2019 Multifamily Uniform Application
2019 HTC
Full Application

Part 1 Tab 1a

Application Certification

(Part 1 Tab 1b required for 4% Tax Exempt Bond Developments only)
2019 Multifamily Uniform Application Certification

Development Name: Vi Collina

The undersigned hereby makes an Application to Texas Department of Housing and Community Affairs. The Applicant affirms that they have read and understand, as applicable, Title 10, Texas Administrative Code ("10 TAC"), Chapters 1, 8, 11, 12, and 13. Specifically, the undersigned understands the requirements under 10 TAC §11.101 of the Qualified Allocation Plan ("QAP"), Site and Development Requirements and Restrictions, as well as Internal Revenue Code Section 42. By signing this document, Applicant is affirming that all statements and representations made in this certification and application, including all supporting materials, are true and correct under penalty of law, including Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. Applicant is also affirming understanding of 10 TAC §11.1(i) of the QAP, relating to Public Information Requests, specifically that the filing of an Application with the Department is deemed as consent to release any and all information contained therein.

The undersigned further certifies that he/she has the authority to execute this certification.

By: Megan D. Lasch
Signature of Authorized Representative
Megan D. Lasch
Printed Name
President

Sworn to and subscribed before me on the 12th day of February, 2019
by Megan D. Lasch

Notary Public
Notary Public, State of Texas
County of Tarrant
My Commission Expires: March 29, 2020
Date

2/11/2019
2019 HTC
Full Application

Part 1 Tab 2

Development Owner Certification, Acknowledgement, and Consent
The Certification, Acknowledgement, and Consent of Development Owner is included behind this tab.

**The form should be executed, notarized, and included in the full application document.**

The form for the certification will be posted to the Department's website at http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

Please indicate whether any of the following required disclosure on the Certification, Acknowledgement, and Consent of Development Owner (to be used for data capture for application processing):

- 10 TAC §11.101(a)(2) - Undesirable Site Features
- 10 TAC §11.101(a)(3) - Neighborhood Risk Factors
- 10 TAC §11.202(1)(M) - Termination of Relationship in an Affordable Housing Transaction
- 10 TAC §11.202(1)(N) - Voluntary Compliance Agreement
  (or any similar agreement resulting from negotiations regarding noncompliance)
- 10 TAC §11.901(16) - Unused Credit or Penalty Fee

Note: If any disclosures are indicated regarding 10 TAC §11.101(a)(3), submit the Neighborhood Risk Factors Report Packet (NRFR) located on the Department's website

http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm
Development Owner Certification, Acknowledgement and Consent

All defined terms used in this certification and not specifically defined herein have the meanings ascribed to them in Chapter 2306 of the Tex. Gov’t Code, §42 of the Internal Revenue Code, and § 11.1(d) of the Qualified Allocation Plan.

The undersigned, in each and all of the following capacities in which it may serve or exist -- Applicant, Development Owner, Developer, Guarantor of any obligation of the Applicant, and/or Principal of the Applicant and hereafter referred to as “Applicant” or “Development Owner,” whether serving in one or more such capacities, is hereby submitting its Application to the Department for consideration of Department funding.

Applicant hereby represents, warrants, acknowledges and certifies to the Department and to the State of Texas that:

The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov’t Code, Chapter 552. All persons who have a property interest in the Application, along with all plans and third-party reports, acknowledge that the Department may publish them on the Department’s website, release them in response to a request for public information, and make other use of the information as authorized by law. This includes all Third Party reports, which will be posted in their entirety on the Department’s website, as they constitute a part of the Application. The Application is in compliance with all requirements related to the eligibility of an Applicant, Application and Development as further defined in 10 TAC §§11.101 and 11.202 of the Qualified Allocation Plan. Any issues of non-compliance have been disclosed.

All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Award Letter, Commitment or Contract by the Department. To the extent allowed under Tex. Gov’t Code §2306.6720, if any such representations,
undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

When providing a Pre-Application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant’s competitive posture, an Applicant must disclose in accordance with the Department’s rules those aspects of the Development that may not have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.), the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.), Fair Housing Accessibility, the Texas Fair Housing Act; and the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

The Development Owner has read and understands the Department’s fair housing educational materials posted on the Department’s website as of the beginning of the Application Acceptance Period.

All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with 10 TAC Chapter 1, Subchapter B.

The Development Owner will establish a reserve account consistent with Tex. Gov’t Code §2306.186, and as further described in §11.302(d)(2)(I) of the Qualified Allocation Plan, relating to Replacement Reserve Account requirements.

The Development will operate in accordance with the applicable compliance monitoring requirements found in Chapter 10, Subchapter F.

The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be
required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov’t Code §2306.6734.

The Development Owner will specifically market to veterans through direct marketing or contracts with veteran’s organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

**Accessibility Requirements**

The Development Owner understands that in accordance with Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8, if the Development includes the New Construction or substantial rehabilitation of multifamily units (4 or more units per building), at least five percent (5%) of all dwelling units will be designed and built to be accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise compliant with the 2010 ADA Standards with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities” (Federal Register 79 FR 29671) meets this requirement. In addition, at least two percent (2%) of all dwelling units will be designed and built to be accessible for persons with hearing or vision impairments.

The Development Owner understands that regardless of building type, all Units accessed by the ground floor or by elevator (“affected units”) must meet the requirements at 10 TAC §11.101(b)(8)(B).

The Development Owner certifies that all accessible Units under 10 TAC Chapter 1, Subchapter B, will be dispersed throughout the Development.

The Development Owner certifies that representations made in the Architect Certification are true and correct, and understands that the Department evaluation of architectural drawings may not include an assessment of accessibility. The Development Owner is responsible for any modifications necessary to meet accessibility requirements identified at the final construction inspection.
Unused Credit or Penalty Fee (select one box as applicable)

_____ The Applicant returned a full credit allocation after the Carryover Allocation deadline required for that allocation and is subject to the Unused Credit or Penalty Fee pursuant to §11.901(16) of the Qualified Allocation Plan.

X____ The Applicant certifies that no disclosure regarding §11.901(16) of the Qualified Allocation Plan is necessary.

Termination of Relationship in an Affordable Housing Transaction (select one box as applicable)

_____ The Applicant has disclosed, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction that has terminated, voluntarily or involuntarily, within the past 10 years or plans to or is negotiating to terminate their relationship with any other affordable housing development. The disclosure identified the person or persons and development involved, the identity of each other development and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. The Applicant has read and understands §11.202(1)(M) of the Qualified Allocation Plan related to such disclosure.

X____ The Applicant certifies that no disclosure regarding §11.202(1)(M) of the Qualified Allocation Plan is necessary.

Voluntary Compliance Agreement with any Governmental Agency (select one box as applicable)

_____ The Applicant has disclosed, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction that entered into a voluntary compliance agreement (or similar agreement) with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. The disclosure identified the person or persons and development involved, the identity of each other development, contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the agreement or proposed agreement, and any appropriate supporting documents. The Applicant has read and understands §11.202(1)(N) of the Qualified Allocation Plan related to such disclosure.
The Applicant certifies that no disclosure regarding §11.202(1)(N) of the Qualified Allocation Plan is necessary.

The Applicant certifies that, for any Development proposing New Construction or Reconstruction and located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, the Development Site will be developed in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. The Applicant certifies that, floodplain maps will be used and the Development Site will comply with regulations as they exist at the time of commencement of construction. Applicant further certifies that, for any Development proposing Rehabilitation (excluding Reconstruction) that is not a HUD or TRDO-USDA assisted property, the Development Site is not located in the one-hundred year floodplain unless the existing structures already meet the requirements for New Construction or Reconstruction, as certified to by a Third Party engineer, or unless the state or local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application.

Undesirable Site Features (select one of the boxes as applicable)

____ The Development is not located in an area with undesirable site features as further described in §11.101(a)(2) of the Qualified Allocation Plan.

____ The proposed Development is Rehabilitation (excluding Reconstruction) with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (“VA”) and an exemption was requested prior to the filing of an Application or is being requested with the Application in accordance with §11.101(a)(2) of the Qualified Allocation Plan.

____ The proposed Development is Historic Preservation pursuant to §11.9(e)(6) of the Qualified Allocation Plan, is located in an area with an undesirable site feature and an exemption was requested prior to the filing of an Application or is being requested with the Application.

____ The proposed Development is New Construction, is located in an area with an undesirable site feature and a copy of the local ordinance that regulates the proximity of such feature to a multifamily development is included in the Application.

____ The proposed Development is located in an area with an undesirable site feature and mitigation to be considered by staff and the Board is included in the Application.
Neighborhood Risk Factors (select one of the main boxes as applicable)

X The Development Owner certifies that the Development is not located in an area with any of the neighborhood risk factors described in §11.101(a)(3) of the Qualified Allocation Plan and that no disclosure is necessary;

In the table:

- [ ] in a census tract with a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13);
- [ ] in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crimes is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com;
- [ ] is located within 1,000 feet of a blighted or abandoned area as further described in §11.101(a)(3)(B)(iii) of the Qualified Allocation Plan;
- [ ] is located in the attendance zones of an elementary, middle, or high school that does not have a 2018 Met Standard rating by the Texas Education Agency, unless the school is “Not Rated” because it meets the TEA Hurricane Harvey Provision, in which case the 2017 rating will apply. Elderly Developments are exempt from the requirement to disclose the presence of this characteristic.

The Development will include all of the mandatory Development amenities required in §11.101(b)(4) of the Qualified Allocation Plan at no charge to all residents (market rate and low-income) and written notice of such amenities will be provided to the residents.

The Development will satisfy the minimum point threshold for common amenities as further described in §11.101(b)(5) of the Qualified Allocation Plan. These amenities must be for the benefit of all residents (market rate and low-income), meet accessibility standards, be sized appropriately to serve the proposed Target Population, be made available throughout normal business hours, and be maintained throughout the Affordability Period. The residents must be provided written notice of the amenity elections made by the Development Owner.

The Development will meet the minimum size of Units as further described §10.101(b)(6)(A) of the Qualified Allocation Plan.
The Development (excluding competitive Housing Tax Credit Applications) will include enough unit and development construction features to meet the minimum number of points as further described in §11.101(b)(6)(B) of the Qualified Allocation Plan.

The Development (excluding competitive Housing Tax Credit Applications) will include enough resident supportive services, at no charge to the residents, be accessible to all residents (market rate and low-income), and maintained throughout the Affordability Period, to meet the required minimum number of points as further described in §11.101(b)(7) of the Qualified Allocation Plan, and offered in accordance with §10.619 of the Uniform Multifamily Rules. The tenant must be provided written notice of the elections made by the Development Owner.

If income averaging is elected, Unit Designations for all units identified as 20%, 30%, 40%, 50%, 60%, 70% and 80% Units will be dispersed across all Unit Types in a manner that does not violate fair housing laws, as required by 10 TAC §10.605(c), effective February 28, 2019.

If the Applicant is applying for Multifamily Direct Loan funds and the Development consists of New Construction, the Applicant further certifies that the Development meets the Construction Site Standards in 24 C.F.R §983.57(e).

If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

The Development Owner will comply with any and all notices required by the Department.

None of the criteria in subparagraphs (A) – (N) of §11.202(1) of the Qualified Allocation Plan, related to ineligible Applicants, applies to those identified on the organizational chart for the Applicant, Developer and Guarantor.

The individual whose name is subscribed hereto, in his or her individual capacity, on behalf of Applicant, and in all other related capacities described above, as applicable, expressly represents, warrants, and certifies that all inform ation contained in this certification and in the Application, including any and all supplements, additions, clarifications, or other materials or information submitted to the Department in connection therewith as required or deemed necessary by the materials governing the multifamily funding programs are true and correct and the Applicant has undergone sufficient investigation to affirm the validity of the statements made. Further, the Applicant hereby expressly represents, warrants, acknowledges and certifies that the individual whose name is subscribed hereto has read and understands all the information contained in this form of the Application.

By signing this document, the undersigned, in their individual capacity, on behalf of Applicant, whether formed or to be formed, and in all other related capacities described above, is
affirming under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification, and subject to criminal penalties as defined by Tex. Penal Code §§37.01 et seq., and subject to any and all other state or federal laws regarding the making of false statements to governmental bodies or the providing of false information in connection with the procurement of allocations or awards, that the Application and all materials relating thereto constitute government documents and that the Application and all materials relating thereto are true, correct, and complete in all material respects.
By: Megan D. Lasch

Signature

Megan D. Lasch

Printed Name

President

Title

2-20-19

Date

THE STATE OF Texas

COUNTY OF Parker

Before me, a notary public, on this day personally appeared Megan D. Lasch, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared and certified that the statements therein contained are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24th day of February 2019.

(Seal)

ISAMAR ENRIQUEZ
Notary ID #129140838
My Commission Expires September 29, 2020

Notary Public Signature

Page 9 of 9

February 13, 2019
10 TAC §11.202 of the Qualified Allocation Plan identifies situations in which an Application or Applicant may be ineligible for Department funding. Applicants must provide disclosure of all potential instances of ineligibility, along with evidence of appropriate corrective action taken and accepted by the Department or mitigating factors to be considered. Documentation should be attached behind this tab.

Disclosure of all potential instances of ineligibility, along with evidence of appropriate corrective action is included behind this tab.
Applicant Eligibility Certification

All defined terms used in this certification and not specifically defined herein have the meanings ascribed to them in Chapter 2306 of the Tex. Gov’t Code, §42 of the Internal Revenue Code, and § 11.1(d) of the Qualified Allocation Plan.

The undersigned, in each and all of the following capacities in which it may serve or exist or be contemplated to bring a new entity into existence—Applicant, Development Owner, Developer, Guarantor of any obligation of the Applicant, and/or Principal of the Applicant and hereafter referred to as “Applicant,” whether serving in one or more such capacities, is hereby submitting its Application to the Department for consideration of multifamily funding.

Applicant hereby represents, warrants, agrees, acknowledges and certifies to the Department and to the State of Texas that:

It has obtained all necessary consents and approvals, and conducted all necessary diligence to enable it to make these certifications and to perform any all agreements and to give all consents provided for or made herein.

All representations, undertakings and commitments made by Applicant in the Application process for a Development, whether with respect to Threshold Criteria, selection criteria or otherwise, expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. To the extent allowed under §2306.6720 Tex. Gov’t Code, if any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and/or the tenants of the Development, including but not limited to enforcement by assessment of administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement, the entry of orders by the Department’s Governing Board requiring strict performance, or the obtaining of injunctive relief.

Neither Applicant nor any other member of the Development Team has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in HUD’s System for Award Management (SAM).

Neither Applicant nor any other member of the Development Team has been convicted of a
state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission.

Neither Applicant nor any other member of the Development Team is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; and/or is the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity.

Neither Applicant nor any other member of the Development Team has breached a contract with a public agency and failed to cure that breach within the timeframe provided or allowed by contract. If such breach is permitted to be cured under the contract, notice of the breach has been given and a reasonable opportunity to cure.

Neither Applicant nor any other member of the Development Team has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency.

Neither Applicant nor any other member of the Development Team has been found by the Board to be ineligible based on a previous participation review performed in accordance with 10 TAC Chapter 1 Subchapter C.

Neither Applicant nor any other member of the Development Team is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans.

Neither Applicant nor any other member of the Development Team has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least ten (10) days prior to the Board meeting at which the decision for an award is to be made.

Neither Applicant nor any other member of the Development Team is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733 of the Tex. Gov’t Code, or a provision of Chapter 572 of the Tex. Gov’t Code, that would prohibit the Person from participating in the Application in the manner and capacity they are participating.
Neither Applicant nor any other member of the Development Team has previous Contracts or Commitments that have been partially or fully de-obligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations, and the Person is not on notice that such de-obligation results in ineligibility under 10 TAC Chapter 11.

Neither Applicant nor any other member of the Development Team has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment, or Determination Notice for a Development.

Neither Applicant nor any other member of the Development team has been the owner or Affiliate of the owner of a Department assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or Department funds repaid.

Neither Applicant nor any other member of the Development Team has participated in the dissemination of misinformation about affordable housing and the persons it serves or about a competing Applicant that would likely have the effect of fomenting opposition to an Application where such opposition is not based on substantive and legitimate concerns that do not implicate potential violations of fair housing laws.

The Applicant will not violate §2306.1113 of the Tex. Gov’t Code relating to Ex Parte Communication and further explained in §11.202(2)(A) of the Qualified Allocation Plan.

For any Development utilizing Housing Tax Credit or Tax-Exempt Bonds, at all times during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is not or has not been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; or in violation of §2306.6733 of the Tex. Gov’t Code.

For any Development utilizing Housing Tax Credits, the Applicant will not propose to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Tex. Gov’t Code are met.

All the instances in which any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that
has terminated voluntarily or involuntarily within the past ten years or is negotiating to terminate their relationship with any other affordable housing development have been fully disclosed pursuant to §11.202(1)(M) of the Uniform Multifamily Rules. Applicant understands that failure to disclose is grounds for termination.

All housing developments with which Applicant, Development Owner, Developer, Guarantor and/or Principal thereof participating, are in compliance with: state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.); and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.).

The making of an allocation or award by the Department does not constitute a finding or determination that the Development is deemed qualified to receive such allocation or award. Applicant agrees that the Department or any of its directors, officers, employees, and agents will not be held responsible or liable for any representations made to the undersigned or its investors; therefore, Applicant assumes the risk of all damages, losses, costs, and expenses related thereto and agrees to indemnify and hold harmless the Department and any of its officers, employees, and agents against any and all claims, suits, losses, damages, costs, and expenses of any kind and of any nature that the Department may hereinafter suffer, incur, or pay arising out of its decisions and actions concerning this Application or the use of information therein.

Applicant, Development Owner, Developer, Guarantor or other Related Party is not subject to any pending criminal proceedings and if any such proceeding or any other charges which would invalidate the certifications are finally adjudicated or otherwise disposed of prior to Carryover, Determination Notice, or Closing, the Applicant will immediately notify the Department. Such notification must be presented to the Board for consideration at the next available Board meeting.

The individual whose name is subscribed hereto, in his or her individual capacity, on behalf of Applicant, and in all other related capacities described above, as applicable, expressly represents, warrants, and certifies that all information contained in this certification and in the Application, including any and all supplements, additions, clarifications, or other materials or information submitted to the Department in connection therewith as required or deemed necessary by the materials governing the multifamily funding programs are true and correct and the Applicant has undergone sufficient investigation to affirm the validity of the statements made. The Applicant agrees that the Department may, at its discretion, request additional information and/or documentation in its evaluation of this Application and is authorized but
not obligated under this document to conduct its own investigation regarding any information requested and or provided in relation to the Application or the Development. Further, the Applicant hereby expressly represents, warrants, and certifies that the individual whose name is subscribed hereto has read and understands all the information contained in this form of the Application.

By signing this document, the undersigned, in their individual capacity, on behalf of Applicant, whether formed or to be formed, and in all other related capacities described above, is affirming under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §§37.01 et seq. (Vernon 2011) and subject to any and all other state or federal laws regarding the making of false statements to governmental bodies or the false statements or the providing of false information in connection with the procurement of allocations or awards that the Application and all materials relating thereto constitute government documents and that the Application and all materials relating thereto are true, correct, and complete in all material respects.
2019 REVISED Applicant Eligibility Certification

By:  
Signature of Authorized Representative

Megan D. Lasch  
Printed Name

President  
Title

Date

THE STATE OF  
Texas  
$  
COUNTY OF  
Parker  
$

Before me, a notary public, on this day personally appeared Megan D. Lasch, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared and certified that the statements therein contained are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21st day of February, 2019

(Seal)

ISAMAR ENRIQUEZ  
Notary ID #1291-41838  
My Commission Expires September 29, 2020

Notary Public Signature
Multifamily Direct Loan Certification (10 TAC Chapter 13)

- **Multifamily Direct Loan Certification** is included behind this tab.

- **Multifamily Direct Loan Certification** is not applicable to this Application.

**If applicable, the form should be executed, notarized, and included in the full application document.**

The form for the certification will be posted to the Department's website at [http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm](http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm)
Provide the contact information for the Applicant and any staff responsible for Administrative Deficiencies and/or clarifications to the Application.

### 1. Applicant Contact Information

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone: (830) 330-0762</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email</td>
<td><a href="mailto:megan@o-sda.com">megan@o-sda.com</a></td>
<td></td>
</tr>
<tr>
<td>Mailing Address</td>
<td>5501-A Balcones Dr. #302</td>
<td></td>
</tr>
<tr>
<td>Street</td>
<td>Austin</td>
<td>TX</td>
</tr>
<tr>
<td>City</td>
<td>TX</td>
<td>78731</td>
</tr>
</tbody>
</table>

### 2. Second Contact

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone: (512) 789-1295</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email</td>
<td><a href="mailto:ajcarpen@gmail.com">ajcarpen@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>Mailing Address</td>
<td>1305 E 6th, Ste 12</td>
<td></td>
</tr>
<tr>
<td>Street</td>
<td>Austin</td>
<td>TX</td>
</tr>
<tr>
<td>City</td>
<td>TX</td>
<td>78702</td>
</tr>
</tbody>
</table>

### 3. Consultant Contact (if applicable)

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone: (512) 789-1295</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email</td>
<td><a href="mailto:ajcarpen@gmail.com">ajcarpen@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>Mailing Address</td>
<td>1305 E 6th, Ste 12</td>
<td></td>
</tr>
<tr>
<td>Street</td>
<td>Austin</td>
<td>TX</td>
</tr>
<tr>
<td>City</td>
<td>TX</td>
<td>78702</td>
</tr>
</tbody>
</table>
2019 HTC
Full Application

Part 1 Tab 6

Self Score Form
This form will self-populate based on scoring selections made throughout the Application. Applicant should refer to this form to ensure that scoring selections are accurate prior to submitting the Application. Corrections must be made in the applicable section(s) of the Application. Highlighted rows indicate scoring items for both 9% HTC and Direct Loan applications. Additional scoring for Direct Loan applications can be found at 10 TAC §13.6.

### Criteria Promoting Development of High Quality Housing

<table>
<thead>
<tr>
<th>Point Item Description</th>
<th>QAP Reference</th>
<th>Points Selected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Sizes</td>
<td>§11.9(b)(1)(A)</td>
<td>6</td>
</tr>
<tr>
<td>Unit and Development Features</td>
<td>§11.9(b)(1)(B)</td>
<td>9</td>
</tr>
<tr>
<td>Sponsor Characteristics</td>
<td>§11.9(b)(2)</td>
<td>2</td>
</tr>
</tbody>
</table>

**High Quality Housing Total**: 17

### Criteria to Serve and Support Texans Most In Need

<table>
<thead>
<tr>
<th>Point Item Description</th>
<th>QAP Reference</th>
<th>Points Selected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income Levels of Tenants</td>
<td>§11.9(c)(1)</td>
<td>16</td>
</tr>
<tr>
<td>Rent Levels of Tenants</td>
<td>§11.9(c)(2)</td>
<td>11</td>
</tr>
<tr>
<td>Resident Services</td>
<td>§11.9(c)(3)</td>
<td>10</td>
</tr>
<tr>
<td>Opportunity Index</td>
<td>§11.9(c)(4)</td>
<td>0</td>
</tr>
<tr>
<td>Underserved Area</td>
<td>§11.9(c)(5)</td>
<td>2</td>
</tr>
<tr>
<td>Tenant Populations with Special Needs</td>
<td>§11.9(c)(6)</td>
<td>2</td>
</tr>
<tr>
<td>Proximity to the Urban Core</td>
<td>§11.9(c)(7)</td>
<td>5</td>
</tr>
<tr>
<td>Readiness to Proceed in Disaster Impacted Counties</td>
<td>§11.9(c)(8)</td>
<td></td>
</tr>
</tbody>
</table>

**Serve and Support Texans Most in Need Total**: 46

### Criteria Promoting Community Support and Engagement

| Point Item Description                                        | QAP Reference | Points Selected |
|                                                               |               |                 |
| Local Government Support                                      | §11.9(d)(1)   | 12              |
| Commitment of Development Funding by Local Political Subdivision | §11.9(d)(2)   | 1               |
| Declared Disaster Area                                        | §11.9(d)(3)   | 10              |
| Quantifiable Community Participation                           | §11.9(d)(4)   |                 |
| Community Support from State Representative                    | §11.9(d)(5)   |                 |
| Input from Community Organizations                            | §11.9(d)(6)   |                 |
| Concerted Revitalization Plan                                | §11.9(d)(7)   |                 |

**Community Support and Engagement Total**: 11

### Criteria Promoting the Efficient Use of Limited Resources and Applicant Accountability

<table>
<thead>
<tr>
<th>Point Item Description</th>
<th>QAP Reference</th>
<th>Points Selected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Feasibility</td>
<td>§11.9(e)(1)</td>
<td>18</td>
</tr>
<tr>
<td>Cost of Development per Square Foot</td>
<td>§11.9(e)(2)</td>
<td>12</td>
</tr>
<tr>
<td>Pre-application Participation</td>
<td>§11.9(e)(3)</td>
<td>6</td>
</tr>
<tr>
<td>Leveraging of Private, State, and Federal Resources</td>
<td>§11.9(e)(4)</td>
<td>3</td>
</tr>
<tr>
<td>Extended Affordability</td>
<td>§11.9(e)(5)</td>
<td>2</td>
</tr>
<tr>
<td>Historic Preservation</td>
<td>§11.9(e)(6)</td>
<td>0</td>
</tr>
<tr>
<td>Right of First Refusal</td>
<td>§11.9(e)(7)</td>
<td>1</td>
</tr>
<tr>
<td>Funding Request Amount</td>
<td>§11.9(e)(8)</td>
<td>1</td>
</tr>
</tbody>
</table>

**Efficient Use of Limited Resources and Applicant Accountability Total**: 43

### Total Application Self Score

117

2/26/2019
Site Information Form
Part I
### Site Information Form Part I

| **1. Development Address (All Programs)** |
|------------------|------------------|
| **Address**      | 2401 E. Oltorf St. (aka 2431 E. Oltorf St.) |
| **City**         | Austin            |
| **ETJ?**         | No                |
| **Region**       | 7                |
| **Zip**          | 78741             |
| **County**       | Austin            |
| **Rural/Urban**  | Urban             |

<table>
<thead>
<tr>
<th><strong>2. Census Tract Information (All Programs)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Census Tract Number</strong></td>
</tr>
<tr>
<td><strong>QCT?</strong></td>
</tr>
<tr>
<td><strong>Median Household Income:</strong></td>
</tr>
<tr>
<td><strong>Quartile:</strong></td>
</tr>
<tr>
<td><strong>Poverty Rate:</strong></td>
</tr>
</tbody>
</table>

The poverty rate for the Census Tract is above 40% (55% for Regions 11 or 13), and the Neighborhood Risk Factors Report and required documentation has been submitted.

<table>
<thead>
<tr>
<th><strong>3. Resolutions (Competitive HTC and Tax-Exempt Bonds, if applicable) [10 TAC §11.3]</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Twice the State Average Per Capita.</strong> The proposed Development is NOT located in a municipality or a county that has more than twice the state average of units per capita supported by Tax Credits or Private Activity Bonds. (QAP §11.3(c))</td>
</tr>
<tr>
<td><strong>One Mile Three Year Rule.</strong> The proposed Development is NOT a New Construction or Adaptive Reuse development that will be located one mile or less from a New Construction HTC or Bond Development serving the same type of household and awarded within the applicable three-year period and has not been withdrawn or terminated, OR the Development meets one of the exceptions in §11.3(d)(2) of the QAP (provide evidence of exception).</td>
</tr>
<tr>
<td><strong>Limitations on Developments in Certain Census Tracts.</strong> The proposed Development is NOT a New Construction or Adaptive Reuse development that will be located in a census tract that has more than 20% HTC units per total households. (§11.3(e))</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>4. Two Mile Same Year Rule (Competitive HTC Only) [10 TAC §11.3(b)]</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The site is not located in a county with a population that exceeds one million.</td>
</tr>
<tr>
<td>The site is located in a county with a population that exceeds one million and is not located within 2 linear miles of the proposed Development Site of any eligible Pre-application in the same county.</td>
</tr>
<tr>
<td>The site is located in a county with a population that exceeds one million and is located within 2 linear miles of the site of the following eligible Pre-application(s) within the same county:</td>
</tr>
<tr>
<td>19043, 19108, 19294</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>5. Proximity of Development Sites (Competitive HTC Only) [10 TAC §11.3(g)]</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The site is contiguous to or within 1,000 feet of the site for the following eligible Pre-application(s) serving the same Target Population:</td>
</tr>
<tr>
<td>NA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>6. Zoning [10 TAC §11.204(11)] and Flood Zone Designation [10 TAC §11.101(a)(1)] (All Programs)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Development Site is appropriately zoned?</strong></td>
</tr>
<tr>
<td><strong>Zoning Designation:</strong></td>
</tr>
<tr>
<td><strong>Flood Zone Designation:</strong></td>
</tr>
<tr>
<td><strong>Entire Development Site is outside the 100 year floodplain.</strong></td>
</tr>
<tr>
<td><strong>Farmland Designation (New Construction (including adaptive re-use) seeking Section 811 and/or Direct Loan funds):</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Confirms the following supporting documents are provided behind this tab:</strong></td>
</tr>
<tr>
<td>Statement explaining how the Development will promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.</td>
</tr>
<tr>
<td>DP-1 Profile of General Demographic Characteristics (2010) Census data for the census tract and city (and county if proposed site is located in a rural area) where the proposed site will be located. DP-1 Census data can be accessed using the Advanced Search option at <a href="http://www.census.gov">www.census.gov</a>.</td>
</tr>
</tbody>
</table>


2/26/2019
Children of the proposed development will attend:

<table>
<thead>
<tr>
<th>School Name</th>
<th>Grades</th>
<th>Met Standard Rating?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X through X</td>
<td>2016</td>
</tr>
<tr>
<td>Linder Elementary</td>
<td>K through 5</td>
<td>Yes</td>
</tr>
<tr>
<td>Fulmore Middle</td>
<td>6 through 9</td>
<td>Yes</td>
</tr>
<tr>
<td>Travis High School</td>
<td>9 through 12</td>
<td>Yes</td>
</tr>
</tbody>
</table>

School district has no attendance zones and the closest schools are listed.

The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that does not have a 2018 (or 2017 if the Hurricane Harvey Provision applies) Met Standard rating by the Texas Education Agency, and the Neighborhood Risk Factors Report ("NRFR") and required documentation has been submitted. [§11.101(a)(3)(D)(iv)]

The Target Population is Elderly. ** Applicant is required to enter school rating information above, but no disclosure is required.**

### Waiver of Rules [10 TAC §11.207]

- Applicant requests waiver of rules.
- Documentation to support waiver was previously provided or is attached behind Tab 8 and includes:
  - Documentation establishing how the need for the waiver was both not reasonably foreseeable and was not preventable by the Applicant and (where appropriate), plans for mitigation or alternative solutions; and
  - Documentation establishing how, by granting the waiver, it better serves the policies and purposes articulated in referenced sections of Tex. Gov't Code than not granting the waiver.
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documentation for
Site Information Form Part I
Maps:
- Street Map with Site Drawn and Identified
- Census Tract Map with Development Site Identified
- https://factfinder.census.gov/taces/nav/jsf/pages/searchresults.xhtml?refresh=t

Resolutions:
- Twice the State Average of Units Per Capita Resolution
- One Mile Three Year Resolution or evidence of other exception
- Housing Tax Credit Units per Total Household Resolution

For Tax-Exempt Bond Applications:
- The resolution of no objection to satisfy requirements of 10 TAC §11.204(4) of the QAP is included
- The resolution of no objection to satisfy requirements of 10 TAC §11.204(4) of the QAP is not included and will be provided under separate cover no later than 14 days prior to the Board meeting selected in Tab 1b

Zoning and Floodplain
- Evidence of Zoning and/or Evidence of Re-Zoning Process
- Evidence of Flood Zone Designation

Farmland Designation
- Information is included in the ESA.
- Information is included behind this tab.

Go to https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx and
  - Go to "Quick Navigation", select address and enter street address, city, and state. If the Development Site does not have a fixed address, enter the street, city, and state.
  - Just below where it says "Area of Interest Interactive Map" and to the left of where it says "Legend" is a row of buttons. Two at the end are labeled "AOI" for area of interest. Click the rectangle or triangle button based on the relative shape of the Development Site.
  - Outline the Development Site, getting as much within the rectangle or triangle as possible.
  - Select the tab for "Soil Data Explorer", select "Land Classifications", then select "Farmland Classification".
  - Select "View Rating". You may need to scroll down to see it.
  - In the upper right corner, select "Printable Version". Name it if you wish, scale to "Fit to page", printed sheet size "A landscape (11" x 8.5")". Make sure the box box labeled "show UTM Coordinate Ticks" is checked. Select "View".
  - Save the file as a PDF and include it in the Application.

Site and Neighborhood Standards (New Construction Direct Loan Only)
- Statement regarding promoting housing choice explains HOW the Development will promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low income persons.

2/26/2019
Educational Quality (all Applications)

- School Attendance Zone Map with Development labeled;
- 2018 TEA accountability information for each school (or 2017 if the Hurricane Harvey Provision applies); and
- Neighborhood Risk Factors Report ("NRFR") if a school in the attendance zone has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year (or 2017 if the Hurricane Harvey Provision applies).

Waiver of Rules

- The waiver request must establish how the need for the waiver was both not reasonably foreseeable and was not preventable by the Applicant
- The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov’t Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documents:
Street Map
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documents:
Census Tract Map
Census Tract Map
Vi Collina

The 2019 Qualified Census Tracts (QCTs) and Difficult Development Areas (DDAs) are effective January 1, 2019. The 2019 designations use data from the 2010 Decennial census and three releases of 5-year tabulations from the American Community Survey (ACS): 2010-2014; 2011-2015; and 2012-2016. The designation methodology is explained in the Federal Register notice published October 22, 2018.

Source: https://www.huduser.gov/portal/sadda/sadda_qct.html
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documents:
2x Per Capita Resolution/
1 Mile 3 Year Resolution/
30% HTC Resolution
RESOLUTION NO. 20190207-012

WHEREAS, Vi Collina, LLC ("Applicant"), its successors, assigns or affiliates, proposes to construct an affordable multi-family housing development of approximately 84 units to be located at or near 2401 East Oltorf Street ("Development") within the City of Austin; and

WHEREAS, Applicant, its successors, assigns or affiliates, intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 9% Low Income Housing Tax Credits for the Development to be known as Tierra Skyline; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Pursuant to Section 11.3 of Texas’ Qualified Allocation Plan, the City Council expressly acknowledges and confirms that the City has more than twice the state average of units per capita supported by Housing Tax Credits or Private Activity Bonds.

BE IT FURTHER RESOLVED:

Pursuant to Sections 11.3 and 11.4 of Texas’ Qualified Allocation Plan, the City Council acknowledges that the proposed Development is located one linear mile or less from a development that serves the same type of household as the Development and
has received an allocation of Housing Tax Credits (or private activity bonds) within the
three year period preceding the date the Certificate of Reservation is issued.

BE IT FURTHER RESOLVED:

Pursuant to Section 2306.6703(a)(4) of the Texas Government Code and
Sections 11.3 and 11.4 of Texas' Qualified Allocation Plan, the City Council supports
the Development; approves the construction of the Development; and authorizes
allocation of Housing Tax Credits for the Development.

BE IT FURTHER RESOLVED:

The City Council authorizes, empowers, and directs Jannette S. Goodall, City
Clerk, to certify this resolution to the Texas Department of Housing and Community
Affairs.

ADOPTED: ______ February 7 ______, 2019  ATTEST: Jannette S. Goodall
City Clerk
February 25, 2019

Megan Lasch
Saigebrook Development
421 West 3rd Street, suite 1504
Austin, TX 78701

Re: Resolution of Support for Vi Collina

Dear Ms. Lasch,

At the Austin City Council meeting on February 7, 2019, staff presented the requests from multiple entities for resolutions of support for applications to the Texas Department of Housing and Community Affairs Competitive Low Income Housing Tax Credit Program. Generally, staff presents these resolutions en masse, having reviewed and vetted each request, and Council approves the resolutions on consent. This year, the City of Austin received eighteen requests for resolutions of support, with ten proposals ultimately going before Council. As staff worked to prepare all of the documentation and resolutions for Council to approve, we unfortunately made a minor error in the drafting of the resolution of support for Vi Collina. This resolution was advertised and listed in the agenda as being in support of the Vi Collina application. The language in the agenda clearly stated that this resolution was to be in support of Vi Collina. The supporting documentation for this agenda item included the original request from you, the applicant, for a resolution of support for Vi Collina, as well as multiple documents showing staff’s analysis of the location proposed in your application. Further, the resolution lists Vi Collina, LLC as the “applicant” and identifies the proposed development to be located at 2401 East Oltorf Street. Unfortunately, the resolution then states that the applicant intends to apply for the tax credits for “the Development to be known as Tierra Skyline.” This was an error. The resolution is in support of the application submitted by Vi Collina, LLC for the development to be located at 2401 East Oltorf Street, to be known as Vi Collina, or whatever name the developer ultimately chooses. Please accept this as an explanation of events and an apology for the confusion.

Sincerely,

James B. May, AICP
Community Development Manager
Neighborhood Housing and Community Development
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documents:
Evidence of Zoning
For questions concerning zoning compliance or any development criteria contact the Development Assistance Center of the City of Austin at (512) 974-6370.

This letter is to verify that the parcel listed is covered by the listed zoning classification on the date the letter was created.

**Party Requesting Verification**

<table>
<thead>
<tr>
<th>Name: Megan Lasch</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address:</td>
</tr>
<tr>
<td>5501 A Balcones Dr. #302</td>
</tr>
<tr>
<td>Austin, TX 78731</td>
</tr>
</tbody>
</table>

**Tax Parcel Identification Number**

| Agency: TCAD |
| Parcel ID: 289145 |

**Zoning Classification(s)**


| MF-6-CO |

**Zoning Case Number(s)**

Look up case info at [https://www.austintexas.gov/devreview/a_queryfolder_permits.jsp](https://www.austintexas.gov/devreview/a_queryfolder_permits.jsp)

| C14-2016-0087 |

**Zoning Ordinance Number(s)**

Look up ordinances at [http://austintexas.gov/edims/search.cfm](http://austintexas.gov/edims/search.cfm)

| 20170126-078 |

For Address Verification visit:
[http://austintexas.gov/addressverification](http://austintexas.gov/addressverification)

To access zoning ordinance documentation visit:
[http://austintexas.gov/edims/search.cfm](http://austintexas.gov/edims/search.cfm)

To access zoning overlay documentation (Land Development Code Chaper 25-2 Division 6) visit:

[http://austintexas.gov/department/zoning](http://austintexas.gov/department/zoning)

This letter was produced by the City of Austin Communication Technology Management Department on behalf of the Planning and Development Review Department.

I, Stacy Meeks, of the Communications and Technology Management Department for the City of Austin, do hereby certify that the above information reflects the data and records on file in this office.
ORDINANCE NO. 20170126-078

AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 2431 EAST OLTORF STREET FROM COMMUNITY COMMERCIAL (GR) DISTRICT TO MULTIFAMILY RESIDENCE HIGHEST DENSITY-CONDITIONAL OVERLAY (MF-6-CO) COMBINING DISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from community commercial (GR) district to multifamily residence highest density-conditional overlay (MF-6-CO) combining district on the property described in Zoning Case No. C14-2016-0087, on file at the Planning and Zoning Department, as follows:

Lots 2-7, Willow Creek Commercial Section II subdivision, a subdivision in Travis County, Texas, as recorded in Volume 87, Pages 110B-110C of the Plat Records of Travis County, Texas (the “Property”),

locally known as 2431 East Oltorf Street in the City of Austin, Travis County, Texas, generally identified in the map attached as Exhibit “A”.

PART 2. The Property within the boundaries of the conditional overlay combining district established by this ordinance is subject to the following condition:

A. The maximum height of a building or structure on the Property is limited to 60 feet.

B. A site plan or building permit for the Property may not be approved, released, or issued if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds 2,000 trips per day.

Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the multifamily residence highest density (MF-6) district and other applicable requirements of the City Code.
PART 3. This ordinance takes effect on February 6, 2017.

PASSED AND APPROVED

January 26, 2017

APPROVED: Anne L. Morgan
City Attorney

ATTEST: Jannette S. Goodall
City Clerk

Steve Adler
Mayor
ZONING

Case#: C14-2016-0087

EXHIBIT A

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Zoning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

Created: 8/26/2016
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documents:
Flood Zone Designation
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documents:
Farmland Designation
### MAP LEGEND

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image1" alt="Symbol" /></td>
<td>Not prime farmland</td>
</tr>
<tr>
<td><img src="image2" alt="Symbol" /></td>
<td>All areas are prime farmland</td>
</tr>
<tr>
<td><img src="image3" alt="Symbol" /></td>
<td>Prime farmland if drained</td>
</tr>
<tr>
<td><img src="image4" alt="Symbol" /></td>
<td>Prime farmland if protected from flooding or not frequently flooded during the growing season</td>
</tr>
<tr>
<td><img src="image5" alt="Symbol" /></td>
<td>Prime farmland if irrigated and reclaimed of excess salts and sodium</td>
</tr>
<tr>
<td><img src="image6" alt="Symbol" /></td>
<td>Farmland of statewide importance</td>
</tr>
<tr>
<td><img src="image7" alt="Symbol" /></td>
<td>Farmland of local importance</td>
</tr>
<tr>
<td><img src="image8" alt="Symbol" /></td>
<td>Farmland of unique importance</td>
</tr>
<tr>
<td><img src="image9" alt="Symbol" /></td>
<td>Not rated or not available</td>
</tr>
</tbody>
</table>

### Soil Rating Polygons

- Not prime farmland
- All areas are prime farmland
- Prime farmland if drained
- Prime farmland if protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated and reclaimed of excess salts and sodium
- Farmland of statewide importance
- Farmland of local importance
- Farmland of unique importance
- Not rated or not available

### Soil Rating Lines

- Not prime farmland
- All areas are prime farmland
- Prime farmland if drained
- Prime farmland if subsoiled, completely removing the root inhibiting soil layer
- Prime farmland if irrigated and the product of I (soil erodibility) x C (climate factor) does not exceed 60
- Prime farmland if irrigated and reclaimed of excess salts and sodium
- Farmland of statewide importance
- Farmland of local importance
- Farmland of unique importance
- Not rated or not available

### Water Features

- Prime farmland if irrigated and drained
- Prime farmland if irrigated and either protected from flooding or not frequently flooded during the growing season
- Farmland of statewide importance
- Farmland of local importance
- Farmland of unique importance
- Not rated or not available

---

**Farmland Classification—Travis County, Texas**
**Vi Collina**

**Natural Resources Conservation Service**
**Web Soil Survey**
**National Cooperative Soil Survey**

2/2/2019
The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL: [Link]
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Travis County, Texas
Survey Area Data: Version 20, Sep 16, 2018

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Feb 8, 2015—Nov 30, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.
Farmland Classification

<table>
<thead>
<tr>
<th>Map unit symbol</th>
<th>Map unit name</th>
<th>Rating</th>
<th>Acres in AOI</th>
<th>Percent of AOI</th>
</tr>
</thead>
<tbody>
<tr>
<td>HsD</td>
<td>Houston Black soils and Urban land, 0 to 8 percent slopes</td>
<td>Not prime farmland</td>
<td>2.2</td>
<td>7.7%</td>
</tr>
<tr>
<td>TuD</td>
<td>Travis soils and urban land, 1 to 8 percent slopes</td>
<td>Not prime farmland</td>
<td>1.8</td>
<td>6.3%</td>
</tr>
<tr>
<td>Tw</td>
<td>Tinn clay, 0 to 1 percent slopes, frequently flooded</td>
<td>Not prime farmland</td>
<td>2.5</td>
<td>8.9%</td>
</tr>
<tr>
<td>UvE</td>
<td>Urban land and Ferris soils, 10 to 15 percent slopes</td>
<td>Not prime farmland</td>
<td>22.1</td>
<td>77.1%</td>
</tr>
<tr>
<td><strong>Totals for Area of Interest</strong></td>
<td></td>
<td></td>
<td><strong>28.6</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Description

Farmland classification identifies map units as prime farmland, farmland of statewide importance, farmland of local importance, or unique farmland. It identifies the location and extent of the soils that are best suited to food, feed, fiber, forage, and oilseed crops. NRCS policy and procedures on prime and unique farmlands are published in the "Federal Register," Vol. 43, No. 21, January 31, 1978.

Rating Options

*Aggregation Method: No Aggregation Necessary
*Tie-break Rule: Lower*
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documents:
Direct Loan
Site and Neighborhood Standards
This Tab is Not Applicable
2019 HTC
Full Application

Part 2 Tab 8

Supporting Documents:
Educational Quality
School Assignment by Residential Address

Year: 2019–2020
Grade: Pre-K / Kindergarten
ZIP Code: 78741
Street Name: East Oltorf St
Street Number: 2300 – 2499 (odd #)

2019–2020 Assignment for
2300–2499 (odd #) East Oltorf St, Austin, TX 78741

Linder Elementary
2800 Metcalfe Rd
Austin, TX 78741
(512) 414–2398
1st – 5th grade
Beverly Odom, principal
### Texas Education Agency
**2018 Accountability Ratings Overall Summary**
LINDER EL (227901160) - AUSTIN ISD

<table>
<thead>
<tr>
<th>Component</th>
<th>Score</th>
<th>Scaled Score</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>79</td>
<td>Met Standard</td>
<td></td>
</tr>
<tr>
<td>Student Achievement</td>
<td>70</td>
<td>Met Standard</td>
<td></td>
</tr>
<tr>
<td>STAAR Performance</td>
<td>41</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>College, Career and Military Readiness</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Graduation Rate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School Progress</td>
<td>79</td>
<td>Met Standard</td>
<td></td>
</tr>
<tr>
<td>Academic Growth</td>
<td>74</td>
<td>79</td>
<td>Met Standard</td>
</tr>
<tr>
<td>Relative Performance (Eco Dis: 94.1%)</td>
<td>41</td>
<td>78</td>
<td>Met Standard</td>
</tr>
<tr>
<td>Closing the Gaps</td>
<td>82</td>
<td>79</td>
<td>Met Standard</td>
</tr>
</tbody>
</table>

**Distinction Designations**
- ELA/Reading: Not Earned
- Mathematics: Not Earned
- Science: Not Earned
- Social Studies: Not Eligible
- Comparative Academic Growth: Not Earned
- Postsecondary Readiness: Not Earned
- Comparative Closing the Gaps: Not Earned
<table>
<thead>
<tr>
<th>Year</th>
<th>2019–2020</th>
<th>2018–2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade</td>
<td>7th Grade</td>
<td></td>
</tr>
<tr>
<td>ZIP Code</td>
<td>78741</td>
<td></td>
</tr>
<tr>
<td>Street Name</td>
<td>East Oltorf St</td>
<td></td>
</tr>
<tr>
<td>Street Number</td>
<td>2300 – 2499 (odd #)</td>
<td></td>
</tr>
</tbody>
</table>

2019–2020 Assignment for

2300–2499 (odd #) East Oltorf St, Austin, TX 78741

Fulmore Middle
201 E Mary St
Austin, TX 78704
(512) 414–3207
6th – 8th grade
Stacie Holiday, principal
# Texas Education Agency

## 2018 Accountability Ratings Overall Summary

### FULMORE M S (227901043) - AUSTIN ISD

<table>
<thead>
<tr>
<th>Component</th>
<th>Score</th>
<th>Scaled Score</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>81</td>
<td>Met Standard</td>
<td></td>
</tr>
<tr>
<td>Student Achievement</td>
<td>79</td>
<td>Met Standard</td>
<td></td>
</tr>
<tr>
<td>STAAR Performance</td>
<td>48</td>
<td>79</td>
<td></td>
</tr>
<tr>
<td>College, Career and Military Readiness</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Graduation Rate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School Progress</td>
<td>85</td>
<td>Met Standard</td>
<td></td>
</tr>
<tr>
<td>Academic Growth</td>
<td>63</td>
<td>63</td>
<td>Met Standard</td>
</tr>
<tr>
<td>Relative Performance (Eco Dis: 64.2%)</td>
<td>48</td>
<td>85</td>
<td>Met Standard</td>
</tr>
<tr>
<td>Closing the Gaps</td>
<td>37</td>
<td>72</td>
<td>Met Standard</td>
</tr>
</tbody>
</table>

### Distinction Designations

- ELA/Reading: Earned
- Mathematics: Not Earned
- Science: Earned
- Social Studies: Earned
- Comparative Academic Growth: Not Earned
- Postsecondary Readiness: Earned
- Comparative Closing the Gaps: Not Earned
2019–2020 Assignment for
2300–2499 (odd #) East Oltorf St, Austin, TX 78741

Travis High
1211 E Oltorf St
Austin, TX 78704
(512) 414–2527
9th – 12th grade
Christina Hantgin, principal
## Texas Education Agency
### 2018 Accountability Ratings Overall Summary
#### TRAVIS H S (227901007) - AUSTIN ISD

<table>
<thead>
<tr>
<th>Component</th>
<th>Scaled Score</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>83</td>
<td>Met Standard</td>
</tr>
<tr>
<td>Student Achievement</td>
<td>75</td>
<td>Met Standard</td>
</tr>
<tr>
<td>STAAR Performance</td>
<td>42</td>
<td>71</td>
</tr>
<tr>
<td>College, Career and Military Readiness</td>
<td>48</td>
<td>80</td>
</tr>
<tr>
<td>Graduation Rate</td>
<td>93.1</td>
<td>75</td>
</tr>
<tr>
<td>School Progress</td>
<td>86</td>
<td>Met Standard</td>
</tr>
<tr>
<td>Academic Growth</td>
<td>76</td>
<td>86</td>
</tr>
<tr>
<td>Relative Performance (Eco Dis: 77.3%)</td>
<td>45</td>
<td>79</td>
</tr>
<tr>
<td>Closing the Gaps</td>
<td>55</td>
<td>76</td>
</tr>
</tbody>
</table>

### Distinction Designations
- ELA/Reading: Earned
- Mathematics: Not Earned
- Science: Earned
- Social Studies: Not Earned
- Comparative Academic Growth: Earned
- Postsecondary Readiness: Earned
- Comparative Closing the Gaps: Earned
This Tab is Not Applicable
2019 HTC
Full Application

Part 2 Tab 9

Site Information Form
Part II
**Site Information Form Part II**

If necessary, provide a brief summary of how the Development Site is justifying the points selected:

Application is seeking points for Opportunity Index.  

<table>
<thead>
<tr>
<th>Contiguous Census Tract #</th>
<th>Contiguous Tract Quartile</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

- Development Site is located entirely within a census tract that has a poverty rate that is less than 20% or that is less than the median poverty rate for the region, whichever is higher.
- The census tract has a median household income rate in the two highest quartiles within the region (2 points).
- The census tract has a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. A map showing the Development Site, location of the border, scale showing distance, and other applicable evidence is included (1 point).

- Development is Urban and Development Site is within the required radius of eligible amenities and/or services, pursuant to §11.9(c)(4)(B)(i) of the QAP. A map showing the Development Site, scale showing radius, location of the amenities, and evidence that the amenity meets all requirements of the rule, as applicable, is included.
  - full service grocery store (1 point)(1 mile)
  - pharmacy (1 point)(1 mile)
  - health-related facility (1 point)(3 miles)
  - licensed center serving children (1 point)(2 miles)
  - university or community college (1 point)(5 miles)
  - indoor recreation facility available to public (1 point)
  - outdoor recreation facility available to public (1 point)

- Development is Rural or USDA and Development Site is within the required distance of eligible amenities and/or services pursuant to §11.9(c)(4)(B)(ii) of the QAP. A map showing the Development Site, scale showing radius, location of the amenities, and evidence that the amenity meets all requirements of the rule, as applicable, is included.

- No members of the Applicant or Affiliates had an ownership position in a selected amenity or served on the board or staff of a nonprofit that owned or managed a selected amenity within the year preceding the Pre-Application Final Delivery Date.

- Opportunity Index points are not requested. Part 1 entries are related to Concerted Revitalization Plan.

If yes, skip down to select amenities under Urban or Rural, as applicable.

**Application is seeking points for Opportunity Index.**

**Total Points Claimed:** 0

2/26/2019
2. **Underserved Area (Competitive HTC and Direct Loan Applications Only) [10 TAC §11.9(c)(5) and 10 TAC §13.6(3)]**

Applications may qualify for up to five (5) points for proposed Developments located in ONE of the following areas:

- Wholly or partially within a Colonia (2 points);
  (Note: Not eligible if application qualifies for Opportunity Index points)
- Entirely within the boundaries of an Economically Distressed Area (1 point);
  (Note: Not eligible if application qualifies for Opportunity Index points)
- Entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department’s property inventory tab of the Site Demographic Characteristics Report (2 points);
- Entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded less than 15 years ago according to the Department’s property inventory tab of the Site Demographic Characteristics Report (2 points);
- Entirely within a census tract that, according to American Community Survey 5-year Estimates, has both a poverty rate greater than 20% and a median gross rent for a two-bedroom unit greater than its county’s 2016 HUD Fair Market Rent for a two-bedroom unit. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report (2 points);
- An At-risk or USDA Development placed in service 30 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development (3 points).

### Application is seeking points for Underserved Area.  |  Total Points Claimed: 2

3. **Proximity to the Urban Core (Competitive HTC Applications Only) [10 TAC §11.9(c)(7)]**

- Development Site is located in a Place with a population over 200,000 and is not in the At-Risk Set-Aside.
- Population of Place is 200,000-749,999 and Development is located w/in 2 miles of the main municipal government administration building.
- Population of Place is 750,000 or more and Development is located w/in 4 miles of the main municipal government administration building.

### Application is seeking points for Proximity to the Urban Core.  |  Total Points Claimed: 5

4. **Concerted Revitalization Plan (Competitive HTC Applications Only) [10 TAC §11.9(d)(7)]**

- Region: 7 Urban
- Application is claiming points for a Concerted Revitalization Plan ("CRP").
- No points were claimed for Opportunity Index.
- Applicant has selected amenities in the Opportunity Index section and included documentation in the CRP packet.
- The CRP Packet has been completed and uploaded along with but separately from the Application.

### Application is seeking points for Concerted Revitalization.  |  Total Points Claimed: 7

5. **Declared Disaster Area Scoring (Competitive HTC Applications ONLY) [10 TAC §11.9(d)(3)]**

---

2/26/2019
Development is located in an area that qualifies as a Declared Disaster Area as defined in §11.9(d)(3).

Application is seeking points for Declared Disaster Area. Total Points Claimed: 10

6. Readiness to Proceed in Disaster Impacted Counties (Competitive HTC Applications ONLY) [10 TAC §11.9(c)(8)]

NA Application meets all of the following requirements:

- Application is for a proposed Development located in a county declared by FEMA to be eligible for individual assistance within two years preceding December 1, 2018.
- Application includes a certification that the Applicant will close all financing on or before the last business day in November, 2019.
- Application includes acknowledgement from all lenders and the syndicator of the required closing date.
- Application includes a certification that the Applicant will fully execute the construction contract on or before the last business day in November, 2019.
- Application includes evidence that appropriate zoning will be in place at award.
- Application includes a DETAILED narrative description of each piece of evidence provided that is not specifically requested and how that evidence proves that the Applicant will have appropriate zoning at award and will close all financing and fully execute the construction contract on or before the last business day of November, 2019.
- Applicant understands that failure to close all financing and/or fully execute the construction contract on or before the last business day in November, 2019 will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

Application is seeking points for Readiness to Proceed. Total Points Claimed: 0

2/26/2019
2019 HTC
Full Application

Part 2 Tab 10

Supporting Documentation for
Site Information Form Part II
Supporting Documentation for the Site Information Form Part II

### Opportunity Index (Competitive HTC and Direct Loan Only)

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Map with Development Site boundaries indicated, relative to census tract boundaries</td>
<td>n/a</td>
</tr>
<tr>
<td>Map with Development Site boundaries indicated, relative to census tract boundaries; and contiguous census tract with evidence of no physical barriers between the tracts</td>
<td>NA</td>
</tr>
<tr>
<td>Map(s) of Community Assets with Development, radius, and each asset labeled</td>
<td>x</td>
</tr>
<tr>
<td>Distances are measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. All measurements include ingress/egress and any easements</td>
<td>x</td>
</tr>
<tr>
<td>For each amenity, supporting documentation to evidence how the amenity meets each requirement of the rules. NOTE: Per the rule, regular and recurring substantive services provided by community, civic or service organization must be beyond exclusively congregational or member-affiliated activities. For this item, you must evidence the organization’s service activity in the community.</td>
<td>x</td>
</tr>
<tr>
<td>Print-out from DFPS website confirming daycare licensed to serve relevant age groups <a href="http://www.dfps.state.tx.us/Child_Care/Search_Texas_Child_Care/ppFacilitySearchDayCare.asp">http://www.dfps.state.tx.us/Child_Care/Search_Texas_Child_Care/ppFacilitySearchDayCare.asp</a></td>
<td>x</td>
</tr>
<tr>
<td>Crime rate information for census tract from Neighborhood Scout or local data source dated after October 1, 2018, including the computation used to determine the crime rate <a href="https://www.neighborhoodscout.com">https://www.neighborhoodscout.com</a></td>
<td>NA</td>
</tr>
<tr>
<td>Print-out from THECB website confirming accreditation of university or community college <a href="http://www.txhighereddata.org/Interactive/Institutions.cfm">http://www.txhighereddata.org/Interactive/Institutions.cfm</a></td>
<td>x</td>
</tr>
<tr>
<td>Evidence amenity is operational or has started site work (for instance: website postings, news paper ads, etc.); evidence of costs or membership fees, age restrictions, as applicable</td>
<td>x</td>
</tr>
<tr>
<td>Evidence of Underserved Area (Competitive HTC and Direct Loan Only)</td>
<td>x</td>
</tr>
<tr>
<td><strong>For Colonia:</strong></td>
<td></td>
</tr>
<tr>
<td>Evidence from Attorney General of Colonia boundaries; and <a href="https://www.texasattorneygeneral.gov/cpd/colonias">https://www.texasattorneygeneral.gov/cpd/colonias</a></td>
<td>n/a</td>
</tr>
<tr>
<td>Letter from the appropriate local government official or other evidence that the colonia lacks infrastructure and the Development will enable the current dwellings to connect to such infrastructure; and</td>
<td>NA</td>
</tr>
<tr>
<td>Map showing development site boundaries, relative to Colonia boundaries, and distance from Rio Grande river border.</td>
<td></td>
</tr>
<tr>
<td><strong>For Economically Distressed Areas:</strong></td>
<td></td>
</tr>
<tr>
<td>A letter or correspondence from Texas Water Development Board indicating the boundaries of the EDA; and <a href="http://www.twdb.texas.gov/financial/programs/EDAP/index.asp">http://www.twdb.texas.gov/financial/programs/EDAP/index.asp</a></td>
<td>n/a</td>
</tr>
<tr>
<td>Map showing development site boundaries, relative to EDA boundaries.</td>
<td>x</td>
</tr>
<tr>
<td>For other items: Development must be awarded 2004 or earlier for 15-year threshold and 1988 or earlier for 30-year threshold, as listed in the &quot;Board Approval&quot; column of the Property Inventory tab of the Site Demographic Characteristics Report posted on the Department’s website at <a href="http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm">http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm</a></td>
<td></td>
</tr>
<tr>
<td>Map with Development Site boundaries indicated, relative to census tract boundaries</td>
<td>x</td>
</tr>
<tr>
<td>Map with census tract boundaries indicated, relative to boundaries of incorporated area, if applicable.</td>
<td></td>
</tr>
<tr>
<td>Map with all contiguous census tracts, if applicable</td>
<td></td>
</tr>
<tr>
<td>Proximity to Urban Core (Competitive HTC Only)</td>
<td>x</td>
</tr>
<tr>
<td>Map with the appropriate radius, City Hall location, and evidence of meetings regularly scheduled for City Council, City Commission, or similar governing body.</td>
<td>x</td>
</tr>
<tr>
<td>Concerted Revitalization Plan (Competitive HTC Only)</td>
<td>X</td>
</tr>
<tr>
<td>CRP Packet is uploaded along with but separate from the Application.</td>
<td></td>
</tr>
<tr>
<td>Declared Disaster Area:</td>
<td>x</td>
</tr>
<tr>
<td>The county in which the Development Site is located is listed on the 2019 List of Declared Disaster Areas (no further documentation is required). The List of Declared Disaster Areas is posted on the Department’s website at <a href="http://www.twdb.texas.gov/financial/programs/EDAP/index.asp">http://www.twdb.texas.gov/financial/programs/EDAP/index.asp</a></td>
<td>2/26/2019</td>
</tr>
</tbody>
</table>
Applicant believes the county in which the Development Site is located was omitted from the list and should be listed. Application includes evidence that the Development Site is located in an area declared to be a disaster area under Tex. Gov’t Code §418.014 at any time within the two-year period preceding the date of Application submission.

Evidence that the Development Site is located in a county declared by FEMA to be a disaster area eligible for individual assistance in the last calendar year (only required if county is not included on the list and Applicant believes it should be).

Each piece of evidence provided that is not listed above must be accompanied by a detailed narrative describing how that piece of evidence will allow the Applicant to meet the requirements.
2019 HTC
Full Application

Part 2 Tab 10

Supporting Documents:
Opportunity Index
Please note that these opportunity Index selections are also reflected in the CRP Packet that has been uploaded under separate cover.
# Vi Collina

## Opportunity Index Amenities

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Address</th>
<th>City</th>
<th>Zip</th>
<th>Distance (mi)</th>
</tr>
</thead>
<tbody>
<tr>
<td>III</td>
<td>H-E-B Plus Supermarket</td>
<td>2508 E. Riverside Dr.</td>
<td>Austin</td>
<td>78741</td>
<td>.63</td>
</tr>
<tr>
<td>IV</td>
<td>H-E-B Plus Pharmacy</td>
<td>2508 E. Riverside Dr.</td>
<td>Austin</td>
<td>78741</td>
<td>.63</td>
</tr>
<tr>
<td>V</td>
<td>FastMed Urgent Care</td>
<td>1920 E. Riverside Dr.</td>
<td>Austin</td>
<td>78741</td>
<td>.92</td>
</tr>
<tr>
<td>VI</td>
<td>Children's Choice Learning Center</td>
<td>3819 S IH 35</td>
<td>Austin</td>
<td>78741</td>
<td>1.21</td>
</tr>
<tr>
<td>IX</td>
<td>The University of Texas at Austin</td>
<td>1823 Red River St.</td>
<td>Austin</td>
<td>78712</td>
<td>3.77</td>
</tr>
<tr>
<td>XI</td>
<td>Planet Fitness</td>
<td>1819 S. Pleasant Valley Rd.</td>
<td>Austin</td>
<td>78741</td>
<td>.67</td>
</tr>
<tr>
<td>XII</td>
<td>Mabel Davis District Park</td>
<td>3427 Parker Ln.</td>
<td>Austin</td>
<td>78741</td>
<td>.57</td>
</tr>
<tr>
<td>XIII</td>
<td>Faith Food Pantry</td>
<td>1314 E. Oltorf St.</td>
<td>Austin</td>
<td>78704</td>
<td>.77</td>
</tr>
<tr>
<td>XIV</td>
<td>Meals on Wheels</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Associates Degree</td>
<td>30.06%</td>
</tr>
</tbody>
</table>
Vi Collina
1-Mile Radius Map
Vi Collina
5-Mile Radius Map
Texas Pharmacy License # 21106

HEB PHARMACY #091

License Information

- **License Status**: Active
- **License #**: 21106
- **Expiration Date**: 08/31/2019
- **Date License Issued**: 08/13/2001

Address

2508 E RIVERSIDE DR
AUSTIN, TX  78741-3037
**County**: TRAVIS
**Phone**: (512) 448-3353

Pharmacy Details

- **Prior Disciplinary Orders**: No

* Information relating to disciplinary orders is current as of 30 days prior to this date. Please note that disciplinary orders entered more than 10 years ago are not available online. A written request for information regarding prior disciplinary orders may be submitted to the office of the Texas State Board of Pharmacy. Any disciplinary orders entered pursuant to Chapter 564 of the Texas Pharmacy Act are confidential and not subject to public disclosure.

- **Class of Pharmacy**: Community Pharmacy
- **Type of Ownership**: Partnership
- **Type of Pharmacy**: Community Multi
- **# of Hospital beds**: 0

Employment Information

- **Pharmacist in Charge**: GUERRA, ELOY

Services Provided

- **Nuclear**: No
- **Out-Patient Prescriptions**: Yes
- **Ship Prescription Out of State**: No
- **Class D (Expanded Formulary)**: No
- **Class D (Alternative Visit Schedule)**: No
- **Compounding Sterile-Risk Level Low**: No
- **Compounding Sterile-Risk Level Med**: No
- **Compounding Sterile-Risk Level High**: No
- **Compounding Non-Sterile**: No
- **24 Hour Service**: No
- **Closed Door**: No
- **Compounding, Office Use**: No
- **Home Delivery**: Yes
- **Infusion**: No
- **Pharmacist Administered Immunizations**: Yes
- **Veterinary Prescriptions**: Yes

Remedial Plans

Remedial plans (if any) are shown above and subject to removal at the end of the 5th fiscal year after the Board enters the plan.
### Texas Pharmacist Employment information

<table>
<thead>
<tr>
<th>Pharmacist Name</th>
<th>License #</th>
<th>Registr. Date</th>
<th>Expir. Date</th>
<th>Emp. Status</th>
<th>License Status</th>
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<tbody>
<tr>
<td>CROFFORD, JENE MENDEZ</td>
<td>29079</td>
<td>03/05/1986</td>
<td>02/29/2020</td>
<td>Staff</td>
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<tr>
<td>GUERRA, ELOY</td>
<td>30844</td>
<td>03/01/1989</td>
<td>07/31/2020</td>
<td>PIC</td>
<td>Acti</td>
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<tr>
<td>HAMMETT, AMY LYNN</td>
<td>48609</td>
<td>07/02/2010</td>
<td>03/31/2020</td>
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### Texas Registered Technicians/Trainees Employment information

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<thead>
<tr>
<th>Technician/Trainee Name</th>
<th>License #</th>
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<th>Expir. Date</th>
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<tr>
<td>HOFF, HEATHER A</td>
<td>100937</td>
<td>05/18/2004</td>
<td>09/30/2020</td>
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<tr>
<td>JAMES, ROBYN</td>
<td>258599</td>
<td>08/08/2016</td>
<td>08/31/2020</td>
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<tr>
<td>MARTINEZ, LILIANA MICHAELLA</td>
<td>185223</td>
<td>06/25/2010</td>
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<tr>
<td>MEDINA, LORRAINE B</td>
<td>227680</td>
<td>02/12/2014</td>
<td>12/31/2019</td>
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<tr>
<td>MENDIETA, ALEXIS ALI</td>
<td>226246</td>
<td>12/23/2013</td>
<td>12/31/2019</td>
<td>Staff</td>
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<tr>
<td>MOLINA SALGADO, MELISSA</td>
<td>233258</td>
<td>08/06/2014</td>
<td>09/30/2019</td>
<td>Staff</td>
<td>Acti</td>
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<tr>
<td>RUIZ, ZELINA ANA</td>
<td>242431</td>
<td>04/28/2015</td>
<td>04/30/2019</td>
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<tr>
<td>TORREZ, SORINA BRINA</td>
<td>255522</td>
<td>05/05/2016</td>
<td>05/31/2020</td>
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<tr>
<td>ZAMORA, BRITTANY LUCILLE</td>
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<td>02/28/2008</td>
<td>08/31/2019</td>
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### Texas Remote Pharmacy information

No records to view.

### Texas Pharmacy Owner information

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<td>HEBCO GP, LLC</td>
<td>OWNER</td>
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<td>OTTO, MARTIN H.</td>
<td>OFFICER</td>
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<tr>
<td>READ, DOUGLAS EDWARD</td>
<td>OFFICER</td>
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<tr>
<td>NORMAN, CRAIG ROBERT</td>
<td>OFFICER</td>
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<tr>
<td>MOUNT, STEPHEN C</td>
<td>OFFICER</td>
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</tbody>
</table>

The Texas State Board of Pharmacy certifies that it maintains the information for the license verification function of this website, performs daily updates to the website, and considers the website to be a secure, primary source for license verification.
LOCATIONS IN TEXAS

Austin, TX E Riverside Dr

1920 E Riverside Dr, Suite A110
Austin, TX 78741

Patients Currently In Line: 2

P: 512-326-1600
F: 512-326-1606

Avg. Rating: ★★★★★

Request a Ride:

$25 FLU SHOTS AVAILABLE NOW*

Located off East Riverside Drive and Shore District Drive in the same shopping center as Walgreens and Starbucks. The clinic is between the AT&T store and UPS Store.

WE'RE OPEN TODAY UNTIL 9 PM

Hours

Monday – Friday: 9:00 AM - 9:00 PM
Saturday – Sunday: 9:00 AM - 6:00 PM

Holiday Hours:

We are open from 09:00 AM to 04:00 PM on Thanksgiving, Christmas Eve, Christmas Day, New Year’s Day, New Year’s Eve, Easter Sunday, Memorial Day, July 4th, and Labor Day.

TREATMENTS

Sprains, Strains, and Broken Bones
Dislocations
Cuts, Scrapes, Wounds, Abrasions, and Burns
Wound Care
Urinary Tract Infections
Bee Stings, Insect Bites, and Allergic Reactions
Sore Throat / Strep Throat Treatment
Dehydration
Sinus Infections
Respiratory Infections
Patient Reviews

⭐️⭐️⭐️⭐️⭐️
“Quick, Easy, and Professional”

⭐️⭐️⭐️⭐️⭐️
“The staff are friendly and helpful love that they helped my son quickly.”

⭐️⭐️⭐️⭐️⭐️
“Called within 45 minutes of closing. staff was very receptive and courteous. Clean and professional facilities. Would use again if... MORE ⏳

⭐️⭐️⭐️⭐️⭐️⭐️
“I liked it they help me they workers were nice every look clean and they helped me a lot thank... MORE ⏳
Illnesses And Injuries Treated

Accidents, illnesses, and injuries can happen at any time. Fortunately, when they do, you can turn to FastMed to receive immediate, high-quality medical care. Let us help you get appropriate medical care without the wait for an appointment with your physician or the long wait times typical of most hospital emergency rooms. FastMed Urgent Care clinics treat a wide range of non-life-threatening injuries and illnesses that require immediate attention. These include:

- Acute Pain and Injuries
- Asthma and Trouble Breathing
- Bee Stings, Insect Bites, and Allergic Reactions
- Colds, Flu, Fevers, and Viruses
- Dehydration
- Diabetic Issues
- Dislocations
- Earaches
- Headaches
- High Blood Pressure (Hypertension)
- Minor Dermatology and Skin Care
- Nausea, Vomiting, and Diarrhea
- Respiratory Infections
- Sinus Infections
- Sore Throat / Strep Throat Treatment
- Sports Injuries
- Sprains, Strains, and Broken Bones
- Urinary Tract Infections
- Basic Pulmonary Function Test (Spirometry)
- Cuts, Scrapes, Wounds, Abrasions, and Burns
- Ear Lavage
- EKG
- Incision and Drainage (I&D)
- Medication Administration
- Medical Evaluations
- Minor Surgical Procedures
- Nebulizer Treatments
- Partial Casting/Splinting
- Sutures and Stitches
- Wart and Skin Tag Removal
- Wound Care

FastMed offers urgent care services for a variety of illness and injury needs. These include:
FastMed also provides dedicated women’s health services for a wide range of women’s health needs. View women’s health

FastMed offers urgent care services for a variety of illness and injury needs. These include:

* The content presented on this page is not intended to diagnose health problems or take the place of professional medical care.

Find A Location
Use Current Location

Enter City/State or ZIP

JOINT COMMISSION ACCREDITATION

FastMed is the largest urgent care operator to be awarded the Joint Commission Gold Seal of Approval.

LEARN MORE

Treatments And Services

URGENT CARE SERVICES

FLU PREVENTION & TREATMENT

LABS & X-RAYS

PHYSICALS

VACCINATIONS & IMMUNIZATIONS

FAMILY MEDICINE

SPORTS MEDICINE

WOMEN'S HEALTH

EMPLOYERS
Operation Details

You may click on the question mark image (FAQ) to view the Frequently Asked Questions (FAQ) page.

Operation Number: 1521541
Operation Type: Licensed Center
Program Provided: Child Care Program
Operation/Caregiver Name: Children's Choice Learning Center
Location Address: 3819 S IH 35
AUSTIN, TX 78741
Mailing Address: 3819 S IH 35
AUSTIN, TX 78741
Phone Number: 737-800-4700
County: TRAVIS
Website Address: www.brighthorizons.com/irs
Email Address: futurestars@brighthorizons.com
Administrator/Director Name: LaVonda Lyles
Type of Issuance: Full Permit
Issuance Date: 8/7/2013
Permit Renewal Due By Date: 8/7/2019
Conditions on Permit: No
Accepts Child-Care Subsidies: Yes
Hours of Operation: 06:00 AM-06:00 PM
Days of Operation: Monday - Friday
Total Capacity: 134
Licensed to Serve Ages: Infant, Toddler, Pre-Kindergarten, School
Number Of Admin Penalties: 0
Corrective Action: No
Adverse Action: No
Temporarily Closed: No

Three Year Inspection Summary

- Inspectors routinely monitor compliance with Licensing standards, rules and law. At a minimum, licensed and certified operations are inspected at least once a year; Registered Child Care Homes are inspected at least once every two years, Listed Family Homes are inspected only if there is a report of abuse/neglect or if we receive a report that the home is caring for too many children.

- When operations have serious deficiencies or a significant number of deficiencies, repeat deficiencies, or fail to make corrections timely, they are inspected more frequently by licensing staff, to ensure the health and safety of children in care.

- In the last three years, Licensing conducted the following:

  - 16 - Inspections
  - 0 - Assessments
  - 8 - Self Reported Incidents
  - 1 - Reports

Click on the inspection type to see additional details related to each inspection.

- There are many standards that an operation must comply with; the total number varies for each type of operation. An operation or home is generally given an opportunity to correct deficiencies and has the right to request a review of a deficiency. Deficiencies pending review are not included in the two year history.

Three Year Compliance Summary

- During the last three years, 2072 standards were evaluated for compliance at this operation.

  - Of the standards evaluated deficiencies were cited.

Click on the number of deficiencies to see additional details.

- Each standard is assigned a weight. The weight ensures all inspectors consider standard violations in the same way, and represents the potential impact a deficiency might have on children. Review the inspection reports to learn more about each citation. It's important to remember; weights are not assigned to an individual operation, inspection, or circumstance and are not intended to result in a ranking of operations or score.

- The weights of the standard deficiencies cited in the past three years are as follows:

  - 4 were weighted as High
  - 5 were weighted as Medium - High
  - 0 were weighted as Medium
  - 0 were weighted as Medium - Low
  - 0 were weighted as Low

Click on the weight to see additional details about each deficiency.

Disclaimer: The online compliance history includes only information after January 1, 2002. In addition, the online compliance history does not include minimum standard violations or corrective or adverse actions until after the child-care operation has had due process or waived its rights. For compliance history prior to January 1, 2002 or history with pending due process, please contact your local licensing office. Child-Care Licensing disclaims liability for any errors or omissions from the compliance history information.
What starts here changes the world.
The University of Texas at Austin provides public access to a first-class education and the tools of discovery. This has resulted in a culture of ambition and leadership, where physical scale is matched by bold goals and achievements.

Serving the State
From the Panhandle to the Gulf Coast, UT is improving the lives of Texans across the state.
LEARN MORE

Transforming Healthcare
At UT Health Austin, Dell Medical School faculty are providing direct patient care to the people of Austin and Travis County.
LEARN MORE

Diversity and Inclusion Plan
A blueprint for creating a more inclusive campus culture that involves all schools, colleges and administrative units on campus.
LEARN MORE
Ann Huff Stevens Appointed Dean of UT Austin's College of Liberal Arts

UT Austin has named Ann Huff Stevens the next dean of the College of Liberal Arts. Her appointment will begin July 15, 2019. READ MORE

Latest News and Stories

Evolution Used Same Genetic Formula to Turn Animals Monogamous

Females Prefer City Frogs' Tunes

Newly Identified Gravitational Waves Help Pinpoint Black Hole

Liberal Arts Student Awarded British Marshall Scholarship

Scientists Coax Proteins to Form Synthetic Structures with Method that Mimics Nature

MORE STORIES
Missed the gym this morning, but I can vouch for the conclusions of this research! https://t.co/KnpyslFmfl
## Public Universities

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<th>Institution</th>
<th>Administrative Officer</th>
<th>Main Telephone</th>
</tr>
</thead>
<tbody>
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<td>Angelo State University</td>
<td>Brian J. May</td>
<td>(325) 942-2073</td>
</tr>
<tr>
<td>Lamar University</td>
<td>Kenneth Evans</td>
<td>(409) 880-7011</td>
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<tr>
<td>Midwestern State University</td>
<td>Suzanne Shipley</td>
<td>(940) 397-4000</td>
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<tr>
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<td>(936) 857-3311</td>
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<tr>
<td>Sam Houston State University</td>
<td>Dana G. Hoyt</td>
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<td>Steve Westbrook</td>
<td>(936) 468-2011</td>
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<tr>
<td>Sul Ross State University Rio Grande College</td>
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<td>(830) 278-3339</td>
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<td>(979) 845-3211</td>
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<tr>
<td>Texas A&amp;M University at Galveston</td>
<td>Col. Michael E. Fossum</td>
<td>(877) 322-4443</td>
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<td>John Sharp</td>
<td>(979) 458-6000</td>
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<td>Marc Nigliazzo</td>
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<td>Kelly M. Quintanilla</td>
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<td>Emily F. Cutrer</td>
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**Latest News**

- **01/31/2019** Data Resources for 2019
- **01/25/2019** Dual Credit Enrollment Data Updated for 2018
- **01/24/2019** Enrollment Forecast 2019-2030 for Texas Institutions of Higher Education
- **12/12/2018** 2016 Annual Texas Success Initiative Assessment (TSIA) Summary Score Report
- **10/30/2018** 2016-2017 Annual TSIA High School Summary Report

**e-UPDATES**

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ABOUT

We strive to create a workout environment where everyone feels accepted and respected. That's why at Planet Fitness Austin (E. Riverside), TX we take care to make sure our club is clean and welcoming, our staff is friendly, and our certified trainers are ready to help. Whether you're a first-time gym user or a fitness veteran, you'll always have a home in our Judgement Free Zone™.

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MEMBERSHIPS

Select the right membership for you.

Have a Promo Code?

Enter Promo Code Here  Apply

CLASSIC

$10.00/MO

+12 Never Meant So Much!

Low $9.99 Status Fee.
Offer Expires February 8th

Join now

Benefits

✓ Unlimited Access to Home Club
✓ Free Fitness Training
✓ Free WiFi
✓ Reciprocal use of all Planet Fitness® Franchise Locations
✓ Unlimited Guest Passes at All Planet Fitness Locations
✓ Unlimited Use of HydroMassage
✓ Use of Tanning
✓ Unlimited Total Body Enhancement
✓ Unlimited Use of Massage Chairs
✓ 1/2 Price Coolers Drinks (Restrictions may apply)
✓ PF Black Card Key Tag
✓ 20% off Reebok products

BLACK CARD

$21.99/MO

60 Down

No Status Fee.
Offer Expires February 8th

Join now

Benefits

✓ Unlimited Access to Home Club
✓ Free Fitness Training
✓ Free WiFi
✓ Reciprocal use of all Planet Fitness® Franchise Locations
✓ Unlimited Guest Passes at All Planet Fitness Locations
✓ Unlimited Use of HydroMassage
✓ Use of Tanning
✓ Unlimited Total Body Enhancement
✓ Unlimited Use of Massage Chairs
✓ 1/2 Price Coolers Drinks (Restrictions may apply)
✓ PF Black Card Key Tag
✓ 20% off Reebok products

NO COMMITMENT

$15.00/MO

No Commitment!
Low $9.99 Status Fee.
Offer Expires February 8th

Join now

Benefits

✓ Unlimited Access to Home Club
✓ Free Fitness Training
✓ Free WiFi
✓ Reciprocal use of all Planet Fitness® Franchise Locations
✓ Unlimited Guest Passes at All Planet Fitness Locations
✓ Unlimited Use of HydroMassage
✓ Use of Tanning
✓ Unlimited Total Body Enhancement
✓ Unlimited Use of Massage Chairs
✓ 1/2 Price Coolers Drinks (Restrictions may apply)
✓ PF Black Card Key Tag
✓ 20% off Reebok products
Quick Facts

THIS PARK IS ADOPTED!
Want to be connected to the Adopt-A-Park group? Contact Us at volunteer@aparks.org.

Popular For:
- Swimming
- Skateboarding
- Playground
- Picnics
- Basketball

For more park information or reservations visit Austin Parks & Recreation.

APF Projects in the Park:

More Photos

Donations

Donation Amount *
- $10
- $25
- $50
- $100
- $200
- $500
- $1,000
- $5,000
- $10,000
- $25,000

Make an Evergreen (recurring) or One-time Gift?
- One Time

Is this a Corporate Gift? *
- No
- Yes

Contact Information

Name *
First Name
Last Name

Email *
email@example.com

Address *
Address Line 1
Address Line 2
City
State Province
ZIP/Postal Code
Country

Phone
(110) 555-1234

Is this gift anonymous?
- No
- Yes

Is this a tribute gift?
- No
- Yes, in honor of
- Yes, in memory of
SKATE PARKS

The Austin Parks and Recreation Department currently operates two skate parks - one in Mabel Davis District Park and the Heath Eiland and Morgan Moss BMX Skate Park at 1213 Shoal Creek Boulevard next to Austin Recreation Center.

Mabel Davis District Park - Skate Park

Austin's first skate park is located in Mabel Davis District Park at 3427 Parker Lane. The skate park includes a skate bowl, streetscape elements and a grass seating area for interested onlookers. It opened in late-2005 and is a 12,000-square-feet concrete skate park.

Heath Eiland and Morgan Moss BMX Skate Park

Heath Eiland and Morgan Moss BMX Skate Park opened at 1213 Shoal Creek Boulevard on June 16, 2011. This 30,000-square-feet facility features a skate bowl, large plaza with streetscape elements, shade structures, unisex restroom and skateable public art piece. This project was funded by the 2006 bond election and designed by New Line Skateparks out of British Columbia, Canada.
The Faith Food Pantry helps over 200 persons in 70 families per month, with an all-volunteer staff filling requests for food that we receive from other churches and social service agencies, who call the pantry’s unlisted telephone number to request groceries for their members or clients. The history of our church’s food pantry includes starting four other Austin pantries, and in founding the Central Texas Food Bank.

Reach Out To Us

(512) 444-1314

FaithChurchAustin@gmail.com

1314 East Oltorf Street
Austin, TX 78704

Join Us In Worship

Sundays

@ 10 a.m.

Learn More

Get Directions and updates on Oltorf Bridge construction

Secure Online Giving!

Click here or scan this image to start.

We celebrate SCOTUS valuing women’s rights.

over a year ago, via @FaithPresAustin
MEALS ON WHEELS
Greater Austin Prepared Meal Delivery Service for Seniors and Adults with Disabilities

MEALS ON WHEELS
Greater Austin Prepared Meal Delivery Service for Seniors and Adults with Disabilities
The Meal Delivery Program is a holistic nutrition program that provides home delivered prepared meals for seniors and other homebound clients throughout the Greater Austin area. This program provides case management services to individuals enrolled in the Meals on Wheels program. Each recipient receives one hot meal per day during the week and may have an option of receiving supplemental frozen meals for the weekend. To see if you or someone you know may qualify for home delivered meals, check our eligibility list below.

**ELIGIBILITY**

Individuals must be:

- Primarily homebound
- Unable to easily prepare nutritious meals
- Without consistent daytime assistance from another person
- Able to accept meals during the delivery time frame
- Must live in the Greater Austin Area

Each applicant will be assessed by a MOWCTX supportive case manager to ensure that eligibility requirements are met. Short-term service is available to those with temporary meal needs.

Interested in our services? Fill out our inquiry form by clicking here.

**QUICK LINKS**

- [Apply for Our Services](/get-involved/interested-in-receiving-services)
- [Cancel My Meal](mailto:mealcancel@mealsonwheelsandmore.org?subject=Cancel My Meal)
- [Find Meal Programs Outside Our Service Area](https://www.mealsonwheelsamerica.org/sign-up/find-programs)

**NUTRITIONAL FACTS**

Menus are planned and prepared under the supervision of a RDN. Our meals are whole-food based and provide an array of nutrients and phytochemicals to promote optimum health.

- [Nutritional Information](/nutritional-facts)

**CASE MANAGEMENT**

- [Learn more about Case Management](/about-us/case-management)

**CALL TO VOLUNTEER**

We have many open meal delivery routes all over the Austin area.
2019 HTC
Full Application

Part 2 Tab 10

Supporting Documents:
Underserved Area
Vi Collina
Underserved Area

This application qualifies for 2 points for Underserved Area under the following subsection:

(D) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 15 years ago according to the Department’s property inventory tab of the Site Demographic Characteristics Report. (2 points);

This application is located in Census tract 48453002313. According the HTC property inventory, this tract has the following HTC awards: 97173 Douglas Landing (1997), 02413 Pleasant Valley Courtyards (8/8/2002)
Supporting Documents:
Proximity to Urban Core
Vi Collina
Proximity to Urban Core
Thursday, January 31, 2019

The City Council will convene at 10:00 AM on Thursday, January 31, 2019 at Austin City Hall

301 W. Second Street, Austin, TX

Mayor Steve Adler
Mayor Pro Tem Delia Garza, District 2
Council Member Natasha Harper-Madison, District 1
Council Member Sabino “Pio” Renteria, District 3
Council Member Gregorio Casar, District 4
Council Member Ann Kitchen, District 5
Council Member Jimmy Flannigan, District 6
Council Member Leslie Pool, District 7
Council Member Paige Ellis, District 8
Council Member Kathie Tovo, District 9
Council Member Alison Alter, District 10

For meeting information, contact the City Clerk, (512) 974-2210
2019 HTC
Full Application

Part 2 Tab 10

Supporting Documents:
Concerted Revitalization Plan

CRP Packet is uploaded along with but separate from this Application
2019 HTC
Full Application

Part 2 Tab 10

Supporting Documents:
Declared Disaster Area
2019 Declared Disaster Areas
Counties Eligible under §11.9(d)(3) of the 2019 QAP
as of November 5, 2018

Andrews  Cottle  Haskell  Lubbock  San Patricio
Angelina  Crosby  Hays  Lynn  San Saba
Aransas  Dallam  Hemphill  Madison  Scurry
Archer  Dawson  Henderson  Martin  Shackelford
Armstrong  DeWitt  Hidalgo  Mason  Sherman
Atascosa  Deaf Smith  Hill  Matagorda  Somervell
Austin  Dickens  Hopkins  Maverick  Starr
Bandera  Dimmit  Hood  McLennan  Stephens
Bastrop  Donley  Houston  McMullen  Sterling
Baylor  Duval  Howard  Mills  Swisher
Bexar  Edwards  Jackson  Milam  Tarrant
Blanco  Ellis  Jasper  Mills  Travis
Borden  Falls  Jim Hogg  Montgomery  Taylor
Bosque  Fannin  Jim Wells  Moore  Throckmorton
Brazoria  Fayette  Johnson  Motley  Tyler
Brazos  Fisher  Jones  Navarro  Trinity
Briscoe  Floyd  Karnes  Newton  Van Zandt
Brooks  Foard  Kendall  Nolan  Uvalde
Brown  Fort Bend  Kenedy  Nueces  Val Verde
Burleson  Frio  Kent  Olchtree  Van Zandt
Burnet  Gaines  Kerr  Oldham  Victoria
Caldwell  Galveston  Kimble  Orange  Walker
Calhoun  Garza  King  Palo Pinto  Waller
Callahan  Gillespie  Kinney  Parker  Washington
Cameron  Glasscock  Kleberg  Parmer  Webb
Carson  Goliad  Knox  Polk  Wharton
Castro  Gonzales  La Salle  Potter  Wheeler
Chambers  Gray  Lampasas  Rains  Wilbarger
Childress  Grimes  Lavaca  Randall  Willacy
Cochran  Guadalupe  Lee  Real  Williamson
Coke  Hall  Leon  Refugio  Wilson
Coleman  Hamilton  Liberty  Roberts  Winkler
Collingsworth  Hansford  Limestone  Robertson  Yoakum
Colorado  Hardeman  Lipscomb  Runnels  Young
Comal  Hardin  Live Oak  Sabine  Zapata
Comanche  Harris  Llano  San Augustine  Zavala
Coryell  Hartley  Loving  San Jacinto
2019 HTC
Full Application

Part 2 Tab 10

Supporting Documents:
Readiness to Proceed
This Tab is Not Applicable
### Site Information Form Part III

**Self Score Total:** 117

#### 1. Site Acreage

Please identify site acreage as listed in each of the following exhibits/documents.

<table>
<thead>
<tr>
<th>Site Control</th>
<th>Site Plan</th>
<th>Appraisal</th>
<th>ESA</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.558</td>
<td>4.558</td>
<td>NA</td>
<td>4.594</td>
</tr>
</tbody>
</table>

(*) Should equal acreage indicated in site control documents less acreage intended to be dedicated, sold or used for public purpose and not to be encumbered by LURA (net acreage). The net acreage will be used for calculating density for all purposes.

Please provide an explanation of any discrepancies in site acreage below:

**ESA examined a slightly larger area.**

#### 2. Site Control [10 TAC §11.204(10)]

The current owner of the Development Site is (If scattered site & more than one owner refer to Tab 13):

<table>
<thead>
<tr>
<th>Entity Name</th>
<th>Contact Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cedar Willow Creek Ltd</td>
<td>Jimmy Nassour</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Zip</th>
<th>Date of Last Sale</th>
</tr>
</thead>
<tbody>
<tr>
<td>PO Box 29837</td>
<td>Austin</td>
<td>TX</td>
<td>78755</td>
<td>6/30/1993</td>
</tr>
</tbody>
</table>

Is the seller affiliated with the Applicant, Principal, sponsor, or any Development Team member, as described in §11.302(e)(1)(B) (Identity of Interest)?

If "Yes," please explain: **NA**

If "Yes", the Application must include the documentation required by 10 TAC §11.302(e)(1)(B)(ii), as applicable.

Did the seller acquire the property through foreclosure or deed in lieu of foreclosure? **No**

Identify all of the sellers of the proposed property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team:

<table>
<thead>
<tr>
<th>Name</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA</td>
<td></td>
</tr>
</tbody>
</table>

Site Control is in the form of:

- **Contract for sale.**
  - If Direct Loan funds are requested, contract includes required language in 10 TAC §13.5(e).
- **Recorded Warranty Deed with corresponding executed closing/settlement statement.**
- **Contract for lease.**
  - Expiration of Contract or Option: **12/31/2019**
  - Anticipated Closing Date: **8/30/2019**
- **Title Commitment or Title Policy is included behind this tab (per 10 TAC §11.204(12)).**

The Property has the following encumbrance(s):

#### 3. Ingress/Egress and Easements (9% and 4% HTC Only) [10 TAC §11.204(10)(D)]

If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the

---

2/28/2019
### 4. 30% Increase in Eligible Basis “Boost” (9% and 4% HTC Only) [10 TAC §11.4(c)]

Development qualifies for the boost for:

| ☒ | Qualified Census tract that has less than 20% HTC Units per household |
| ☐ | New Construction or Adaptive Reuse Development is in a QCT with 20% or greater Housing Tax Credit Units per household, and a resolution from the Governing Body of the appropriate municipality or county allowing the construction of the Development is included behind Tab 8.†* |
| †Rehabilitation Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households are eligible to qualify for the boost and are not required to obtain such a resolution from the Governing Body. |
| ☐ | Development is located in a Small Area Difficult Development Area (SADDA) |
| ☒ | Rural Development (Competitive HTC only) |
| ☒ | Development is entirely Supportive Housing (Competitive HTC Only) |
| ☐ | Development meets the criteria for the Opportunity Index as identified in §11.9(c)(4) of the Qualified Allocation Plan (Competitive HTC only) |
| ☒ | Development includes an additional 10% of units at 30% AMI. (Competitive HTC only) Must be in addition to the number of units needed for any scoring item or any other funding source from MF Direct Loan requirements. |
| ☐ | Development is in an area covered by a concerted revitalization plan and elects and is eligible for points under 10 TAC §11.9(d)(7), is not Elderly, and is not located in a QCT. (Competitive HTC only) |
| ☐ | Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892). (Competitive HTC only) |

If a revised form is submitted, date of submission: ___________________
2019 HTC
Full Application

Part 2 Tab 12

Supporting Documentation for
Site Information Form Part III
Support Documentation from Site Information Part III Should be Included Behind this Tab.

Site Control Documentation

☐ If recorded warranty deed, includes corresponding executed settlement statement (or functional equivalent).

☐ If Identity of Interest, includes documentation described in 10 TAC §11.302(e)(1)(B)(ii), as applicable.

☐ If Application is requesting Direct Loan Funds, contract for sale, option to purchase or option to lease includes the language required by 10 TAC §13.5(e).

☒ Title Commitment or Policy

Ingress/Egress and Easements

☐ Documentation required by 10 TAC §11.204(10)(D) is included, as applicable.

Increase in Eligible Basis (30% Boost)

☐ Resolution from the Governing Body of the appropriate municipality or county allowing the construction of the Development, if applicable.

☒ Census tract map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT, if applicable.

☐ SADDA map clearly showing the Development is located within the boundaries of a SADDA, if applicable.

☐ Census tract map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within the boundaries of a Qualified Opportunity Zone, if applicable.

List of Opportunity Zones can be found at:

https://www.cdfifund.gov/Documents/Copy%20of%20Designated%20QOZs.6.14.18.xlsx

2/26/2019
2019 HTC
Full Application

Part 2 Tab 12

Supporting Documents:
Site Control
ASSIGNMENT AND ASSUMPTION OF COMMERCIAL CONTRACT – UNIMPROVED PROPERTY
(Vi Collina)

THIS ASSIGNMENT AND ASSUMPTION OF COMMERCIAL CONTRACT - UNIMPROVED PROPERTY (this “Assignment”) is made as of the ___ day of February, 2019, by and between SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company (“Assignor”), and VI COLLINA, LLC, a Texas limited liability company (“Assignee”).

RECITALS

A. CEDAR WILLOW CREEK, LTD., a Texas limited partnership (“Seller”), and Assignor heretofore entered into that certain Commercial Contract – Unimproved Property dated as of December 8, 2017, as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property, dated of even date therewith, as amended by that certain First Amendment to Commercial Contract – Unimproved Property dated as of April 9, 2018, as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated as of April 24, 2018, as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018 (the “Contract”).

B. Assignor desires to assign to Assignee all of Assignor’s right, title and interest in, to and under the Contract, and Assignee desires to accept such assignment and assume all of Assignor’s liabilities and obligations under the Contract.

TERMS

In consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Recitals. The foregoing recitals are true and incorporated herein by this reference as if set out in full.

2. Assignment. Assignor hereby assigns, transfers, and sets over unto Assignee all of Assignor's right, title, and interest in, to and under the Contract (including, without limitation, Assignor's interest in all deposits paid under the Contract), and authorizes Seller to make, execute, and deliver to Assignee such deed of conveyance, assignments and/or other instruments as are contemplated by the Contract, in the same manner as though Assignee, instead of Assignor, had been an original signatory to the Contract.

3. Assumption. Assignee hereby accepts Assignor’s assignment of all of its right, title and interest in, to and under the Contract, and assumes all of Assignor’s liabilities and obligations under the Contract, including those which survive the closing or termination thereof.

4. Miscellaneous. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Assignment shall be construed in accordance with and be governed by the laws of the State of Texas.
IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company

By: __________________________
   Lisa Stephens, President

ASSIGNEE:

VI COLLINA, LLC,
a Texas limited liability company

By: __________________________
   Name: Megan Lasch
   Title: President
CONSENT TO ASSIGNMENT OF COMMERCIAL CONTRACT – UNIMPROVED PROPERTY

CEDAR WILLOW CREEK, LTD., a Texas limited partnership ("Seller") hereby consents to the assignment by SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company ("Assignor") of all of its rights, duties and obligations under that certain Commercial Contract – Unimproved Property, by and between Seller and Assignor, dated as of December 8, 2017, as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property, dated of even date therewith, as amended by that certain Amendment to Commercial Contract – Unimproved Property dated April 9, 2018, as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property, dated as of April 24, 2018, as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property, dated as of October 25, 2018, as further amended by that certain Fourth Amendment to Commercial Contract – Unimproved Property, dated of even date herewith (collectively, the “Agreement”), with respect to certain real property, as more particularly described in the Agreement, to VI COLLINA, LLC, a Texas limited liability company ("Assignee"), notwithstanding that Assignee is not controlled by or under common control with Assignor.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: ________________________________

Name: Jimmy Nassour

Date: 2-27-2019
JOINDER AND CONSENT OF VI COLLINA, LLC

VI COLLINA, LLC, a Texas limited liability company, as assignee of all of Saigebrook Development, LLC’s (“Saigebrook”) interest in and to that certain Commercial Contract – Unimproved Property dated December 8, 2017, as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith, as amended by that certain Amendment to Commercial Contract – Unimproved Property dated on or about April 9, 2018, as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated on or about April 24, 2018, as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018, pursuant to that certain Assignment and Assumption of Commercial Contract – Unimproved Property dated February 22, 2019, hereby joins and consents to Saigebrook’s execution of that certain Fourth Amendment to Commercial Contract – Unimproved Property dated of even date herewith and attached hereto as Exhibit “A”.

VI COLLINA, LLC, a Texas limited liability company

By: ______________________________
Name: ____________________________
Title: ______________________________
Date: ________________

Megan Lasch
President
2-26-19
EXHIBIT “A”
From: Mandy Dean-Knotts [mailto:mandy.dean@stewart.com]
Sent: Friday, March 29, 2019 1:33 PM
To: ‘Michael Levy'
Cc: Jimmy Nassour; Steve Portnoy; Megan Lasch; Lisa Stephens; Robert Cheng; P. Taylor Yawney
Subject: RE: [External] RE: GF#156049: 2431 East Oltorf Street, Austin, TX 78741: Saigebrook Development, LLC and/or assigns

EXTERNAL: This email originated from outside of the SHUTTS email system. Do not respond, click any links or open any attachments unless you trust the sender and know the content is safe.

Received. Thank you.

WIRE FRAUD ALERT! Your security is our concern. Please always call your closing team to confirm wiring instructions before initiating a wire.

From: Michael Levy [mailto:mlevy@mathiaspartners.com]
Sent: Friday, March 29, 2019 12:11 PM
To: Mandy Dean-Knotts
Cc: Jimmy Nassour; Steve Portnoy; Megan Lasch; Lisa Stephens; Robert Cheng; P. Taylor Yawney

Thank you for your email. I have received your message and will review it promptly.

Michael Levy
Mathias Partners
10500 Midway Road, Suite 1010
Dallas, TX 75252
(214) 380-1900
mlevy@mathiaspartners.com
Subject: [External] RE: GF#156049: 2431 East Oltorf Street, Austin, TX 78741: Saigebrook Development, LLC and/or assigns

Mandy,

Please find attached a fully executed copy of the Confirmation and Ratification to 5th Amendment which clarifies certain items of the 5th Amendment that was submitted to you below on 3/15/19 erroneously titled as the 4th Amendment (also attached).

Please let us know of any questions.

Thanks,
Michael

Michael Levy
512.637.6957 office
512.417.2919 cell
mlevy@mathiaspartners.com

From: Michael Levy <mlevy@mathiaspartners.com>
Sent: Friday, March 15, 2019 4:23 PM
To: 'Mandy Dean-Knotts' <mandy.dean@stewart.com>
Cc: 'Jimmy Nassour' <jimmy@jimmynassour.com>; 'Steve Portnoy' <steve.portnoy@gmail.com>; 'Megan Lasch' <megan@o-sda.com>; 'Lisa Stephens' <lisa@saigebrook.com>; 'Robert Cheng' <rcheng@shutts.com>; 'P. Taylor Yawney' <TYawney@shutts.com>
Subject: GF#156049: 2431 East Oltorf Street, Austin, TX 78741: Saigebrook Development, LLC and/or assigns

Mandy,

Please find attached a fully executed copy of the 4th Amendment extending the feasibility period to 5pm CT on March 29, 2019.

Please let us know of any questions.

Thanks,
Michael

Please note our new address effective 2/25/19.

Michael E. Levy | President & COO
MATHIAS PARTNERS
3660 Stoneridge Rd. | Building E-104 | Austin, Texas 78746
512.637.6957 direct | 512.330.9111 main | 512.417.2919 cell
JOINDER AND CONSENT OF VI COLLINA, LLC

VI COLLINA, LLC, a Texas limited liability company, as assignee of all of Saigebrook Development, LLC’s (“Saigebrook”) interest in and to that certain Commercial Contract – Unimproved Property dated December 8, 2017, as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith, as amended by that certain Amendment to Commercial Contract – Unimproved Property dated on or about April 9, 2018, as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated on or about April 24, 2018, as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018, pursuant to that certain Assignment and Assumption of Commercial Contract – Unimproved Property dated February 6, 2019, hereby joins and consents to Saigebrook’s execution of that certain Fourth Amendment to Commercial Contract – Unimproved Property dated February 22, 2019 and that certain Confirmation and Ratification to Fifth Amendment to Commercial Contract – Unimproved Property dated March 29, 2019, copies of which are attached hereto as Exhibit “A”.

VI COLLINA, LLC, a Texas limited liability company

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________

Megan Lasch
President

5-15-19
EXHIBIT “A”
FOURTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY

THIS FOURTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY (this “Amendment”) is made this 15th day of March, 2019, by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership (“Seller”), whose address is 3839 Bee Cave Road, Suite 200, Austin, Texas 78746, and VI COLLINA, LLC, a Texas limited liability company (“Buyer”), whose office address is 5501-A Balcones Drive, #302, Austin, Texas 78731.

WHEREAS, Seller and Saigebrook Development, LLC, a Florida limited liability company (“Saigebrook”), are parties to that certain Commercial Contract – Unimproved Property, dated on or about December 8, 2017 (the “Contract”), as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith (the “Addendum”), as amended by that certain First Amendment to Commercial Contract – Unimproved Property dated April 9, 2018 (the “First Amendment”), as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated April 24, 2018 (the “Second Amendment”), as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018 (the “Third Amendment”; and together with the Contract, the Addendum, the First Amendment and the Second Amendment, collectively, the “Agreement”); and

WHEREAS, Saigebrook assigned all of its right, title and interest in and to the Agreement to Buyer pursuant to that certain Assignment and Assumption of Commercial Contract – Unimproved Property; and

WHEREAS, Buyer and Seller desire to further amend the Agreement as more particularly set forth below.

NOW THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. RECITALS: The above recitals are true and correct and incorporated into this Amendment by this reference.

2. DEFINITIONS: Any capitalized terms not defined in this Amendment shall have the meaning given to such term in the Agreement.

3. FEASIBILITY PERIOD: Notwithstanding anything in the Agreement to the contrary, the Feasibility Period shall expire at 5:00 p.m. Central Time on March 29, 2019. All references to the Feasibility Period in the Agreement shall remain unchanged except for the aforementioned change in date.

4. EARNEST MONEY: Notwithstanding anything in the Agreement to the contrary, unless the Agreement is sooner terminated, the Second Deposit, being $25,000.00, shall be due
and payable to Escrow Agent by 5:00 p.m. Central Time on April 1, 2019. Additionally, subparts (i)-(iii) of Section 2(a) of the Addendum are deleted in their entirety and replaced with the following:

“(i) within two days after the expiration of the Feasibility Period, Ten Thousand Dollars ($10,000.00) of the Escrow Deposit shall become non-refundable to Buyer except upon Seller’s default or as provided in this Agreement;

(ii) if this Agreement has not been terminated by the Buyer by 5:00 p.m. Central Time on April 29, 2019, an additional sum of Ten Thousand Dollars ($10,000.00) from the Escrow Deposit shall become non-refundable to Buyer, for an aggregate hard Escrow Deposit of Twenty Thousand Dollars ($20,000.00), except upon Seller’s default or as provided in this Agreement;

(iii) if this Agreement has not been terminated by the Buyer by 5:00 p.m. Central Time on May 29, 2019, an additional sum of Ten Thousand Dollars ($10,000.00) from the Escrow Deposit shall become non-refundable to Buyer, for an aggregate hard Escrow Deposit of Thirty Thousand Dollars ($30,000.00), except upon Seller’s default or as provided in this Agreement;

5. **BINDING EFFECT:** This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

6. **HEADINGS:** Headings in this Amendment are for convenience and reference only and shall not be used to interpret or construe its provisions.

7. **COUNTERPARTS:** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. Any signature delivered by facsimile, email, or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party. Either party or both parties shall be permitted to electronically execute this Amendment and all other related documents, in accordance with Texas Statutes Chapter 322.

8. **CONFLICT:** In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail. Except as modified herein, the Agreement remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects.

*(Remainder of page intentionally blank. Signature page to follow.)*
IN WITNESS WHEREOF, the parties hereto hereby execute this Amendment as of the date first above written.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: Cedar Contracting, Inc., a Texas corporation, its general partner

[Signature]

By: Jimmy Nassour

BUYER:

VI COLLINA, LLC, a Texas limited liability company

[Signature]

By: [Signature]

Name: Megan Lasch

Title: President
CONFIRMATION AND RATIFICATION TO FIFTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY

THIS CONFIRMATION AND RATIFICATION TO FIFTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY (this "Confirmation") is entered into by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership ("Seller"), and SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company ("Buyer").

RECITALS

WHEREAS, Seller and Buyer heretofore entered into that certain Commercial Contract – Unimproved Property, dated on or about December 8, 2017 (the "Contract"), as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith (the "Addendum"), as amended by that certain First Amendment to Commercial Contract – Unimproved Property dated April 9, 2018 (the "First Amendment"), as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated April 24, 2018 (the "Second Amendment"), as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018 (the "Third Amendment"), as further amended by that certain Fourth Amendment to Commercial Contract – Unimproved Property dated as of February 22, 2019 (the "Fourth Amendment"), as further amended by that certain amendment inadvertently titled “Fourth Amendment” to Commercial Contract – Unimproved Property dated as of March 15, 2019, by and between Seller and Vi Collina, LLC ("Vi Collina"), as successor in interest to Buyer (the "Fifth Amendment"; and together with the Contract, the Addendum, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, collectively, the "Agreement");

WHEREAS, on or about February 27, 2019, Seller executed that certain Consent to Assignment of Commercial Contract – Unimproved Property, whereby Seller acknowledged and agreed to the assignment of the Agreement from Buyer to Vi Collina;

WHEREAS, the parties acknowledge that Vi Collina has not yet been formed, and that the Fifth Amendment was intended to be executed by Buyer;

WHEREAS, the parties acknowledge that the Fifth Amendment was intended to be titled “Fifth Amendment to Commercial Contract – Unimproved Property”;

WHEREAS, the parties desire to (i) confirm and ratify the Agreement, and all of their respective obligations thereunder despite (a) Vi Collina executing the Fifth Amendment instead of Buyer and (b) the Fifth Amendment being inadvertently titled "Fourth Amendment"; and (ii) to amend the Agreement to provide that it may be assigned to an entity controlled by or under common control with O-SDA Industries, LLC, without the consent of Seller.

NOW THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Buyer hereby agree as follows:
1. **RECITALS:** The above recitals are true and correct and incorporated into this Confirmation by this reference.

2. **DEFINITIONS:** Any capitalized terms not defined in this Confirmation shall have the meaning given to such term in the Agreement.

3. **RATIFICATION OF AGREEMENT:** The Agreement is hereby ratified, confirmed and reaffirmed in all respects, and shall be treated in the same manner as though (i) Buyer, instead of Vi Collina, had been the original party and signatory to the Fifth Amendment; and (ii) the Fifth Amendment was titled “Fifth Amendment to Commercial Contract – Unimproved Property”.

4. **ASSIGNMENT:** Notwithstanding any limitation or prohibition in the Agreement, Buyer shall be entitled to assign its right, title and interest in the Agreement to an entity controlled by or under common control with O-SDA Industries, LLC, without the necessity of Seller consent.

5. **FULL FORCE AND EFFECT:** Except as specifically modified by this Confirmation, all other provisions of the Agreement remain in full force and effect. To the extent of any conflict between the provisions of the Agreement and this Confirmation, the provisions of this Confirmation shall control.

6. **AUTHORITY:** Seller and Buyer represent and warrant to the other that such party has the full right, power, and lawful authority to enter into, execute, and perform under this Confirmation and that such actions do not violate any other agreement, covenant, or restriction placed upon such party. Seller and Buyer further represent and warrant to the other that the person signing this Confirmation on its behalf has been duly authorized to sign this Confirmation.

7. **GOVERNING LAW:** This Confirmation shall be governed by the laws of the State of Texas, without application of its conflict of law principles.

8. **BINDING EFFECT:** This Confirmation shall be binding upon, and shall inure to the benefit of, Seller, Buyer, and their respective successors or assigns.

9. **HEADINGS:** The headings contained in this Confirmation are for convenience of reference only and shall not be construed as limiting or defining in any way the provisions of this Confirmation.

10. **COUNTERPARTS:** This Confirmation may be executed in counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Any signature delivered by facsimile or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party.

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IN WITNESS WHEREOF, Seller and Buyer have executed this Confirmation as of this 29 day of March, 2019.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: Cedar Contracting, Inc., a Texas corporation, its general partner

By: [Signature]

Jimmy Nassour

BUYER:

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: [Signature]

Name: Lisa Stephens
Title: President
FOURTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY

THIS FOURTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY (this “Amendment”) is entered into as of the 22 day of February, 2019, by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership (“Seller”), and SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company (“Purchaser”).

RECITALS

WHEREAS, Seller and Purchaser are parties to that certain Commercial Contract – Unimproved Property dated December 8, 2017 (the “Contract”), as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith (the “Addendum”), as amended by that certain Amendment to Commercial Contract – Unimproved Property dated on or about April 9, 2018 (the “First Amendment”), as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated on or about April 24, 2018 (the “Second Amendment”), as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018 (the “Third Amendment”; and together with the Contract, the Addendum, the First Amendment and the Second Amendment, collectively, the “Agreement”) for the sale of that certain real property located in Travis County, Texas and defined as the "Property" in Section 2(a) of the Contract (the "Property");

WHEREAS, Purchaser and Seller desire to amend the Agreement as more particularly set forth herein.

NOW THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Purchaser hereby agree as follows:

1. RECITALS: The above recitals are true and correct and incorporated into this Amendment by this reference.

2. DEFINITIONS: Any capitalized terms not defined in this Amendment shall have the meaning given to such term in the Agreement.

3. LEGAL DESCRIPTION: Seller and Purchaser hereby acknowledge and agree that the legal description of the Property to be conveyed by Seller to Purchaser is hereby amended to be the legal description of the Property as set forth on Exhibit “A” attached hereto and made a part hereof. Any references to the term Property in the Agreement shall mean and refer to the Property as described on Exhibit “A” attached hereto.

4. FULL FORCE AND EFFECT: Except as specifically modified by this Amendment, all other provisions of the Agreement remain in full force and effect. To the extent of any conflict between the provisions of the Agreement and this Amendment, the provisions of this Amendment shall control.
5. **AUTHORITY:** Seller and Purchaser represent and warrant to the other that such party has the full right, power, and lawful authority to enter into, execute, and perform under this Amendment and that such actions do not violate any other agreement, covenant, or restriction placed upon such party. Seller and Purchaser further represent and warrant to the other that the person signing this Amendment on its behalf has been duly authorized to sign this Amendment.

6. **GOVERNING LAW:** This Amendment shall be governed by the laws of the State of Texas, without application of its conflict of law principles.

7. **BINDING EFFECT:** This Amendment shall be binding upon, and shall inure to the benefit of, Seller, Purchaser, and their respective successors or assigns.

8. **HEADINGS:** The headings contained in this Amendment are for convenience of reference only and shall not be construed as limiting or defining in any way the provisions of this Amendment.

9. **COUNTERPARTS:** This Amendment may be executed in counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Any signature delivered by facsimile or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party.

{remainder of this page intentionally left blank}
IN WITNESS WHEREOF, Seller and Purchaser have executed this Amendment as of the date and year first above written.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: [Signature]
Name: Jimmy Nassour
Title: Mgr.

PURCHASER:

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: [Signature]
Lisa M. Stephens, President
EXHIBIT “A”

Legal Description

BEING all of Lots 2, 3, 4, 5, 6, and part of Lot 7, Willow Creek Commercial, Section II, an addition in the City of Austin, Travis County, Texas, according to the plat recorded in Volume 87, Pages 110B and 110C, Plat Records, Travis County, Texas (P.R.T.C.T.), the subject tract being more particularly described as follows ( Bearings are based on the State Plane Coordinate System, Texas Central Zone (4203), North American Datum of 1983 (NAD ’83)):

BEGINNING at a 1/2 inch rebar with cap stamped “HOLT” found at the northwest corner of said Lot 2, lying in the southwest right-of-way of East Oltorf Street (called to be a 90’ right-of-way by said Willow Creek Commercial, Section II);

THENCE with the southwest right-of-way of said East Oltorf Street, the following calls:

1. SOUTH 61 degrees 42 minutes 18 seconds EAST, a distance of 168.31 feet to a 5/8 inch rebar found at the beginning of a tangent curve to the right, having a radius of 1012.50 feet, a central angle of 26 degrees 23 minutes 35 seconds, and a chord bearing and distance of SOUTH 48 degrees 30 minutes 13 seconds EAST, 462.29 feet;
2. Along the arc of said curve, an arc distance of 466.40 feet to the northeast corner of said Lot 5, from which a 1/2 inch rebar found bears SOUTH 83 degrees WEST, 0.27 feet, being the beginning of a reverse curve, having a radius of 1012.50 feet, a central angle of 09 degrees 20 minutes 53 seconds, and a chord bearing and distance of SOUTH 40 degrees 00 minutes 28 seconds EAST, 165.01 feet;
3. Along the arc of said curve, an arc distance of 165.19 feet to the northwest corner of Lot 1, Willow Bend II Addition, an addition in the City of Austin, Travis County, Texas, according to the plat recorded in Volume 83, Page 184B, P.R.T.C.T., from which a 1/2 inch iron pipe found bears NORTH 01 degree WEST, 0.42 feet;

THENCE with the west line of said Lot 1, SOUTH 27 degrees 11 minutes 07 seconds WEST, a distance of 250.09 feet to a 3/8 inch rebar found at the southernmost corner of said Lot 7;

THENCE with the perimeter and to the corners of said Lot 7, the following calls:

1. NORTH 41 degrees 12 minutes 51 seconds WEST, a distance of 289.01 feet to the beginning of a non-tangent curve to the left, having a radius of 774.50 feet, a central angle of 25 degrees 50 minutes 10 seconds, and a chord bearing and distance of NORTH 48 degrees 46 minutes 48 seconds WEST, 346.29 feet;
2. Along the arc of said curve, an arc distance of 349.24 feet to a 1/2 inch rebar with cap stamped “HOLT” found;
3. NORTH 61 degrees 42 minutes 18 seconds WEST, a distance of 317.17 feet to the westernmost corner of said Lot 7, from which a 1/2 inch rebar found bears NORTH 78 degrees EAST, 0.46 feet;
4. NORTH 27 degrees 20 minutes 12 seconds EAST, a distance of 68.01 feet to the northernmost corner of said Lot 7, from which a 1/2 inch rebar with cap stamped “HOLT” found bears SOUTH 69 degrees EAST, a distance of 0.23 feet;
5. SOUTH 61 degrees 42 minutes 18 seconds EAST, a distance of 25.36 feet to a point in the northeast line of said Lot 7;
THENCE through the interior of said Lot 7, the following calls:

1. SOUTH 28 degrees 17 minutes 42 seconds WEST, a distance of 38.00 feet;
2. SOUTH 61 degrees 42 minutes 28 seconds EAST, a distance of 22.93 feet;
3. NORTH 88 degrees 43 minutes 02 seconds EAST, a distance of 21.27 feet;
4. NORTH 28 degrees 17 minutes 42 seconds EAST, a distance of 27.50 feet to a point in the northeast line of said Lot 7;

THENCE with the northeast line of said Lot 7, SOUTH 61 degrees 42 minutes 18 seconds EAST, a distance of 83.21 feet to a 5/8 inch rebar found at the southwest corner of said Lot 2;

THENCE with the west line of said Lot 2, NORTH 28 degrees 17 minutes 42 seconds EAST, a distance of 169.99 feet, returning to the POINT OF BEGINNING and enclosing 4.558 acres (198,555 square feet) of land, more or less.
THIRD AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY

This Amendment to Commercial Contract – Unimproved Property (this “Amendment”) is made by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership (“Seller”), whose address is 3839 Bee Cave Road, Suite 200, Austin, Texas 78746, and SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company, its successors and/or assigns (“Buyer”), whose office address is 5501-A Balcones Drive, #302, Austin, Texas 78731.

WHEREAS, Seller and Buyer are parties to that certain Commercial Contract – Unimproved Property, dated on or about December 8, 2017 (the “Contract”), as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith (the “Addendum”, and together with the Contract, the “Agreement”); and

WHEREAS, Buyer and Seller executed the First Amendment to the Agreement on April 9, 2018; and

WHEREAS, Buyer and Seller executed the Second Amendment to Commercial Contract – Unimproved Property on or around April 24, 2018 (the “Second Amendment”); and

WHEREAS, Buyer and Seller desire to further amend the Agreement as more particularly set forth below.

NOW THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. RECITALS: The above recitals are true and correct and incorporated into this Amendment by this reference.

2. DEFINITIONS: Any capitalized terms not defined in this Amendment shall have the meaning given to such term in the Agreement, and the term “Agreement” shall mean and include all amendments thereto.

3. SALES PRICE: Notwithstanding anything in the Agreement to the contrary, the Sales Price is $3,400,000.00

4. FEASIBILITY PERIOD: Notwithstanding anything in the Agreement to the contrary, the Feasibility Period shall expire at 5:00 p.m. Central Time on March 15, 2019. All references to the Feasibility Period in the Agreement shall remain unchanged except for the aforementioned change in date.

4. EARNEST MONEY: Notwithstanding anything in the Agreement to the contrary, unless the Agreement is sooner terminated, the Second Deposit, being $25,000.00, shall be due and
payable to Escrow Agent March 17, 2019. Additionally, subparts (i)-(iv) of Section 2(a) of the Addendum are deleted in their entirety and replaced with the following:

“(i) within two days after the expiration of the Feasibility Period, Ten Thousand Dollars ($10,000.00) of the Escrow Deposit shall become non-refundable to Buyer except upon Seller’s default or as provided in this Agreement;

(ii) if this Agreement has not been terminated by the Buyer by 5:00 p.m. Central Time on April 15, 2019, an additional sum of Ten Thousand Dollars ($10,000.00) from the Escrow Deposit shall become non-refundable to Buyer, for an aggregate hard Escrow Deposit of Twenty Thousand Dollars ($20,000.00), except upon Seller’s default or as provided in this Agreement;

(iii) if this Agreement has not been terminated by the Buyer by 5:00 p.m. Central Time on May 15, 2019, an additional sum of Ten Thousand Dollars ($10,000.00) from the Escrow Deposit shall become non-refundable to Buyer, for an aggregate hard Escrow Deposit of Thirty Thousand Dollars ($30,000.00), except upon Seller’s default or as provided in this Agreement;

(iv) if this Agreement has not been terminated by the Buyer by 5:00 p.m. Central Time on June 15, 2019, an additional sum of Ten Thousand Dollars ($10,000.00) from the Escrow Deposit shall become non-refundable to Buyer, for an aggregate hard Escrow Deposit of Forty Thousand Dollars ($40,000.00), except upon Seller’s default or as provided in this Agreement; and

(v) if this Agreement has not been terminated by the Buyer by 5:00 p.m. Central Time on August 1, 2019, Purchaser shall deposit with the Escrow Agent an additional sum of Fifty Thousand Dollars ($50,000.00), the “Third Deposit”. Upon payment, the Third Deposit shall be deemed hard and non-refundable to Buyer, for an aggregate hard Escrow Deposit of Ninety Thousand Dollars ($90,000.00), except upon Seller’s default or as provided in this Agreement.”

5. MARKETING OF PROPERTY: Section 5 of the Second Amendment is hereby deleted in its entirety and is of no further force or effect.

6. CLOSING: Should the Agreement remain in full force and effect as of the expiration of the Feasibility Period, then notwithstanding anything in the Agreement to the contrary, the Closing Date shall be as set forth in Section 7 of the Second Amendment.

7. BINDING EFFECT: This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

8. HEADINGS: Headings in this Amendment are for convenience and reference only and shall not be used to interpret or construe its provisions.

9. COUNTERPARTS: This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. Any signature delivered by facsimile, email, or other forms of electronic
transmission, such as a PDF, shall be considered an original signature by the sending party. Either party or both parties shall be permitted to electronically execute this Amendment and all other related documents, in accordance with Texas Statutes Chapter 322.

10. CONFLICT: In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail. Except as modified herein, the Agreement remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects.

(Remainder of page intentionally blank. Signature page to follow.)
SELLER:
CEDAR WILLOW CREEK, LTD., a Texas limited partnership
By: Cedar Contracting, Inc., a Texas corporation, its general partner
By: 

Jim Nassour

BUYER:
SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company, and/or assigns
By: 
Lisa Stephens, President
Yes, Sir. The wire just hit our account.

Thank you,

WIRE FRAUD ALERT! Your security is our concern. Please always call your closing team to confirm wiring instructions before initiating a wire.

Mandy Dean-Knotts
Vice President / Branch Manager
Barton Oaks
Stewart Title of Austin, LLC
901 South Mopac, Building III, Suite #100
Austin, TX 78746
O (512) 322-8701 | F (512) 472-3101
stewart.com/austin | mandy.dean@stewart.com | View My Profile

From: P. Taylor Yawney [mailto:TYawney@shutts.com]
Sent: Monday, April 01, 2019 1:53 PM
To: Mandy Dean-Knotts; 'Michael Levy'
Cc: Jimmy Nassour; Steve Portnoy; Megan Lasch; Lisa Stephens; Robert Cheng
Subject: RE: [External] GF#156049: 2431 East Oltorf Street, Austin, TX 78741: Saigebrook Development, LLC and/or assigns

Mandy:

Please confirm that you received the $25,000 additional deposit.

Thanks,

Taylor
SECOND AMENDMENT TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

THIS AMENDMENT TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY (this “Amendment”) is made by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership (“Seller”), whose address is 3839 Bee Cave Road, Suite 200, Austin, TX 78746, and SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company, its successors and/or assigns (“Buyer”), whose office address is 421 West 3rd Street, Suite 1504, Austin, Texas 78701.

WHEREAS, Seller and Buyer are parties to that certain Commercial Contract - Unimproved Property, dated on or about December 8, 2017 (the “Contract”), as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith (the “Addendum”, and together with the Contract, the “Agreement”); and

WHEREAS, Buyer and Seller executed the First Amendment to the Agreement on April 9, 2018; and

WHEREAS, Buyer and Seller desire to further amend the Agreement as more particularly set forth below.

NOW THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. **RECITALS:** The above recitals are true and correct and incorporated into this Amendment by this reference.

2. **DEFINITIONS:** Any capitalized terms not defined in this Amendment shall have the meaning given to such term in the Agreement.

3. **FEASIBILITY PERIOD:** Notwithstanding anything in the Agreement to the contrary, the Feasibility Period shall expire at 5:00 p.m. Central Time on April 12, 2019. All references to the Feasibility Period in the Agreement shall remain unchanged except for the aforementioned change in date. By way of example, and by no means a limitation of the foregoing, Buyer shall have up and until 5:00 p.m. Central Time on April 12, 2019 to terminate the Agreement for any reason or no any reason and receive a refund of the earnest money less the $100.00 that Seller shall retain as independent consideration for Buyer’s unrestricted right to terminate.

4. **EARNEST MONEY:** Notwithstanding anything in the Agreement to the contrary, unless the Agreement is sooner terminated, the Second Deposit shall be due and payable to Escrow Agent on April 15, 2019. Additionally, subparts (i)-(iv) of Section 2(a) of the Contract are deleted in their entirety and replaced with the following:

   “(i) if the Contract has not been terminated by Buyer in accordance with the terms hereof by the expiration of the Feasibility Period, $10,000.00 of the Escrow Deposit shall
be deemed hard and non-refundable to Buyer, unless Closing does not occur as a result of a
default by Seller, Seller's inability to deliver indefeasible title subject only to the Permitted
Exceptions at Closing, or termination of the Contract due to condemnation;

(ii) if the Contract has not been terminated by Buyer in accordance with the
terms hereof by 5:00 p.m. Central Time on May 31, 2019, an additional $10,000.00 of the
Escrow Deposit shall be deemed hard and non-refundable to Buyer, for an aggregate hard
Escrow Deposit of $20,000.00, unless Closing does not occur as a result of a default by Seller,
Seller's inability to deliver indefeasible title subject only to the Permitted Exceptions at Closing,
or termination of the Contract due to condemnation;

(iii) if the Contract has not been terminated by Buyer in accordance with the
terms hereof by 5:00 p.m. Central Time on June 29, 2019, an additional $10,000.00 of the
Escrow Deposit shall be deemed hard and non-refundable to Buyer, for an aggregate hard
Escrow Deposit of $30,000.00, unless Closing does not occur as a result of a default by Seller,
Seller's inability to deliver indefeasible title subject only to the Permitted Exceptions at Closing,
or termination of the Contract due to condemnation; and

(iv) if the Contract has not been terminated by Buyer in accordance with the
terms hereof by 5:00 p.m. Central Time on July 31, 2019, an additional $10,000.00 of the
Escrow Deposit shall be deemed hard and non-refundable to Buyer, for an aggregate hard
Escrow Deposit of $40,000.00, unless Closing does not occur as a result of a default by Seller,
Seller's inability to deliver indefeasible title subject only to the Permitted Exceptions at Closing,
or termination of the Contract due to condemnation.”

5. **SELLER’S RIGHT TO CONTINUE TO MARKET THE PROPERTY:** Seller may
continue to market the Property for sale to bona fide third-party purchasers up until December
13, 2018. In the event that Seller receives an acceptable offer to purchase the Property prior to
December 13, 2018, the Buyer shall have the right to match this offer within seven (7) calendar
days of Seller’s acceptance of the third-party offer. If Buyer fails to match the offer in that time
period, Buyer’s rights to purchase the Property under the Agreement shall terminate and shall be
deemed null and void and of no further effect.

6. **TAX CREDITS:** The term “Tax Credits” as used in the Agreement, including, but not
limited to, Section 6(b) of the Contract, shall hereinafter refer to the 2019 Application Cycle for
Federal Income Tax Credits under the Low Income Housing Tax Credit Program.

7. **CLOSING:** Should the Agreement remain in full force and effect as of the expiration of
the Feasibility Period, then notwithstanding anything in the Agreement to the contrary, the
Closing Date shall be August 30, 2019. Buyer shall continue to have the right to extend the
Closing Date pursuant to the four Closing Extensions referenced in Section 7 of the Contract (but
to no later than December 31, 2019); provided, however, notwithstanding anything in the
Agreement to the contrary, Buyer will not receive a credit toward its payment of the Purchase
Price for any of the Closing Extensions paid to Seller. Except as modified herein, Section 7 shall
otherwise remain in full force and effect.
8. **BINDING EFFECT:** This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

9. **HEADINGS:** Headings in this Amendment are for convenience and reference only and shall not be used to interpret or construe its provisions.

10. **COUNTERPARTS:** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. Any signature delivered by facsimile, email, or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party. Either party or both parties shall be permitted to electronically execute this Amendment and all other related documents, in accordance with Texas Statutes Chapter 322.

11. **CONFLICT:** In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail. Except as modified herein, the Agreement remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects.

{SIGNATURES ON FOLLOWING PAGE}
IN WITNESS WHEREOF, the parties hereto hereby execute this Amendment as of the 24th day of April, 2018.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: Cedar Contracting, Inc., a Texas corporation, its general partner

By: [Signature]

Jimmy Nassour, President

BUYER:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company, and/or assigns

By: [Signature]

Lisa Stephens, President
IN WITNESS WHEREOF, the parties hereto hereby execute this Amendment as of the 24th day of April, 2018.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: Cedar Contracting, Inc., a Texas corporation, its general partner

By: ______________________________

Jimmy Nassour, President

BUYER:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company, and/or assigns

By: ______________________________

Lisa Stephens, President
AMENDMENT TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

THIS AMENDMENT TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY (this “Amendment”) is made by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership (“Seller”), whose address is 3839 Bee Cave Road, Suite 200, Austin, TX 78746, and SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company, its successors and/or assigns (“Buyer”), whose office address is 421 West 3rd Street, Suite 1504, Austin, Texas 78701.

WHEREAS, Seller and Buyer are parties to that certain Commercial Contract - Unimproved Property, dated on or about December 8, 2017 (the “Contract”), as modified and supplemented by that certain Addendum to Commercial Contract - Unimproved Property of even date therewith (the “Addendum”, and together with the Contract, the “Agreement”); and

WHEREAS, Buyer and Seller desire to amend the Agreement as more particularly set forth below.

NOW THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. RECITALS: The above recitals are true and correct and incorporated into this Amendment by this reference.

2. DEFINITIONS: Any capitalized terms not defined in this Amendment shall have the meaning given to such term in the Agreement.

3. FEASIBILITY PERIOD: Notwithstanding anything in the Agreement to the contrary, the Feasibility Period shall expire at 5:00 p.m. Central Time on April 24, 2018. All references to the expiration of the Feasibility Period in the Agreement shall remain unchanged except for the aforementioned change in date. By way of example, and by no means a limitation of the foregoing, Buyer shall have up and until 5:00 p.m. Central Time on April 24, 2018 to terminate the Agreement for any reason and receive a refund of the earnest money less the $100.00 that Seller shall retain as independent consideration for Buyer’s unrestricted right to terminate.

4. BINDING EFFECT: This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

5. HEADINGS: Headings in this Amendment are for convenience and reference only and shall not be used to interpret or construe its provisions.

6. COUNTERPARTS: This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. Any signature delivered by facsimile, email, or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party.
Either party or both parties shall be permitted to electronically execute this Amendment and all other related documents, in accordance with Texas Statutes Chapter 322.

7. **CONFLICT:** In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail. Except as modified herein, the Agreement remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects.

{SIGNATURES ON FOLLOWING PAGE}
IN WITNESS WHEREOF, the parties hereto hereby execute this Amendment as of the day of April, 2018.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: Cedar Contracting, Inc., a Texas corporation, its general partner

By: Jimmy Nassour, President

BUYER:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company, and/or assigns

By: Lisa Stephens, President
1. PARTIES: Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Cedar Willow Creek, Ltd.
Address: 3839 Bee Cave Road, Suite 200, Austin, TX 78746
Phone: 512-474-2900 E-mail: jimmy@jimmyemansour.com
Fax: 512-474-4547 Other: 

Buyer: Saigebrook Development, LLC and/or assigns
Address: 421 West 3rd Street, Suite 1504, Austin, TX 78701
Phone: 512-363-5470 E-mail: megan@o-sda.com
Fax: Other: lisa@saigebrook.com

2. PROPERTY:
A. "Property" means that real property situated in Travis County, Texas at 2431 E. Oltorf Street, Austin, TX 78741 (address) and that is legally described on the attached Exhibit or as follows:

   Lots 2-7, Willow Creek Commercial, Sec. 11, Abstract 24, Santiago del Valle having Travis County Appraisal District Property ID No. 289145, save and except approximately 1,606 SF plus related access and utility easements leased to AT&T Wireless Services for its use as a cell site, to be separately retained by the Seller.

B. Seller will sell and convey the Property together with:
   (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
   (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
   (3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)
(If mineral rights are to be reserved an appropriate addendum should be attached.)

3. SALES PRICE:
A. At or before closing, Buyer will pay the following sales price for the Property:
   (1) Cash portion payable by Buyer at closing $3,300,000.00
   (2) Sum of all financing described in Paragraph 4 
   (3) Sales price (sum of 3A(1) and 3A(2)) $3,300,000.00

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Commercial Contract - Unimproved Property concerning 2431 E. Oltorf Street, Austin, TX 78741

B. Adjustment to Sales Price: (Check (1) or (2) only.)

☑ (1) The sales price will not be adjusted based on a survey.
☐ (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of $_________ per:
☐ (i) square foot of ☐ total area ☐ net area.
☐ (ii) acre of ☐ total area ☐ net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:
☐ (i) public roadways;
☐ (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
☐ (iii) _______________________

(c) If the sales price is adjusted by more than _____% of the stated sales price, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. FINANCING: Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

☐ A. Third Party Financing: One or more third party loans in the total amount of $_________. This contract:
☐ (1) is not contingent upon Buyer obtaining third-party financing.
☐ (2) is contingent upon Buyer obtaining third-party financing in accordance with the attached Commercial Contract Financing Addendum (TAR 1931).

☐ B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR 1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be $_________.

☐ C. Seller Financing: The delivery of a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR 1931) in the amount of $_________.

5. EARNEST MONEY:

A. Not later than 2 days after the effective date, Buyer must deposit $_________ as earnest money with Stewart Title of Austin (title company) at 901 S. MoPac Expwy., Bldg. III, Ste. 100, Austin, TX 78746 (address) Mandy Dean-Knotts (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 16 by providing written notice to Buyer before Buyer deposits the earnest money. See Addendum to Commercial Contract - Unimproved Property

☐ Buyer will deposit an additional amount of $_________ with the title company to be made part of the earnest money on or before:
☐ (i) _________ days after Buyer's right to terminate under Paragraph 7B expires; or
☐ (ii) _________

☐ Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 6B within 5 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

(TAR-1802) 1-1-16 Initiated for Identification by Seller and Buyer

Page 2 of 13
commercial Contract - Unimproved Property concerning 2431 E. Ollorf Street, Austin, TX 78741

6. {Tie Policy and Survey:} See Addendum to Commercial Contract - Unimproved Property

A. Title Policy:

(1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the "title policy") issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to: ______

(a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and

(b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.

(2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements.

(b) will not be amended or deleted from the title policy.

(b) will be amended to read "shortages in areas" at the expense of ______

(2) Within ______ days after the effective date, Seller will furnish Buyer a commitment for title insurance (the "Commitment") including legible copies of recorded documents evidencing title exceptions.

Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within ______ days after the effective date:

(b) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer ______ (insert amount) of the cost of the survey at closing, if closing occurs.

(b) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.

(b) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 10 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller ______ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. Buyer's Obligations to the Commitment and Survey:

(4) Within ______ days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or items that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 8B(4) applies,
Commercial Contract - Unimproved Property concerning 2431 E. Oltorf Street, Austin, TX 78741

Buyer is deemed to receive the survey on the earlier of (i) the date of Buyer's actual receipt of the survey, or (ii) the deadline specified in Paragraph 6B.

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 16 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 7B is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

B. Feasibility Period: Buyer may terminate this contract for any reason within 120 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

☐ (1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less $100.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

☐ (2) Not later than 3 days after the effective date, Buyer must pay Seller $ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:
   (a) employ only trained and qualified inspectors and assessors;
   (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
   (c) abide by any reasonable entry rules or requirements of Seller;
   (d) not interfere with existing operations or occupants of the Property; and
   (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(TAR-1802) 1-1-16 Initialed for Identification by Seller and Buyer
(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within __ days after the effective date, Seller will deliver to Buyer: (Check all that apply.)
- (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (d) copies of property tax statements for the Property for the previous 2 calendar years;
- (e) plats of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
- (g) copies of all documents above in Seller's possession.

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than __ days after the termination date: (Check all that apply.)
- (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied; and
- (c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

6. LEASES

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new leases, fail to comply with any existing leases, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, all of the following exist at the time Seller delivers the leases to the Buyer or subsequently occur before closing:
- (1) any failure by Seller to comply with Seller's obligations under the lease;
- (2) any circumstances under which the tenant is entitled to terminate the lease or seek any offsets or damages;
- (3) any advances made by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and

(TAR-1002) 1-1-16 Initialed for identification by Seller and Buyer

Page 5 of 13
Commercial Contract - Unimproved Property concerning 2431 E. Oltorf Street, Austin, TX 78741

(s) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificate: Within _______ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than ________________ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1933 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

9. BROKERS:

A. The brokers to this sale are:

Principal Broker: Carlson Commercial Properties, LLC  
Agent: Steve Portnoy  
Address: 3839 Bee Cave Road, Ste 200  
Austin, TX 78748  
Phone & Fax: 512-474-2900  
E-mail: steve.portnoy@gmail.com  
License No.: 9001051

Cooperating Broker: Mathias Partners  
Agent: Michael Levy  
Address: 505 W. 15th Street  
Austin, TX 78701  
Phone & Fax: 512-637-6957  
E-mail: mlevy@mathiaspartners.com  
License No.: 602940

Principal Broker: (Check only one box)
☐ represents Seller only.
☐ represents Buyer only.
☐ is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. Fees: (Check only (1) or (2) below.)

☐ (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

☐ (2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:
☐ 3.0% of the sales price.
☐ ________________________________.

Cooperating Broker a total cash fee of:
☐ 3.0% of the sales price.
☐ ________________________________.

The cash fees will be paid in Travis County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

(TAR-1802) 1-1-16 Initialed for Identification by Seller and Buyer

Page 6 of 13
Commercial Contract - Unimproved Property concerning 2431 E. Oltorf Street, Austin, TX 78741

10. CLOSING:

A. The date of the closing of the sale (closing date) will be on or before the later of:
   (1) ☐ ________ days after the expiration of the feasibility period.
       ☑ August 31, 2018 (specific date).
   ☑ See Addendum to Commercial Contract - Unimproved Property
   (2) 7 days after objections made under Paragraph 6C have been cured or waived.

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

C. At closing, Seller will execute and deliver, at Seller's expense, a ☑ general ☐ special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
   (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
   (2) without any assumed loans in default; and
   (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
   (1) tax statements showing no delinquent taxes on the Property;
   (2) an assignment of all leases to or on the Property;
   (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
   (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
   (5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
   (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.

E. At closing, Buyer will:
   (1) pay the sales price in good funds acceptable to the title company;
   (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
   (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
       (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
       (b) specifies the exact dollar amount of the security deposit;
   (4) sign an assumption of all leases then in effect; and
   (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

(TAR-1802) 1-1-16 Initiated for Identification by Seller and Buyer
12. SPECIAL PROVISIONS: The following special provisions apply and will control in the event of a conflict with other provisions of this contract. (If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)

See Addendum to Commercial Contract - Unimproved Property

13. SALES EXPENSES:

A. Seller's Expenses: Seller will pay for the following at or before closing:
   (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
   (2) release of Seller's loan liability, if applicable;
   (3) tax statements or certificates;
   (4) preparation of the deed;
   (5) one-half of any escrow fee;
   (6) costs to record any documents to cure title objections that Seller must cure; and
   (7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:
   (1) all loan expenses and fees;
   (2) preparation of any deed of trust;
   (3) recording fees for the deed and any deed of trust;
   (4) premiums for flood insurance as may be required by Buyer's lender;
   (5) one-half of any escrow fee;
   (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

A. Prorations:
   (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
   (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
   (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, Insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

(TAR-1802) 1-1-16 Initialed for Identification by Seller and Buyer
15. DEFAULT:

A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's Inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue, or (Check if applicable) enforce specific performance, or seek such other relief as may be provided by law.

B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
   1) terminate this contract and receive the earnest money, less any Independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
   2) extend the time for performance up to 15 days and the closing will be extended as necessary.

C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
   1) terminate this contract and receive the earnest money, less any Independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
   2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any Independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or

B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
   1) Seller and the sales price will be reduced by the same amount; or
   2) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESGROW:

A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.

B. If one party makes a written demand for the earnest money, the title company will give notice of the demand by providing a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.

C. The title company will deduct any Independent consideration under Paragraph 7B(1) before disbursement of the earnest money to Buyer and will pay the Independent consideration to Seller.

D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursal of the earnest money.
E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.

F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney’s fees; and (iv) all costs of suit.

G. ☐ Seller ☑ Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

19. MATERIAL FACTS: To the best of Seller’s knowledge and belief (Check only one box)
☐ A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR 1406).
☐ B. Except as otherwise provided in this contract, Seller is not aware of
   (1) any subsurface structures, pipe, waste, septic, or improvements;
   (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
   (3) any environmental hazards or conditions that materially affect the Property;
   (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
   (5) whether radon, asbestos containing materials, urea formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
   (6) any waste land, as defined by federal or state law or regulation, on the Property;
   (7) any threatened or endangered species or their habitat on the Property;
   (8) any report of pest infestation of wood destroying insects in the Property’s improvements;
   (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
   (10) any condition on the Property that violates any law or ordinance

   (Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum)

20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

☐ A. Seller also consents to receive any notices by e-mail at Seller’s e-mail address stated in Paragraph 1.
☐ B. Buyer also consents to receive any notices by e-mail at Buyer’s e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. AGREEMENT OF THE PARTIES:

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas.

(TAR 1602) 1-1-16 Initialed for Identification by Seller [Signature] and Buyer [Signature] Page 10 of 13
If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.

B. This contract contains the entire agreement of the parties and may not be changed except in writing.

C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: (Check all that apply.)
- (1) Property Description Exhibit identified in Paragraph 2;
- (2) Commercial Contract Financing Addendum (TAR-1931);
- (3) Commercial Property Condition Statement (TAR-1406);
- (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
- (5) Notice to Purchaser of Real Property in a Water District (MUD);
- (6) Addendum for Coastal Area Property (TAR-1915);
- (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
- (8) Information About Brokerage Services (TAR-2501); and
- (9) See Addendum to Commercial Contract - Unimproved Property

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

E. Buyer may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

23. **TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. **EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the title company receives this contract after all parties execute this contract.

25. **ADDITIONAL NOTICES:**

A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.

C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. Your property is located in a certificated area. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at the closing of purchase of the real property."

(TAR-1802) 1-1-16 Initiated for Identification by Seller and Buyer
D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.

E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.

F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.

H. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on December 12, 2017, the offer will lapse and become null and void.

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.

Seller: Cedar Willow Creek, Ltd, a Texas limited partnership
By: Cedar Contracting, Inc., its General Partner
By (signature): Jimmy Nielsen
Printed Name: Jimmy Nielsen
Title: President

Buyer: Sagebrook Development LLC
By: ____________________________
By (signature): ____________________
Printed Name: ____________________
Title: _______________________

By: ____________________________
By (signature): ____________________
Printed Name: ____________________
Title: _______________________

By: ____________________________
By (signature): ____________________
Printed Name: ____________________
Title: _______________________

(TAR-1802) 1-1-16
AGREEMENT BETWEEN BROKERS
(Use only if Paragraph 98(1) is effective)

Principal Broker agrees to pay __________________________ (Cooperating Broker) a
fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

☐ $__________ or
☐ ______% of the sales price, or
☐ ______% of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing.
This Agreement Between Brokers supersedes any prior offers and agreements for compensation between
brokers.

Principal Broker: _____________________________________________
Cooperating Broker: __________________________________________

By: ___________________________________________________________

ATTOYNEYS

Seller's attorney: _____________________________
Buyer's attorney: Robert Cheng

Address: _____________________________________________
Address: 200 S. Biscayne Blvd., Suite 4100

Phone & Fax: _____________________________________________
Phone & Fax: 305-415-9083

E-mail: _____________________________________________
E-mail: rocheng@shutts.com

Seller's attorney requests copies of documents, notices, and other information:
☐ the title company sends to Seller.
☐ Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:
☐ the title company sends to Buyer.
☐ Seller sends to Buyer.

ESCROW RECEIPT

The title company acknowledges receipt of:
☐ A. the contract on this day December 11, 2017 (effective date);
☐ B. earnest money in the amount of $15,000 in the form of wire on 12-12-17

Title company: Stewart Title of Austin, LLC
Address: 301 S. Mopac Expwy, Bldg III, Ste 100

By: Mandy Dean

Assigned file number (GF#): 154049

Phone & Fax: 512 472 9731
E-mail: mandy.dean@stewart.com
ADDENDUM TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

THIS ADDENDUM TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY (this "Addendum") is by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership ("Seller"), whose office address is 3839 Bee Cave Road, Suite 200, Austin, Texas 78746, and SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company, its successors and/or assigns ("Buyer"), whose office address is 421 West 3rd Street, Suite 1504, Austin, Texas 78701. The effective date of this Addendum shall be the date that this Addendum is fully executed by Seller and Buyer (the "Effective Date").

WHEREAS, Seller and Buyer are parties to that certain Commercial Contract - Unimproved Property of even date herewith (the "Contract");

WHEREAS, Seller and Buyer desire to modify and supplement the Contract as more particularly set forth herein.

NOW, THEREFORE, in consideration of $10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree that the Contract is hereby modified and supplemented to include the following provisions:

1. Title Commitment. Notwithstanding anything contained in Section 6 of the Contract, the following provisions shall govern and control Buyer's review of and objection to title to the Property:

   (a) Within the Feasibility Period, Buyer may, at its sole expense, obtain (i) a title insurance commitment (the "Title Commitment") for a fee owner's title insurance policy covering the Property (the "Title Policy") from a title insurance company selected by Buyer (the "Title Company") and (ii) a survey of the Property (the "Survey"). The cost of the Owner's Title Policy shall be borne by Buyer.

   (b) Buyer shall, within thirty (30) days of receipt of Title Commitment, notify Seller in writing specifying any objections to matters shown on the Title Commitment or the Survey (the "Title Objections"). Any matters on the Title Commitment or the Survey that Buyer does not timely object to, and which are not items set forth in Sections 1(c)(ii)-(iv) below, shall be deemed "Permitted Exceptions." If Buyer notifies Seller of any title objections, Seller has ten (10) days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the title objections before closing, Buyer may, within five (5) days after the deadline for the giving of Seller's Cure Notice, notify Seller that this Contract is terminated, in which case the Earnest Money (less the Independent Consideration) shall be refunded to Buyer. If Buyer does not terminate this Contract as provided in this paragraph, then at or before Closing Seller must cure the Title Objections that Seller has agreed to cure and Buyer shall be deemed to have waived any remaining Title Objections.

   (c) Notwithstanding anything in Section 1(b) above, at or prior to Closing, Seller shall cause to be cured, remedied, or released (i) any and all Title Objections which
Seller has elected, or is deemed to have elected, to cure pursuant to Section 1(b) hereof, (ii) any mortgages, deeds of trust or judgment liens, (iii) construction liens and other liens (other than the lien of real estate taxes and assessments not yet due and payable) concerning the Property provided for by statute, code or ordinance, or created by express grant in writing by Seller, and (iv) any and all encumbrances and/or exceptions concerning the Property created by, under or through Seller after the Effective Date.

(d) From time to time prior to Closing, Buyer may cause, at its sole expense, the Title Commitment and/or the survey to be updated (the "Title Update") and a copy of the Title Update shall be delivered to Seller. If within ten (10) days following receipt of same Buyer objects in writing to any matters shown on the Title Update that were not shown on the Title Commitment or the survey, such matters shall be deemed Title Objections and the provisions of subparagraph 6(C) of the Contract shall apply to those matters.

2. Earnest Money.

(a) Within two (2) business days following the Effective Date, Buyer shall deposit as an earnest money deposit, the sum of Fifteen Thousand and No/100 Dollars ($15,000.00) (the "Initial Deposit") with the Title Company (the "Escrow Agent"). Buyer shall make an additional deposit payable to Escrow Agent in the amount of Twenty-Five Thousand and No/100 Dollars ($25,000.00) (the "Second Deposit") within two (2) business days following the expiration of the Feasibility Period. The Initial Deposit and the Second Deposit are collectively referred to herein as the "Escrow Deposit." If Buyer fails to terminate the Contract and this Addendum prior to the expiration of the Feasibility Period, the Escrow Deposit, to the extent paid, shall be non-refundable to Buyer (except as otherwise expressly provided for in the Contract and this Addendum) and credited to the Purchase Price at Closing (as hereinafter defined), unless a party is in default under the Contract or this Addendum, in which case the Escrow Deposit, less the $100.00 independent consideration referenced in Section 2(b) hereof, together with any interest accrued thereon, if any, shall be disbursed by Escrow Agent to the appropriate party in accordance with the applicable provisions of the Contract and this Addendum. Notwithstanding anything contained in the Contract or this Addendum to the contrary, portions of the Escrow Deposit shall become non-refundable to Purchaser in all events as follows:

(i) if the Contract has not been terminated by Buyer in accordance with the terms hereof by the expiration of the Feasibility Period, $10,000.00 of the Escrow Deposit shall be deemed hard and non-refundable to Buyer, unless Closing does not occur as a result of a default by Seller, Seller's inability to deliver indefeasible title subject only to the Permitted Exceptions at Closing, or termination of the Contract due to condemnation;

(ii) if the Contract has not been terminated by Buyer in accordance with the terms hereof by 5:00 p.m. Central Time on May 31, 2018, $10,000.00 of the Escrow Deposit shall be deemed hard and non-refundable to Buyer, for an aggregate hard Escrow Deposit of $20,000.00, unless Closing does not occur as a result of a default by Seller, Seller's inability to
deliver indefeasible title subject only to the Permitted Exceptions at Closing, or termination of
the Contract due to condemnation;

(ii) if the Contract has not been terminated by Buyer in accordance with the
terms hereof by 5:00 p.m. Central Time on June 29, 2018, $10,000.00 of the Escrow Deposit
shall be deemed hard and non-refundable to Buyer, for an aggregate hard Escrow Deposit of
$30,000.00, unless Closing does not occur as a result of a default by Seller, Seller's inability to
deliver indefeasible title subject only to the Permitted Exceptions at Closing, or termination of
the Contract due to condemnation; and

(iv) if the Contract has not been terminated by Buyer in accordance with the
terms hereof by 5:00 p.m. Central Time on July 31, 2018, $10,000.00 of the Escrow Deposit
shall be deemed hard and non-refundable to Buyer, for an aggregate hard Escrow Deposit of
$40,000.00, unless Closing does not occur as a result of a default by Seller, Seller's inability to
deliver indefeasible title subject only to the Permitted Exceptions at Closing, or termination of
the Contract due to condemnation.

(b) Paragraph 7B(1) of the Contract is hereby amended to provide that in the event
Buyer terminates the Contract within the Feasibility Period, the Escrow Deposit will be refunded
to Buyer less $100.00 that Seller will retain as independent consideration for Buyer's
unrestricted right to terminate.

3. Legal Description. Notwithstanding any contrary provision in the Contract or herein, if
Buyer's Survey produces a legal description which includes land not described in the
deed vesting title in Seller, Seller shall, to the extent owned by Seller, convey such excess
parcel by a quitclaim deed without warranty.

4. Seller's Representations, Warranties and Covenants. As of the Effective Date and as of
the Closing, Seller represents and warrants to Buyer, and where indicated, covenants and
agrees, as follows:

(a) The execution, delivery and performance by Seller of the Contract, as
supplemented by this Addendum, has been duly and validly authorized by all requisite
action on the part of Seller, and no consent of any person not heretofore obtained is
required.

(b) The Contract, as supplemented by this Addendum, constitutes the legal,
valid and binding obligation of Seller, enforceable against Seller in accordance with its
terms.

(c) Seller owns the Property in fee simple, subject only to the Permitted
Exceptions.

(d) Seller and its general partner are duly organized and validly existing under
the laws of their respective jurisdictions of organization and are authorized to transact
business in the State of Texas, with full power and authority to enter into and perform the
Contract and this Addendum in accordance with their terms.
(e) There are no actions, suits or proceedings pending or, to the best of Seller's current actual knowledge, threatened against Seller or the Property.

(f) There are no condemnation or eminent domain proceedings pending or to the Seller's knowledge, threatened concerning the Property, and Seller has received no written notice from any governmental or quasi-governmental agency or authority or potential condemnor concerning any right-of-way, utility, or other taking which may affect the Property.

(g) Except as may be set forth to the contrary in any environmental assessment, soils, or similar investigation reports concerning the Property delivered by Seller to Purchaser, Seller has no current actual knowledge of hazardous substances present on the Property in any quantity or manner that violates, or that gives rise to liability, under any applicable environmental law, regulation, or ordinance. Notwithstanding such representation, Buyer intends to perform its own due diligence and obtain third party reports to assess all environmental conditions, as well as the feasibility of developing the Property.

(h) Neither the execution and delivery of the Contract or this Addendum by Seller, nor the consummation by Seller of the transactions contemplated hereby, will (i) require Seller to file or register with, notify, or obtain any permit, authorization, consent, or approval of any person or entity (including any limited partners of Seller, governmental, quasi-governmental or regulatory authority), (ii) violate or breach any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any agreement or other instrument, commitment, or obligation to which Seller, the Property, or any of Seller's assets may be bound, or (iii) violate any order, writ, injunction, decree, judgment, statute, law, or ruling of any court or governmental authority applicable to Seller, the Property or any of Seller's assets.

(i) During the term of the Contract, Seller shall maintain (i) the Property in substantially the same condition as it is in on the Effective Date and (ii) all insurance policies, if any, for the Property as of the Effective Date in full force and effect through Closing.

(j) There are no existing (i) contracts for the sale of all or any portion of the Property, (ii) options to purchase all or any portion of the Property, or (iii) rights of first refusal with respect to the sale of all or any portion of the Property.

(k) Unless otherwise permitted under the Contract or this Addendum, Seller shall not grant or otherwise create or consent to the creation of any easement, restriction, lien, assessment or encumbrance affecting the Property, or pursue any re-zoning of the Property or any other land use approvals relating to the Property without Purchaser's written consent, which consent may be withheld at Purchaser's sole and absolute discretion.
There are no leases, tenancies, or other rights of occupancy or use of any portion of the Property.

Seller is not in default (and has committed no act that, with the passage of time and/or the giving of notice would be a default) under any indenture, mortgage, deed of trust, loan agreement, or other agreement to which Seller is a party and which affects the Property.

Seller (i) has not made an assignment for the benefit of creditors, (ii) has not admitted in writing its inability to pay its debts as they mature, or (iii) has not been adjudicated as bankrupt or insolvent, or filed a petition for voluntary bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any State, and no such petition has been served upon Seller.

To the best of Seller's current knowledge, no commitments relating to the Property have been made by Seller to any governmental authority, utility company, school board, church or other religious body, any property owners' association, or any other organization, group or individual which would impose an obligation upon Purchaser or its successors or assigns to make any contribution, or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Property, and to the best of Seller's knowledge, no governmental authority has imposed any requirement that any owner of the Property pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with the Property.

The representations contained in this Section 4 shall survive the Closing for a period of one (1) year.

5. **Governmental Approval Applications.** Seller shall promptly, upon Buyer's request and provided Seller thereby assumes no liability or obligation and at no cost to Seller, join in or otherwise consent to any and all applications (collectively, the “Applications”) with respect to zoning, platting, site plan approval, vacations, dedications, surface water management permits, drainage permits, concurrency compliance approvals, building permits, and any and all other permits, consents, approvals, and/or authorizations which, in Buyer's reasonable opinion, are necessary or desirable for the development of the Property for Buyer's Intended Use. Buyer's “Intended Use” shall refer to the development of the Property with no less than one hundred (100) multifamily residential units. Notwithstanding the foregoing, Buyer agrees that in the event Closing does not occur, Seller's existing use of the Property shall not be disturbed and no encumbrance shall be placed on the Property without the advance written consent of the Seller.

6. **Closing Conditions.** Seller and Buyer acknowledge and agree that the obligation of Buyer to consummate the transaction contemplated hereby is also subject to the satisfaction of the following conditions (the “Closing Conditions”), unless waived in writing by Buyer prior to Closing:
(a) At Closing, there shall have been no material, adverse change to the condition of the Property from the condition existing on the Effective Date (ordinary wear and tear excepted), including, without limitation, any adverse change to the environmental condition of the Property.

(b) By Closing, Buyer shall have obtained TDHCA Financing (as hereinafter defined), or Buyer shall have waived in writing the requirement and condition precedent to obtain TDHCA Financing. For purposes of this Addendum, the term “TDHCA Financing” means, collectively: (i) an award from Texas Department of Housing and Community Affairs (“TDHCA”) in the 2018 Application Cycle for Federal Income Tax Credits under the Low Income Housing Tax Credit Program (“Tax Credits”), combined with (ii) such other resources which may be awarded by TDHCA during this application cycle concurrent with the Tax Credits in an amount sufficient, in Buyer’s sole and absolute discretion, to enable Buyer to acquire the Property and construct its intended improvements on the Property, with all time to appeal such award having expired and with no appeal then pending and no appeal instituted or petition filed, and (iii) a binding commitment acceptable to Buyer in its sole and absolute discretion for a syndication/sale of such Tax Credits to an investor.

In addition to any rights or remedies that Buyer may be entitled to under the Contract and this Addendum, if (a) any of the Closing Conditions are not satisfied by the time specified above, or (b) Buyer shall have made a good faith determination that its application for TDHCA Financing will not be successful, then in any such event, Buyer shall have the right to terminate the Contract and this Addendum upon delivering written notice to Seller, and the Earnest Money (less the Independent Consideration) not deemed to be non-refundable pursuant to Section 2(a) hereof as of the date of such termination shall be returned to Buyer and all further obligations of the parties hereunder shall terminate, except those that expressly survive termination hereof. With respect to Section 6(b) above, Buyer’s withdrawal of its application for Tax Credits shall not be a condition precedent to the return of any portion of the Escrow Deposit.

7. Closing. Unless sooner terminated by either Seller or Buyer pursuant to the provisions of the Contract and this Addendum and subject to the terms and conditions of the Contract and this Addendum, Closing shall take place at the offices of the Title Company at 10:00 a.m. Central Time, or by mail, or at any other time mutually agreed to by the parties, on or before August 31, 2018 (the “Closing Date”). Buyer shall have the right to close this transaction prior to the then scheduled Closing Date. If Buyer elects to exercise such right, it will notify Seller of the earlier Closing Date at least ten (10) days prior to the new Closing Date. Buyer shall also have the right to extend the Closing Date (but to no later than December 31, 2018) by exercising up to four (4) consecutive 1-month Closing extensions (each 1-month Closing extension being referred to herein as a “Closing Extension”). If Buyer elects to exercise a Closing Extension, it shall notify Seller and Title Company in writing of such election on or before ten (10) days of the previously-scheduled Closing Date and deliver an extension fee in the amount of Ten Thousand and No/100 Dollars ($10,000.00) (“Extension Fee”) to Seller. If a Closing Extension is timely exercised by Buyer, the Closing Date will be extended by one (1) month to the last business day of the calendar month following the month of the prior Closing Date. Each Extension Fee is non-refundable upon payment to Seller, except if Closing does not occur.
due to a default by Seller under the Contract or this Addendum or Seller’s inability to deliver indefeasible title to the Property, in which case the Extension Fee shall be immediately returned to Buyer. Buyer will receive a credit toward its payment of the Purchase Price for each of the first two Extension Fees paid to Seller, but will not receive a credit toward its payment of the Purchase Price for the last two Extension Fees paid to Seller.

8. **Seller Default.** Sections 15(B) and 15(C) of the Contract are hereby deleted in its entirety and the following inserted in their place and stead: In the event that Seller is not entitled to terminate the Contract or this Addendum under any provision hereof and Buyer is not in default in performance of the terms hereof, then in the event that Seller should fail to consummate the transaction contemplated herein, fail to perform any of its obligations hereunder, or is otherwise in breach or default hereunder in any respect, including, but not limited to, being in breach of a representation or warranty, then Seller shall be in default under the Contract and this Addendum and Buyer may elect, as its sole and exclusive remedy, either to (i) terminate the Contract and this Addendum and (1) receive the return of the Earnest Money (less the Independent Consideration) and any interest accrued thereon and (2) recover from Seller damages in an amount equal to all out of pocket costs and expenses incurred by Buyer in connection with the proposed acquisition and development of the Property, but not to exceed One Hundred Thousand and No/100 Dollars ($100,000.00), or (ii) pursue an action for specific performance. Notwithstanding the foregoing, if Seller’s default consists of a sale of the Property to a third party in violation of Buyer’s rights under the Contract and this Addendum, Buyer shall have the right to pursue any legal remedy available at law or in equity.

9. **Brokers.** The parties hereby represent and warrant each to the other that they have not utilized or engaged any real estate broker, salesman or finder with respect to the transaction contemplated by the Contract and this Addendum, other than Michael Levy of Mathias Partners and Steve Portnoy of Carlson Commercial Properties, LLC, whose commissions shall be paid by Seller pursuant to separate agreement. Each party hereby agrees to indemnify and hold the other harmless from and against any liability, loss, cost or expense (including reasonable attorneys’ fees and court costs, including those incurred in dispute resolution or appellate matters) resulting from a claim or demand for any commissions in connection with the Contract or the purchase and sale of the Property which the indemnified party shall suffer as a result of a breach of the representations and warranties contained in this Section 9. The provisions of this Section 9 shall survive Closing or the earlier termination of the Contract and this Addendum.

10. **Escrow Deposit.**

(a) The Escrow Deposit shall be held in escrow by the Title Company and paid over or disbursed according to the terms of the Contract and this Addendum (together, the “Agreement”), and, unless otherwise refunded pursuant to the terms of the Agreement, the Escrow Deposit shall be paid over and applied against the Purchase Price at Closing. The Escrow Deposit shall be deposited by the Title Company in an interest bearing account. Any interest earned on the Escrow Deposit will be paid to the party that becomes entitled to the Escrow Deposit. Title Company shall have no responsibility for, nor shall Title Company be
held liable for, any loss occurring which arises from the fact that the amount of the Escrow Deposit may cause the aggregate amount of any depositor's accounts to exceed $250,000 and that the excess amount is not insured by the Federal Deposit Insurance Corporation. Title Company shall not be responsible for any delay in the electronic wire transfer of funds.

(b) In the event of any disagreement between Buyer and Seller resulting in conflicting instructions to, or adverse claims or demands upon Title Company with respect to the release of the Escrow Deposit, Title Company shall refuse to comply with such instruction, claim or demand so long as such disagreement shall continue, and shall not release the Escrow Deposit. Title Company shall not be or become liable in any way to Buyer or Seller for its failure or refusal to comply with any such conflicting instructions or adverse claims or demands, and it shall be entitled to continue so to refrain from acting until such conflicting or adverse demands (a) shall have been adjusted by agreement and it shall have been notified in writing thereof by Buyer and Seller, or (b) shall have finally been determined in a court of competent jurisdiction in Travis County, Texas. Additionally, at its discretion Title Company may proceed with filing an interpleader action in Travis County, Texas. Upon depositing the Escrow Deposit with a court of competent jurisdiction in Travis County, Texas, Title Company shall be released from any further obligation, responsibility or liability under the Agreement and shall be entitled to seek reimbursement out of the Escrow Deposit for its costs and reasonable attorney’s fees that are incurred in connection with filing the interpleader action. Title Company is not a trustee for any party for any purpose, and is merely acting as a depository and a ministerial capacity hereunder with the limited duties herein prescribed and has no responsibility in respect of any instructions, certificate or notice delivered to it or of the Escrow Deposit other than faithfully to carry out the obligations undertaken in the Agreement and to follow the directions in such instructions or notice provided in accordance with the terms hereof.

(c) The Seller and Buyer hereby agree to jointly and severally indemnify and hold harmless the Title Company from and against all costs, damages, judgment, attorney’s fees, expenses, obligations, and liabilities of any kind or nature, which Title Company in good faith may incur or sustain in connection with serving as Title Company under this Agreement (collectively, the “Title Company Costs”), excepting any costs, damages, judgment, attorney’s fees, expenses, obligations and liabilities arising from or as a result of a breach of this Agreement by Title Company, or the negligence of Title Company.

(d) The Title Company may resign as escrow agent hereunder by giving thirty (30) days written notice thereof to Buyer and Seller. Within ten (10) days after receipt of such notice, Buyer and Seller shall furnish to the Title Company written instructions for the release of the Escrow Deposit and corresponding escrow documents. If the Buyer and Seller fail to furnish the written instructions within the ten (10) day period, the Title Company may petition any court of competent jurisdiction for the appointment of a successor escrow agent and, upon such appointment, deliver the Escrow Deposit and corresponding escrow documents to such successor. By doing so, the Title Company shall not incur any liability to any party to this Agreement and shall be released from any further obligation, responsibility and liability under this Agreement. Furthermore, Title Company shall be entitled to be reimbursed out of the Escrow Deposit for its costs and reasonable attorney’s fees that are incurred as a result of having to petition the court for the appointment of a successor.
11. **WAIVER OF JURY TRIAL.** SELLER AND BUYER WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE CONTRACT OR THIS ADDENDUM OR THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THE CONTRACT AND THIS ADDENDUM. ANY SUCH DISPUTES SHALL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

12. **Binding Effect.** This Addendum shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

13. **Headings.** Headings in this Addendum are for convenience and reference only and shall not be used to interpret or construe its provisions.

14. **Counterparts.** The Contract and this Addendum may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. Any signature delivered by facsimile, email, or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party. Either party or both parties shall be permitted to electronically execute the Contract, this Addendum and all other related documents, in accordance with Texas Statutes Chapter 322.

15. **Conflict.** In the event of any conflict between the terms of the Contract and this Addendum, the terms of this Addendum shall prevail. Except as modified herein, the Contract remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects.

[Signatures appear on following page]
IN WITNESS WHEREOF, the parties hereto hereby execute this Addendum as of the Effective Date.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: Cedar Contracting, Inc., a Texas corporation, its general partner

By: [Signature]

Jimmy Nassour, President

Date: 12/8/17

BUYER:

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company, and/or assigns

By: [Signature]

Lisa Stumph, President

Date: 12/8/2017
2019 HTC
Full Application

Part 2 Tab 12

Supporting Documents:
Title Commitment
COMMITMENT FOR TITLE INSURANCE

ISSUED BY
STEWART TITLE GUARANTY COMPANY

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

We, STEWART TITLE GUARANTY COMPANY, will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

In Witness Whereof, the Company has caused this commitment to be signed and sealed as of the effective date of commitment as shown in Schedule A, the commitment to become valid and binding only when countersigned by an authorized signatory.

Authorized Countersignature
Stewart Title of Austin, LLC
901 S Mopac, Building III, Suite 100
Austin, TX 78746

For purposes of this form the “Stewart Title” logo featured above is the represented logo for the underwriter, Stewart Title Guaranty Company.
CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.

2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252-2029.
IMPORTANT INFORMATION

FOR INFORMATION, OR
TO MAKE A COMPLAINT
CALL OUR TOLL-FREE TELEPHONE NUMBER
1-800-729-1902

ALSO
YOU MAY CONTACT
THE TEXAS DEPARTMENT
OF INSURANCE AT
1-800-252-3439

to obtain information on:
1. filing a complaint against an insurance company or agent,
2. whether an insurance company or agent is licensed,
3. complaints received against an insurance company or agent.
4. policyholder rights, and
5. a list of consumer publications and services available through the Department.

YOU MAY ALSO WRITE TO
THE TEXAS DEPARTMENT OF INSURANCE
P.O. BOX 149104
AUSTIN, TEXAS 78714-9104
FAX NO. (512) 490-1007

AVISO IMPORTANTE

PARA INFORMACION, O PARA SOMETER UNA QUEJA
LLAME AL NUMERO GRATIS
1-800-729-1902

TAMBIEN
PUEDE COMUNICARSE CON
EL DEPARTAMENTO DE SEGUROS
DE TEXAS AL
1-800-252-3439

para obtener informacion sobre:
1. como someter una queja en contra de una compania de seguros o agente de seguros,
2. si una compania de seguros o agente de seguros tiene licencia,
3. quejas recibidas en contra de una compania de seguros o agente de seguros,
4. los derechos del asegurado, y
5. una lista de publicaciones y servicios para consumidores disponibles a traves del Departamento.

TAMBIEN PUEDE ESCRIBIR AL
DEPARTAMENTO DE SEGUROS DE TEXAS
P.O. BOX 149104
AUSTIN, TEXAS 78714-9104
FAX NO. (512) 490-1007
Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

Your commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment’s terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the title insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company’s decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

MINERALS AND MINERAL RIGHTS may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy’s Exceptions, Exclusions and Conditions, defined below.

- EXCEPTIONS are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.
- EXCLUSIONS are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.
- CONDITIONS are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-800-729-1902 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the Policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner’s Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company’s other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession". If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you refuse amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession". If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.
1. The policy or policies to be issued are:
   a. OWNER’S POLICY OF TITLE INSURANCE (Form T-1)
      (Not applicable for improved one-to-four family residential real estate)
      Policy Amount: $3,400,000.00
      PROPOSED INSURED: Vi Collina, LLC, a Texas limited liability company
   b. TEXAS RESIDENTIAL OWNER’S POLICY OF TITLE INSURANCE
      -ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)
      Policy Amount: $
      PROPOSED INSURED:
   c. LOAN POLICY OF TITLE INSURANCE (Form T-2)
      Policy Amount:
      PROPOSED INSURED:
      Proposed Borrower: Vi Collina, LLC, a Texas limited liability company
   d. TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)
      Policy Amount: $
      PROPOSED INSURED:
      Proposed Borrower:
   e. LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)
      Binder Amount: $
      PROPOSED INSURED:
      Proposed Borrower:
   f. OTHER:
      Policy Amount: $
      PROPOSED INSURED:

2. The interest in the land covered by this Commitment is:
   FEE SIMPLE

3. Record title to the land on the Effective Date appears to be vested in:
   Cedar Willow Creek, Ltd.

4. Legal description of land:
   See Exhibit “A” Attached Hereto
File No.: 156049

Lots 2, 3, 4, 5, 6, and a part of 7, of Willow Creek Commerical Section II, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 87, Pages 110B and 110C, Plat Records of Travis County, Texas, being more particularly described by metes and bounds in Exhibit "A-1" attached hereto.

NOTE: The Company does not represent that the above acreage or square footage calculations are correct.

Exhibit A-1
EXHIBIT A-1

BEING all of Lots 2, 3, 4, 5, 6, and part of Lot 7, Willow Creek Commercial, Section II, an addition in the City of Austin, Travis County, Texas, according to the plat recorded in Volume 87, Pages 110B and 110C, Plat Records, Travis County, Texas (P.R.T.C.T.), the subject tract being more particularly described as follows (bearings are based on the State Plane Coordinate System, Texas Central Zone (4203), North American Datum of 1983 (NAD ’83)):

BEGINNING at a 1/2 inch rebar with cap stamped “HOLT” found at the northwest corner of said Lot 2, lying in the southwest right-of-way of East Oltorf Street (called to be a 90’ right-of-way by said Willow Creek Commercial, Section II);

THENCE with the southwest right-of-way of said East Oltorf Street, the following calls:

1. SOUTH 61 degrees 42 minutes 18 seconds EAST, a distance of 168.31 feet to a 5/8 inch rebar found at the beginning of a tangent curve to the right, having a radius of 1012.50 feet, a central angle of 26 degrees 23 minutes 35 seconds, and a chord bearing and distance of SOUTH 48 degrees 30 minutes 13 seconds EAST, 462.29 feet;
2. Along the arc of said curve, an arc distance of 466.40 feet to the northeast corner of said Lot 5, from which a 1/2 inch rebar found bears SOUTH 83 degrees WEST, 0.27 feet, being the beginning of a reverse curve, having a radius of 1012.50 feet, a central angle of 09 degrees 20 minutes 53 seconds, and a chord bearing and distance of SOUTH 40 degrees 00 minutes 28 seconds EAST, 165.01 feet;
3. Along the arc of said curve, an arc distance of 165.19 feet to the northwest corner of Lot 1, Willow Bend II Addition, an addition in the City of Austin, Travis County, Texas, according to the plat recorded in Volume 83, Page 184B, P.R.T.C.T., from which a 1/2 inch iron pipe found bears NORTH 01 degree WEST, 0.42 feet;
4. THENCE with the west line of said Lot 1, SOUTH 27 degrees 11 minutes 07 seconds WEST, a distance of 250.09 feet to a 3/8 inch rebar found at the southernmost corner of said Lot 7;
4. THENCE with the perimeter and to the corners of said Lot 7, the following calls:
   1. NORTH 41 degrees 12 minutes 51 seconds WEST, a distance of 289.01 feet to the beginning of a non-tangent curve to the left, having a radius of 774.50 feet, a central angle of 25 degrees 50 minutes 10 seconds, and a chord bearing and distance of NORTH 48 degrees 46 minutes 48 seconds WEST, 346.29 feet;
   2. Along the arc of said curve, an arc distance of 349.24 feet to a 1/2 inch rebar with cap stamped “HOLT” found;
   3. NORTH 61 degrees 42 minutes 18 seconds WEST, a distance of 317.17 feet to the westernmost corner of said Lot 7, from which a 1/2 inch rebar found bears NORTH 78 degrees EAST, 0.46 feet;
   4. NORTH 27 degrees 20 minutes 12 seconds EAST, a distance of 68.01 feet to the northernmost corner of said Lot 7, from which a 1/2 inch rebar with cap stamped “HOLT” found bears SOUTH 69 degrees EAST, a distance of 0.23 feet;
   5. SOUTH 61 degrees 42 minutes 18 seconds EAST, a distance of 25.36 feet to a point in the northeast line of said Lot 7;
THENCE through the interior of said Lot 7, the following calls:

1. SOUTH 28 degrees 17 minutes 42 seconds WEST, a distance of 38.00 feet;
2. SOUTH 61 degrees 42 minutes 28 seconds EAST, a distance of 22.93 feet;
3. NORTH 88 degrees 43 minutes 02 seconds EAST, a distance of 21.27 feet;
4. NORTH 28 degrees 17 minutes 42 seconds EAST, a distance of 27.50 feet to a point in the northeast line of said Lot 7;

THENCE with the northeast line of said Lot 7, SOUTH 61 degrees 42 minutes 18 seconds EAST, a distance of 83.21 feet to a 5/8 inch rebar found at the southwest corner of said Lot 2;

THENCE with the west line of said Lot 2, NORTH 28 degrees 17 minutes 42 seconds EAST, a distance of 169.99 feet, returning to the POINT OF BEGINNING and enclosing 4.558 acres (198,555 square feet) of land, more or less.
EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your policy will not cover loss, costs, attorney's fees and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording date or delete this exception.):

   Those recorded in/under Volume 87, Pages 110B-110C, Plat Records, Volume 10409, Page 651, Volume 10495, Page 934, and Volume 11219, Page 615 of the Real Property Records of Travis County, Texas; but omitting any covenants, condition, or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin or (b) relates to handicap, but does not discriminate against handicapped persons.

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements. Upon receipt of an approved survey, Schedule B, Item 2 may be modified to read in its entirety, "Shortages in area" (Loan Policy only or Owner's Title Policy with prescribed premium.)

3. Homestead or community property or survivorship rights, if any, of any spouse of any insured. (Applies to the Owner's Policy only.)

4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
   a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs, or oceans, or
   b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
   c. to filled-in lands, or artificial islands, or
   d. to statutory water rights, including riparian rights, or
   e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area. (Applies to the Owner's Policy only.)

5. Standby fees, taxes and assessments by any taxing authority for the year 2019 and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute “which become due and payable subsequent to Date of Policy” in lieu of “for the year 2019 and subsequent years.”)

6. The terms and conditions of the documents creating your interest in the land.

7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)

8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy T-2 only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance. (T-2R)

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):

   a) Rights of parties in possession. (Owner Title Policy only)

   b) Building setback line, 40 feet in width, along the property line abutting East Oltorf Street, as recorded in/under Volume 87, Pages 110B and 110C of the Plat Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lots 2-6)

   c) Building setback line, 20 feet in width, along the property line abutting Douglas Street, as recorded in/under Volume 87, Pages 110B and 110C of the Plat Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lot 7)

   d) 7.5’ public utility easement reserved along the rear property line, as shown on plat recorded in Volume 87, Pages 110B and 110C, Plat Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lots 2-6)

   e) 15’ drainage easement reserved along the rear property line, as shown on plat recorded in Volume 87, Pages 110B and 110C, Plat Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lots 2-6)

   f) 7.5’ public utility easement reserved along the southerly property line, as shown on plat recorded in Volume 87, Pages 110B and 110C, Plat Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lots 2-6)

   g) 15’ drainage and public utility easement reserved along the easterly property line, as shown on plat recorded in Volume 87, Pages 110B and 110C, Plat Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lots 2-6)

   h) Electric transmission easement granted to the City of Austin by instrument recorded in Volume 649, Page 472, Deed Records of Travis County, Texas. Said easement also shown on plat recorded in Volume 87, Pages 110B-110C, Plat Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lots 2-6)

   i) INTENTIONALLY DELETED

   j) INTENTIONALLY DELETED

   k) Sanitary sewer easement granted to the owners of Lot 3, Block A, Willow Creek Section One by instrument recorded in Volume 3909, Page 937, Deed Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lots 2-6)

   l) Electric utility easement granted to the City of Austin by instrument recorded under Document Number 1999044007, Official Public Records of Travis County, Texas, and as shown on survey dated 2/21/2019, prepared by John Homer Barton, R.P.L.S. No. 6737. (Lots 2-6)

   m) INTENTIONALLY DELETED

   n) Easements for access, ingress, egress, and utilities as set out and described in that Memorandum of Lease by and between Cedar Willow Creek, Ltd. and ACC McCaw Cellular of Fresno dba Austin Cellular Telephone Company dated 2/12/1996, recorded in/under Volume 12630, Page 167 of the Real Property Records of Travis County, Texas. As affected by that Memorandum of Second Amendment to Option and Site Lease Agreement recorded under Document Number 2017124583, Official Public Records of Travis County, Texas. (Lot 7)

   o) Rights of tenants, and assigns, as tenants only, under currently effective lease agreements.
p) All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interests that are not listed.
Your Policy will not cover loss, costs, attorneys’ fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.

2. Satisfactory evidence must be provided that:
   - no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
   - all standby fees, taxes, assessments and charges against the property have been paid,
   - all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialman's liens have attached to the property,
   - there is legal right of access to and from the land,
   - (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.

3. You must pay the seller or borrower the agreed amount for your property or interest.

4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.

5. Note: Procedural Rule P-27 as provided for in Section 2561.202, Texas Insurance Code requires that “Good Funds” be received and deposited before a Title Agent may disburse from its Trust Fund Account. Procedural Rule P-27 provides a list of the types of financial documents and instruments which satisfy this requirement. Please be advised that we reserve the right to determine on a case-by-case basis what form of good funds is acceptable.

6. Statement Securing Lien or Assessment filed by the City of Austin, for clearance of property, in the amount of $330.00, recorded in/under Volume 11285, Page 348 of the Real Property Records of Travis County, Texas. (Lots 2-6)

7. Statement Securing Lien or Assessment filed by the City of Austin, for clearance of property, in the amount of $609.68, recorded in/under Volume 13129, Page 538 of the Real Property Records of Travis County, Texas. (Lots 2-7)

8. State Securing Lien or Assessment filed by the City of Austin, for clearance of property, in the amount of $1,255.50, recorded in/under Document Number 2006011550 of the Official Public Records of Travis County, Texas.

9. Statement Securing Lien or Assessment filed by the City of Austin, for clearance of property, in the amount of $2,265.62, recorded in/under Document Number 2006210450 of the Official Public Records of Travis County, Texas.

10. Statement Securing Lien or Assessment filed by the City of Austin, for clearance of property, in the amount of $5,452.62, recorded in/under Document Number 2007126606 of the Official Public Records of Travis County, Texas.

11. We require a copy of the limited partnership agreement, and all amendments thereto, in order to determine who is authorized to execute documents in connection with the closing of this transaction. We require satisfactory evidence that said limited partnership is registered with the Secretary of State and is in good standing. The Company requires the joinder of all general partners and evidence of the consent of all of the limited partners to the closing of this transaction, where appropriate.
12. The Company requires for its review, satisfactory copy of the Certificate of Formation and Operating Agreement and any amendments thereto, a certificate of good standing and satisfactory evidence of authority of the officers, managers or members to execute the documents.

13. If this property is located within the boundaries of a district providing water, sewer, drainage or flood control facilities or services, notice must be given to the proposed purchasers in accordance with the provisions of the Texas Water Code.

14. If the Proposed Insured executes a Waiver of Inspection in the approved form, an exception to "Rights of parties in possession" will be contained in the Owner's Policy when issued; however, the Proposed Insured may refuse to execute the Waiver, in which case the Company will require that an inspection be conducted by its agent, for which an inspection fee may be charged, and the Company reserves the right to make additional, particular exceptions in the Policy to matters revealed by the inspection.

15. We must be furnished with a satisfactory Affidavit as to Debts and Liens, executed by the seller/borrower or his/her/their authorized representative at the time of closing. We reserve the right to make additional requirements on the basis of this Affidavit.

16. You may request amendment of the Area and Boundary Exception to read "Shortages in Area". The Texas Title Insurance Information portion of the Commitment for Title Insurance advises you that your Policy will insure you against loss because of non-excepted discrepancies or conflicts in boundary lines, encroachments, or protrusions, or overlapping of improvements if you pay an additional five percent (5%) premium of the Basic Rate for T-1R Residential Owner Policy coverage, or fifteen percent (15%) premium of the Basic Rate for T-1 Non-Residential Owner Policy coverage, and if we are provided with a satisfactory survey, pursuant to Procedural Rule P2.

17. Your Owner's Title Policy will contain this coverage and you will be charged the appropriate additional premium unless, on or before the date of closing, you advise the company in writing that you wish to decline this additional coverage.

18. The Texas Department of Insurance has approved a new Restrictions, Encroachments, Minerals Endorsement, T-19.1, to be available on Owner's Title Policies. This coverage was previously only available on Loan Policies. The T-19.1 Endorsement affords insurance against any previous violation of restrictions affecting the subject property, all rights of first refusal, all reversionary rights and any damage to the property due to future damages to the improvements because of an existing right to extract or develop minerals.

19. We will require a Premium of $5.00 be collected for the Standard Tax Exception "Company insures that standby fees, taxes, and assessments by any taxing authority for the year 2017 are not yet due and payable." (Loan Policy Only).

20. FOR INFORMATIONAL PURPOSES ONLY: The following conveyances involving the subject property were recorded within the last 24 months: NONE.
The information contained in this Schedule (D) does not affect title to or the lien upon the land described in Schedule A hereof, to be insured in any policy(ies) of title insurance to be issued in accordance with this Commitment.

As to Stewart Title Guaranty Company, the Underwriter herein, the following disclosures are made as of December 31, 2016:

A-1. Shareholders owning or controlling, or holding, directly or indirectly, ten percent (10%) or more of the shares of Stewart Title Guaranty Company as of the last day of the year preceding the date hereinabove set forth are as follows:
   Stewart Information Services Corporation -100%

A-2. The members of the Board of Directors of Stewart Title Guaranty Company as of the last day of the year preceding the date hereinabove set forth are as follows: Malcolm S. Morris, Charles F. Howard, Matthew Morris, Stewart Morris, Stewart Morris, Jr., John Killea and Allen Berryman.

A-3. The designated officers of Stewart Title Guaranty Company as of the date hereinabove set forth are as follows: Matthew Morris, Chief Executive Officer & President; Allen Berryman, Chief Financial Officer & Assistant Secretary-Treasurer; Timothy Okrie, Chief Operations Officer; Brad Rable, Chief Information Officer; Genady Vishnevetsky, Chief Information Security Officer; Jay Milligan, Chief Revenue Officer; Ann Manal, Chief Human Resources Officer; Dave Fauth, Group President – Direct Operations; Steven M. Lessack, Group President – International Operations; Patrick Beall, Group President; John Killea, General Counsel & Chief Compliance Officer; Bruce Hawley, Executive Vice President – Commercial Services; Richard Black, Senior Vice President – Associate Senior Underwriting Counsel; James Gosdin, Senior Vice President – Chief Underwriting Counsel & Associate General Counsel; John Rothermel, Senior Vice President – Regional Underwriting Counsel.

As to Stewart Title of Austin, LLC (Title Insurance Agent), the following disclosures are made:

B-1 Shareholders, owners, partners or other persons having, owning or controlling one percent (1%) or more of Title Insurance Agent are as follows:
   Stewart Title Company

B-2 Shareholders, owners, partners, or other persons having, owning or controlling ten percent (10%) or more of an entity that has, owns or controls one percent (1%) or more of Title Insurance Agent are as follows:
   Stewart Title Guaranty

B-3 If Title Insurance Agent is a corporation, the following is a list of the members of the Board of Directors:
   Paul E. Gammill Jr. - Manager and President; John M. McCain - Manager and Chairman; Larry Molinare - Executive Vice President; Gaye Pierce - Executive Vice President and Secretary.

B-4 If Title Insurance Agent is an corporation, the following is a list of its officers:
   Paul E. Gammill Jr. - Manager and President; John M. McCain - Manager and Chairman; Larry Molinare - Executive Vice President; Gaye Pierce - Executive Vice President and Secretary.

C-1. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium* is:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner’s Policy</td>
<td>$16,805.00</td>
</tr>
<tr>
<td>Loan Policy</td>
<td>$0.00</td>
</tr>
<tr>
<td>Endorsement Charges</td>
<td>$4,301.25</td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$21,106.25</strong></td>
</tr>
</tbody>
</table>

Of this total amount 15 % will be paid to Stewart Title Guaranty Company; 85 % will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:
COMMITMENT FOR TITLE INSURANCE
SCHEDULE D

ISSUED BY
STEWART TITLE GUARANTY COMPANY

<table>
<thead>
<tr>
<th>Amount</th>
<th>To Whom</th>
<th>For Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>(or %)</td>
<td></td>
</tr>
<tr>
<td>$</td>
<td>(or %)</td>
<td></td>
</tr>
<tr>
<td>$</td>
<td>(or %)</td>
<td></td>
</tr>
</tbody>
</table>

“The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance.”
ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator’s award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is $2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The arbitration provision in the Policy is as follows:

“Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.”

______________________________  __________________________
SIGNATURE  DATE
Stewart Title Guaranty Company Privacy Notice
Stewart Title Companies

WHAT DO THE STEWART TITLE COMPANIES DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of the Stewart Title Guaranty Company and its title affiliates (the Stewart Title Companies), pursuant to Title V of the Gramm-Leach-Blilley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as the Stewart Title Companies, need to share customers’ personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers’ personal information; the reasons that we choose to share; and whether you can limit this sharing.

<table>
<thead>
<tr>
<th>Reasons we can share your personal information.</th>
<th>Do we share</th>
<th>Can you limit this sharing?</th>
</tr>
</thead>
<tbody>
<tr>
<td>For our everyday business purposes— to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For our marketing purposes— to offer our products and services to you.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For joint marketing with other financial companies</td>
<td>No</td>
<td>We don’t share</td>
</tr>
<tr>
<td>For our affiliates’ everyday business purposes— information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies. Our affiliates may include companies with a Stewart name; financial companies, such as Stewart Title Company.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For our affiliates’ everyday business purposes— information about your creditworthiness.</td>
<td>No</td>
<td>We don’t share</td>
</tr>
<tr>
<td>For our affiliates to market to you — For your convenience, Stewart has developed a means for you to opt out from its affiliates marketing even though such mechanism is not legally required.</td>
<td>Yes</td>
<td>Yes, send your first and last name, the email address used in your transaction, your Stewart file number and the Stewart office location that is handling your transaction by email to <a href="mailto:optout@stewart.com">optout@stewart.com</a> or fax to 1-800-335-9591.</td>
</tr>
<tr>
<td>For non-affiliates to market to you. Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.</td>
<td>No</td>
<td>We don’t share</td>
</tr>
</tbody>
</table>

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

SHARING PRACTICES

<table>
<thead>
<tr>
<th>How often do the Stewart Title Companies notify me about their practices?</th>
<th>We must notify you about our sharing practices when you request a transaction.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How do the Stewart Title Companies protect my personal information?</td>
<td>To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer, file, and building safeguards.</td>
</tr>
<tr>
<td>How do the Stewart Title Companies collect my personal information?</td>
<td>We collect your personal information, for example, when you request insurance-related services provide such information to us We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.</td>
</tr>
<tr>
<td>What sharing can I limit?</td>
<td>Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.</td>
</tr>
</tbody>
</table>

Contact us: If you have any questions about this privacy notice, please contact us at: Stewart Title Guaranty Company, 1980 Post Oak Blvd., Privacy Officer, Houston, Texas 77056

File No.: 156049

Revised 11-19-2013
2019 HTC
Full Application

Part 2 Tab 12

Increase in Eligible Basis
Census Tract Map
Vi Collina

Source: https://www.huduser.gov/portal/sadda/sadda_qct.html
** Elected officials were identified in the Pre-Application, and there have been no changes.
(If box above is checked, the rest of the form may be left BLANK.)

** Elected officials have changed since the Pre-Application was submitted, and information regarding notifications or re-notifications is entered below.

** No Pre-Application was submitted.

Please identify all elected officials which represent the Development Site.

<table>
<thead>
<tr>
<th>** US Representative</th>
<th>District</th>
</tr>
</thead>
</table>

** While Applicants are not required to notify US Representatives, the Department is required to notify them. Therefore, Applicant must identify the appropriate US Representative of the district containing the Development.

<table>
<thead>
<tr>
<th>State Senator</th>
<th>District</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Representative</td>
<td>District</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Support Letter</th>
<th>Support Letter</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>City Mayor</th>
<th>County Judge</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>School Superintendent</th>
<th>District Name</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
<td>Zip</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presiding officer of Board of Trustees</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District/Precinct</th>
<th>Email or Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>District/Precinct</td>
<td>Email or Phone</td>
</tr>
<tr>
<td>District/Precinct</td>
<td>Email or Phone</td>
</tr>
<tr>
<td>District/Precinct</td>
<td>Email or Phone</td>
</tr>
<tr>
<td>District/Precinct</td>
<td>Email or Phone</td>
</tr>
<tr>
<td>District/Precinct</td>
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</tr>
<tr>
<td>District/Precinct</td>
<td>Email or Phone</td>
</tr>
<tr>
<td>District/Precinct</td>
<td>Email or Phone</td>
</tr>
<tr>
<td>District/Precinct</td>
<td>Email or Phone</td>
</tr>
</tbody>
</table>

2/26/2019
Organizations were identified in the Pre-Application, and there have been no changes.
(If above is checked, the rest of the form may be left BLANK)

Organizations have changed since the Pre-Application was submitted, and information regarding notifications or re-notifications is entered below.

No Pre-Application was submitted.

Identify all Neighborhood Organizations on record with the county or Texas Secretary of State as of the beginning of the Application Acceptance Period whose boundaries include the Development Site.

<table>
<thead>
<tr>
<th>Name of Organization</th>
<th>Contact Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
</tr>
<tr>
<td>Zip</td>
<td>Phone Fax or Email</td>
</tr>
</tbody>
</table>

1. 

<table>
<thead>
<tr>
<th>Name of Organization</th>
<th>Contact Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
</tr>
<tr>
<td>Zip</td>
<td>Phone Fax or Email</td>
</tr>
</tbody>
</table>

2. 

<table>
<thead>
<tr>
<th>Name of Organization</th>
<th>Contact Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
</tr>
<tr>
<td>Zip</td>
<td>Phone Fax or Email</td>
</tr>
</tbody>
</table>

3. 

<table>
<thead>
<tr>
<th>Name of Organization</th>
<th>Contact Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
</tr>
<tr>
<td>Zip</td>
<td>Phone Fax or Email</td>
</tr>
</tbody>
</table>

4. 

<table>
<thead>
<tr>
<th>Name of Organization</th>
<th>Contact Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
</tr>
<tr>
<td>Zip</td>
<td>Phone Fax or Email</td>
</tr>
</tbody>
</table>

5. 

2/26/2019
Certification of Notifications
Pursuant to 10 TAC §11.203 of the Qualified Allocation Plan, evidence of notifications includes this sworn affidavit, and the Elected Officials and Neighborhood Organizations Forms. All Applicants must complete Parts 1 through 4 below:

Part 1. Notifications made at Pre-Application (Competitive HTC only):

☐ I (We) certify that the pre-application included evidence of these notifications pursuant to 10 TAC §11.203, the pre-application met all threshold requirements, and no additional notifications were required with this full Application.

☐ Re-notifications made at Application (Competitive HTC only):

☐ I (We) certify that the pre-application for this full Application met all threshold requirements, but all required entities were re-notified as required by 10 TAC §11.203.

☐ Notifications made at Application:

☐ No pre-application was submitted, and I (We) certify that the all required entities were notified as required by 10 TAC §11.203.

☐ One or more persons holding a position or role described changed between the submission of the pre-application and the Application, and I (We) certify that the new person(s) was notified as required by 10 TAC §11.203.

☐ As applicable, all re-notifications or notifications made at Application are indicated in the Application on the Elected Officials and/or Neighborhood Organizations Form(s).

Part 2. Notifications - Form and Content:

☐ I (we) certify that the notifications are not older than 3 months from the first day of the Application Acceptance Period for Competitive HTC Applications and not older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted for Tax Exempt Bond Developments, and not older than three (3) months prior to the date the Application is submitted for all other Applications.

☐ I (we) certify that the notifications do not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification does not create the impression that the proposed Development will serve a Target Population exclusively or as a preference without such targeting or preference being documented in the Application and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

☐ I (we) certify that the notifications or any other communications do not contain any statement that violates Department rules, statute, code, or federal requirements.

☐ I (we) certify that in addition to all of the required neighborhood organizations, the following entities were notified in accordance with 10 TAC §11.203. The notifications were in the format provided in the Application Notification Template. All of the following entities were notified and are correctly listed on the Elected Officials Form and Neighborhood Organizations Form:

- Superintendent of the school district containing the Development;
- Presiding officer of the board of trustees of the school district containing the Development;
- Mayor of any municipality containing the Development;
- All elected members of the Governing Body of any municipality containing the Development;
- Presiding officer of the Governing Body of the county containing the Development;
- All elected members of the Governing Body of the county containing the Development;
- State senator of the district containing the Development; and
- State representative of the district containing the Development.

☐ While not required to be submitted in this Application, I have kept evidence of all notifications made and this evidence may be requested by the Department at any time during the Application review.

Part 3. Neighborhood Organizations (competitive HTC only):

☐ Pursuant to 10 TAC §11.203, I (We) certify that a reasonable search for applicable entities has been conducted and all Neighborhood Organizations for which this Application would be eligible to receive points under 10 TAC §11.9(d)(4) of the QAP or for which notification is required have been listed in the pre-application and/or the Application.

Certify on next page

2/11/2019
Megan D. Lasch
Printed Name

My Commission expires

County of

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \(\text{12th day of February 2019}\)

Notary Public Signature

2/11/2019
Development Narrative

1. The proposed Development is: (Check all that apply)
   - New Construction
   - Adaptive Reuse

(adaptive reuse select New Construction here and adaptive reuse in next box)

and/or: NOTE: Definition of "Adaptive Reuse" has changed. Review 10 TAC §11.1(d)(1) to ensure compliance.

Previous TDHCA # NA If Acquisition/Rehab or Rehab, original construction year: NA

If Reconstruction, Units Demolished NA Units Reconstructed NA

2. The Target Population will be:

   - General

   If Elderly is selected (10 TAC §11.1(d)(47)):
     - Development meets the requirements of the Housing for Older Persons Act under the Fair Housing Act.
     - Development receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

Selection is based on funding from (select from list):

NOTE: Definition of "Elderly Development" has changed. Review 10 TAC §11.1(d)(47) to ensure compliance.

3. Staff Determinations regarding definitions of development activity obtained?

   - If a determination under 10 TAC §11.1(k) was made prior to Application submission, provide a copy of such determination behind this tab.

4. Narrative

   - The Development will not provide continual or frequent nursing, medical or psychiatric services to the residents.
     - The Development does not violate the general public use requirement of Treasury Regulation §1.42-9 regarding units for use by the general public.
     - The Development does violate TR 1.42-9 and the Application includes a private letter ruling ("PLR").
     - Development financing includes a funding source that specifically allows for the intended Target Population. A copy of that funding sources' authority to target the intended population is included behind this tab.

   - Development does not violate the Department's Integrated Housing Rule under 10 TAC §1.15 regarding restricting occupancy to persons with disabilities or in combination with other populations with special needs.

Briefly describe the proposed Development, including any relevant information not already identified above. If Adaptive Reuse, Additional Phase, or Scattered Site, or if any of the three main boxes above are not checked, include detailed information below.

Vi Collina is a made of of three, four story elevator served buildings and a single strory clubhouse that will serve at the management/leasing office and amenity center which will be appropriate for a general population.
5. **Funding Request:**

Complete the table below to describe this Application’s funding request. If applying for Multifamily Direct Loan funds, please select only one type of loan.

<table>
<thead>
<tr>
<th>Department Funds applying for with this Application</th>
<th>Requested Amount</th>
<th>If funds will be in the form of a Direct Loan by the Department or for Private Activity Bonds, the terms will be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multifamily Direct Loan: Const. to Perm (Repayable)</td>
<td></td>
<td>Interest Rate (%)</td>
</tr>
<tr>
<td>Multifamily Direct Loan: Construction Only (Repayable)</td>
<td></td>
<td>0.00%</td>
</tr>
<tr>
<td>Multifamily Direct Loan: Const. to Perm. (Soft Repayable)</td>
<td></td>
<td>0.00%</td>
</tr>
<tr>
<td>CHDO Operating Expenses Grant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing Operating Expenses Grant</td>
<td>$ 1,500,000</td>
<td></td>
</tr>
<tr>
<td>Private Activity Mortgage Revenue</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. **§11.5 - Set-Aside (For Competitive HTC & Multifamily Direct Loan Applications Only)**

Identify any and all set-asides the application will be applying under with an “x”.

Set-Asides can not be added or dropped from pre-application to full Application for Competitive HTC Applications.

<table>
<thead>
<tr>
<th>Competitive HTC Only</th>
<th>Multifamily Direct Loan Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>At-Risk</td>
<td>Nonprofit</td>
</tr>
</tbody>
</table>

By selecting the set-aside above, I, individually or as the general partner(s) or officers of the Applicant entity, confirm that I (we) are applying for the above-stated Set-Aside(s) and Allocations. To the best of my (our) knowledge and belief, the Applicant entity has met the requirements that make this Application eligible for this (these) Set-Aside(s) and Allocations and will adhere to all requirements and eligibility standards for the selected Set-Aside(s) and Allocations.

7. **Previously Awarded State and Federal Funding**

Has this site/activity previously applied for TDHCA funds? [ ] Yes [ ] No

Has this site/activity previously received TDHCA funds? [ ] Yes [ ] No

If "Yes" Enter Project Number: NA and TDHCA funding source: NA

Has this site/activity previously received non-TDHCA federal funding? [ ] Yes [ ] No

If yes, source: NA

Will this site/activity receive non-TDHCA federal funding for costs described in this Application? [ ] Yes [ ] No

8. **Qualified Low Income Housing Development Election (HTC Applications only)**

Pursuant to §42(g)(1)(A) - (C), the term “qualified low income housing development” means any project for residential rental property, if the Development meets one of the requirements below, whichever is elected by the taxpayer. Once an election is made, it is irrevocable. Select only one:

- [ ] At least 20% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income, adjusted for family size.
- [ ] At least 40% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 60% or less of the median gross income, adjusted for family size.
- [ ] Applicant elects to use the Average Income for the Development.

If a revised form is submitted, date of submission: 2/28/2019
Development Activities I

1. **Common Amenities (ALL Multifamily Applications) [10 TAC §11.101(b)(5)]**

<table>
<thead>
<tr>
<th># of Units</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>84</td>
<td>10</td>
</tr>
</tbody>
</table>

   Development will provide sufficient common amenities to qualify for the number of points indicated above, pursuant to 10 TAC §11.101(b)(5). Applications for scattered site developments should refer to 10 TAC §11.101(b)(5)(B).

2. **Unit Requirements (ALL Multifamily Applications) [10 TAC §11.101(b)(6)(A) and (B)]**

   A. **Unit Sizes**

      Development is New Construction or Reconstruction and will meet the minimum Unit Size requirements:

      | Bedroom Size | 0 | 1 | 2 | 3 | 4 |
      |--------------|---|---|---|---|---|
      | Square Footage | 500 | 600 | 800 | 1,000 | 1,200 |

   OR:

   Development is proposing Rehabilitation (excluding Reconstruction) or Supportive Housing, and is not required to meet the size requirements above.

   B. **Unit Amenities (For Competitive HTC Applications, see Tab 19 for Unit and Development Features scoring)**

      Application is a Tax Exempt Bond Development and will meet a minimum of nine (9) points as outlined in 10 TAC §11.101(b)(6)(B).

      Application is Direct Loan not layered with Housing Tax Credits and will meet a minimum of four (4) points as outlined in 10 TAC §11.101(b)(6)(B).

      **Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.**

3. **Resident Supportive Services (For Competitive HTC Applications and Direct Loan Applications seeking to qualify for points under 10 TAC §13.6, see Tab 19 for Tenant Services scoring elections)**

   Application is a Tax Exempt Bond Development and will meet a minimum of eight (8) points as outlined in 10 TAC §11.101(b)(7).

   Application is Direct Loan not layered with Housing Tax Credits and will meet a minimum four (4) points as outlined in 10 TAC §11.101(b)(7).

4. **Development Accessibility Requirements (ALL Multifamily Applications) [10 TAC §1.207]; [10 TAC §11.101(b)(8)]**

   Development will meet all specifications and accessibility requirements reflected in the Certification of Development Owner form pursuant to 10 TAC §11.101(b)(8).

   All Units accessed by the ground floor or by elevator ("affected units") comply with the visitability requirements in clauses (i) – (iii) of 10 TAC §11.101(b)(8)(B).

   and

   Development has a minimum of 5% of all units in the development set aside for the mobility impaired and an additional 2% set aside for the hearing and/or visually impaired.

   Regardless of building type, ALL Units accessed by the ground floor or by elevator ("affected units") must comply with the visitability requirements in clauses (i) – (iii) of 10 TAC §11.101(b)(8)(B).

   2/26/2019
### Development Activities II

#### 1. Size and Quality of Units (Competitive HTC Applications only) [10 TAC §11.9(b)(1)]

<table>
<thead>
<tr>
<th>Bedroom Size</th>
<th>Square Footage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>550</td>
</tr>
<tr>
<td>1</td>
<td>650</td>
</tr>
<tr>
<td>2</td>
<td>850</td>
</tr>
<tr>
<td>3</td>
<td>1,050</td>
</tr>
<tr>
<td>4</td>
<td>1,250</td>
</tr>
</tbody>
</table>

- Development is Rehabilitation (excluding Reconstruction), Supportive Housing, or USDA financed; OR meets the minimum size requirements below:
  - Points claimed: 6

- Specific amenities and quality features will be provided in every Unit at no extra charge to the resident; Development will maintain the points selected and associated with those amenities as outlined in 10 TAC §11.101(b)(6)(B).
  - Points claimed: 9

* Direct Loan applicants proposing new construction or rehabilitation should be prepared to comply with requirements of 81 FR 92626, which requires installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental housing that is funded or supported by HUD.

#### 2. Rent Levels of Residents and Tiebreaker (Direct Loan Applications only) [10 TAC §13.6(5)]

- At least 20 percent of all low-income Units at 30% or less of AMGI*  
  - Direct Loan Points: 0
- At least 10 percent of all low-income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30%  
  - Direct Loan Points: 0
- At least 5 percent of all low-income Units at 30% or less of AMGI*  
  - Direct Loan Points: 0

In the event of a tie with another application or applications, this percentage of 30% AMGI MFDL units within the Development would be converted to be available to households at 15% AMGI.

* Applicants electing to restrict units at 30% AMGI for Competitive HTC purposes may not count those same units for scoring points under §13.6(5). However, 50% AMGI and 60% AMGI units that are layered with 30% AMGI units for Direct Loan purposes may count for point scoring under §13.6(5). Points claimed here will not appear on the Self Score tab.

#### 3. Income Levels of Residents (Competitive HTC Applications only) [10 TAC §11.9(c)(1)]

- Application proposes to use the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively.
  - Total Number of Units at 50% or less of AMGI: 38
  - Number of 30% Units used to score points under §11.9(c)(2)*: 8
  - Number of Units used under §11.4(c)(3)(D) regarding an Increase in Eligible Basis (30% boost): 0
  - Percentage used for calculation of eligible points under §11.9(c)(1): 41.10%
  - Development located in Non-Rural Area of Dallas, Fort Worth, Houston, San Antonio or Austin MSA; or Development proposed in all other areas.
  - Points claimed: 16

* Applicants electing the 30% boost for additional 30% units are advised to ensure the units used to support the boost are not included in the units needed to achieve the Application’s scoring elections.

**OR**

- Application proposes to use the Average Income election under §42(g)(1)(C) of the Code, and
  - Development located in Non-Rural Area of Dallas, Fort Worth, Houston, San Antonio or Austin MSA
    - The Average Income for the proposed Development will be 54% or lower (16 points).
    - The Average Income for the proposed Development will be 55% or lower (14 points).
    - The Average Income for the proposed Development will be 56% or lower (12 points).  
      - Points claimed: 0

**OR**

- Development proposed in all other areas.
  - The Average Income for the proposed Development will be 55% or lower (16 points).
  - The Average Income for the proposed Development will be 56% or lower (14 points).
  - The Average Income for the proposed Development will be 57% or lower (12 points).  
    - Points claimed: 0
4. **Rent Levels of Residents (Competitive HTC Applications only)** [§11.9(c)(2)]

Mark only one box below:

- At least 20% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; development is Supportive Housing proposed by a Qualified Nonprofit Organization.
- Development is urban and at least 10% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; or
- Development is located in a Rural Area and 7.5% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; or
- At least 5% of all low-income Units at 30% or less of AMGI

Points Claimed: 16

5. **Resident Services (Competitive HTC Applications and Direct Loan Applications)** [§11.9(c)(3) and §13.6(6)]

Development will provide a combination of supportive services as identified in §11.101(b)(7) and those services will be recorded in the Development’s LURA.

- Supportive Housing Development proposed by a Qualified Nonprofit
- All other Developments.
- The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants.

Points Claimed: 11

6. **Tenant Populations with Special Housing Needs (Competitive HTC, MFDL, and Section 811 Applications)** [§11.9(c)(6); §13.6(6)]

A. HTC and MFDL Applicants pursuing these points must try to score first under item B below by committing an Existing Development, and then under item C below by committing the proposed Development. Only if an HTC Applicant or Affiliate cannot meet the requirements of subparagraphs (B) or (C) may an HTC Application qualify for points under subparagraph (D). MFDL Applications that are not layered with 2019 9% HTC cannot elect to score points under subparagraph (D).

B. Applicant or Affiliate Owns or Controls an Existing Development that is included on the List of Qualified Existing Developments for Participation in the Section 811 PRA Program (See 10 TAC §8.3 and 10 TAC 8.4)

<table>
<thead>
<tr>
<th>Existing Development Name:</th>
<th>TDHCA #:</th>
</tr>
</thead>
</table>

- Attached behind this tab is the executed Certification for Section 811 PRA Program Participation.
- OR

C. If not scoring under B above, Applicant or Affiliate is committing at least 10 Units in the proposed Development for participation in the Section 811 PRA Program

To establish its lack of legal authority where an Applicant Owns or Controls an Existing Development that otherwise meets the criteria established by 10 TAC §11.9(c)(6)(B), the Application must include the information as described in clauses (i) – (iii) of that subparagraph in the Section 811 PRA Program Supplement Packet. The packet must be uploaded along with but separate from the Application.

- Applicant or Affiliate has attached behind this tab an explanation and documentation regarding the Applicant's or Affiliate's lack of Ownership interest or Control of any Existing Development that is included on the List of Qualified Existing Developments for Multifamily Programs;
- AND
- Attached behind this tab is the executed Certification for Section 811 PRA Program Participation.
- OR

D. If cannot score under A or B above, Applicant elects to set-aside at least 5 percent of the total Units for Persons with Special Needs. The Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source.

- Applicant or Affiliate has attached behind this tab an explanation and documentation regarding the Applicant's or
Affiliate's lack of Ownership interest or Control of any Existing Development that is included on the List of Qualified Existing Developments for Multifamily Programs; and the Development applying for funding has a disqualifying factor described below:
Mark any of the following factors that disqualify the development applying for funding from participating in the Section 811 PRA Program and provide documentation supporting the selection:

- The Development is not proposing to use and previously did not use federal funding (such as HOME or CDBG funds), and the Development was originally constructed before 1978;
- Development only has units available that have existing or proposed project-based rental or long-term operating assistance that will be in effect when the property is operating or within six months of receiving Section 811 PRA Program assistance;
- Development only has units available that are restricted for persons with disabilities.
A Development having a preference for Persons with Disabilities or a use restriction for Special Needs Populations is not a disqualifying factor for purposes of this scoring item.
- Development only has units with an existing or proposed 62 or more age restriction.

Application includes documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure or determining preliminary eligibility for status as a Certified Historic Structure.

Development only has units available that have existing or proposed project-based rental or long-term operating assistance that will be in effect when the property is operating or within six months of receiving Section 811 PRA Program assistance.

Development is requesting Pre-Application Points.

Development will maintain a 35 year Affordability Period.

Development is not located in Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA, Dallas-Fort Worth-Arlington MSA, El Paso MSA, Houston-The Woodlands-Sugar Land MSA, McAllen-Edinburg-Mission MSA, or San Antonio-New Braunfels MSA.

The Development is a new construction project and located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's most current Flood Insurance Rate Maps.

The Development is located in a coastal high hazard area (V Zone) or regulatory floodway.

Other disqualifying factor (please explain)

Application is seeking points for Tenant Populations.

| Points Claimed: | 2 |

7 Pre-Application Participation (Competitive HTC Applications only) [§11.9(e)(3)]

- Development is requesting Pre-Application Points.

8 Extended Affordability (Competitive HTC Applications only) [§11.9(e)(5)]

- Development will maintain a 35 year Affordability Period.

9 Historic Preservation (Competitive HTC Applications only) [§11.9(e)(6)]

- Application requests points for Historic Preservation.
- Application contains a letter from the Texas Historical Commission (THC) determining preliminary eligibility for federal or state historic (rehabilitation) tax credits.
- Application includes documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure or determining preliminary eligibility for status as a Certified Historic Structure.
- Development will be able to document receipt of historic tax credits by the time Forms 8609 are issued.
- At least 75% of the residential units will be within the Certified Historic Structure.

At least 75% of the residential units will be within the Certified Historic Structure.

Attached behind this tab are the THC letter and other documentation described above.

Application is eligible for five (5) points.

10 Right of First Refusal (Competitive HTC Applications only) [§11.9(e)(7)]

- Development Owner agrees to provide a Right of First Refusal to purchase the Development upon or following the end of the Compliance Period.

11 Funding Request Amount (Competitive HTC Applications only) [§11.9(e)(8)]

- Application reflects funding request for no more than 100% of the amount available in the subregion or set-aside as of 12/3/2018.

2/26/2019
2019 HTC
Full Application

Part 3 Tab 19

Tenant Populations with Special Needs
Section 811 Information
Section 811 Project Rental Assistance Program “PRA” Certification

On behalf of the Applicant and all Affiliates of the Applicant (“Applicant”), I (We) hereby certify that the Applicant is familiar with the provisions of HUD’s Section 811 Project Rental Assistance (“PRA”) program, enacted by Section 811 of the Cranston Gonzalez National Affordable Housing Act (Pub L. 111-374) and the Frank Melville Supportive Housing Investment Act of 2010, the Texas Department of Housing and Community Affairs (“TDHCA”) Rules as published in Title 10 of the Texas Administrative Code, HUD Handbook 4350.3 REV-1 (Occupancy Requirements of Multifamily Housing Programs), and the Section 811 Project Rental Assistance Program Cooperative Agreement, including the Rental Assistance Contract (“RAC”) and the Use Agreement. I (We) hereby certify that the Applicant will comply with future guidance regarding the Section 811 PRA Program provided by HUD and/or TDHCA, including Rules, FAQs, and program manuals.

I (We) hereby certify that Applicant will execute a Section 811 PRA Owner Participation Agreement, in a form to be provided by TDHCA, for a TDHCA approved Existing Development, or if authorized by TDHCA, for the awarded Development included in this Application. Once an Owner Participation Agreement has been executed, I (We) hereby certify that I (We) understand that TDHCA will market the property under the Owner Participation Agreement to potential Section 811 PRA tenants at any time during the term of the Owner Participation Agreement, and I (We) hereby certify that I (We) will furnish to TDHCA, all marketing materials generated, including pictures and unit features, at the time the Owner Participation Agreement is signed and returned to TDHCA to do such marketing. If requested by TDHCA, I (We) hereby certify that I (We) will execute a RAC and record the required Use Agreement in the county deed records.

I (We) understand, that even though the Owner or the Owner of the Existing Development will be required to execute an Owner Participation Agreement, TDHCA may never require the Development to execute a RAC and therefore the Development may not be required to serve Section 811 PRA tenants.

I (We) hereby certify that I (We) will comply with all HUD regulations, court rulings, related administrative rules, and eligibility guidelines and restrictions during the application process and in the event of award, for the duration of the Section 811 Owner Participation Agreement or the Use Agreement, whichever has a longer term.

I (We) hereby make application to the TDHCA to participate in the Section 811 PRA Program. The undersigned hereby acknowledges that an award by the TDHCA does not warrant that the Existing Development or the Development proposed in the Application is deemed qualified to participate in the Section 811 PRA Program. I (We) agree that the TDHCA or any of its directors, officers, employees, and agents will not be held responsible or liable for any representations made to the undersigned or its investors relating to the Section 811 PRA Program; therefore, I (We) assume the risk of all damages, losses, costs, and expenses related thereto and agree to indemnify and save harmless the TDHCA and any of its officers, employees, and agents against any and all claims, suits, losses, damages, costs, and expenses of any kind and of any nature that the TDHCA may hereinafter suffer, incur, or pay arising out of its decision concerning this application involving Section 811 PRA funds or the use of information concerning the 811 PRA Program.
I (We) hereby acknowledge that this Application is subject to disclosure under Chapter 552, Texas Government Code, the Texas Public Information Act, unless a valid exception exists.

I (We) acknowledge all representations, undertakings, and commitments made by Applicant in the application process for a Development, whether with respect to eligibility criteria, selection criteria or otherwise, shall be deemed to be a condition to any Commitment or Contract for such Development, the violation of which shall be cause for cancellation of such Commitment or Contract by the TDHCA and if concerning the ongoing features or operation of the Development, shall be enforceable by the TDHCA and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the LURA. The obligation to sign an Owner Participation Agreement is binding. I (We) must sign an Owner Participation Agreement if the Development receives an award and is requested to do so by the Department.

I (We) agree the TDHCA may, at its discretion, request additional information and/or documentation in its evaluation of this Application to garner required information relating to the qualification of the Development for the 811 Program. I (We) hereby assert that the information contained in this Application as required or deemed necessary by the materials governing the 811 PRA program are true and correct and that I (We) have undergone sufficient investigation to affirm the validity of the statements made.

Further, I (We) hereby assert that I (We) have read and understand all the information contained in the Application. By signing this document, I (We) affirm that all statements made in this government document are true and correct under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §37.01 et seq. (Vernon 2011).

I (We) understand and agree that if false information is provided in this Application which has the effect of increasing the Applicant’s competitive advantage, the TDHCA will disqualify the Applicant and may hold the Applicant ineligible to receive 811 PRA funds or until any issue of restitution is resolved.

If, at any time, including after the signing a Section 811 PRA Program Owner Participation Agreement, it is discovered that I (We) provided false or misleading information to TDHCA, TDHCA may terminate the Applicant’s HUD RAC and/or the Section 811 PRA Program Owner Participation Agreement and recapture all Section 811 PRA funds expended.

I (We) hereby certify that I (We) will comply with applicable fair housing and civil rights requirements in 24 CFR §§5.105(a), including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act. Further, I (We) certify that I (We) shall not, in the provision of services, or in any other manner, discriminate against any person on the basis of race, color, religion, sex, national origin, familial status, or disability. I (We) certify that I (We) will comply with HUD’s Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity requirements. See 24 C.F.R. §§ 5.100, 5.105(a)(2), 5.403. I (We) hereby certify that I (We) understand that the Development must prominently display HUD’s Fair Housing Poster (HUD Form 928.1) in all offices in which rental activity takes place. This includes property management leasing offices located at their projects with Section 811 PRA units, and may include a designated place where information or
other business regarding the Section 811 PRA program is conducted with potential tenants. I (We) will comply with any requirements of the Section 811 PRA Program that require changes to the Development’s tenant selection plans, house rules, marketing materials, or application.

I (We) will at all times indemnify and hold the TDHCA harmless against all losses, costs, damages, expenses, and liabilities of any nature directly or indirectly resulting from, arising out of or relating to the TDHCA’s acceptance, consideration, approval or disapproval of this request and the issuance or non-issuance of a RAC or 811 PRA funds herewith.

I (We) have written below the name of the individual(s) authorized to execute the TDHCA Owner Participation Agreement, the HUD RAC, the HUD Use Agreement, and any and all future commitments and contracts related to this Application. I (We) hereby certify that this individual(s) has the full authority and has been authorized by all of the Parties, Affiliates, or associates with interest in the Development in this Application. If this individual is replaced by the organization, I (We) must inform the TDHCA within 30 days of the person authorized to execute agreements, commitments and/or contracts on behalf of the Applicant.

I (We) certify that I (We) do not and will not knowingly employ an undocumented worker, where “undocumented worker” means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States.

If, after receiving a public subsidy (including Section 811 PRA Program funds), I (We) are convicted of a violation under 8 U.S.C Section 1324a(f), I (We) shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Tex. Government Code §2264.053, not later than the 120th day after the date TDHCA notifies the Applicant of the violation.

I (We) certify that I (We) am eligible to apply for funds or any other assistance from the TDHCA. I (We) certify that all audits are current at the time of application. I (We) certify that any Audit Certification Forms have been submitted to the TDHCA in a satisfactory format on or before the Application deadline for funds or other assistance pursuant to 10 TAC §1.3(b).

**Property Condition Standards Certification**

I (We) certify that I (We) will meet local and state housing code, ordinances, and zoning requirements, Texas Minimum Construction Standards, Uniform Physical Construction Standards and Inspection Requirements under 24 CFR Section 5 Subpart G, including any changes in the regulation and related directives and will comply with HUD’s Physical Condition Standards of Multifamily Properties of 24 CFR Part 200, Subpart P, including any changes in the regulation and related directives.

I (We) certify that TDHCA approved Existing Development, or if allowed by TDHCA in writing, the Development referenced in this Application is or will be in compliance and that during the term of the Section 811 Participation Agreement and/or RAC the Applicant will respond to all requests for compliance deficiency resolution within the timeframes mandated by the Texas Administrative Code Rules at 10 TAC Chapters 1, 2, 8, 10, and 11, or other requirements associated with the satisfactory provision of a unit as required by the 811 PRA program.

Page | 31
December 17, 2018
Federal Cross-Cutting Certifications

The Federal Cross-Cutting Certifications that apply to the Development identified to receive the 811 PRA assistance include but are not limited to:

Lead Based Paint

I (We) certify that documentation of compliance with 24 CFR Part 35 (Lead Safe Housing Rule), including but not limited to the documentation reflected in the following clauses, will be maintained in project files. I (We) understand that standard forms are available in the Federal Register, as indicated by the sources noted below.

Applicability Form 24 CFR §35.115 – A copy of a statement indicating that the property is covered by or exempt from the Lead Safe Housing Rule.

   a. If the property is exempt, the file should include the reason for the exemption and no further documentation is required.

   b. If the property is subject to the Rule, the file should include the appropriate documentation to indicate basic compliance, as listed below:

      i. Summary Paint Testing Report or Presumption Notice 24 CFR §35.930(a) – A copy of any report to indicate the presence of lead-based paint (LBP) for projects receiving up to $5,000 per unit in rehabilitation assistance. If no testing was performed, then LBP is presumed to be on all disturbed surfaces;

      ii. Notice of Evaluation 24 CFR §35.125(a) – A copy of a notice demonstrating that an evaluation summary was provided to residents following a lead-based paint inspection, risk assessment or paint testing;

      iii. Clearance Report 24 CFR §35.930(b)(3) – A report indicating a “clearance examination” was performed of the work-site upon completion; and

      iv. Notice of Hazard Reduction Completion 24 CFR §35.125(b) – Upon completion, a copy of a notice to show that a LBP remediation summary was provided to residents.

Environmental

I (We) understand that the environmental effects of each activity carried out with funds provided under this Application must be assessed in accordance with the provisions of the Section 811 PRA Cooperative Agreement, § PRA.215 and § PRA.216. Each activity must have an environmental review completed and support documentation prepared complying with HUD regulations. No Section 811 Owner Participation Agreement may be signed and no Section 811 PRA funds can be provided for a unit before the completion of the environmental review process and the provision of written clearance by TDHCA.
I (We) certify that I (We) have read and understand the requirements of the HUD Section 811 PRA Cooperative Agreement, § PRA.215 and § PRA.216.

Energy and Water Conservation

I (We) certify to comply with Energy and Water Conservation standards and requirements as outlined in § PRA.214.

Procurement of Recovered Materials

I (We) certify to comply with the Procurement of Recovered Materials requirements as outlined in § PRA.219.

Housing Standards for Assisted Units

I (We) certify to comply with Housing Standards for Assisted Units as outlined in § PRA.307 for Section 811 PRA units and as outlined in 10 TAC Chapter 1 Subchapter B and Chapter 10 “Uniform Multifamily Rules.”

Eligibility and Threshold Certification

On behalf of the Applicant and all affiliates of the Applicant, I (We) hereby certify that the Applicant is familiar with the provisions and requirements of the Section 811 PRA Program for which I (We) am applying.

I (We) understand that housing units occupied by eligible tenants participating in the program must be affordable to Extremely Low-Income persons. I (We) understand that mixed income rental Developments may only apply PRA to units that meet 811 program affordability standards. I (We) understand that the Development identified to receive the 811 PRA assistance must adhere to the TDHCA’s Integrated Housing Rule at 10 TAC §1.15, 10 TAC Chapter 8 and Exhibit 5 of the Section 811 PRA Cooperative Agreement § PRA.305.

I (We) certify that the units identified for 811 PRA assistance will be dispersed throughout the property and must not be segregated to one area of a building or Development.

I (We) certify to follow the requirements of § PRA.403 regarding the Selection and Admission of Eligible Tenants. In addition, I (We) understand that prior to receiving referrals for Section 811 tenants, I (We) must submit and receive approval by the TDHCA for the Development’s Tenant Selection Plan. I (We) understand that the Applicant or their designated property management staff will accept referrals of Section 811 applicants from the TDHCA and determine eligibility based on the TDHCA-approved Tenant Selection Plan. I (We) understand that upon the request of TDHCA or HUD, the Applicant must furnish copies of all applications to HUD and/or TDHCA.

I (We) understand that the Applicant or their designated property management staff will be responsible for:
(1) obtaining and verifying income through the use of Enterprise Income Verification (EIV), pursuant to 24 CFR §5.233(a)(2). Applicant or their designated property management staff shall refer to HUD Handbook 4350.3 REV-1, Chapter 3-30 for further guidance;

(2) obtaining and verifying information related to income eligibility of Eligible Families in Assisted Units in accordance with 24 CFR Part 5, subpart F. Applicant or their designated property management staff shall refer to HUD Handbook 4350.3 REV-1, Chapter 3-30 for further guidance;

(3) preventing crime in the Assisted Units, including the denial of admission to persons engaged in criminal activity or has certain criminal histories, in accordance with 24 CFR Part 5, Subpart H. Applicant or its designated property management staff shall refer to HUD Handbook 4350.3 REV-1, Chapter 4-27, E. for further guidance;

4) complying with protections for victims of domestic violence, dating violence, sexual assault, or stalking, pursuant to 24 CFR Part 5, Subpart L; and

(5) complying with all other applicable requirements, including but not limited to the RAC, Project Rental Assistance Program Guidelines, 10 TAC Chapters 1, 2, 8, and any other HUD administrative requirements.

I (We) understand that the Section 811 tenants' participation in supportive services is voluntary and cannot be required as a condition of admission or occupancy.

I (We) understand that if the Applicant or their designated property management staff determines that an applicant is ineligible on the basis of income or Household composition, or because of failure by an Section 811 applicant to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, or that the Applicant or their designated property management staff is not selecting the Section 811 applicant for other reasons, the Applicant or their designated property management staff will promptly notify the Section 811 applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the Applicant or their designated property management staff and has the right to request a reasonable accommodation, if applicable. I (We) understand that the Section 811 applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, national origin, religion, sex, disability or familial status. I (We) understand that records on Section 811 applicants and Section 811 tenants, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three (3) years. I (We) shall refer to HUD Handbook 4350.3 REV-1, Chapter 4-9 for further guidance on rejecting Section 811 applicants and denial of rental assistance.

I (We) certify that no Section 811 PRA Program funds will be attached to units receiving any other form of federal or state housing operating assistance or units that have received any form of long-term operating housing subsidy within a six-month period prior to receiving PRA funds. I (We) additionally certify that 811 PRA subsidy funds will not be attached to any unit that is currently a 30% AMI rent and income restricted unit or any unit that is currently operating with an existing use.
restriction or contractual obligation to exclusively serve persons with disabilities or persons 62 and older.

I (We) understand that funding through the full, initial 20 year term of a RAC contract to provide 811 PRA assistance will be conditional based upon available appropriations during each 5 year renewal cycle and may be moved or dissolved by TDHCA at anytime. Additionally, I (We) understand that the total number of assisted units, and their number of bedrooms may be adjusted at anytime by TDHCA for a maximum number of units committed in the Section 811 PRA Owner Participation Agreement.

Management Practices Certification

I (We) certify that the Applicant or their designated property management staff will immediately notify TDHCA of all unit vacancies until all Section 811 PRA units are occupied. I (We) certify that, after a RAC is executed, any available units of a type identified in the RAC will be held vacant for an 811 PRA tenant referred by TDHCA, if a tenant has been referred to the property by TDHCA, for up to 60 days before the unit will be re-rented to a non-811 PRA applicant.

I (We) certify that the Applicant or their designated property management staff will comply with any current or future requirement for marketing or outreach of the units and I (We) certify that I (we) will follow all HUD Fair Housing and Equal Opportunity requirements.

I (We) certify that I (we) will furnish all required documentation, reports, and forms as necessary to assist TDHCA in entering necessary eligibility and income information in HUD systems as required; information requested for reporting on performance measures to HUD will be furnished within the timelines as specified by TDHCA.

I (We) certify that we understand that all Applicants who are States, Territories, Urban Counties, and Metropolitan cities shall be subject to the requirements of 24 CFR Part 85, and further that all Applicants who are Nonprofits shall be subject to the requirements of 24 CFR Part 84.

I (We) certify that the initial lease between the Development and any 811 PRA assisted tenant will be a minimum of one year; I (we) further certify that the HUD model lease form HUD-92236-PRA will be used as required by the Cooperative Agreement, Section XII. GRANTEE PROGRAM ADMINISTRATION.

In addition, I (We) certify that we understand that all lease addendums must be approved by TDHCA. TDHCA will consider lease addendums on a case by case basis and may opt to request approval from HUD. Owners may only modify the lease terms with a tenant at the end of the initial term or a successive term by serving an appropriate notice to the tenant, together with the provision of a revised TDHCA approved agreement or addendum.

I (We) certify to follow requirements of § PRA.406. I (We) understand that prior to occupancy of a Section 811 unit, that an Eligible Section 811 Household must be given the opportunity to be present for the move-in unit inspection. I (We) understand that the inspection of the Section 811 Unit will be completed by both the Applicant or the designated Property Management staff and the Eligible Section 811 Household and both shall certify, on a form prescribed or approved by TDHCA that they have inspected the Section 811 Unit and have determined it to be Decent, Safe, and
Sanitary condition in accordance with the criteria provided in the form. The Applicant or the designated Property Management staff shall keep a copy of this inspection and make part of the lease as an attachment to the lease. If the Eligible Section 811 Household waives the right to this inspection, a form prescribed or approved by the TDHCA would be signed by the Eligible Household indicating they have waived this right.

In addition, I (We) certify that the Applicant or the designated Property Management staff shall perform unit inspections of the Section 811 Units on at least an annual basis to determine whether the appliances and equipment in the unit are functioning properly and to assess whether a component needs to be repaired or replaced. This will ensure that the Applicant is meeting its obligation to maintain the Assisted Units in Decent, Safe, and Sanitary condition.

In addition, I (We) understand that the TDHCA and/or HUD may ask, and must be permitted, to review the records related to the RAC at least annually to determine compliance. I (We) understand that HUD may independently inspect project operations and Section 811 Units at any time with reasonable notice prior to inspection; and Equal Opportunity reviews may be conducted by HUD at any time.

I (We) certify that the Applicant or the designated Property Management staff shall comply with the Overcrowded and Under Occupied Unit requirements set by TDHCA and will ensure that Section 811 tenants are not over or under housed according to those requirements.

I (We) certify that the Applicant or the designated Property Management staff shall comply and participate with any dispute resolution processes as required by TDHCA.

I (We) certify, as referenced in § PRA.409, that the Applicant shall not impede the reasonable efforts of tenants of the Assisted Units to organize pursuant to 24 CFR Part 245, or any successor regulations of 24 CFR Part 245, or unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the mortgaged property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to the operation of the mortgaged property.

I (We) certify that the Development site referenced in this Application will take reasonable steps to ensure meaningful access to its programs and activities to Limited English Proficiency tenants. Additionally, I (We) certify that all communications provided to Eligible Applicants and Eligible Households at the Development referenced in this Application are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and, as applicable, the Americans with Disabilities Act.

I (We) certify that Development staff will assist 811 PRA tenants with annual re-certification of income and program requirements as required by HUD; property staff are or will be familiar with HUD income verification requirements and tenant re-certification policies as published in the HUD Handbook 4350.3 REV-1.
I (We) certify that Development staff has the capacity and agrees to participate in the Tenant Rental Assistance Certification System for Section 811 PRA tenants, and that requests for payment will be made from this System within 60 calendar days of a tenant’s initial move in date. I (We) certify that if TDHCA procures a third party for one or more duties of the 811 PRA program, the Development will respond and comply with that third party in all ways as required of their obligations to TDHCA.

I (We) certify that the Development will obtain and maintain any information technology systems required of the PRA Program will be utilized at the Development at no expense to the TDHCA.

I (We) certify that any updated screening, eligibility, lease addenda or fee criteria established for tenants of the identified Development in this Application will be provided to TDHCA 30 calendar days prior to property implementation; additionally, upon request TDHCA will receive copies of tenant re-certifications completed by property staff.

I (We) certify that TDHCA will receive upon request any notices advising of property or resident rental increases.

I (We) certify that a copy of the Development’s property management plan, tenant selection criteria (or plan) and Affirmative Fair Housing Marketing plan will be provided to and discussed with onsite Development staff.
Section 811 PRA Program Certification

By: Megan D. Lasch

Signature of Authorized Representative

Megan D. Lasch

Printed Name

President

Title

2-12-19

Date

The State of Texas

The undersigned, a Notary Public in and for said County and State, do hereby certify that name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12th day of February, 2019

(Seal)

KATHERINE E. JOHNSON
Notary Public Signature

Notary Public ID # 130694692
My Commission Expires March 29, 2020

Page 38
December 17, 2018
Tenant Populations with Special Housing Needs
Section 811 Explanation

The Applicant is part of the ownership structure of the following developments that are included on the List of Eligible Existing Developments for Participation in the Section 811 PRA Program: Art at Bratton’s Edge, LaMadrid, Kaia Pointe, Mistletoe Station, Aria Grand, Canova Palms

Art at Bratton’s Edge: Though according to the Operating Agreement the Applicant is a partial owner who does not have authority to act on behalf of or bind the ownership entity, the Applicant has requested approval from the Third Party Lender and Syndicator to add Section 811 units to this development, but the Third Party Lender and/or Syndicator withheld approval. The Section 811 PRA Program Supplemental Packet has been uploaded separately.

LaMadrid: Though according to the Operating Agreement the Applicant is a partial owner who does not have authority to act on behalf of or bind the ownership entity, the Applicant has requested approval from the Third Party Syndicator to add Section 811 units to this development, but the Third Party Syndicator withheld approval. The Section 811 PRA Program Supplemental Packet has been uploaded separately.

Kaia Pointe: The Applicant requested approval from the Third Party Lender and Syndicator to add Section 811 units to this development, but the Third Party Lender and/or Syndicator withheld approval. The Section 811 PRA Program Supplemental Packet has been uploaded separately.

Mistletoe Station: The Applicant requested approval from the Third Party Lender and Syndicator to add Section 811 units to this development, but the Third Party Lender and/or Syndicator withheld approval. The Section 811 PRA Program Supplemental Packet has been uploaded separately.

Aria Grand: The Applicant requested approval from the Third Party Lender and Syndicator to add Section 811 units to this development, but the Third Party Lender and/or Syndicator withheld approval. The Section 811 PRA Program Supplemental Packet has been uploaded separately.

Canova Palms: The Applicant requested approval from the Third Party Limited Partner to add Section 811 units to this development, but the Third Party Limited Partner withheld approval. The Section 811 PRA Program Supplemental Packet has been uploaded separately.

Due to the above, this Application is unable to score points and meet the requirements of subparagraph (B).

This Application has selected points under subparagraph (C) because it is located within a participating MSA for the Section 811 Program and will commit least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Rules limit the Development to fewer than 10 Section 811 PRA Program Units.
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet

Introduction

The purpose of this Packet is to formalize the process by which an Applicant establishes its lack of legal authority to commit Section 811 PRA Program Units in a Development as described pursuant to 10 TAC §11.9(c)(6)(A) of the Qualified Allocation Plan ("QAP").

This Packet is required only if all of the following conditions are true:

1) An Applicant is selecting points under Tenant Populations with Special Housing Needs pursuant to 10 TAC §11.9(c)(6) AND

2) An Applicant is seeking to establish its lack of legal authority where an Applicant or Affiliate Owns or Controls an Existing Development that otherwise meets the criteria established by 10 TAC §11.9(c)(6)(B) of the QAP.

One Packet must be submitted for each Existing Development for which the Applicant or Affiliate is seeking a determination that the needed legal authority is lacking and that the Development can be excluded from consideration.

Instructions: Complete the Questionnaire on page 2 of this packet, then complete the fields on each of the subsequent form cover pages, and attach the denoted documentation for each item behind each included cover pages. Submit each Packet, including Attachments in PDF format and include bookmarks for each item. The Packet must be saved and uploaded as one standalone file to the Serv-U folder associated with each 2019 Multifamily Application.

This Packet and all supporting documentation must be uploaded to the Department’s Serv-U system at the same time as, but as a separate document from, the Application. Refer to the Multifamily Programs Procedures Manual posted at [http://www.tdhca.state.tx.us/multifamily/applyforfunds.htm](http://www.tdhca.state.tx.us/multifamily/applyforfunds.htm) for an explanation of the process to set-up a Serv-U Account if needed.

Questions about this Packet may be submitted to Spencer Duran: spencer.duran@tdhca.state.tx.us
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

Questionnaire

2019 Uniform Multifamily Application #19276 & 19295 & 19288

1) Selecting Points under 10 TAC §11.9(c)(6)?
   □ No – STOP. PACKET SUBMISSION NOT NEEDED
   ☒ Yes – CONTINUE TO QUESTION 2

2) To obtain Points under 10 TAC §11.9(c)(6), Applicants must first attempt to meet the requirements in §11.9(c)(6)(B).
   Does the Applicant Own or Control an Existing Development that appears on the List of Qualified Existing Developments?
   □ No – STOP. PACKET SUBMISSION NOT NEEDED
   ☒ Yes – CONTINUE TO QUESTION 3

3) Is the Applicant seeking to establish its lack of legal authority where an Applicant Owns or Controls an Existing Development that appears on the List of Qualified Existing Developments?
   □ No - STOP. PACKET SUBMISSION NOT NEEDED
   ☒ Yes – CONTINUE TO QUESTION 4

4) Can the Applicant provide all three of the following items listed under §11.9(c)(6)(A)(i)-(iii)?
   □ No - STOP. PACKET SUBMISSION NOT NEEDED
   ☒ Yes – CONTINUE TO COVER PAGES
   (i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement);

   (ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program); AND

   (iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party identified in (ii) that they are denying an Existing Development from participation).
2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name Canova Palms

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: First Amended & Restated Operating Agreement

Provide the name of the Third Party: Hunt Capital Partners

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: Section 5.3 - Restrictions on Authority, para (a)(xix) & (a)(xviii)

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: 43-45

ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.
CANOVA PALMS, LLC
A TEXAS LIMITED LIABILITY COMPANY

FIRST AMENDED AND RESTATED

OPERATING AGREEMENT

Dated as of February 1, 2019

THE LIMITED LIABILITY COMPANY INTERESTS EVIDENCED BY THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933 (“1933 ACT”) OR PURSUANT TO APPLICABLE STATE SECURITIES LAWS (“BLUE SKY LAWS”). ACCORDINGLY, THE LIMITED LIABILITY COMPANY INTERESTS CANNOT BE RESOLD OR TRANSFERRED BY ANY PURCHASER THEREOF WITHOUT REGISTRATION OF THE SAME UNDER THE 1933 ACT AND THE BLUE SKY LAWS OF SUCH STATE(S) AS MAY BE APPLICABLE, EXCEPT IN A TRANSACTION WHICH IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT AND THE BLUE SKY LAWS OR WHICH IS OTHERWISE IN COMPLIANCE THERewith. IN ADDITION, THE SALE OR TRANSFER OF SUCH LIMITED LIABILITY COMPANY INTERESTS IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN THIS AGREEMENT.
# Table of Contents

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DEFINED TERMS</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>NAME AND BUSINESS</td>
<td>24</td>
</tr>
<tr>
<td>2.1</td>
<td>Name; Continuation</td>
<td>24</td>
</tr>
<tr>
<td>2.2</td>
<td>Admission</td>
<td>24</td>
</tr>
<tr>
<td>2.3</td>
<td>Withdrawal</td>
<td>24</td>
</tr>
<tr>
<td>2.4</td>
<td>Office and Resident Agent</td>
<td>25</td>
</tr>
<tr>
<td>2.5</td>
<td>Term and Dissolution</td>
<td>25</td>
</tr>
<tr>
<td>2.6</td>
<td>Filing of Certificate</td>
<td>25</td>
</tr>
<tr>
<td>3</td>
<td>PURPOSE OF THE COMPANY</td>
<td>25</td>
</tr>
<tr>
<td>3.1</td>
<td>Purpose of the Company</td>
<td>25</td>
</tr>
<tr>
<td>4</td>
<td>MEMBERS, PERCENTAGE INTERESTS, CAPITAL CONTRIBUTIONS, MEMBER LOANS</td>
<td>25</td>
</tr>
<tr>
<td>4.1</td>
<td>Managing Member</td>
<td>25</td>
</tr>
<tr>
<td>4.2</td>
<td>Investor Member</td>
<td>26</td>
</tr>
<tr>
<td>4.3</td>
<td>Reserved</td>
<td>31</td>
</tr>
<tr>
<td>4.4</td>
<td>Draws</td>
<td>31</td>
</tr>
<tr>
<td>4.5</td>
<td>Liability of the Investor Member</td>
<td>31</td>
</tr>
<tr>
<td>4.6</td>
<td>Interest on Capital Contributions</td>
<td>32</td>
</tr>
<tr>
<td>4.7</td>
<td>Deposit of Capital Contributions</td>
<td>32</td>
</tr>
<tr>
<td>4.8</td>
<td>Payment of Third Party Costs</td>
<td>32</td>
</tr>
<tr>
<td>4.9</td>
<td>Guaranteed Payment</td>
<td>32</td>
</tr>
<tr>
<td>4.10</td>
<td>Return of Capital Contributions</td>
<td>32</td>
</tr>
<tr>
<td>4.11</td>
<td>MM Loans</td>
<td>32</td>
</tr>
<tr>
<td>4.12</td>
<td>IM Loans</td>
<td>33</td>
</tr>
<tr>
<td>4.13</td>
<td>Notice of Member Loans</td>
<td>33</td>
</tr>
<tr>
<td>4.14</td>
<td>Documentation of Member Loans</td>
<td>33</td>
</tr>
<tr>
<td>4.15</td>
<td>Usury Savings Clause</td>
<td>34</td>
</tr>
<tr>
<td>4.16</td>
<td>Capital Contribution Alternative</td>
<td>34</td>
</tr>
<tr>
<td>5</td>
<td>MANAGING MEMBER RIGHTS, DUTIES AND OBLIGATIONS</td>
<td>34</td>
</tr>
<tr>
<td>5.1</td>
<td>Management of the Company</td>
<td>34</td>
</tr>
<tr>
<td>5.2</td>
<td>Duties and Obligations</td>
<td>34</td>
</tr>
<tr>
<td>5.3</td>
<td>Restrictions on Authority</td>
<td>43</td>
</tr>
<tr>
<td>5.4</td>
<td>Personal Services</td>
<td>45</td>
</tr>
<tr>
<td>5.5</td>
<td>Continued Compliance Sale</td>
<td>46</td>
</tr>
<tr>
<td>5.6</td>
<td>Other Activities</td>
<td>46</td>
</tr>
<tr>
<td>5.7</td>
<td>Indemnification of the Managing Member</td>
<td>46</td>
</tr>
<tr>
<td>5.8</td>
<td>Indemnification of the Company and the Hunt Indemnified Parties</td>
<td>47</td>
</tr>
<tr>
<td>5.9</td>
<td>Certain Payments to the Managing Member and Affiliates</td>
<td>49</td>
</tr>
<tr>
<td>5.10</td>
<td>Reserve Accounts</td>
<td>49</td>
</tr>
</tbody>
</table>
5.11 Pledged Payments ................................................................................................ 51
5.12 Assignment to Company ...................................................................................... 52
5.13 Meetings ............................................................................................................... 52
5.14 Purchase Option .................................................................................................. 52

ARTICLE 6 MANAGING MEMBER REPRESENTATIONS AND WARRANTIES .......... 52
6.1 Representations, Warranties and Covenants ........................................................ 52
6.2 Environmental Representations, Warranties and Covenants ............................... 63

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES ......................................................... 63
7.1 Events of Default ................................................................................................. 63
7.2 Notice and Remedies ........................................................................................... 67
7.3 Nonexclusive Remedies ....................................................................................... 71
7.4 Attorney’s Fees and Expenses ............................................................................. 71
7.5 Effect of Waiver ................................................................................................... 72

ARTICLE 8 MANAGING MEMBER GUARANTEES ............................................................ 72
8.1 Construction Completion Guaranty ..................................................................... 72
8.2 Operating Deficit Guaranty .................................................................................. 73
8.3 Housing Tax Credit Compliance Guaranty .......................................................... 73
8.4 Permanent Loan Funding Guaranty ..................................................................... 75
8.5 Security Documents ............................................................................................. 75

ARTICLE 9 WITHDRAWAL OF THE MANAGING MEMBER; ADMISSION OF NEW MANAGING MEMBER; REMOVAL OF A MANAGING MEMBER .............................................................. 76
9.1 Withdrawal ........................................................................................................... 76
9.2 Admission of Additional Managing Member(s) under Certain Circumstances .................................................................................................................. 76
9.3 Effect of Voluntary Withdrawal of Managing Member ...................................... 76
9.4 Effect of Involuntary Withdrawal of Managing Member .................................... 78

ARTICLE 10 RIGHTS OF THE INVESTOR MEMBER .......................................................... 78
10.1 Management of the Company .............................................................................. 78
10.2 Limitation on Liability of the Investor Member .................................................. 78
10.3 Other Activities .................................................................................................... 78
10.4 Full Disclosure of and Right to Revise Information ............................................ 78
10.5 Fees to Hunt and its Affiliates ............................................................................. 78
10.6 Control Over Investor Member Decisions ........................................................... 79

ARTICLE 11 TRANSFERABILITY OF INVESTOR MEMBER INTERESTS ....................... 79
11.1 Assignment or Pledge of Investor Member Interests ........................................... 79
11.2 Admission of Substitute Investor Member ......................................................... 80
11.3 Rights of Assignee of Limited Liability Company Interest ................................. 81
11.4 Equity Lender ....................................................................................................... 81
11.5 Funds Sponsored by Investor Member(s) ................................................................ 81
ARTICLE 12 BORROWINGS ........................................................................................................ 81
12.1 Borrowings .................................................................................................................. 81

ARTICLE 13 ALLOCATIONS ................................................................................................ 82
13.1 Allocation of Profits, Losses and Housing Tax Credits from Operations .................. 82
13.2 Allocation of Profits and Losses From Capital Transactions ................................. 82
13.3 Determination of Profits and Losses ....................................................................... 82
13.4 Special Allocations ..................................................................................................... 83
13.5 Authority of the Managing Member to Vary Allocations to Preserve and ... 85
13.6 Capital Account .......................................................................................................... 86
13.7 Excess Nonrecourse Liabilities .................................................................................. 87

ARTICLE 14 DISTRIBUTIONS AND PAYMENTS ................................................................ 88
14.1 Distributions and Payments of Cash Flow (Other than Cash From a Capital Transaction and Other Than in Connection with a Liquidation) .............................. 88
14.2 Distribution of Cost Savings ....................................................................................... 90

ARTICLE 15 PARTNERSHIP AUDIT PROCEDURES ............................................................ 90
15.1 Defined Terms ............................................................................................................. 90
15.2 Partnership Representative ....................................................................................... 91
15.3 Modifications and Company Elections .................................................................... 93
15.4 Related Tax Items ..................................................................................................... 95

ARTICLE 16 MANAGEMENT AGENT ............................................................................... 95
16.1 Appointment of Management Agent .......................................................................... 95
16.2 Management Agreement ............................................................................................. 96
16.3 Removal of Management Agent ................................................................................ 96
16.4 Replacement of Management Agent ........................................................................ 96

ARTICLE 17 SALE, DISSOLUTION AND LIQUIDATION ..................................................... 97
17.1 Dissolution of the Company ....................................................................................... 97
17.2 Winding Up and Liquidation ..................................................................................... 97
17.3 Rights and Obligations of Investor Member upon Dissolution ................................ 98
17.4 Filing of Certificate of Dissolution .......................................................................... 98

ARTICLE 18 BOOKS AND RECORDS, ACCOUNTING, TAX ELECTIONS, ETC .......... 99
18.1 Books and Records .................................................................................................... 99
18.2 Bank Accounts ........................................................................................................... 99
18.3 Accountants ............................................................................................................... 99
18.4 Cost Recovery and Elections .................................................................................... 100
18.5 Special Basis Adjustments ....................................................................................... 100
18.6 Fiscal Year ................................................................................................................. 100
18.7 Information Reporting to Members .......................................................................... 100
18.8 Expenses of the Company ....................................................................................... 105
18.9 Housing Tax Credit Compliance Records ............................................................... 105
18.10 Compliance Audit .................................................................................................... 105
ARTICLE 19 GENERAL PROVISIONS ................................................................................. 105

19.1 Notices ............................................................................................................... 105
19.2 Word Meanings .................................................................................................. 106
19.3 Binding Effect .................................................................................................... 107
19.4 Applicable Law .................................................................................................. 107
19.5 Counterparts ....................................................................................................... 107
19.6 Entire Agreement ............................................................................................... 107
19.7 Reserved ............................................................................................................. 107
19.8 Separability of Provisions .................................................................................. 107
19.9 Paragraph Titles ................................................................................................. 107
19.10 Project Lender Provisions .................................................................................. 107
19.11 No Continuing Waiver ....................................................................................... 107
19.12 Amendment Procedure ....................................................................................... 107
19.13 Waiver of Jury Trial ........................................................................................... 108
19.14 No Third-Party Rights ........................................................................................ 108
19.15 Forbearance ........................................................................................................ 108
19.16 Review with Counsel ......................................................................................... 109

EXHIBIT A -- LEGAL DESCRIPTION OF LAND
EXHIBIT B -- DEVELOPMENT BUDGET AND SUMMARY OF LOANS
EXHIBIT C -- FUNDING CONDITIONS
EXHIBIT D -- INSURANCE REQUIREMENTS
EXHIBIT E -- DEVELOPMENT AGREEMENT
EXHIBIT F -- GUARANTY AGREEMENT
EXHIBIT G-1 -- PLEDGE AND SECURITY AGREEMENT (CO-MANAGING MEMBER TO INVESTOR MEMBER)
EXHIBIT G-2 -- PLEDGE AND SECURITY AGREEMENT (ADMINISTRATIVE MEMBER TO INVESTOR MEMBER)
EXHIBIT H -- PLEDGE AND SECURITY AGREEMENT (DEVELOPER TO INVESTOR MEMBER)
EXHIBIT I -- MANAGEMENT AGREEMENT
EXHIBIT J -- REQUEST FOR PAYMENT
EXHIBIT K -- RESERVED
EXHIBIT L -- RESERVED
EXHIBIT M -- FORM OF ASSIGNMENT
EXHIBIT N -- RESERVED
EXHIBIT O -- PURCHASE OPTION AGREEMENT
EXHIBIT P -- PLANS AND SPECIFICATIONS
EXHIBIT Q TITLE AND SURVEY REQUIREMENTS
EXHIBIT R FORM OF PAYMENT CERTIFICATE
EXHIBIT S LIHTC CERTIFICATE
Canova Palms, LLC
A Texas Limited Liability Company

First Amended and Restated
Operating Agreement

Preliminary Statement

Canova Palms, LLC (the “Company”) was formed as a Texas limited liability company as evidenced by a certificate of formation filed with the Office of the Secretary of the State of Texas (the “Filing Office”) on August 9, 2018 by and between Saigebrook Canova, LLC, a Texas limited liability company, as a managing member (the “Co-Managing Member”) and Lisa M. Stephens, as an investor member (the “Withdrawing Investor Member”).

A Company Agreement was entered into with respect to the Company as of August 9, 2018 (the “Original Agreement”) by and between the Co-Managing Member and the Withdrawing Investor Member.

This First Amended and Restated Operating Agreement (this “Agreement”) is made and entered into as of February 1, 2019 (the “Closing Date” or “Closing”) by and among the Co-Managing Member, O-SDA Canova, LLC, a Texas limited liability company (the “Administrative Member”), HCP-ILP, LLC, a Nevada limited liability company (“Investor Member”), and the Withdrawing Investor Member.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties hereto agree that the Original Agreement is hereby amended and restated in its entirety to read as follows:

Article 1
Defined Terms

In addition to the terms defined above, the following terms used in this Agreement shall have the meanings specified below:

Access Laws has the meaning set forth in Section 5.2(u).

Access Laws Certification means a certification to the Company concluding that the Apartment Complex is in compliance with applicable Access Laws, with such certification being prepared by the Architect.

Accountants means Tidwell Group of Birmingham, Alabama or such other firm of independent certified public accountants as may be engaged by the Managing Member at the expense of the Company with the Consent of the Investor Member, which Consent shall not be unreasonably withheld, conditioned or delayed, to prepare the Company income tax returns.

Actual Housing Tax Credits means, with respect to any period of time, the total amount of the Housing Tax Credits allocated by the Company to the Investor Member, representing ninety-nine and ninety-nine hundredths percent (99.99%) of the Housing Tax Credits reported
and claimed by the Company and its Members on their respective federal information and income tax returns, and not disallowed by any taxing authority.

**Additional Managing Member** has the meaning set forth in Section 9.2(a).

**Adjusted Capital Account** means, with respect to each Member, the Capital Account balance of such Member after giving effect to the following adjustments: (i) credit to such Capital Account the sum of (A) any amounts which such Member is obligated to restore pursuant to any provision of this Agreement, plus (B) an amount equal to such Member’s share of Company Minimum Gain as determined under Regulation Section 1.704-2(g)(1) and such Member’s share of Member Nonrecourse Debt Minimum Gain as determined under Regulation Section 1.704-2(i)(5), plus (C) any amounts which such Member is deemed to be obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and (ii) debit to such Capital Account the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition is intended to comply with the provisions of Regulation Section 1.704-1(b)(2)(ii)(d), and shall be interpreted consistently therewith.

**Administrative Member** means O-SDA Canova, LLC, a Texas limited liability company, and any other Person admitted as an administrative member pursuant to this Agreement, and their respective successors pursuant to this Agreement, including a Replacement Managing Member.

**Administrative Member Pledge** means the Pledge and Security Agreement dated as of the date hereof by the Administrative Member for the benefit of the Investor Member in the form of Exhibit G-2, wherein the Administrative Member pledges and grants a first priority security interest in the Administrative Member’s Interest in the Company to secure the obligations of the Managing Member under this Agreement and the Developer under the Development Agreement.

**Affiliate** means, as to any named Person or Persons (or as to any Member if no Person is specifically named): (i) such Person; (ii) each member of the Immediate Family of such Person; (iii) each legal representative, successor or assignee of any Person referred to in the preceding clauses (i) or (ii); (iv) each trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) or (ii); or (v) any other Person (a) who directly or indirectly controls, is controlled by, or is under common control with such Person, (b) who owns or controls ten percent (10%) or more of the outstanding voting securities of such Person, (c) of which ten percent (10%) or more of the outstanding voting securities is owned by such Person or any of the Persons referred to in the foregoing clauses (i) through (iii), (d) who is an officer, director, partner or trustee of such Person, or (e) for which such Person acts in the capacity of officer, director, partner or trustee.

**Affiliated Entity** means (a) a limited partnership in which the Managing Member, the Developer, any Guarantor or an Affiliate of the Managing Member, the Developer or the Guarantor is a general partner, and in which an Affiliate of Hunt is a limited partner, or (b) a limited liability company in which the Managing Member, the Developer, any Guarantor or an Affiliate of the Managing Member, the Developer or the Guarantor is a managing member, and in which an Affiliate of Hunt is a member.
AFR means the “applicable federal rate” as defined in Section 1274(d) of the Code.

Agency means Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, or any successor in its capacity as the housing credit agency of the State.

Agreement means this First Amended and Restated Operating Agreement, including all Exhibits hereto, as amended from time to time.

AIA means the American Institute of Architects.

ALTA As-Built Survey means a current recertification of the plat of survey for the Apartment Complex, which shall (i) be prepared by a land surveyor licensed in the state in which the Apartment Complex is located, (ii) be certified for the benefit of the Company, Investor Member and their successors and assigns, and Title Company as having been made in compliance with ALTA minimum detail requirements, and with such certification being otherwise in form and substance satisfactory to the Title Company and Investor Member, (iii) show the location of all improvements located within the boundaries of the Apartment Complex, and (iv) certifying at least: (a) the legal description and boundaries of the Apartment Complex; (b) that the location of each improvement located on the Apartment Complex does not encroach upon any setback lines or violate any building or other restriction of record; (c) the location of all easements appurtenant to or affecting the Apartment Complex, whether visible or of record; (d) the location of all encroachments onto the Apartment Complex from buildings or other improvements on adjacent property; (e) all lot, set-back and building lines on the Apartment Complex; (f) all encroachments by the improvements located on the Apartment Complex over or onto any such easements or over any such lot, set-back or building lines created since the date of the prior survey; and (g) indicate whether the Apartment Complex is in a flood plain and other such items as may apply detailed in Exhibit Q.

ALTA Survey means a survey for the Apartment Complex prepared by a land surveyor licensed in the state in which the Apartment Complex is located and certified for the benefit of the Company, Investor Member and Title Company as having been made in compliance with ALTA minimum detail requirements, and with such certification being otherwise in form and substance satisfactory to the Title Company and Investor Member. The survey shall indicate whether the Apartment Complex is in a flood plain and other such items as may apply detailed in Exhibit Q.

Amendment has the meaning set forth in Section 4.16.

Annual Budget means a pro forma budget of the Company’s expected Cash Receipts and Cash Expenditures for any particular year, which is to be prepared in a sufficiently detailed format reasonably acceptable to the Investor Member, and is to be submitted to the Investor Member as set forth in Section 18.7(a).

Anti-Corruption Laws means all laws, rules, statutes, codes and regulations of any governmental entity applicable to the Managing Member, its Affiliates or the Company concerning or relating to corruption or bribery, including laws prohibiting an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value, to
anyone, while knowing or believing that all or some portion of the money or thing of value will be offered, given, promised to, or retained by a Government Official or any other person for the purposes of obtaining or retaining business, securing any improper advantage or the improper performance of that person’s or Government Official’s function, or misuse of that person’s or Government Official’s position.

**Apartment Complex** means the Land and the 58-unit multifamily rental housing development and other improvements to be constructed, owned and operated thereon by the Company and to be known as Canova Palms, 1717 W. Irving Blvd., Irving, Dallas County, Texas.

**Applicable Fraction** has the meaning set forth in Section 42(c)(1)(B) of the Code.

**Applicable Percentage** means the percentage by which the Qualified Basis of a building in the Apartment Complex is multiplied in order to determine the amount of Housing Tax Credits available to such building in the Apartment Complex, as more particularly defined in Code Section 42(b).

**Application** means the Company’s Low Income Housing Tax Credit Application for Credit Reservation submitted to and approved by the Agency for any undertaking with respect to the development and operation of the Apartment Complex, including any amendments thereto approved by the Agency.

**Architect** means Miller Slayton, a Texas corporation, as the architect for the Apartment Complex pursuant to the Architect’s Contract, or such other Architect as Consented to by the Investor Member.

**Architect’s Contract** means the AIA Standard Form of Agreement Between Owner and Architect dated September 17, 2018 by and between the Company and the Architect.

**Asset Management Fee** has the meaning set forth in Section 10.5.

**Assignment** means a valid sale, exchange, pledge, transfer or other disposition of all or any portion of an Interest made in accordance with the terms of this Agreement.

**Bankruptcy Code** has the meaning set forth in Section 7.2(b)(v).

**BBVA Lender** means BVA Compass Bancshares, Inc.

**BBVA Loan** means that certain construction and permanent loan from the BBVA Lender to the Partnership in the amount of up to $[8,787,679] at the Closing Date, which is to be evidenced by the promissory note given by the Company to the BBVA Lender at the Closing Date, and which is to be secured by the BBVA Loan Mortgage and other related security documents and financing statements, the terms of which will be subject to the Consent of the Investor Member, and which will be nonrecourse to the Partnership and the Partners from and after Conversion.
**BBVA Loan Mortgage** means the mortgage or deed of trust to be given by the Partnership at the Closing in favor of the BBVA Lender, as holder of the BBVA Loan Mortgage, securing the BBVA Loan.

**Business Day** means a day (other than a Saturday or Sunday) on which banks generally are open in New York, New York for the conduct of substantially all of their commercial lending activities.

**Capital Account** means the capital account of a Member as described in Section 13.6.

**Capital Contribution** means, with respect to each Member, the total value of cash or property contributed and agreed to be contributed to the Company by each Member pursuant to Article 4. Any reference in this Agreement to the Capital Contribution of a then Member shall include a Capital Contribution previously made by any prior Member for the Interest of such then Member.

**Capital Contribution Account** has the meaning set forth in Section 4.2(b)(ix).

**Capital Transaction** means any transaction the proceeds of which are attributable to the sale, refinance, exchange, transfer, assignment or other disposition (including a condemnation, to the extent proceeds are not used to rebuild the Apartment Complex, or foreclosure) of all or any portion of the Apartment Complex or a casualty (to the extent proceeds are not used to rebuild the Apartment Complex) affecting the Apartment Complex, but excluding the payment of Capital Contributions.

**Carryover Allocation** means the carryover allocation of Housing Tax Credits issued to the Company by the Agency on December 20, 2018 in an annual amount of not less than $890,850 made pursuant to Code Section 42(h)(1)(E) which requires the Apartment Complex be Placed in Service by the end of the second year after the date of the Carryover Allocation.

**Carryover Certification** means the written certification of the Accountants that the Company had incurred capitalizable costs with respect to the Apartment Complex within one (1) year after the date of the Carryover Allocation of at least ten percent (10%) of the Company’s reasonably expected basis in the Apartment Complex.

**Cash Expenditures** means all disbursements of cash during the applicable period, including, without limitation, cash expenditures for Operating Expenses, Debt Service Expense, including, but not limited to, the monthly funding of the Replacement Reserve and any other reserves required under this Agreement or by any Lender. Cash Expenditures shall not include payments and distributions to be made pursuant to Article 14 of this Agreement, refunds to tenants of security deposits, and expenditures from the Replacement Reserve and other reserves required to be maintained under this Agreement or by any Lender. For purposes of this definition, Cash Expenditures without a specific maturity date shall be paid on a sixty (60) day current basis.

**Cash Flow** means, for any period of time, the excess, if any, of Cash Receipts for such period over Cash Expenditures for such period.
Cash From Capital Transaction means the proceeds of a Capital Transaction after (i) payment of all reasonable and customary expenses associated with the Capital Transaction, (ii) repayment of all secured Company debts required by any Lender to be paid with respect to such Capital Transaction, and (iii) application of such proceeds to the repair and restoration of the Apartment Complex as provided under the terms of this Agreement. Cash from Capital Transaction shall not include Cash Flow or proceeds of any Loan.

Cash Receipts means all cash receipts of the Company from whatever source, including, without limitation, operating income, subsidy payments, interest or investment earnings on the Replacement Reserve or other reserves required by any Lender and assets of the Company, cash from the forfeiture or application of tenant security deposits and the cash from the release of reserves held by any Lender to the Company other than for application to the expense for which they were set aside. Cash Receipts shall not include Cash From Capital Transaction, cash from Capital Contributions, proceeds from a loan to the Company (including, without limitation, Operating Deficit Loans, IM Loans and MM Loans) and the deposit by tenants of security deposits and any interest payable to tenants thereon.


Certificate means the Certificate of Formation of the Company filed with the Filing Office on August 9, 2018, as such certificate may be amended from time to time.

Closing Date or Closing has the meaning set forth in the Preliminary Statement.

Co-Managing Member means Saigebrook Canova, LLC, a Texas limited liability company, and any other Person admitted as a co-managing member pursuant to this Agreement, and their respective successors pursuant to this Agreement, including a Replacement Managing Member.

Co-Managing Member Pledge means the Pledge and Security Agreement dated as of the date hereof by the Co-Managing Member for the benefit of the Investor Member in the form of Exhibit G-1, wherein the Co-Managing Member pledges and grants a first priority security interest in the Co-Managing Member’s Interest in the Company to secure the obligations of the Managing Member under this Agreement and the Developer under the Development Agreement.

Code means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

Company means Canova Palms, LLC, a Texas limited liability company.

Completion means the date on which all of the following have occurred, in the reasonable judgment of the Investor Member; (i) Substantial Completion has been achieved; (ii) the lien-free and defect-free completion of Construction of the Apartment Complex in a good and workmanlike manner, in compliance with the Plans and Specifications with only such immaterial variations as to which Consent is not required under this Agreement and other changes approved by the Investor Member in accordance with the terms and provisions of this Agreement and the terms and provisions of the Project Documents; (iii) the issuance of all
necessary permanent certificates of occupancy (with no outstanding issues relating to improvements of the Apartment Complex) from the applicable governmental jurisdictions and authorities for the Apartment Complex, allowing for immediate occupancy of one hundred percent (100%) of the Units, and any other written acknowledgement required by the Project Documents that the Apartment Complex has been completed satisfactorily and Placed in Service; (iv) delivery and installation in the Apartment Complex of all necessary and appropriate fixtures, equipment and personal property, including, without limitation, installation of all required appliances in the residential units in the Apartment Complex has occurred; (v) all amounts owing to the Contractor for the construction or rehabilitation of the Apartment Complex have been or will be with the Fourth Installment paid-in-full, as evidenced by a final application for payment (as evidenced by the Architect’s Certificate for Payment AIA Forms G702 and G703); (vi) the payment and release of all liens of subcontractors, materialmen, and other providers of labor, equipment, material and/or services to the Land and the Apartment Complex as evidenced by the receipt of all unconditional lien releases from all such subcontractors, materialmen and all other providers of labor, equipment, material and/or services to the Land and the Apartment Complex and (vii) the Completion Documentation has been provided to, and approved by, the Investor Member, with such approval not to be unreasonably withheld.

**Completion Date** means the date on which Completion is achieved.

**Completion Documentation** means any documentation that the Investor Member may reasonably require to demonstrate that the criteria for Completion have been satisfied, including but not limited to: (i) fully-executed AIA documents G704, G706, G706A, and (if a payment and performance bond had been issued) G707; (ii) a letter from the Contractor to the Company stating that the Contractor’s warranty has commenced; (iii) a letter from the Architect to the Company stating that all “work” described in the Construction Contract, including completion of all “punch work,” has been completed; (iv) the ALTA As-Built Survey; (v) electronic copies of the “as-built” plans and specifications; (vi) if applicable, chain-of-custody and disposal records for any Hazardous Material disposal; (vii) engineer certification pertaining to soil compaction and concrete stress testing; (viii) if applicable, written approval by appropriate professionals pertaining to the fulfillment of any “green building” or EnergyStar requirements; (ix) if requested by the Investor Member, or otherwise if required by the municipality, written approvals of completed work from the mechanical, electrical, plumbing, and/or landscape design professionals; (x) if applicable in the State, a copy of the filed public notice of completion; and (xi) if requested by the Investor Member due to reasonable concerns about the as-completed Apartment Complex’s compliance with Access Laws, an Access Laws Certification.

**Compliance Period** means with respect to each building in the Apartment Complex, the period of fifteen (15) taxable years beginning with the first taxable year of the Credit Period, as more particularly defined in Code Section 42(i).

**Consent** means the prior written consent or approval of the Investor Member at its sole discretion (except where otherwise stated) and/or any other Member, as the context may require, to do the act or thing for which the consent is solicited.

**Construction** means construction, renovation or rehabilitation, as applicable, of the Apartment Complex.
**Construction Contract** means the [Partnership’s Construction Contract] with the General Contractor’s.

**Construction Loan Draw** has the meaning set forth in Section 4.4.

**Construction Loan Closing** means the date upon which the Construction Loan is closed and the initial disbursement is made thereunder. The Construction Loan Closing is anticipated to occur on or before the Closing Date.

**Construction Period** means the period commencing on Construction Loan Closing and ending on the Completion Date.

**Continued Compliance Sale** has the meaning set forth in Section 5.5.

**Contractor** means, collectively, General Contractor and such other contractor subject to the Consent of the Investor Member.

**Contribution Date** has the meaning set forth in Section 4.13.

**Controlling Interest** means the power to direct the management and policies of any Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

**Controlling Person** has the meaning given to it in the context of Section 15 of the Securities Act of 1933, as amended.

**Conversion** means the first date upon which each of the following shall have occurred as reasonably determined and approved in writing by the Investor Member: (a) the Completion Date, (b) the BBVA Loan shall have been converted to its permanent phase in accordance with Section 8.4(a), (c) amortization of the BBVA Loan shall commence within thirty (30) days of Conversion, (d) the full disbursement of the HOME Loan, and (e) such other conditions as the Investor Member may require.

**Cost Certification** means the written certification of the Accountants, in form and substance satisfactory to the Investor Member, as to the itemized amounts of the acquisition, construction and development costs of the Apartment Complex and the Eligible Basis and Applicable Percentage pertaining to each building in the Apartment Complex, together with evidence of submission thereof to the Agency.

**Cost Savings** means the amount, if any, by which Permitted Sources exceed Development Costs.

**Counsel for the Company** means Shutts & Bowen LLP or such other firms as may be engaged by the Managing Member with Consent of the Investor Member.

**Credit Period** means the “credit period” with respect to each of the buildings in the Apartment Complex, as defined in Code Section 42(f).
DDF Election has the meaning set forth in Section 8.1(b).

Debt Service Coverage Ratio means, for the applicable period, the Net Operating Income divided by the Debt Service Expense. The calculation of the Debt Service Coverage Ratio shall be prepared by the Managing Member and approved in good faith by the Investor Member in its sole discretion, notwithstanding any other provision herein to the contrary.

Debt Service Expense means, with respect to any period, the debt service expense incurred by the Company on an accrual basis, including interest expense and required principal payments, late charges and any other fees and expenses incurred during such period and solely relating to the BBVA Loan; provided that where the Debt Service Expense is being calculated for purposes of Rental Achievement and Loan sizing pursuant to Section 8.4(a) for the period prior to Rental Achievement (other than in connection with calculation of Development Costs), it shall equal the Debt Service Expense that would have been incurred by the Company if Rental Achievement (assuming the anticipated BBVA Loan terms at the time of the calculation) had occurred prior to such period.

Default IM Loans means IM Loans (or portions thereof) made pursuant to Section 4.12 that arise from a default by the Managing Member in its obligations to the Company under this Agreement. For example, an IM Loan made to fund Operating Deficits that the Managing Member failed to fund in breach of the Operating Deficit Guaranty shall constitute a Default IM Loan.

Deferred Development Fee means the deferred portion, if any, of the Development Fee payable by the Company to the Developer pursuant to the Development Agreement and Article 14. The amount of the Deferred Development Fee is expected to be $245,024.

Deficit Restoration Contribution has the meaning set forth in Section 4.2(c)(ii).

Deficit Restoration Obligation has the meaning set forth in Section 4.2(c)(ii).

Developer means, collectively, Saigebrook Development, LLC, a Florida limited liability company and O-SDA Industries, LLC, a Texas limited liability company.

Developer Pledge means the Pledge and Security Agreement dated as of the date hereof by the Developer for the benefit of the Investor Member in the form of Exhibit H.

Development Agreement means the Development Agreement dated as of February 1, 2019 between the Developer and the Company, in the form set forth in Exhibit E.

Development Budget means the construction, development and financing budget for the Apartment Complex, including, without limitation, the construction of the Apartment Complex, the furnishing of all personalty in connection therewith, and the operation of the Apartment Complex prior to Rental Achievement, which is attached hereto as Exhibit B, and any amendments thereto made with the Consent of the Investor Member.

Development Costs means all direct or indirect costs paid or accrued by the Company related to the acquisition of the Land and the development and Completion of the Apartment
Complex through and including Rental Achievement, including, without limitation, all amounts due under and pursuant to the Construction Contract, all costs of completing punchlist items regardless of when incurred and all direct or indirect costs paid or accrued by the Company related to the operation of the Apartment Complex prior to and including Rental Achievement, including, without limitation, the following: (i) costs of acquiring, financing, developing and constructing the Apartment Complex, as described in and as contemplated by the Plans and Specifications and the Project Documents, including, without limitation, any construction cost overruns, the cost of any change orders and all costs necessary to achieve Completion and Rental Achievement; (ii) all Debt Service Expense which is due and payable or accrues at any time prior to Rental Achievement; (iii) all costs, payments and deposits needed to avoid a default under the BBVA Loan, including, without limitation, all required deposits to satisfy any requirements of the BBVA Lender and the Investor Member to keep the BBVA Loan “in balance” prior to Rental Achievement; (iv) all monthly payments required to be made to the Replacement Reserve upon and prior to Rental Achievement; (v) all costs and expenses relating to remedying any environmental problem or condition of Hazardous Materials that existed on or prior to Rental Achievement; (vi) all costs, expenses and other charges incurred in connection with the operation of the Apartment Complex on or prior to Rental Achievement, including, without limitation, local taxes, utilities, mortgage insurance premiums and casualty and liability insurance premiums and other amounts which are required pursuant to the BBVA Loan; (vii) all other costs and expenses of the Company accrued on or prior to Rental Achievement, including, without limitation, legal fees, and fees of other professionals; (viii) any fees paid or due to the Managing Member and its Affiliates, including the Development Fee; (ix) all costs to achieve Construction Loan Closing, Conversion and Rental Achievement, including costs to date down Owner’s Title Policy; and (x) funding of the Operating Reserve, Rental Achievement Reserve (if applicable) and any other reserve in accordance with Section 5.10 hereof.

**Development Deficit** means, as of any date, the amount, if any, by which the Development Costs which the Company has an obligation to pay as of such date exceed the sum of Permitted Sources as of such date.

**Development Fee** means the fee payable by the Company to the Developer pursuant to the Development Agreement and as set forth in Section 5.9(a).

**Due Diligence Documents** means the documents requested and provided to the Investor Member in connection with its review of the transaction reflected herein.

**Economic Risk of Loss** has the meaning set forth in Regulation Section 1.752-2.

**Eligible Basis** has the meaning set forth in Code Section 42(d) and the Regulations and rulings thereunder.

**Entity** means any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, cooperative, association, the State or any agency or political subdivision thereof.
**Environmental Documents** means that certain Phase I Environmental Site Assessment prepared by Terracon Consultants, Inc., of Dallas, Texas, [dated January 12, 2018 and updated on February 1, 2019.]

**Environmental Laws** means any law, regulation, code, license, permit, order, judgment, decree or injunction from any governmental authority relating to the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substance Control Act, the Safe Drinking Water Control Act, CERCLA, the Occupational Safety and Health Act and any other federal, state or local laws, regulations, ordinances or decrees governing Hazardous Material or hazardous substances or the protection or preservation of public and/or human health or the environment (including air, water, soil and natural resources) or the presence, transportation, recycling, storage, treatment, use, handling, disposal, release or threat of release, or exposure to Hazardous Material, in each such case which has the force of law and is in force at the date of this Agreement.

**Equity Lender** means the financial institution which advances funds to the Investor Member to pay its Capital Contribution obligations under this Agreement.

**Event of Bankruptcy** means, with respect to the Company, a Managing Member, the Management Agent, a Guarantor or a Person with a Controlling Interest in any of them (i) the voluntary or involuntary filing of a petition in bankruptcy by or against such person under the federal Bankruptcy Code (11 U.S.C. §§1101 et seq.), as amended, or any successor statute thereto, or the commission of an act of bankruptcy (except if the filing of the petition in bankruptcy or act of bankruptcy is susceptible to cure or dismissal and is so cured or dismissed within ninety (90) days), (ii) the voluntary or involuntary commencement of an assignment for the benefit of creditors, a receivership or other insolvency proceeding pursuant to state law or as determined by court proceedings; or (iii) with respect to a Managing Member, any of the following:

(a) The making of an assignment for the benefit of creditors or the filing of a voluntary petition in bankruptcy by the Managing Member;

(b) The filing of an involuntary petition in bankruptcy against the Managing Member which is not dismissed within ninety (90) days after filing or the adjudication of the Managing Member as a bankrupt or insolvent;

(c) The filing by the Managing Member of a petition or answer seeking for the Managing Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule;

(d) The filing by the Managing Member of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Managing Member in any proceeding of a nature described under sub-paragraph (c) above;

(e) The seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator by any Person with a Controlling Interest in the Managing Member or of all or a substantial part of the Managing Member’s properties;
(f) The commencement of a proceeding against the Managing Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule not dismissed within ninety (90) days after commencement of the proceeding;

(g) The appointment, without the Managing Member’s Consent, of a trustee, receiver or liquidator, either of the Managing Member or of all or a substantial part of the Managing Member’s properties, which is not vacated or stayed on or before the ninetieth (90th) day after such appointment and, if stayed, is not vacated on or before the ninetieth (90th) day after expiration of the stay;

(h) The inability of the Managing Member to pay its debts as they become due;

(i) The Managing Member becoming “insolvent” by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to the Federal Bankruptcy Code, the Uniform Fraudulent Transfers Act, any similar state or federal act or law, or the ruling of any court, or

(j) If either (I) any one or more judgments or orders against the Managing Member with respect to a claim or claims involving in the aggregate liabilities exceeding $50,000.00, which judgment or order is not covered in full by insurance or is not stayed, bonded, paid or discharged within thirty (30) days after such judgment or order, or (II) any writ of attachment or execution or any similar process is (A) issued or levied against such Person’s property and (B) is not discharged or stayed within thirty (30) days thereof.

**Event of Default** means an event of default listed in Section 7.1.

**Excess IM Loan Amount** means the amount, if any, by which the outstanding balance of all IM Loans, including principal and accrued interest, exceeds the outstanding balance of all MM Loans, including principal and accrued interest.

**Excess MM Loan Amount** means the amount, if any, by which the outstanding balance of all MM Loans, including principal and accrued interest, exceeds the outstanding balance of all IM Loans, including principal and accrued interest.

**Extended Use Agreement** means the extended low-income housing commitment executed by the Company and the Agency related to the Apartment Complex, which commitment satisfies the requirements of Code Section 42(h)(6)(B) which is required to be recorded prior to the end of the first year in which Housing Tax Credits are claimed.

**Facility** has the meaning given to it in CERCLA, and shall also include any meaning given to it in any similar state or local statutes, ordinances or regulations.

**Fifth Installment** has the meaning set forth in Section 4.2(b)(v).

**Filing Office** has the meaning set forth in the Preliminary Statement.
FinCen has the meaning set forth in Section 6.1(ggg).

First Installment has the meaning set forth in Section 4.2(b)(i).

Forms 8609 means the IRS Forms 8609 issued by the Agency for each residential building of the Apartment Complex which allocates Housing Tax Credits to such residential building.

Fourth Installment has the meaning set forth in Section 4.2(b)(iv).

Funding Conditions means the conditions to funding of the Investor Member’s Capital Contributions as set forth on Exhibit C hereto.

General Contractor means Maker Bros., LLC of [Addison, Texas], pursuant to the General Contractor’s Construction Contract.

General Contractor’s Construction Contract means the AIA Standard Form of Agreement Between Owner and Contractor dated [______________], by and between the Company and the General Contractor relating to the construction of the Apartment Complex, and subject to the Consent of the Investor Member.

Government Official means an officer, employee or official of a government, government owned or controlled entity, political party or public international organization, or a candidate for political office.

Gross Operating Revenues means, with respect to any given period of time, actual monthly collections from the customary operations of the Apartment Complex, including, without limitation, any and all of the following: (i) rent paid by tenants; (ii) rental assistance subsidy payments that are actually paid during such period or up to 90 days accrual; (iii) late charges and interest paid by tenants; (iv) rents, receipts and fees from cellular towers, laundry facilities and similar items; (v) fees from Apartment Complex amenities, including parking, cable television and telephone revenues; and (vi) earnings on the Replacement Reserve, Operating Reserve, Rental Achievement Reserve (if applicable) or other reserves, accounts and investments of the Company; (vii) tenant security deposits forfeited by tenants or applied against amounts due from tenants; and (viii) any rental assistance subsidy payments received by the Company in excess of maximum rents allowed under Section 42 of the Code. Gross Operating Revenues shall not include any revenues from condemnation or casualty proceeds (other than rental interruption insurance), any cash advances from the Company, refunds or rebates from suppliers or vendors, revenue from the sale of any personal or real property of the Company. Gross Operating Revenues shall not include prepaid rent until such time the rent is due. For purposes of determining whether Rental Achievement has occurred, and the applicable Debt Service Coverage Ratio at any time, Gross Operating Revenues shall not exceed the amount of Gross Operating Revenues that could have been achieved by applying a 7% vacancy rate to potential gross income and shall specifically exclude (1) any non-project based rental assistance subsidy payments received by the Company in excess of maximum rents allowed under Section 42 of the Code, (2) fees from parking in excess of the amount underwritten by the Investor Member to be included in Gross Operating Revenues, (3) non-recurring or unpredictable sources of income such as late fees, penalties, security deposits, interest income on security deposits,
prepaid rent and rental receipts prior to the month to which they relate, tenant application fees, interest or other income earned on investment of Company funds, and (4) rents paid by (a) any commercial space tenant, and (b) any tenant in a Housing Tax Credit Unit who does not qualify as low income under the requirements of Section 42 of the Code and the Project Documents.

**Groundbreaking Activities** has the meaning set forth in Section 6.1(eee).

**Guarantors** means, jointly and severally, the Co-Managing Member, the Administrative Member, the Developer, Lisa M. Stephens, individually and Megan D. Lasch, individually.

**Guaranty** means the guaranty of the performance of certain of the obligations of the Managing Member under this Agreement and the Developer under the Development Agreement for the benefit of the Investor Member given by the Guarantors, which Guaranty is in the form of Exhibit F.

**Hazardous Material** has the collective meanings given to the terms “hazardous material”, “hazardous substances” and “hazardous wastes” in CERCLA, and to the term “radioactive materials” (including, without limitation, any source and special nuclear by-product material) as defined by or in the context of the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., as amended or hereafter amended, and also includes any hazardous, toxic or polluting contaminant, substance or waste, including without limitation any solid waste, toxic substance, hazardous substance, hazardous material, hazardous chemical, pollutant or hazardous or acutely hazardous waste defined or qualifying as such in (or for purposes of) any Environmental Law. In addition, the term “Hazardous Material” also includes, but is not limited to, petroleum (including, without limitation, crude oil and any fraction thereof), petroleum products, asbestos containing materials, microbial contaminants, polychlorinated biphenyls or lead-based paint, radon and any other substance known to be hazardous.

**HOME Act** has the meaning set forth in Section 6.1(q).

**HOME Lender** means the City of Irving, Texas, in its capacity as holder of the HOME Loan, or its successors or assigns in such capacity, or such other HOME Lender subject to the Consent of the Investor Member.

**HOME Loan** means the construction and permanent loan in the anticipated principal amount of $1,000,000 to be made to the Company by the HOME Lender in part at the Construction Loan Closing, which is to be evidenced by the promissory note given by the Company to the HOME Lender at the Construction Loan Closing, and which is to be secured by the HOME Mortgage and other related security documents and financing statements, the terms of which are subject to the Consent of the Investor Member.

**HOME Minimum Set-Aside Test** means the HOME Program set aside test required to be met by the Apartment Complex as set forth in the [HOME Regulatory Agreement] entered or to be entered into between the Company and the HOME Lender in connection with the HOME Loan.
**HOME Mortgage** means the mortgage or deed of trust to be given by the Company at the Construction Loan Closing in favor of the HOME Lender, as holder of the HOME Loan, securing the HOME Loan.

**HOME Program** means the HOME Investment Partnerships Program established under the Cranston Gonzalez National Affordable Housing Act of 1990.

**Housing Tax Credit Compliance Guaranty** means the guaranty of the Managing Member to make payments described in Section 8.3.

**Housing Tax Credit Disallowance Event** means (a) the filing of a tax return by the Company or an amendment by the Company to a tax return evidencing a reduction in the Qualified Basis of the Apartment Complex causing a recapture or disallowance of Housing Tax Credits previously allocated to the Investor Member, (b) a reduction in the Qualified Basis or a change in the Applicable Percentage of the Apartment Complex following an assessment or audit by the Service which results in the assessment of a deficiency by the Service against the Company with respect to any Housing Tax Credits previously claimed in connection with the Apartment Complex, unless the Company shall timely file a petition with respect to such deficiency with the United States Tax Court or any other federal court of competent jurisdiction and the collection of such assessment shall be stayed pending the disposition of such petition, (c) a decision by the United States Tax Court or any other federal court of competent jurisdiction upholding the assessment of a deficiency against the Company associated with a reduction in Qualified Basis of the Apartment Complex or change in the Applicable Percentage with respect to any Housing Tax Credits previously claimed in connection with the Apartment Complex, unless the Company shall timely appeal such decision and the collection of such assessment shall be stayed pending the disposition of such appeal, or (d) the decision of a federal court of competent jurisdiction affirming such decision.

**Housing Tax Credit Excess** has the meaning set forth in Section 4.2(d).

**Housing Tax Credit Price** means $0.94.

**Housing Tax Credit Shortfall** means any reduction in Housing Tax Credits of which 99.99% are allocable to the Investor Member as a result of (a) Actual Housing Tax Credits being less than the Projected Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits), or (b) as a result of a Housing Tax Credit Disallowance Event.

**Housing Tax Credit Shortfall Payment** means any amounts payable by reason of the provisions of Section 4.2(d) or Section 8.3 as a result of a Housing Tax Credit Shortfall.

**Housing Tax Credit Units** has the meaning set forth in Section 6.1(p).

**Housing Tax Credits** means the low-income housing tax credits allowable to the Company pursuant to Code Section 42.

**Hunt** means Hunt Capital Partners, LLC, a Delaware limited liability company, or its successor in interest.
**Hunt Entity** means an Affiliate of Hunt or the Investor Member.

**Hunt Indemnified Parties** means the Investor Member, and its Affiliates, and all past and present officers, directors, managers, employees, partners, agents, shareholders, members, trustees, predecessors, successors, subrogees, attorneys, insurance carriers and assigns of the Investor Member and its Affiliates. For the avoidance of doubt, any Person holding more than 10% of the investor member interests in the Investor Member is an Affiliate of the Investor Member and shall constitute one of the Hunt Indemnified Parties.

**IM Loans** has the meaning set forth in Section 4.12.

**Immediate Family** means with respect to any Person, such Person’s spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law.

**Imputed Underpayment** means that amount of tax finally determined to be due under Section 6225 of the Code with respect to adjustments to the Company’s items of income, gain, loss, deduction, or credit for any Company taxable year.

**Initial 100% Occupancy** means that Construction has been completed and one hundred percent (100%) of all units (excluding the Market Rate Units) in the Apartment Complex including the Housing Tax Credit Units shall have been leased to and shall have been physically occupied by Qualified Tenants.

**Initial Operating Reserve Amount** has the meaning set forth in Section 5.10(b).

**Initiating Member** has the meaning set forth in Section 4.13.

**Installment or Installments** has the meaning set forth in Section 4.2(b).

**Interest** means the entire interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled hereunder and the obligation of such Member to comply with the terms of this Agreement.

**Investor Member** means HCP-ILP, LLC, a Nevada limited liability company, its successors and/or assigns and any Person or Persons who replaces it as a Substitute Investor Member.

**Involuntary Withdrawal** has the meaning set forth in Section 7.2(b)(i).

**Land** means the tract of land currently owned or leased or to be purchased or leased by the Company upon which the Apartment Complex will be located, as more particularly described in Exhibit A hereto.

**Lender** means any Person who makes a loan to the Company for so long as such loan remains outstanding, or its successors and assigns in such capacity.

**Lending Member** has the meaning set forth in Section 4.16.
**Limited Recourse Liability** has the meaning set forth in Section 8.3(d).

**Liquid Assets** means cash or cash equivalents that can be converted to cash within forty-eight (48) hours.

**Liquidator** means the Managing Member or, if there is none at the time in question, such other Person who may be appointed in accordance with applicable law and who shall be responsible for taking all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company upon its dissolution.

**Loans** means, collectively, the BBVA Loan and the HOME Loan.

**Management Agent** means Accolade Property Management, Inc., a Texas corporation, and/or any successor or assign who is selected by the Managing Member with the Consent of the Investor Member to provide management services with respect to the Apartment Complex in accordance with Article 16.

**Management Agreement** means the agreement between the Company and the Management Agent substantially in the form attached hereto as Exhibit I, providing for the marketing and property management of the Apartment Complex by the Management Agent.

**Management Fee** means the fee payable by the Company to the Management Agent pursuant to the Management Agreement.

**Managing Member** means the Co-Managing Member and the Administrative Member and any other Person admitted as a managing member pursuant to this Agreement, and their respective successors pursuant to this Agreement, including the Replacement Managing Member.

**Managing Member Pledge** means the Co-Managing Member Pledge and the Administrative Member Pledge.

**Managing Member’s Special Capital Contribution** has the meaning set forth in Section 4.1(c).

**Market Rate Units** has the meaning set forth in Section 6.1(p)(ii).

**Member** means the Co-Managing Member, the Administrative Member, and the Investor Member.

**Member Loans** means collectively the IM Loans and the MM Loans.

**Minimum Set-Aside Test** means the set aside test selected by the Company pursuant to Code Section 42(g) whereby at least forty percent (40%) of the Housing Tax Credit Units in the Apartment Complex must be occupied by individuals with incomes equal to sixty percent (60%) or less of area median income; provided, that five (5) of the Housing Tax Credit Units must be occupied by persons whose incomes are at or below 30% of the established median gross income, twenty (20) of the Housing Tax Credit Units must be occupied by persons whose
incomes are at or below 50% of the established median gross income and twenty-five (25) of the Housing Tax Credit Units must be occupied by persons whose incomes are at or below 60% of the established median gross income, as set forth in the Application and in all cases as adjusted for family size. There will be eight (8) Market Rate Units.

**MM Incentive Management Fee** means the fee payable by the Company to the Managing Member pursuant to the provisions of Sections 5.9(b) and 14.1(a).

**MM Loans** have the meaning set forth in Section 4.11.

**Net Operating Income** means, with respect to any given period of time, the aggregate Gross Operating Revenues for such period of time minus the aggregate Operating Expenses for such period of time.

**New Allocation** has the meaning set forth in Section 13.5(b).

**No Cure Sections** has the meaning set forth in Section 7.2(c)(i).

**Non-Initiating Members** has the meaning set forth in Section 4.13.

**Notice, Notification and Notify** each have the meaning set forth in Section 19.1.

**Notice of Default** has the meaning set forth in Section 7.2(a).

**O&M** has the meaning set forth in Section 6.2.

**Occupancy Commencement Date** means the first date a Unit is leased and occupied.

**Operating Deficit** means, for any specified period of time, the amount by which Cash Expenditures for such period exceeds Cash Receipts for such period.

**Operating Deficit Guaranty** means the guaranty of the Managing Member to fund Operating Deficits during the Operating Deficit Guaranty Period.

**Operating Deficit Loan** means a loan from a Managing Member to the Company to fund Operating Deficits pursuant to Section 8.2.

**Operating Deficit Loan Cap** has the meaning set forth in Section 8.2.

**Operating Deficit Guaranty Period** means the period commencing on Rental Achievement and terminating sixty (60) months after Rental Achievement, provided that such sixty (60) month period shall be extended for additional periods of twelve (12) consecutive months unless and until (i) the Company achieves an average Debt Service Coverage Ratio of at least 1.15 to 1.0 during the last twelve (12) calendar months of the Operating Deficit Guaranty Period and (ii) the balance of the Operating Reserve is at least the $236,000.

**Operating Expenses** means, with respect to any given period of time, all expenses of the Company in connection with the ownership, operation, leasing and occupancy of buildings in the Apartment Complex attributable to such period as determined on an accrual basis, (except that
seasonal expenses shall be averaged over the entire year), excluding Debt Service Expense and all expenses and payments set forth in Section 14.1(a), but including, without limitation, any and all of the following: (i) general real estate taxes; (ii) special assessments or similar charges; (iii) personal property taxes, if any; (iv) sales and use taxes applicable to such operating expenses; (v) cost of utilities for the Apartment Complex; (vi) maintenance and repair costs of the Apartment Complex (to the extent not funded from the Replacement Reserve); (vii) operating and management expenses and fees; (viii) premiums of insurance carried on or with respect to the Apartment Complex; (ix) marketing costs, leasing commissions and advertisement and promotional costs, to obtain leases and the cost of work performed to ready space in the Apartment Complex for occupancy under leases; (x) accounting and auditing fees and costs, attorneys’ fees and other administrative and general expenses and disbursements of the Company (excluding the Asset Management Fee and the MM Incentive Management Fee) in connection with the ownership, operation, leasing and management of the Apartment Complex and the Company; (xi) amounts required to fund the Replacement Reserve and any other reserve required pursuant hereto or under the Project Documents; and (xii) any capital expenditures not funded from reserves. For purposes of calculating the Debt Service Coverage Ratio at any time, Operating Expenses (excluding annual deposits for Replacement Reserves) means the greater of (1) actual Operating Expenses, as calculated in the preceding sentence, inclusive of fully assessed real estate taxes, or (2) $[4,276] [Drafters Note: Subject to final underwriting] per unit times 58 per year plus actual real estate taxes if available, otherwise $[5,345] [Drafters Note: Subject to final underwriting] per unit per year.

**Operating Reserve** has the meaning set forth in Section 5.10(b).

**Opinion of Counsel** means the opinion(s) of counsel to be rendered by Counsel for the Company and the Managing Member to the Investor Member and its counsel, as required herein, in form and substance satisfactory to the Investor Member.

**Original Agreement** has the meaning set forth in the Preliminary Statement.

**Partnership Minimum Gain** means the amount determined by computing, with respect to each Partnership Nonrecourse Liability, the amount of gain, if any, that would be realized by the Company if it disposed of (in a taxable transaction) the property subject to such liability in full satisfaction of such liability, and by then aggregating the amounts so computed. Such computations shall be made in a manner consistent with Regulation Sections 1.704-2(d) and (k).

**Partnership Nonrecourse Debt** means any Company liability (a) that is considered nonrecourse under Regulation Section 1.1001-2 or for which the creditor’s right to repayment is limited to one or more assets of the Company and (b) for which any Member or Related Person bears the Economic Risk of Loss.

**Partnership Nonrecourse Debt Minimum Gain** means the amount of partner nonrecourse debt minimum gain and the net increase or decrease, as the case may be, in partner nonrecourse debt minimum gain determined in a manner consistent with Regulation Sections 1.704-2(d), 1.704-2(g)(3), 1.704-2(i)(3) and 1.704-2(k).
**Partnership Nonrecourse Liability** means any Company liability (or portion thereof) for which no Member or Related Person bears the Economic Risk of Loss.

**Partnership Representative** has the meaning set forth in Section 15.2(a).

**Payment Date** means the date which is seventy-five (75) days after the end of the Company’s fiscal year with respect to the preceding fiscal year.

**Percentage Interest** means ninety-nine and ninety-nine hundredths percent (99.99%) as to the Investor Member, sixty one-thousandth percent (0.0060%) as to the Co-Managing Member and forty one-thousandth percent (0.0040%) as to the Administrative Member; *provided, however*, if a Replacement Managing Member replaces the Managing Member pursuant to Section 7.2(b)(i) and (ii), then the Replacement Managing Member shall have a Percentage Interest of eight one-thousandth percent (0.01%).

**Permanent Loan Shortfall** has the meaning set forth in Section 8.4(b).

**Permitted Sources** means (i) proceeds of the Loans; (ii) the right to defer the Development Fee pursuant to this Agreement and the Development Agreement; (iii) the Capital Contributions required by the Members under this Agreement (other than the Special Additional Capital Contribution, the Managing Member’s Special Capital Contribution); and (iv) Cash Receipts prior to Rental Achievement.

**Person** means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such individual or Entity as the context may require.

**Placed in Service** or **Placement in Service** means the placement in service of all dwelling units in the Apartment Complex for purposes of Section 42 of the Code.

**Placed in Service Date** means the date by which all dwelling units in the Apartment Complex have been Placed in Service.

**Plans and Specifications** means the plans and specifications for the Apartment Complex stamped with the seal of an architect and/or engineer, which have been approved in writing by the Investor Member, and any changes thereto made in accordance with the terms of this Agreement. The Plans and Specifications approved by the Investor Member, and the date thereof, are listed on Exhibit P.

**Pledged Payments** has the meaning set forth in Section 5.11.

**Predevelopment Loan** means the pre-development loan made to the Company by HCP-ILP, LLC, a Nevada limited liability company on January 30, 2019 in the principal amount of $400,000, evidenced by the promissory note given by the Company to the HCP-ILP, LLC, a Nevada limited liability company, and to be paid off with proceeds of the First Installment.

**Prime Rate** means the “prime rate” of interest as published in *The Wall Street Journal* from time to time.
Project Documents means and includes (i) all documentation related to the Loans; (ii) the Construction Contract, the Architect’s Agreement, the Development Agreement, the Guaranty, the Management Agreement and documentation relating thereto, (iii) the Plans and Specifications, (iv) the Application, (v) the reservation, Carryover Allocation, Carryover Certification and related documents pertaining to the Housing Tax Credits, (vi) the Extended Use Agreement, (vii) the Section 811 Subsidy Contract, (viii) [Reserved], (ix) all other instruments delivered to (or required by) any Lender and/or any Agency, (x) the Managing Member Pledge and the Developer Pledge, (xi) the Purchase Option Agreement, and (xii) all other documents relating to the Apartment Complex and by which the Company is bound, in each case as amended or supplemented from time to time.

Projected Housing Tax Credits means Housing Tax Credits that the Managing Member has projected to be the total amount of the Housing Tax Credits which will be allocated to the Investor Member by the Company, constituting 99.99% of the Housing Tax Credits which are projected to be available to the Company. The Projected Housing Tax Credits as of the date hereof are allocated to the following Fiscal Years in the following respective amounts (subject to adjustment if the Projected Housing Tax Credits are revised pursuant to Section 4.2(d)):

- 2020: $578,995
- 2021-2029: $890,761
- 2030: $311,766

Purchase Option Agreement means the Purchase Option Agreement attached hereto as Exhibit O.

Purposes means the various reasons and purposes for which the Company has been formed as recited in Section 3.1.

Qualified Basis means that portion of the Eligible Basis of the Apartment Complex upon which the Company is able to receive Housing Tax Credits, as more particularly defined in Code Section 42(c).

Qualified Income Offset Item means (1) an allocation of loss or deduction that, as of the end of each year, reasonably is expected to be made (a) pursuant to Section 704(e)(2) of the Code to a donee of an interest in the Company, (b) pursuant to Section 706(d) of the Code as the result of a change in any Member’s Interest, or (c) pursuant to Regulation Section 1.751-1(b)(2)(ii) as the result of a distribution by the Company of unrealized receivables or inventory items and (2) a distribution that, as of the end of such year, reasonably is expected to be made to a Member to the extent it exceeds offsetting increases to such Member’s Capital Account which reasonably are expected to occur during or prior to the Company taxable year in which such distribution reasonably is expected to occur.

Qualified Tenant means a tenant (i) with income on the date of the initial occupancy of the tenant’s unit not exceeding that permitted by the Minimum Set-Aside Test or the HOME Minimum Set-Aside Test, as applicable, and any other additional set-asides applicable to the Apartment Complex, who leases a Unit in the Apartment Complex under a lease having an
original term of not less than twelve (12) months and at a rent which satisfies the Rent Restriction Test and (ii) complying with any other requirements imposed by the Project Documents.

**Recourse Obligations** has the meaning set forth in Section 13.4(a).

**Regulations** means the regulations promulgated under the Code.

**Related Person** means a Person related to a Member within the meaning of Regulation Section 1.752-4(b).

**Rent Restriction Test** means the test pursuant to Code Section 42(g) whereby the gross rent, including utility allowances, charged to tenants of Housing Tax Credit Units in the Apartment Complex is not allowed to exceed thirty percent (30%) of the imputed income limitation levels applicable to such Housing Tax Credit Units based on the applicable area median income levels under the Minimum Set-Aside Test or the HOME Minimum Set-Aside Test, as applicable.

**Rental Achievement** means the first date on which the Apartment Complex has attained, as reasonably determined and approved by the Investor Member in writing, all of the following: (a) either (i) a 1.15 to 1.00 Debt Service Coverage Ratio with respect to the BBVA Loan, each month for a period of three (3) consecutive calendar months of operations ending within 60 days immediately preceding the anticipated date of Rental Achievement, or (ii) full funding of the Rental Achievement Reserve, (b) physical occupancy of at least ninety percent (90%) of the units in the Apartment Complex each month over the same three (3) month period, including at least ninety percent (90%) physical occupancy of the Housing Tax Credit Units each month over the same three (3) month period by Qualified Tenants, (c) Conversion, (d) Initial 100% Occupancy, (e) no continuing Event of Default hereunder, and (f) continuing compliance with the Minimum Set Aside Test.

**Rental Achievement Reserve** has the means set forth in Section 5.10(d).

**Replacement Managing Member** has the meaning set forth in Section 7.2(b)(ii).

**Replacement Reserve** means (a) the Replacement Reserve to be established by the Company and administered in accordance with Section 5.10(a), and (b) any funds of the Company held by any Lender as a reserve for repairs and replacements.

**Revised Projected Housing Tax Credits** has the meaning set forth in Section 4.2(d)(vii).

**Second Installment** has the meaning set forth in Section 4.2(b)(ii).

**Section 4.16 Capital Contributions** has the meaning set forth in Section 4.16.

**Section 811 Subsidy Contract** means a Section 811 Project Rental Assistance Program Owner Participation Agreement entered to by the Managing Member, with the Consent of the Investor Member, to provide rental subsidy for 10 units restricted at 50% or 60% of the
established median gross income and occupied by Eligible Tenants (as defined in the Section 811 Subsidy Contract) for a term of 30 years.

**Service** means the Internal Revenue Service.

**Shortfall Year** has the meaning set forth in Section 4.2(d)(ii).

**Special Additional Capital Contribution** has the meaning set forth in Section 4.2(c).

**State** means the State of Texas.

**Substantial Completion** means the date on which all of the following have occurred to the reasonable satisfaction of the Investor Member: (i) the issuance of all necessary certificates of occupancy (which may be temporary or conditional) from the applicable governmental jurisdictions and authorities for the Apartment Complex, allowing for immediate occupancy of one hundred percent (100%) of the Units; (ii) completion of all “work” described in the Construction Contract, with the exception of “punch work” items; (iii) AIA document G704 containing a list of all “punch work” items and cost estimates provided by the Architect to the Company, with a copy to the Investor Member; and (iv) any necessary radon mitigation has occurred and all planned and required actions pertaining to Hazardous Materials have been properly completed.

**Substantial Completion Date** means the date on which Substantial Completion was achieved.

**Substitute Investor Member** means any Person admitted to the Company as an Investor Member pursuant to Section 11.2.

**Tax Law Change** means any change in the Code which occurs after the date of this Agreement. A Tax Law Change includes any changes in the Regulations.

**Ten Percent Test** means, with respect to the Carryover Allocation of Housing Tax Credits, that the Company’s basis in the Apartment Complex, which shall be determined by the Accountants, as of the date which is one year from the issuance date of the Carryover Allocation or such earlier date required by the Credit Agency, is greater than ten percent (10%) of the reasonably expected basis of the Apartment Complex as provided in Section 42(h)(1)(E) of the Code.

**Third Installment** has the meaning set forth in Section 4.2(b)(iii).

**Title Commitment** means the commitment for title insurance issued by the Title Company evidencing ownership of the Apartment Complex in a form and substance acceptable to the Investor Member.

**Title Company** means First American Title Insurance Company.

**Title Policy** means the owner’s title insurance policy conforming to the requirements set forth in Exhibit Q to be issued to the Company by the Title Company pursuant to the Title
Commitment, which policy will, among other things, update the title of the Apartment Complex through a date not earlier than the Construction Loan Closing, provide for insurance in an amount equal to not less than $[11,588,838] and evidence the Company’s ownership of the Apartment Complex. The Title Policy shall be amended and, if available, its effective date brought forward in the manner set forth in this Agreement.

**Uniform Act** means the Texas Business Organizations Code, Title 3, Chapter 101, as may be amended from time to time during the term of the Company.

**Units** has the meaning set forth in Section 5.2(b).

**USA Patriot Act** means Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 of the United States of America, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

**Vessel** has the meaning given to it in CERCLA, and shall also include any meaning given to it in any similar state or local statutes, ordinances or regulations.

**Voluntary Withdrawal** means, as to any Managing Member, a Withdrawal or the assignment, pledge or encumbrance of any part of its Interest in violation of Section 9.1.

**Withdrawal** (including the forms “Withdraw,” “Withdrawing” and “Withdrawn”) means, as to a Managing Member, dissolution, liquidation, voluntary withdrawal or removal of the Managing Member from the Company for any reason, including whenever a Managing Member may no longer continue as Managing Member by law or pursuant to any terms of this Agreement. “Withdrawal” shall also mean the sale, assignment or transfer by a Managing Member of its interest as Managing Member.

**Withdrawing Investor Member** means Lisa M. Stephens, who is hereby withdrawing as Investor Member from the Company simultaneously with the admission of the Investor Member.

**ARTICLE 2**  
**NAME AND BUSINESS**

2.1 **Name; Continuation.** The name of the Company is Canova Palms, LLC. The Members agree to continue the Company, which was formed pursuant to the provisions of the Uniform Act.

2.2 **Admission.** The Investor Member and Administrative Member are hereby admitted to the Company.

2.3 **Withdrawal.** The Withdrawing Investor Member hereby withdraws as a Member of the Company, and represents and warrants that she has no direct interest in the Company and is not directly entitled to any fees, distributions, compensation or payments from the Company and that she has no direct interest in any property or assets of the Company.
2.4 **Office and Resident Agent.** The principal office of the Company is 689 FM 3028, Millsap, Texas 76066 at which office there shall be maintained those records required by the Uniform Act to be kept by the Company. The Company may have such other or additional offices as The Managing Member shall deem desirable. The Managing Member may at any time change the location of the Company offices and shall give Notice thereof to the Investor Member. The Managing Member shall at all times maintain the principal office in the State.

(a) The name and address of the resident agent in the State for the Company for service of process is Antoinette M. Jackson, 811 Main Street, Suite 2900, Houston, Texas 77002.

2.5 **Term and Dissolution.** The term of the Company commenced August 8, 2018, the date of filing of the Certificate with the Secretary of State of the State, and shall continue in perpetuity, unless the Company is sooner dissolved in accordance with the provisions of this Agreement.

2.6 **Filing of Certificate.** Upon the execution of this Agreement by the parties hereto, the Managing Member shall take all actions necessary to assure the prompt filing of an amendment to the Certificate if and as required by the Uniform Act, including filing with the Secretary of the State of the State. All fees for filing shall be paid out of the Company’s assets. The Managing Member shall take all other necessary action required by law to perfect and maintain the Company as a limited liability company under the laws of the State, and shall register the Company under any assumed or fictitious name statute or similar law in force and effect in the State.

### ARTICLE 3
**PURPOSE OF THE COMPANY**

3.1 **Purpose of the Company.** The purposes for which the Company has been formed and which shall determine its activities shall be the following: (a) to acquire, hold, invest in, construct, develop, improve, maintain, operate, lease, sell, mortgage and otherwise deal with the Apartment Complex; (b) to operate the Apartment Complex in accordance with Code Section 42 and any applicable Lender and Agency regulations and requirements; (c) to secure for the Investor Member the economic and tax advantages afforded by Code Section 42 pertaining to low income housing tax credits, and any other Federal or state tax credit programs, as applicable, and allocated under this Agreement; and (d) to assure all Members the economic, tax, investment and operational advantages allocated to them under this Agreement. The Company shall not engage in any other business or activity.

### ARTICLE 4
**MEMBERS, PERCENTAGE INTERESTS, CAPITAL CONTRIBUTIONS, MEMBER LOANS**

4.1 **Managing Member.**

(a) **Name, Address and Percentage Interest.** The Co-Managing Member’s name and address is Saigebrook Canova, LLC, 220 Adams Drive Ste. 280 #138, Weatherford,
Texas 76086. The Co-Managing Member’s Percentage Interest is sixty-one-thousandth percent (0.0060%). The Administrative Member’s name and address is O-SDA Canova, LLC, 5714 Sam Houston Circle, Austin, Texas 78731. The Administrative Member’s Percentage Interest is forty-one-thousandth percent (0.0040%)

(b) Capital Contributions. Concurrently with the execution of this Agreement, each Managing Member shall make a Capital Contribution to the Company in an amount equal to $100.00. Each Managing Member represents and warrants that as of the date of this Agreement the balance of its Capital Account is $100.00.

(c) Managing Member’s Special Capital Contributions. If the Company has not paid all or part of the Deferred Development Fee when the final payment is due pursuant to the terms of the Development Agreement (i.e. by the earlier of thirteen (13) years following the Placed in Service Date or the date of liquidation of the Company) or, solely with respect to the Managing Member’s Special Capital Contribution, if the Managing Member withdraws pursuant to Article 9 (including Involuntary Withdrawal), the Managing Member shall contribute to the Company an amount equal to the remaining balance of the Deferred Development Fee (the “Managing Member’s Special Capital Contribution”) and the Company shall thereupon pay the Deferred Development Fee. If the Managing Member fails to make the Managing Member’s Special Capital Contribution, such payment shall be deemed to have been made as of the applicable date. Notwithstanding the foregoing, the amount of the Managing Member’s Special Capital Contribution shall be reduced to the extent the Investor Member reasonably determines on or before the end of the first year of the Credit Period that any portion of the remaining balance of the Deferred Development Fee is not necessary to be included in Eligible Basis in order to allocate Projected Housing Tax Credits to the Investor Member throughout the period of eleven (11) taxable years beginning with the first taxable year of the Credit Period. Payments of the Deferred Development Fee pursuant to Section 14.1(a) shall be deemed applied first to the portion of the Deferred Development Fee represented by the Managing Member’s Special Capital Contribution, as adjusted herein, and then to the remaining balance of the Deferred Development Fee, if any. Other than as set forth in this Section 4.1(c) or as may be required by this Agreement, in no event shall any Managing Member make any additional Capital Contributions to the Company without the Consent of the Investor Member.

4.2 Investor Member.

(a) Name, Address and Percentage Interest. The Investor Member’s name and address is HCP-ILP, LLC. The address of the Investor Member is 15910 Ventura Boulevard, Suite 1100, Encino, California 91436. The Investor Member’s Percentage Interest is ninety-nine and ninety-nine hundredths percent (99.99%).

(b) Capital Contributions. The Investor Member will make Capital Contributions to the Company, subject to adjustment as provided in Section 4.2(d), of $8,373,153 representing the product of the Projected Housing Tax Credits and the Housing Tax Credit Price which will be paid to the Company in five (5) installments (the “Installments”) as follows:
(i) **First Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $837,315 (the “First Installment”) upon the latest of (i) the Closing Date and (ii) satisfaction of the Funding Conditions relating to the First Installment, with such funds to be used solely for site acquisition, development and construction costs, including an expense reimbursement of $65,000 to the Investor Member or an Affiliate of the Investor Member for its review and approval costs in connection with the Closing, and to pay a portion of the Development Fee.

(ii) **Second Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $837,315 (the “Second Installment”), subject to reduction as provided in Section 4.2(d), after the Investor Member has reasonably determined in its good faith discretion that all of the Funding Conditions relating to the Second Installment have been fully satisfied, with such funds to be used to pay hard and soft costs of the Construction as reasonably acceptable to the Investor Member.

(iii) **Third Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $837,315 (the “Third Installment”), subject to reduction as provided in Section 4.2(d), after the Investor Member has reasonably determined in its good faith discretion that all of the Funding Conditions relating to the Third Installment have been fully satisfied, with such funds to be used first to pay hard and soft costs of the Construction as reasonably acceptable to the Investor Member, second to repay a portion of the BBVA Loan and to pay a portion of the Development Fee.

(iv) **Fourth Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $5,811,208 (the “Fourth Installment”), subject to adjustment as provided in Section 4.2(d) after the Investor Member has reasonably determined in its good faith discretion that all of the Funding Conditions relating to the Fourth Installment have been fully satisfied, with such funds to be used first to pay hard and soft costs of the Construction as reasonably acceptable to the Investor Member, second to pay-down the BBVA Loan to its permanent phase, third to fully fund the Operating Reserve and fourth to pay a portion of the Development Fee.

(v) **Fifth Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $50,000 (the “Fifth Installment”), subject to adjustment as provided in Section 4.2(d) after the Investor Member has reasonably determined in its good faith discretion that all of the Funding Conditions relating to the Fifth Installment have been fully satisfied, with such funds to be used to pay a portion of the Development Fee.

(vi) **Source of Funding of Installments.** The Investor Member, in its sole discretion, may fund any Installment on or prior to satisfaction of the Funding Conditions by providing funds from one or more of the following: (A) itself or (B) funds arranged by Hunt to be provided from any Entity as equity or debt but without any security interest in or lien on the Apartment Complex.

(vii) **Withholding of Capital Contributions.** The Investor Member may withhold any Installment if at any time it determines, in its sole discretion, that a Development Deficit exists or is projected to exist prior to such Installment, and shall not fund such
Installment until such Development Deficit or projected Development Deficit is cured by the Managing Member.

(c) **Special Additional Capital Contributions and Investor Member Deficit Restoration Obligation.**

(i) If, in any fiscal year of the Company, the Investor Member’s Capital Account balance may be reduced to or below zero, the Investor Member may, in its sole and absolute discretion, make a special additional Capital Contribution to the Company in an amount reasonably required to avoid the reduction of the Investor Member’s Account balance to or below zero (a “Special Additional Capital Contribution”).

(ii) Notwithstanding any other provision herein to the contrary, the Investor Member hereby agrees, pursuant to this Section 4.2(c), that if there is a deficit balance in its Capital Account as of the last day of 2019 and/or 2020, determined after taking into account all Capital Account adjustments for 2019 and/or 2020, the Investor Member shall be unconditionally obligated to restore the amount of such deficit by contributing to the Company the dollar amount of such deficit (a “Deficit Restoration Contribution”), as so determined, not later than the last day of the year in which the liquidation of the Company or the Investor Member’s Interest in the Company occurs (or, if later, within 90 days after the date of such liquidation) (the “Deficit Restoration Obligation”); provided, however, that in no event shall the Deficit Restoration Obligation exceed the unpaid Capital Contribution Obligations of the Investor Member, as adjusted pursuant to Section 4.2(d). Any subsequent Capital Contributions of the Investor Member made in 2019 and/or 2020 or thereafter shall reduce the Deficit Restoration Obligation on a dollar-for-dollar basis. If the dollar amount of such subsequent Capital Contributions equals or exceeds the Deficit Restoration Obligation, then the Deficit Restoration Obligation shall be deemed satisfied in full.

(iii) If the Investor Member makes a Special Additional Capital Contribution or a Deficit Restoration Contribution to the Company pursuant to this Section 4.2(c), the Investor Member shall receive a guaranteed payment pursuant to Section 4.9 for the use of its Special Additional Capital Contribution or Deficit Restoration Contribution, as applicable.

(d) **Adjustment to Capital Contributions of the Investor Member.**

(i) If upon the issuance of Forms 8609 by the Agency for any or all of the buildings comprising the Apartment Complex, or if upon delivery of the Cost Certification, the Investor Member (in its reasonable discretion) or the Accountants determine that there is a Housing Tax Credit Shortfall for the Credit Period because the Actual Housing Tax Credits available to the Investor Member pursuant to Section 42(a) of the Code are less than the Projected Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits for such year), the Investor Member’s Capital Contribution shall be reduced by a Housing Tax Credit Shortfall Payment equal to the Housing Tax Credit Shortfall multiplied by the Housing Tax Credit Price. If upon such issuance of Forms 8609 by the Agency, the Investor Member (in its reasonable discretion) or the Accountants determine that the Actual Housing Tax Credits available to the Investor Member pursuant to Section 42(a) of the Code are greater than the
Projected Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits for such year), giving rise to a “Housing Tax Credit Excess,” then the Investor Member’s Capital Contribution shall be increased by an amount equal to the Housing Tax Credit Price multiplied by the Housing Tax Credit Excess; provided, however, that any such increase shall be subject to the limitation set forth in Section 4.2(d)(vi) hereof.

(ii) In the event that there is a Housing Tax Credit Shortfall because the Actual Housing Tax Credits for any of 2020 or 2021 (determined separately for each year) are less than the Projected Housing Tax Credits for such year (or, if applicable, the Revised Projected Housing Tax Credits for such year) solely by reason that the Applicable Fraction for such year with respect to any buildings in the Apartment Complex was, by reason of the application of Section 42(f)(2) of the Code, lower than the Applicable Fraction projected in the Projected Housing Tax Credits (or Revised Projected Housing Tax Credits, if applicable) (each, a “Shortfall Year”), as determined by the Investor Member, upon receipt of final Company tax returns for the subject year or in advance of receipt of such final Company tax returns, estimated on a monthly basis by the Investor Member, the Service or the Accountants, the Investor Member’s Capital Contribution shall be reduced by a Housing Tax Credit Shortfall Payment in an aggregate amount equal to the product of (x) Projected Housing Tax Credits (or if applicable, Revised Projected Housing Tax Credits) less Actual Housing Tax Credits delivered to the Investor Member for such Shortfall Year (determined separately for each year) and (y) $0.60. Notwithstanding the foregoing, if any building in the Apartment Complex does not achieve Initial 100% Occupancy by the end of the first year of the Credit Period for such building and, as a result, any portion of the Housing Tax Credits with respect to such building will be available over 15 years, then the reduction to the Investor Member’s Capital Contribution shall be the sum of (1) the amount determined under the first sentence of this Section 4.2(d)(ii), plus (2) the amount, if any, that the Projected Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits) for years 2020 (year 1) through 2030 (year 11) exceed the Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits) projected to be available in years 2020 (year 1) through 2029 (year 10), as calculated by the Investor Member at the end of the first year of the Credit Period.

(iii) If at any time the Investor Member (in its reasonable discretion) or the Accountants determine that, for any Fiscal Year or portion thereof during the Company’s operation, by reason of any event other than an event described in Sections 4.2(d)(i) and/or 4.2(d)(ii) hereof (but not including a Tax Law Change or a transfer by the Investor Member of its Interests), there is (a) a Housing Tax Credit Shortfall because the Actual Housing Tax Credits for such Fiscal Year or portion thereof are less than the Projected Housing Tax Credits, or the Revised Projected Housing Tax Credits, if applicable, for such Fiscal Year or portion thereof, including, without limitation, the Apartment Complex not being Placed in Service by the end of the second calendar year after the year in which the Housing Tax Credits were allocated or the failure of the Company to operate the Apartment Complex so as to have 100% of the Housing Tax Credit Units therein eligible for the Housing Tax Credits, (b) a Housing Tax Credit Disallowance Event, or (c) a failure of the Company to allocate 99.99% of the Housing Tax Credits shown on the IRS Forms 8609 for each building comprising the Apartment Complex to the Investor Member over the Credit Period, the Investor Member’s Capital Contribution shall be reduced by a Housing Tax Credit Shortfall Payment equal to the Housing Tax Credit Shortfall and further reduced by all additions to the tax of the Investor Member, and all penalties and
interest assessed (including, without limitation, the “recapture amount” provided for in Section 42(j)(2) of the Code) against the Investor Member or any of its constituent partners as a result of the event giving rise to the Housing Tax Credit Shortfall.

(iv) Whenever in this Section 4.2(d) it is provided that the Investor Member’s Capital Contribution shall be reduced, each remaining installment of the Investor Member’s Capital Contribution then outstanding shall be reduced first, if such deferral is permitted pursuant to Section 8.1(b), for scheduled payments of Development Fees, which shall become Deferred Development Fees and second, pro rata so that the aggregate contributions, when made, will total the new reduced amount of the Investor Member’s Capital Contribution. If the outstanding balance of the Investor Member’s Capital Contribution has been reduced to zero by reason of the aforesaid adjustments to the Investor Member’s Capital Contribution and/or payments previously made thereon or offsets applied thereto, then either (1) the Managing Member shall within fifteen (15) days make a Capital Contribution to the Company in the amount owed to the Investor Member (including, without limitation, interest thereon at 12% per annum from the date that the Investor Member’s Capital Contribution(s) were made), from its own funds, and shall cause the Company immediately to distribute such amount to the Investor Member, or (2) if tax counsel to the Investor Member determines that such a Capital Contribution and distribution would cause Company profits, losses, and credits to be allocated other than in accordance with the Percentage Interests of the Members, the Managing Member shall pay the amount owed to the Investor Member (including, without limitation, any interest thereon at 12% per annum from the date that the Investor Member’s Capital Contribution(s) were made) plus any amount needed to cause the net amount of the payment received by the Investor Member to be the same, on an after-tax basis as the amount of payment that would have been received under clause (1) above), from their own funds, directly to the Investor Member; provided, however, to the extent that the Managing Member fails to pay any such amount owed to the Investor Member, such unpaid amounts shall be payable from Cash Flow and Sale or Refinancing Transaction Proceeds as provided in Sections 14.1(a) and 14.1(b), respectively, hereof, but the Managing Member shall remain in default hereunder.

(v) In the event that the Actual Housing Tax Credits 2020 exceeds the Projected Housing Tax Credits for such year (or, if applicable, the Revised Projected Housing Tax Credits for such year) (an “Excess Year”), as determined by the Investor Member, upon receipt of the Company’s final tax returns for the subject year, the Investor Member’s Fifth Installment with respect to 2020 shall be increased by the “Housing Tax Credit Surplus Payment”, which is an aggregate amount equal to the product of (x) Actual Housing Tax Credits delivered to the Investor Member, less the Projected Housing Tax Credits (or if applicable, Revised Projected Housing Tax Credits) for the Excess Year, and (y) $0.50. The Housing Tax Credit Surplus Payment shall be paid within 30 days of such determination or, if the Fifth Installment is not yet due, upon the payment of the Fifth Installment. In no event shall any Housing Tax Credit Surplus Payment exceed $90,000 and shall be subject to the limitations set forth in Section 4.2(d)(vi). The Company shall use the increase in the Fifth Installment to (i) pay any amounts then owed to the Investor Member and/or Hunt, (ii) then to pay any unpaid Development Fee or Deferred Development Fee, (iii) then to repay any Development Deficit Loans then outstanding, and (iv) then distributed in accordance with Section 14.1(a) of this Agreement.
(vi) With respect to any increase in the Investor Member’s Capital Contribution pursuant to this Section 4.2(d), in no event shall the amount of the Investor Member’s Capital Contribution increase exceed 10% of the Investor Member’s Capital Contribution as originally set forth herein. To the extent that an increase in the amount of Housing Tax Credits would have otherwise resulted in an increase in excess of 10% of the Investor Member’s Capital Contribution, the Investor Member shall have the option to either (1) increase the Investor Member’s Capital Contribution in excess of such 10%, provided that such additional increase over 10% shall be based on the lesser of the Housing Tax Credit Price or the Investor Member’s then-current pricing available generally for investments in Housing Tax Credits, or (2) reduce its Interest so that the Investor Member shall be in the same economic position (i.e., the allocations provided in this Agreement shall be adjusted accordingly by the Managing Member) as if the increase in Housing Tax Credits had not resulted in an increase in the Investor Member’s Capital Contribution in excess of 10% thereof. Any Investor Member’s Capital Contribution payable as a result of any such increase in the available Housing Tax Credits pursuant to Section 4.2(d)(i) shall be payable with the Fifth Installment of the Investor Member’s Capital Contribution set forth herein, provided that all IRS Forms 8609 have been received.

(vii) Whenever there is an adjustment pursuant to this Section 4.2(d) to the Investor Member’s Capital Contribution and/or the Interest of the Investor Member, then the amount of the Projected Housing Tax Credits shall be increased or reduced, as the case may be, and shall thereafter be referred to as the “Revised Projected Housing Tax Credits”.

4.3 Reserved.

4.4 Draws. Prior to Permanent Loan Closing, the Investor Member shall be entitled to conduct monthly inspections of the progress of construction of the Apartment Complex, and review and approve construction draw requests submitted to the BBVA Lender or HOME Lender (“Construction Loan Draw”). Each month prior to Permanent Loan Closing, the Managing Member shall provide proposed Construction Loan Draw requests to the Investor Member simultaneous with submission to the BBVA Lender and HOME Lender. The Investor Member shall Notify the Managing Member to the extent that it disapproves and requires changes in a Construction Loan Draw request within ten (10) Business Days after submission. The Managing Member will cause the BBVA Loan documents and HOME Loan documents to require that the Managing Member shall not accept and the BBVA Lender and HOME Lender, as applicable, shall not disburse on Construction Loan Draws until approved by the BBVA Lender or HOME Lender, as applicable, based on the finding of such Lender’s construction consultant, or the written approval of the Investor Member, the Managing Member shall not accept and the applicable lender shall not disburse on Construction Loan Draws until approved by the Investor Member.

4.5 Liability of the Investor Member. No Investor Member shall be liable for any debts, liabilities, contracts or obligations of the Company and each Investor Member shall only be liable to pay their respective Capital Contributions as and when the same are due hereunder and under the Uniform Act.
4.6 **Interest on Capital Contributions.** No interest shall be paid on any Capital Contribution. No Member shall have the right to withdraw its Capital Contribution or to demand and receive property of the Company in return for its Capital Contribution, except as may be specifically provided in this Agreement or required by law.

4.7 **Deposit of Capital Contributions.** The cash portion of the Capital Contributions of each Member shall be deposited at the Managing Member’s discretion in a checking, savings and/or money market or similar account to be established and maintained in the name of the Company or invested in government securities or certificates of deposit issued by any bank. Thereafter, such amounts shall be utilized for the conduct of the Company business pursuant to the terms of this Agreement and withdrawals can only be made upon the signatures as the Managing Member determines with the Consent of the Investor Member.

4.8 **Payment of Third Party Costs.** The Company shall pay the legal fees, costs and expenses incurred by the Investor Member in connection with this Agreement, the due diligence activities of the Investor Member, the Closing and costs incurred in making the Capital Contributions pursuant to Section 4.2(b) of this Agreement in an amount of $65,000. To the extent that third party costs exceed $65,000, the Investor Member’s Capital Contribution may be increased at the option of the Investor Member and used by the Company to pay such costs.

4.9 **Guaranteed Payment.** No later than ninety (90) days after the end of the Company’s fiscal year, if the Investor Member has made a Special Additional Capital Contribution pursuant to Section 4.2(c), it shall receive, as a guaranteed payment for the use of its capital, an amount equal to the annual interest earned by the Company, if any, on such Special Capital Contributions. The Company shall invest any amounts contributed pursuant to Section 4.2(c) in a federally insured interest-bearing account in such banking institutions as the Managing Member shall determine in accordance with Section 4.7. Any guaranteed payment due to a Member shall be deemed an expense of the Company for purposes of determining Cash Flow. Any guaranteed payment which is not paid when due shall remain a liability of the Company and shall bear interest at the rate of 15% per year.

4.10 **Return of Capital Contributions.** Except as provided in this Agreement, no Member shall be entitled to demand or receive the return of its Capital Contribution.

4.11 **MM Loans.** The Managing Member has the right, but not the obligation, after funding all other obligations under this Agreement, including, without limitation, its obligation to fund Development Deficits under its Construction Completion Guaranty in accordance with Section 8.1 hereof or to fund Operating Deficits under its Operating Deficit Guaranty in accordance with Section 8.2 hereof, to make loans pursuant to this Section 4.11 to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company (together with interest thereon, “MM Loans”); provided, however, that the Managing Member shall not have such right to make such MM Loans at any time when it has an unsatisfied obligation to pay Development Deficits and to make Operating Deficit Loans or to make a Managing Member Capital Contribution as required under this Agreement. MM Loans shall be on the following terms: (i) interest shall accrue on the MM Loans at an annual interest rate not to exceed 5% per annum, compounded annually; (ii) MM Loans shall be repayable solely as set forth in Sections 14.1(a), 14.1(b) and 17.2 of this Agreement; and (iii) MM Loans shall be an
unsecured, nonrecourse obligation of the Company. By making a MM Loan, the Managing Member does not waive any claim of, or remedies with respect to, a default, if any, by the Investor Member in its obligations under this Agreement. Notwithstanding the foregoing, no MM Loan shall be made without the Consent of the Investor Member, which Consent shall not be unreasonably withheld, delayed or conditioned.

4.12 IM Loans. The Investor Member or its designee has the right, but not the obligation, to make loans pursuant to this Section to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company (together with interest thereon, “IM Loans”). IM Loans shall be on the following terms: (i) interest shall accrue on Default IM Loans at an annual interest rate of eight percent (8%) per annum, compounded annually; (ii) interest shall accrue on the Excess IM Loan Amount (other than Default IM Loans) at an annual interest rate of eight percent (8%) per annum, compounded annually, and on any other IM Loans at an annual interest rate of eight percent (8%) per annum, compounded annually; (iii) IM Loans shall be repayable solely as set forth in Sections 14.1(a), 14.1(b) and 17.2 of this Agreement; and (iv) IM Loans shall be an unsecured, nonrecourse obligation of the Company. By making an IM Loan, neither the Investor Member, nor its designee, waives any claim of, or remedies with respect to, a default, if any, by the Managing Member in its obligations under this Agreement.

4.13 Notice of Member Loans. Except for any Operating Deficit Loans that may be required of the Managing Member under the terms of this Agreement, if the Company shall require a Member Loan to fund Operating Deficits or to satisfy other reasonable and necessary obligations of the Company, a Member (the “Initiating Member”) may give the other Members (the “Non-Initiating Members”) Notice of the Initiating Member’s intent to fund a Member Loan, which Notice shall state (i) the total amount of such Member Loan proposed to be funded, (ii) the purpose for such Member Loan, and (iii) the proposed funding date of such Member Loan, which date (the “Contribution Date”) shall not be less than ten (10) days following the date of such Notice; provided that the Notice requirement shall be shortened to the extent necessary to permit a Member to fund a Member Loan for the purpose of curing a default under a Loan. The Initiating Member and the Non-Initiating Members shall each fund the portion of the Member Loan it agreed to make by the Contribution Date. If a Member fails to make such Member Loan to the Company on or before the Contribution Date, any Member who makes such Member’s share of the Member Loan may, at such Member’s option, advance to the Company the amount of the non-lending Member’s share of the Member Loan. No Member has the right to propose and fund a Member Loan to fund distributions and/or payments to be made pursuant to Sections 14.1(a), 14.1(b) or 17.2. Notwithstanding anything herein to the contrary, the Managing Member is obligated to make an Operating Deficit Loan during the Operating Deficit Guaranty Period and a MM Loan after the expiration of the Operating Deficit Guaranty Period to fund any Operating Deficits.

4.14 Documentation of Member Loans. At the request of a Member, any Member Loan shall be evidenced by a non-negotiable promissory note or notes reflecting any such Member Loans made during or prior to the preceding calendar quarter. Member Loans shall be unsecured loans by such Member. Except as set forth in Section 4.16, Member Loans shall not be considered Capital Contributions, and shall not increase such Member’s Capital Account.
4.15 **Usury Savings Clause.** Notwithstanding anything to the contrary herein or in any note evidencing a Member Loan, in no event shall interest accrue on any Member Loan at a rate in excess of the highest rate permitted by applicable law.

4.16 **Capital Contribution Alternative.** If a Member which has made or intends to make a Member Loan (a “Lending Member”) reasonably concludes that the operation of the usury savings clause in Section 4.15 will result in a reduction in the interest rate otherwise specified in Article 4, or if the Investor Member reasonably concludes that it may now have or sometime in the future likely will have a negative Capital Account, then the Lending Member may request that its existing or proposed Member Loans be restructured as Capital Contributions. In such event, all the Members shall cooperate to negotiate and execute an amendment to this Agreement (the “Amendment”), at the expense of the requesting Member, which shall include the following terms: (i) each of the Investor Member (or its designee) and the Managing Member has the right to make Capital Contributions pursuant to the Amendment (“Section 4.16 Capital Contributions”) either instead of making IM Loans and MM Loans, respectively, or to fund the concurrent repayment by the Company of IM Loans or MM Loans, respectively; (ii) with respect to such Section 4.16 Capital Contributions, the Member(s) making them shall be entitled to receive (A) guaranteed payments or a preferred return in amounts and at times corresponding to interest payments that would have been due had the Section 4.16 Capital Contributions been made as Member Loans, and (B) distributions as a return of capital in amounts and at times corresponding to principal payments that would have been due had the Section 4.16 Capital Contributions been made as Member Loans; and (iii) Article 14 shall be revised to the maximum extent feasible to provide that such guaranteed payments or a preferred return and return of capital distributions shall have the same amounts, timing, priority of payment and tax consequences as the corresponding payments of Member Loans would have had. Notwithstanding the foregoing, the Investor Member shall have no obligation to consent to any Amendment pursuant to this Section 4.16, which it concludes could adversely affect the timing or amount of the allocation to the Investor Member of Housing Tax Credits, losses, income or gains.

**ARTICLE 5**
**MANAGING MEMBER RIGHTS, DUTIES AND OBLIGATIONS**

5.1 **Management of the Company.** Subject to the terms of this Agreement, the Managing Member shall have the sole and exclusive right to manage the business and affairs of the Company; provided, however, that the Managing Member must do so only so as to accomplish the Purposes of this Company. In so doing, the Managing Member shall take all actions necessary or appropriate to protect the interests of the Investor Member and the Company.

5.2 **Duties and Obligations.**

(a) The Managing Member shall ensure that all requirements shall be met which are necessary to obtain or achieve (i) compliance with the Minimum Set-Aside Test, the HOME Minimum Set-Aside Test, the Rent Restriction Test, and any other requirements necessary for the Apartment Complex to initially qualify, and to continue to qualify, for Housing
Tax Credits, including all applicable requirements set forth in the Extended Use Agreement, (ii) issuance of Forms 8609, (iii) issuance of all necessary permanent, unconditional certificates of occupancy, including all governmental approvals required to permit occupancy of all of the apartment units in the Apartment Complex, (iv) Construction Loan Closing and Conversion; (v) compliance with all material provisions of the Project Documents, (vi) compliance with all provisions contained in the Application, including, without limitation, those as to which the Agency awarded points pursuant to its scoring or award procedures, and (vii) compliance with all provisions contained in the Carryover Allocation.

(b) During the period the Extended Use Agreement is in effect, the Managing Member shall (i) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that (A) 86.21% of the residential rental units in the Apartment Complex will qualify as “low-income units” under Code Section 42(i)(3), (B) and the Applicable Fraction as defined in Section 42(c) of the Code is at least 84.88%; (ii) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that no less than eighty percent (80%) of the gross income from the Apartment Complex in every year is rental income from or with respect to dwelling units in the Apartment Complex used to provide living accommodations not on a transient basis (“Units”); (iii) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that the Apartment Complex will qualify as a “qualified low-income housing project” under Code Section 42(g); (iv) develop and maintain the Apartment Complex as a first class property; and (v) make, or cause to be made, all certifications required by Code Section 42(l).

(c) The Managing Member shall promptly take all action which may be necessary or appropriate for the proper development, construction, maintenance and operation of the Apartment Complex in accordance with the provisions of this Agreement, the Project Documents and applicable laws and regulations including making any required Capital Contributions pursuant to Section 4.1 and as otherwise required by this Agreement.

(d) While conducting the business of the Company, the Managing Member shall not act in any manner which it knows or should have reasonably known after due inquiry will (i) cause the termination of the Company for federal income tax purposes without the Consent of the Investor Member, or (ii) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation.

(e) The Managing Member shall, during and after the period in which it is a Member, provide the Company with such information and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns.

(f) The Managing Member shall use its best efforts to cause the Company to generate Cash Flow for distribution to the Members at the maximum realizable level in view of (i) any applicable Agency and other regulations, (ii) the Minimum Set-Aside Test and the HOME Minimum Set-Aside Test and (iii) the Rent Restriction Test, and, if necessary, the Managing Member shall also use its best efforts to obtain approvals and implementation of appropriate adjustments in the rental schedule of the Apartment Complex.
(g) The Managing Member shall cause the Company to obtain and keep in force, during the term of the Company, insurance in accordance with Exhibit D hereto. The Managing Member shall provide the Investor Member with written evidence of all insurance required by Exhibit D hereto, in each case in form and substance reasonably acceptable to the Investor Member and, for each particular insurance coverage, both (i) within fifteen (15) days after the first day on which such coverage is required by Exhibit D hereto and (ii) from time to time, as the Investor Member may reasonably request. The Managing Member shall provide the Investor Member with Notice of any cancellation, reduction in coverage, or other coverage changes within 15 days of receipt of notice from the insurance provider. The Investor Member shall have the right to acquire any insurance required by Exhibit D at the expense of the Company if the Managing Member fails to do so and such purchase shall not cure the Managing Member’s default hereunder. In addition, the Managing Member shall indemnify and hold the Hunt Indemnified Parties harmless from any loss suffered by the Hunt Indemnified Parties with respect to its investment in the Company and arising out of any uninsured loss suffered by the Company which would have been insured against by one or more of the policies of insurance described on Exhibit D hereto but which lapsed or which were not in force at the time of such loss because the Managing Member did not obtain or keep said policy or policies in force.

(h) The Managing Member has made (if applicable) and shall make such elections, or refrain from making such elections, with respect to the Housing Tax Credits as are necessary to achieve and maintain the maximum allowable Housing Tax Credits to the Investor Member, unless otherwise directed by the Investor Member. Any such elections (including elections made at the direction or with the Consent of the Investor Member) shall not reduce the obligations of the Managing Member pursuant to this Agreement. Notwithstanding the foregoing, the Investor Member must Consent, before any election is made to defer commencement of the Credit Period pursuant to Code Section 42(f)(1). In the event Building One is Placed in Service in 2019, but the Company is unable to deliver all or a portion of the Projected Housing Tax Credits for 2019, the Managing Member may defer the commencement of the Credit Period to 2020 without the Consent of the Investor Member.

(i) The Managing Member shall (i) not store or dispose of (except in compliance with all laws, including all Environmental Laws, ordinances, and regulations pertaining thereto) any Hazardous Material at the Apartment Complex; (ii) neither directly nor indirectly transport or arrange for the transport of any Hazardous Material (except in compliance with all laws, including all Environmental Laws, ordinances and regulations pertaining thereto) to or from the Apartment Complex; (iii) provide the Investor Member with Notice (A) upon any Managing Member’s obtaining knowledge of any potential or known release, or threat of release, of any Hazardous Material at or from the Apartment Complex; (B) upon any Managing Member’s receipt of any Notice to such effect from any federal, state, or other governmental authority by any other Person; and (C) upon any Managing Member’s obtaining knowledge of any incurrence of any expense or loss by any such governmental authority or third party in connection with the assessment, containment, or removal of any Hazardous Material at or from the Apartment Complex or any claim for loss or damage associated with Hazardous Materials at or from the Apartment Complex for which expense or loss the Managing Member may be liable or for which expense or loss a lien may be imposed on the Apartment Complex.
(j) The Managing Member shall use all reasonable efforts to maintain the Apartment Complex and the Land upon which it is located so that there is no discharge, release, spillage, uncontrolled loss or seepage of any oil, petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Material. The Managing Member shall use all best efforts to maintain the Apartment Complex and the Land so as not to violate any Environmental Laws. If any Hunt Indemnified Party becomes liable with respect to the Apartment Complex under any Environmental Law, the Managing Member shall indemnify and hold harmless such Hunt Indemnified Party (except to the extent attributable solely to direct actions of such Hunt Indemnified Party) for any and all costs, expenses (including reasonable attorneys’ fees necessarily incurred), damages or liabilities to the extent that such Hunt Indemnified Party is required to discharge such costs, expenses, damages, or liabilities in whole or in part. If any claim or loss described in the immediately preceding sentence is brought against any Hunt Indemnified Party, and such Hunt Indemnified Party notifies the Managing Member of the commencement thereof, as soon as practicable but in any event no later than 45 days after receipt of notice by the Investor Member, the Managing Member will be entitled to participate in, and, to the extent that it chooses to do so, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to the Hunt Indemnified Party), and the Managing Member will assume the payment of all fees and expenses relating to such investigation and defense and will have the right to negotiate and consent to settlement thereof provided such settlement expressly and unconditionally releases the Hunt Indemnified Party from all liabilities and obligations with respect to the claim without prejudice and the settlement would not otherwise materially adversely affect the Hunt Indemnified Party. Any one or more of the Hunt Indemnified Parties will have the right to employ separate counsel in any such action and to participate in the defense thereof, but after notice from the Managing Member to such Hunt Indemnified Party of its election to assume the defense thereof, the fees and expenses of such separate counsel will be at the expense of such Hunt Indemnified Party unless (i) the employment of such counsel and the payment of such fees and expenses by the Managing Member has been specifically authorized in writing by the Managing Member, (ii) the Managing Member has not employed counsel to have charge of the defense of such action within a reasonable time after receipt of a request by the Hunt Indemnified Party to assume the defense of the action, or (iii) counsel for such Hunt Indemnified Party or Parties has reasonably concluded that there may be material defenses available to it or them which are different from or additional to those available to the Managing Member and other Hunt Indemnified Parties (in which case, the Managing Member will not have the right to direct the defense of such action on behalf of such Hunt Indemnified Party and the fees and expenses of counsel necessary as a result of the occurrence of the events described in (i), (ii), or (iii) above will be borne by the Managing Member). The Managing Member will not be liable for any settlement of any such action effected without its Consent, but if settled with the Consent of the Managing Member or if there is a final judgment for the plaintiff in any such action as to which the Managing Member has received notice in writing as hereinabove required, the Managing Member agrees to indemnify and hold harmless the Hunt Indemnified Party from and against any loss or liability by reason of such settlement or judgment. The foregoing indemnification shall be a recourse obligation of the Managing Member, and shall survive the Withdrawal of the Managing Member. The Managing Member shall not be liable for any claims that arise from actions of others after its withdrawal or removal as a Managing Member under this Agreement, and no settlement of a claim of loss shall occur without the prior written Consent of the Managing Member.
(k) The Managing Member shall promptly request in writing of each Lender that such Lender provide the Investor Member copies of all notices delivered to the Managing Member or the Company under its Loan, and grant an opportunity for the Investor Member to cure any default under such Loan.

(l) The Managing Member shall cause the Company to maintain tenant deposits in separate accounts, which must be used solely to hold tenant deposits as security for the tenant rents and as security for damages. No funds may be used from such account for any other purpose, including payment of Operating Deficits of the Company.

(m) The Managing Member will execute on behalf of the Company all documents necessary to elect, pursuant to Sections 732, 734, 743, and 754 of the Code, to adjust the basis of the Company’s property upon the request of the Investor Member. The Managing Member shall cause the Company’s property to be depreciated in accordance with Sections 5.2(nn) and 18.4. The Managing Member will execute on behalf of the Company all documents necessary to elect, pursuant to Sections 732, 734, 743, and 754 of the Code, to adjust the basis of the Company’s property upon the request of the Investor Member. The Managing Member shall cause the Company to depreciate all of its applicable property in accordance with Section 5.2(oo), 6.1(hhh), and 18.4(a).

(n) The Managing Member shall provide to the Investor Member for its approval a draft of the Cost Certification to be used by the Company in applying to the Agency for issuance of Form 8609 with respect to each building in the Apartment Complex at least five (5) Business Days prior to the date the Cost Certification is to be provided to the Agency. The Managing Member shall provide the initial Forms 8609 to the Investor Member within ten (10) days of receipt thereof by the Managing Member. Subject to the Agency providing the same, the Managing Member shall cause the Extended Use Agreement to be recorded in the appropriate real estate records no later than the last day of the year in which the Apartment Complex is Placed in Service.

(o) The Managing Member shall furnish to the Investor Member within three (3) Business Days of receipt thereof, a copy of any notice of default under a Loan or any of the Project Documents given to the Company or to the Managing Member by the Lender, and Notice of any occurrence which has or would, with the giving of notice or the passage of time, or both, become a violation or default under a Loan or any of the Project Documents. The Managing Member shall also furnish to the Investor Member within seven (7) Business Days of execution a copy of all amendments or changes to the articles, bylaws, certificates, partnership agreement, operating agreement or other organizational documents of the Managing Member or any Guarantor. The Managing Member shall promptly respond to all requests or inquiries made in writing by the Investor Member regarding matters affecting the Apartment Complex or the Company.

(p) The Managing Member shall use all reasonable efforts to cause the Apartment Complex to be kept in compliance with all applicable land use laws, regulations and ordinances.
(q) The Managing Member shall provide the Investor Member with Notice (and with copies of appropriate correspondence) within three (3) Business Days if the Company receives any writing from the Service or the Agency that the Apartment Complex or any portion thereof is not in compliance with the requirements of Code Section 42 or is subject to a Housing Tax Credit Disallowance Event or any other event that could result in an adjustment to the Housing Tax Credits, or losses allocable to the Investor Member.

(r) If any of the Housing Tax Credit Units fail at any time during the Compliance Period to constitute low-income units or if the Apartment Complex is not in compliance with the requirements contained in Code Section 42, the Managing Member agrees to Notify the Investor Member within three (3) Business Days of its knowledge of such event or occurrence and the Managing Member shall take all actions reasonably necessary to bring the Units or the Apartment Complex, as the case may be, into compliance with the requirements of Code Section 42, such that the Apartment Complex will qualify and continue to qualify for Housing Tax Credits during the Compliance Period as projected.

(s) The Managing Member is exclusively responsible for negotiating and performing all services incidental to (i) the Company’s acquisition of the Land, (ii) arranging of appropriate zoning, (iii) arranging of equity and permanent financing with respect to the Apartment Complex (including reviewing the State’s qualified allocation plan, applying for Housing Tax Credits and obtaining such marketing and feasibility studies and appraisals as it deems reasonably necessary), (iv) contacting local government officials concerning access to utilities, public transportation and local ordinances, (v) performing environmental tests on the Land, (vi) negotiating the purchase of the Land and its related financing, (vii) arranging the permanent financing for the Company, and (viii) the organization and formation of the Company.

(t) The Apartment Complex will be operated in accordance with the Fair Housing Act, 42 U.S.C. § 3601 et seq., as amended, and in this regard, all employees and agents of the Managing Member will be appropriately trained and all required notices to tenants specified by the Fair Housing Act will occur in a timely manner. The Managing Member shall promptly provide to the Investor Member a copy of (i) the annual certification required to be submitted by the Company to the Agency pursuant to Regulation Section 1.42-5, including a copy of all required reports with respect to building code violations and the certification with respect to compliance with the Fair Housing Act and (ii) all communications received by the Managing Member or the Company with respect to compliance with, non-compliance with, or other matters relating to the Fair Housing Act.

(u) The Managing Member shall ensure that the Apartment Complex shall at all times comply with the applicable requirements of Section 504 of the Uniform Federal Accessibility Standards, where applicable and as amended, the Americans with Disabilities Act of 1990, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, as now existing or hereafter amended or adopted, the Fair Housing Act Design Manual implemented in connection the Fair Housing Act, 42 U.S.C. § 3601 et seq., as amended as now existing or hereafter amended or adopted, any other federal and state and local laws and ordinances related to disabled access, and all statutes, rules, regulations, and orders of governmental bodies and regulatory agencies or orders or decrees of any court adopted or
enacted with respect thereto including (collectively, the “Access Laws”). The Investor Member may also require from the Company an Access Laws Certification. Notwithstanding any provisions set forth herein or in any other document, the Managing Member shall not alter or permit any tenant or other person to alter the Apartment Complex in any manner which would increase the Managing Member’s responsibilities for compliance with the Access Laws without the prior written approval of the Investor Member. In connection with any such approval, the Investor Member may require from the Company an Access Laws Certification. Following Substantial Completion, the Apartment Complex will be operated in a manner that fully complies with applicable accessibility and barrier-free regulations such that if an enforcement action is brought against the Company, the Managing Member will use any and all of its own resources to promptly correct recorded deficiencies and shall immediately Notify the Investor Member of any such claims.

(v) The Managing Member shall give Notice to the Investor Member within three (3) Business Days of any violation or event of default, or any occurrence which would, with the giving of notice or the passage of time, or both, become a violation or event of default under any document executed by the Agency and relating to the Company. Neither the Company nor any Managing Member shall consent to any amendment or modification to any document executed by the Agency and relating to the Company without the prior Consent of the Investor Member.

(w) Without limitation, the Company, the Managing Member, and their Affiliates (i) are in compliance with Anti-Corruption Laws, and (ii) shall remain in compliance with Anti-Corruption Laws.

(x) The Managing Member shall from time to time take all actions as are necessary and appropriate to: (i) effectuate and permit the continuation of the Company as a limited liability company under the laws of the State, (ii) enable the Company to do business in the State, and (iii) protect the limited liability of the Investor Member under the laws and regulations of the State, including the preparation and filing of any certificate, document or instrument of the Company as may be required under the laws and regulations of the State.

(y) The Managing Member shall maintain books, files and records including tenant leasing files in compliance with the Code and the Regulations and which will adequately document the timing, amount and availability of the Housing Tax Credits. The Managing Member shall cause construction related files and files which document the initial qualification of the apartment units for Housing Tax Credits to be copied and stored off-site until the later of sixth (6th) year after the last day of the Compliance Period or for the time period required by Section 42 of the Code at the Managing Member’s principal place of business (which shall not be at the Apartment Complex) or at another off-site location over which the Managing Member has control. The Managing Member shall allow any Investor Member and its agents access to all such files during ordinary business hours; provided, however, that files stored off-site shall be provided within three (3) Business Days’ Notice from the Investor Member. All such files are property of the Company and not of the Managing Member.

(z) Except as otherwise required or permitted by this Agreement, the Managing Member shall not, without the Consent of the Investor Member, assign, pledge or
otherwise encumber, for security or otherwise, any fees, payments or distributions to which the Managing Member is entitled from the Company or any Person pursuant to this Agreement or any Project Document, or any portion thereof or any right of the Managing Member thereto.

(aa) Each Managing Member shall not engage in any other business or activity other than that of being a Managing Member of the Company. Each Managing Member was formed exclusively for the purpose of acting as Managing Member of the Company and has never engaged in any other activity, business or endeavor. As of the date of this Agreement, neither Managing Member has liabilities nor indebtedness other than its liability for the debts of the Company, and neither Managing Member shall incur any indebtedness other than its liability for the debts of the Company. If either Managing Member determines it needs additional funds for any purpose, it shall obtain such funds solely from capital contributions from its members. Each Managing Member has observed and shall continue to observe all necessary or appropriate entity formalities in the conduct of its business. Each Managing Member shall keep its books and records and the Company’s books and records separate and distinct from those of its members and Affiliates. Each Managing Member shall clearly identify itself as a legal entity separate and distinct from its members and its Affiliates in all dealings with other Persons.

(bb) The construction and development of the Apartment Complex shall be undertaken and shall be completed in a timely and workmanlike manner in accordance with (i) all applicable requirements of the Project Documents, (ii) all applicable requirements of all appropriate governmental entities, the violation of which would have, or would be likely to have, an adverse effect on the Apartment Complex or the Company, and (iii) the Plans and Specifications of the Apartment Complex as shown on Exhibit P that have been or shall be hereafter approved by the Investor Member and, to the extent required, the Lenders, and any applicable governmental entities, as such Plans and Specifications may be changed from time to time with the approval of the Investor Member and, to the extent required, the Lenders, and any applicable governmental entities. The Managing Member shall provide copies of all change orders to the Investor Member for its written approval promptly after the preparation and prior to the execution thereof.

(cc) The Managing Member shall cause the Company to keep all sources of funding “in balance,” as required by the Lenders and the Investor Member, and ensure that the Company has adequate sources of funds to timely achieve Conversion and satisfaction of other obligations of the Company in accordance with this Agreement.

(dd) Reserved.

(ee) The Managing Member shall prevent a default from occurring under the Project Documents resulting from a breach by the Managing Member, the Guarantors or their Affiliates of any term, condition or restriction applicable to such parties under the Project Documents, including, without limitation, a breach of a restriction on the ownership of the Managing Member or the financial condition of the Managing Member, the Guarantors or their Affiliates.

(ff) Neither the Managing Member nor its Affiliates will receive, directly or indirectly, from the Company or from any other Person, any fee, commission, compensation or
other consideration in connection with (i) this Agreement, (ii) the acquisition of the Land and/or (iii) the construction or operation of the Apartment Complex, except for the payment of fees and distributions to the Managing Member under this Agreement and to the Developer under the Development Agreement.

(gg) The Company received points under the Agency’s Low-Income Housing Tax Credit ranking system pursuant to the Application. The Managing Member shall cause the Company to develop the Apartment Complex and manage the Company in a manner which is consistent with the award of the number of points assigned to the Application by the Agency, unless otherwise consented to by the Agency in writing and Consented to by the Investor Member.

(hh) The Managing Member shall cause the Accountants to certify the Eligible Basis of the Apartment Complex in conjunction with the Company’s application to the Agency for Forms 8609 and in conjunction with the audited cost certification of Eligible Basis.

(ii) The Managing Member shall provide to the Accountants and the Investor Member, promptly upon their request, such written documentation as is reasonably requested by the Accountants and the Investor Member in order to verify the determination of Eligible Basis, including documentation supporting the allocation of any costs incurred by the Company into the determination of Eligible Basis.

(jj) The Company will include in Eligible Basis only the Development Fee which is earned on or prior to the date the Apartment Complex is Placed in Service.

(kk) The Apartment Complex and all of (i) the fixtures, maintenance supplies, tools, equipment and the like now and to be owned by the Company or to be appurtenant to, or to be used in the operation of, the Apartment Complex, as well as (ii) the rents, revenues and profits earned from the operation of, the Apartment Complex, will be free and clear of all security interests and encumbrances except for any mortgages or security agreements (including financing statements) executed in connection with the Loans.

(ll) To the extent required by the Investor Member, one hundred percent (100%) payment and performance bonds issued by a financially viable, nationally recognized bonding company, or a letter of credit, in forms acceptable to the Investor Member naming the Investor Member as a dual obligee or payee, and in amounts satisfactory to the Investor Member, will be obtained by the Contractor at or before Construction Loan Closing and shall remain in full force and effect under terms and conditions as shall be acceptable to the Investor Member. The Managing Member shall promptly notify the Investor Member of any claims made under the bonds.

(mm) In connection with the requirements of the Carryover Allocation, the Managing Member shall take all actions necessary and prepare all documents required in connection with the Company’s satisfaction of the Ten Percent Test and submit to the Agency the supporting documents therefor, including, without limitation, the Carryover Certification, by the date required by the Agency. The Managing Member shall deliver to the Investor Member all documents in support thereof, including, without limitation, the Carryover Certification, prior
to submitting the Ten Percent Test documents to the Agency. Upon the Investor Member’s Consent, the Managing Member shall submit the Ten Percent Test documentation and the supporting documents therefor, including, without limitation, the Carryover Certification, to the Agency.

(nn) If a material defect is discovered in the construction of the Apartment Complex and such defect was known to the Managing Member or an Affiliate of the Managing Member and was not disclosed to the Investor Member in writing or was intentionally concealed by the Managing Member or such Affiliate, then the Managing Member shall promptly take such action as may be necessary, at the Managing Member’s sole expense, to correct such defective work to the satisfaction of the Investor Member.

(oo) The Managing Member shall cause the Company to make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code. The Managing Member shall seek the direction and/or Consent of the Investor Member prior to filing of the Company’s 2019 tax returns or such earlier time as such election is to be made. Once made, the election will be irrevocable.

5.3 Restrictions on Authority.

(a) Notwithstanding any other provision of this Agreement, the Managing Member shall have no authority to (1) knowingly perform any act in violation of applicable law, Agency or other government regulations, requirements of the Lenders or the Project Documents or (2) even unknowingly, perform any act in violation of applicable law, Agency or other government regulations, requirements of the Lenders or the Project Documents if such act would or could materially adversely affect the Apartment Complex, the Company, any Investor Member or the Housing Tax Credits. In the event of any conflict between the terms of this Agreement and any applicable Agency or other government regulations or requirements of the Lender, the terms of such regulations or requirements shall govern. The Managing Member shall not have any authority to do any of the following acts without the Consent of the Investor Member:

(i) To have borrowings in excess of $10,000 in the aggregate at any one time outstanding on the general credit of the Company, except for the Loans, Operating Deficit Loans and IM Loans;

(ii) To borrow from the Company or commingle Company funds with funds of any other Person;

(iii) Following the Completion Date, to construct any new or replacement capital improvements on the Apartment Complex except as contemplated in the applicable Annual Budget, unless under emergency conditions;

(iv) To acquire any real property in addition to the Apartment Complex (including easements or similar rights necessary or convenient for the operation of the Apartment Complex);
(v) To finance or enter into any mortgage loan or other indebtedness, or to increase, decrease, amend or modify the terms of or refinance or repay (other than in accordance with its scheduled term or amortization) any Loan;

(vi) To acquire any personal property (tangible or intangible) at a cost in excess of $10,000 in any year except to the extent approved in the applicable Annual Budget, or use any Company property other than for a purpose of the Company as set forth in this Agreement;

(vii) To rent apartments in the Apartment Complex such that the Apartment Complex would not meet the requirements of the Minimum Set-Aside Test, the HOME Minimum Set-Aside Test and/or the Rent Restriction Test;

(viii) To sell, exchange, pledge or otherwise convey or transfer any portion of the Apartment Complex (including any land owned by the Company) or, all or any significant portion of the assets of the Company or any Member’s Interest in the Company, which Consent shall not be unreasonably withheld, conditioned or delayed after year fifteen (15) of the Credit Period;

(ix) To terminate or modify any agreement with any Agency;

(x) To cause the Company to commence a proceeding seeking any decree, relief, order or appointment in respect to the Company under the federal bankruptcy laws, as now or hereafter constituted, or under any other federal or state bankruptcy, insolvency or similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) for the Company or for any substantial part of the Company’s business or property, or to cause the Company to consent to any such decree, relief, order or appointment instituted by any Person other than the Company;

(xi) To pledge or assign any of the Capital Contribution of the Investor Member or any proceeds thereof;

(xii) To amend the Architect’s Contract or the Construction Contract, including, without limitation, any change orders in excess of $25,000.00 per single change order and $125,000 in the aggregate; provided, however, that all deductive change orders, no matter how small and all change order that materially alter the scope of work, shall be subject to the Consent of the Investor Member;

(xiii) To cause the Company to amend the Development Agreement or any other agreement between the Company and any Managing Member or an Affiliate thereof;

(xiv) To do any act required to be approved or ratified by the Investor Member under the Uniform Act;

(xv) To admit an additional Investor Member;

(xvi) To substantially change the nature of the Company’s business;
(xvii) To permit the Company to engage in any activity inconsistent with the Company’s Purposes;

(xviii) To enter into any Project Document not executed prior to the date hereof, and/or to amend any Project Document;

(xix) To amend the § 811 Subsidy Contract or enter into any contract requiring the Company to accept additional Eligible Tenants;

(x) To adopt any Annual Budget or make any modification to an approved Annual Budget, which Consent shall not be unreasonably withheld, conditioned or delayed;

(xi) To modify the Development Budget;

(xii) To increase the Company’s total initial cost basis allocable to a class of property other than residential rental property by more than 25% of the amount set forth in the LIHTC Certificate attached hereto as Exhibit S;

(xiii) To change the Accountant or the Management Agent;

(xiv) To sell, transfer, assign, pledge or otherwise convey the Interest of the Managing Member in the Company, or sell, transfer, assign, pledge or otherwise convey any interest in the Managing Member, except in connection with estate planning purposes (but only if (A) the Interest of the Managing Member is conveyed to a trust for the benefit of the spouse or children of Lisa M. Stephens and/or Megan D. Lasch, as the case may be, and (B) Lisa M. Stephens or Megan D. Lasch continues to control the Co-Managing Member and Megan D. Lasch or Lisa M. Stephens continues to control the Administrative Member), or in any member, partner or shareholder of the Managing Member, as the case may be, or any other party in the line of ownership of such member, partner or shareholder, or permit the Developer to sell, transfer, assign, pledge or otherwise convey the interest of the Developer in the Development Agreement, or sell, transfer, assign, pledge or otherwise convey any interest in the Developer, or in any controlling member, partner or shareholder of the Developer, as the case may be, or any other party in the line of ownership of such member, partner or shareholder of the Developer, or voluntarily retire, withdraw or resign as the Managing Member of the Company; or

(xv) To make, amend or revoke any tax election required of or permitted to be made by the Company under the Code or the Regulations, including, without limitation, any election under Section 42 or Section 754 of the Code or make an election to defer the first year of Housing Tax Credits. In this regard, the Managing Member shall make any elections required or permitted under Section 42 of the Code requested in writing by the Investor Member;

(xvi) To accept any grants on behalf of the Company.

5.4 **Personal Services.** The Managing Member or any Affiliates thereof shall have the right to contract or otherwise deal with the Company for the sale of goods or services to the Company in addition to those set forth herein, if (a) compensation paid or promised for such
goods or services is reasonable (i.e., at fair market value) and is paid only for goods or services actually furnished to the Company, (b) the goods or services to be furnished shall be reasonable for and necessary to the Company, (c) the fees, terms and conditions of such transaction are at least as favorable to the Company as would be obtainable in an arm’s-length transaction, and (d) the Investor Member has given its Consent to the particular contract or other dealings between the Company and the Managing Member or its Affiliates. Any contract covering such transactions shall be in writing and shall be terminable without penalty on sixty (60) days’ Notice. Any payment made to the Managing Member or any Affiliate for such goods or services shall be fully disclosed to the Investor Member in writing in the reports required under Section 18.7. Neither the Managing Member nor any Affiliate shall, by the making of lump sum payments to any other Person for disbursement by such other Person, circumvent the provisions of this Section 5.4.

5.5 Continued Compliance Sale. Notwithstanding the foregoing, subject to the Purchase Option Agreement commitments in the Application, at any time after the Compliance Period, the Investor Member may request that the Company sell the Apartment Complex subject to the Extended Use Agreement (a “Continued Compliance Sale”)

(a) After receipt of a request for a Continued Compliance Sale, the Managing Member shall use its best efforts to find a third party purchaser for the Apartment Complex and to cause the Company to consummate a sale of the Apartment Complex subject to the Extended Use Agreement and on terms Consented to by the Investor Member. If such efforts are not successful on terms reasonably satisfactory to the Investor Member within six (6) months of the date of the Investor Member’s request, the Investor Member shall have the right thereafter to locate a purchaser for the Apartment Complex. If the Investor Member locates such a purchaser, then the Managing Member shall be obligated to either (i) consent to the sale to such purchaser and execute all documents in connection with such sale or (ii) purchase the Investor Member’s Interest for an amount equal to what the Investor Member would have received for a sale of the Apartment Complex.

(b) At all times after the end of the Compliance Period, the Investor Member shall have the right, exercisable in its sole and absolute discretion, to put its entire Interest to the Managing Member (or its designee) for a price equal to $100.

5.6 Other Activities. Any Investor Member may engage independently or with others in other business ventures of every nature and description including the ownership, operation, management, syndication and development of competing real estate; neither the Company nor any other Member shall have any rights in and to such independent ventures or the income or profits derived therefrom.

5.7 Indemnification of the Managing Member.

(a) No Managing Member nor any Affiliate thereof shall have liability to the Company or to any Investor Member for any loss suffered by the Company which arises out of any action or inaction of such Managing Member or Affiliate thereof if such Managing Member or Affiliate thereof in good faith determined that such course of conduct was in the best interest of the Company and such course of conduct did not constitute gross negligence, misconduct,
fraud or any breach of fiduciary duty of such Managing Member or Affiliate thereof or a breach of this Agreement by such Managing Member or Affiliate thereof.

(b) A Managing Member or any Affiliate thereof shall be indemnified by the Company against losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained in connection with the Company, provided that all of the following conditions are met: (i) such Managing Member has determined, in good faith, that the course of conduct which caused the loss, judgment, liability, expense or amount paid in settlement was in the best interests of the Company; and (ii) such loss, judgment, liability, expense or amount paid in settlement was not the result of gross negligence, misconduct, fraud, breach of fiduciary duty on the part of such Managing Member or Affiliate thereof or breach of this Agreement; and (iii) such indemnification or agreement to hold harmless is recoverable only out of the assets of the Company, and not from the Investor Member.

(c) Subject to the provisions of Section 5.7(b), no Managing Member or any Affiliate thereof performing services for the Company shall be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws unless (i) there has been a successful adjudication on the merits of each count involving securities laws violations as to the particular indemnitee and the court approves the indemnification of such litigation costs, (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee and the court approves the indemnification of such litigation costs or (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and the court finds that indemnification of the settlement and related costs should be made. In any claim for indemnification for federal or state securities law violations, the party seeking indemnification shall, prior to seeking court approval for such indemnification, place before the court the positions of the Securities and Exchange Commission and any applicable state securities administrator with respect to the issue of indemnification for securities law violations.

(d) The Company shall not incur the cost of the portion of any insurance, other than public liability insurance, which insures any party against any liability as to which such party is herein prohibited from being indemnified.

5.8 Indemnification of the Company and the Hunt Indemnified Parties.

(a) The Managing Member shall indemnify, defend and hold harmless the Company and the Hunt Indemnified Parties, and the Company shall indemnify, defend, and hold harmless the Hunt Indemnified Parties, from and against any and all loss, damage and liability, cost or expense (including reasonable attorneys’ fees) which the Company or any Hunt Indemnified Party may incur by reason of the past, present or future actions or omissions of the Managing Member or any of their Affiliates constituting gross negligence, misconduct, fraud, breach of fiduciary duty or a breach or an Event of Default with respect to or under this Agreement; provided, however, that the foregoing indemnification shall not constitute a guaranty of the Loans.
(b) Notwithstanding the foregoing, no Managing Member shall be liable to a Hunt Indemnified Party or the Company for any act or omission for which the Company is required to indemnify such Managing Member under Section 5.7.

(c) The Managing Member shall indemnify, defend, and hold the Company and the Hunt Indemnified Parties harmless from and against any claims, suits, actions, debts, damages, costs, charges, losses, obligations, judgments and expenses of any nature whatsoever (other than actions caused by a third party on property outside of the Apartment Complex over which the Managing Member has no control and about which the Managing Member had no prior knowledge and no ability to prevent or mitigate the impact of those actions on the Apartment Complex) suffered or incurred by the Hunt Indemnified Parties and arising directly or indirectly out of the presence on, under or about the Apartment Complex of any Hazardous Substance, the use, generation, manufacture, storage or disposal of any Hazardous Substance on, under or about the Apartment Complex, or the violation of any Environmental Laws by the Managing Member or its representatives. The Managing Member shall further indemnify and hold harmless the Company and the Hunt Indemnified Parties and their respective Affiliates and successors from and against any claims, demands, losses, damages, liabilities, lawsuits and other proceedings, judgments, awards, costs and expenses including, without limitation, reasonable attorneys’ fees, arising directly or indirectly, in whole or in part, out of a breach of any or all of the representations, warranties and covenants contained in this Agreement. In case such action is brought against any Hunt Indemnified Party, and it notifies the Managing Member of the commencement thereof as soon as practicable, the Managing Member will be entitled to participate in, and, to the extent that it chooses so to do, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to the Hunt Indemnified Party), and the Managing Member will assume the payment of all fees and expenses relating to such investigation and defense and will have the right to negotiate and consent to settlement thereof provided such settlement expressly and unconditionally releases the Hunt Indemnified Party from all liabilities and obligations with respect to the claim without prejudice and the settlement would not otherwise materially adversely affect the Hunt Indemnified Party. Any one or more of the Hunt Indemnified Parties will have the right to employ separate counsel in any such action and to participate in the defense thereof, but after notice from the Managing Member to such Hunt Indemnified Party of its election to assume the defense thereof, the fees and expenses of such separate counsel will be at the expense of such Hunt Indemnified Party unless (i) the employment of such counsel and the payment of such fees and expenses by the Managing Member has been specifically authorized in writing by the Managing Member, or (ii) the Managing Member has not employed counsel to have charge of the defense of such action within a reasonable time after receipt of a request by the Hunt Indemnified Party to assume the defense of the action, (iii) counsel for such Hunt Indemnified Party or Parties has reasonably concluded that there may be material defenses available to it or them which are different from or additional to those available to the Managing Member and other Hunt Indemnified Parties (in which case, the Managing Member will not have the right to direct the defense of such action on behalf of such Hunt Indemnified Party and the fees and expenses of counsel necessary as a result of the occurrence of the events described in (i), (ii), or (iii) above will be borne by the Managing Member). The Managing Member will not be liable for any settlement of any such action effected without its Consent, but if settled with the Consent of the Managing Member or if there is a final judgment for the plaintiff in any such action as to which the Managing Member has received notice in writing as hereinabove required, the Managing Member agrees to indemnify
and hold harmless the Hunt Indemnified Party from and against any loss or liability by reason of such settlement or judgment. In addition to the foregoing indemnification, the Hunt Indemnified Parties may pursue any other available legal or equitable remedy against the Managing Member with respect to the Managing Member’s breach of any of the representations, warranties or covenants contained herein, including, without limitation, the Investor Member’s deferral of the payment of its Capital Contribution pursuant to Section 4.2.

(d) The indemnification rights contained in this Section 5.8 shall be recourse obligations of the Managing Member and shall survive dissolution of the Company and Withdrawal or Involuntary Withdrawal of the Managing Member (except that the Managing Member shall not be liable for claims arising solely from the actions of others after its Withdrawal or Involuntary Withdrawal) and shall be cumulative of, and in addition to, any and all rights, remedies and recourse to which the Hunt Indemnified Parties shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity.

(e) The Managing Member, on behalf of itself and the Company, hereby waives any and all claims it may now or in the future have against any Lender and the Investor Member relating to the BBVA Loan based in any way upon Lender’s status as an investor in the Investor Member.

5.9 Certain Payments to the Managing Member and Affiliates.

(a) Development Fee. The Company shall pay the Developer the Development Fee on the terms, at the times and in the manner set forth in the Development Agreement. The Development Agreement provides for a Development Fee equal to $1,040,056. No Development Fee shall be paid by the Company upon the occurrence of an Event of Default or the occurrence of an event, which with the giving of notice or the passage of time or both would result in an Event of Default.

(b) MM Incentive Management Fee. The Company shall pay the Managing Member an annual non-cumulative fee payable in arrears (the “MM Incentive Management Fee”), for services commencing at Rental Achievement in connection with the administration of the day-to-day business of the Company in an annual amount not to exceed the lesser of: $40,000 or 7% of Gross Operating Revenue. The MM Incentive Management Fee for each fiscal year of the Company shall be payable from Cash Flow in the manner and priority set forth in Section 14.1(a) and shall be prorated for a partial fiscal year.

(c) Payment of Development Fee and MM Incentive Management Fee. In the event of the occurrence of an Event of Default by the Managing Member under this Agreement, no Development Fee or MM Incentive Management Fee shall be paid, and there shall be no payments on any Operating Deficit Loans, MM Loans, and Excess MM Loans.

5.10 Reserve Accounts.

(a) The Managing Member shall establish and maintain the Replacement Reserve (the “Replacement Reserve”) to provide for working capital needs, improvements, replacements and any other contingencies of the Company as required by the Lenders and/or any Agency. Commencing on the date on which the first building in the Apartment Complex
receives a certificate of occupancy or other license or permit allowing for the occupancy of such first building, the Managing Member shall cause the Company to deposit into Replacement Reserve from its Cash Receipts, the amount of $14,500 annually (the annual amount of contributions to the Replacement Reserve shall be funded in twelve (12) equal monthly payments), which amount shall be adjusted upward each year, commencing on the one year anniversary of the due date for the initial deposit to the Replacement Reserve, by three percent (3%). Following the 10th year of the Compliance Period, and every five (5) years thereafter, the Investor Member shall have the right to require a physical needs assessment for the Apartment Complex at the Company’s expense, which may result in adjustments to the Replacement Reserve. Withdrawals and expenditures from the Replacement Reserve shall be made only with the Consent of the Investor Member and are subject to any written approval which may be required by any Lender or Agency. If the terms of any loan impose more strict requirements regarding the funding and/or use of Replacement Reserve, such more strict requirements shall apply. If the BBVA Lender does not require that it shall hold and control the Replacement Reserve, then the Replacement Reserve shall be deposited at an FDIC commercial member bank selected by the Investor Member, in an account requiring the signature of the Investor Member for any withdrawals (including any interest earned on the account).

(b) The Managing Member shall cause to be established and maintained the Operating Reserve to fund Operating Deficits (the “Operating Reserve”). Concurrently with the Fourth Installment, the Managing Member shall cause the Company to deposit into the Operating Reserve the greater of $236,000 or an amount equal to six months of Operating Expenses and Debt Service Expense, as determined at the time of Rental Achievement and any contributions to the Operating Reserve required by the Agency or any Lender (the “Initial Operating Reserve Amount”). The Operating Reserve shall be deposited at an FDIC commercial member bank selected by the Investor Member, in an account requiring the signature of the Investor Member for any withdrawals (including any interest earned on the account). Withdrawals and expenditures from the Operating Reserve shall be made only with the Consent of the Investor Member, which Consent shall not be unreasonably withheld, conditioned or delayed, and are not subject to any approval by any Lender or Agency. The Investor Member shall facilitate withdrawals without condition or delay, to such extent that the Managing Member requests to use any funds in the Operating Reserve in excess of $118,000 to pay Operating Deficits prior to funding under its Operating Deficit Guaranty; provided, however, that such funds shall not be applied against the Operating Deficit Loan Cap and shall not be available to pay fees to the Management Agent if it is an Affiliate of the Managing Member, the Developer, or Guarantors. Notwithstanding anything to the contrary, the Managing Member shall cause the Company to increase the Operating Reserve from time to time to the extent necessary to cause the Company to comply with all Operating Reserve (or comparable reserve) requirements imposed, from time to time, by any Lender or the Agency. The Operating Reserve shall be maintained from Cash Flow throughout the Compliance Period at an amount equal to or exceeding the Initial Operating Reserve Amount, and shall not be subject to release prior to the end of the Compliance Period. Upon expiration of the Compliance Period, funds in the Operating Reserve shall be distributed pursuant to Section 14.1(a), except to the extent otherwise required by Section 17.2 of this Agreement, provided, however, that no distribution shall be made to the Managing Member pursuant to such sections if an Event of Default has occurred and is continuing under this Agreement. The release of the Operating Reserve shall not require the consent of the BBVA Lender.
(c) [Reserved]

(d) The Managing Member shall establish and maintain the rental achievement reserve (the “Rental Achievement Reserve”) in the amount of the Permanent Loan Shortfall to pay Debt Service Expense on the BBVA Loan in the event the terms of the BBVA Loan and the BBVA Lender do not permit the application of the Permanent Loan Shortfall to the redemption of the BBVA Loan as set forth in Section 8.4. The Rental Achievement Reserve shall be deposited at an FDIC member bank selected by the Investor Member, in an account requiring the signature of the Investor Member for any withdrawals (including any interest earned on the account). The Investor Member shall facilitate withdrawals without condition or delay, to such extent that the Managing Member requests to use any funds in the Rental Achievement Reserve to pay Debt Service Expense on the BBVA Loan to the extent Cash Receipts are not sufficient to pay all Cash Expenditures. Commencing not sooner than the first anniversary of Rental Achievement, the Investor Member shall facilitate annual disbursements from the Rental Achievement Reserve (as Cash Flow in accordance with Section 14.1(a) hereof), with each annual disbursement in an amount up to 1/15th of the original balance of the Rental Achievement Reserve, provided that such annual disbursements shall only be made if each of the following is true: (i) there are no uncured events of default under the Project Documents, and (ii) the annual audited financial statements of the Company for the immediately preceding year demonstrate a Debt Service Coverage Ratio of not less than 1.15 to 1.00 and no accrued trade payable liabilities aged more than thirty (30) days. The Rental Achievement Reserve shall be held through the Compliance Period and shall be released as Cash Flow pursuant to Section 14.1(a) hereof at the end of the Compliance Period, and any remaining balance in the Rental Achievement Reserve upon sale of the Project shall be disbursed as provided in accordance with Section 14.1(b).

5.11 Pledged Payments. To secure the payment and performance by the Managing Member and the Developer to Investor Member of the Managing Member’s obligations under this Agreement and the Developer’s obligations under the Development Agreement, the Managing Member, in accordance with the Managing Member Pledge, hereby collaterally assigns, pledges and grants a security interest to the Investor Member in all right, title and interest the Managing Member has in the right to receive any distributions and payments under this Agreement, payments with respect to Operating Deficit Loans and MM Loans and distributions of Cash Flow and Cash From Capital Transaction, and the Developer, in accordance with the Developer Pledge, hereby collaterally assigns, pledges and grants a security interest to the Investor Member in all right, title and interest the Developer has in the Development Agreement, including, without limitation, any payments of the Development Fee (collectively, the “Pledged Payments”). The Managing Member and the Developer, in accordance with the terms of the Managing Member Pledge and Developer Pledge, respectively, irrevocably direct the Company to pay to the Investor Member any Pledged Payments at any time that there is an unsatisfied obligation secured by the Pledged Payments. The Company and the Members shall treat any Pledged Payments made by the Company to the Investor Member as a payment by the Company to the Managing Member or the Developer, as applicable, of the particular Pledged Payment and a payment by the Managing Member or Developer, to the Investor Member, of the particular obligation which it secures. If there is more than one type of outstanding obligation secured at the time a Pledged Payment is made to the Investor Member, the Investor Member, in its sole discretion shall decide to which secured obligation the Pledged Payments shall be
applied. This Section 5.11 shall constitute a security agreement under the laws of the State. In addition, the Managing Member and the Developer each grant the Investor Member a right of offset against Pledged Payments with respect to all amounts due to the Managing Member under this Agreement and the Developer under the Development Agreement.

5.12 Assignment to Company. The Managing Member hereby transfers and assigns to the Company all of its right, title and interest in and to the Apartment Complex and in and to all of the Project Documents, including, without limitation, the following: (i) all contracts with architects, supervising architects, engineers and contractors with respect to the development of the Apartment Complex; (ii) all plans, specifications and working drawings heretofore prepared or obtained in connection with the Apartment Complex; (iii) all governmental commitments and approvals obtained, and applications therefor, including those relating to planning, zoning, building permits, Housing Tax Credits; (iv) any and all commitments with respect to the Loans; (v) any and all contracts or rights with respect to any agreements with the Lenders and any Agency; and (vi) any other work product related to the Apartment Complex and/or the Company, all of which, with respect to the Managing Member, shall have an agreed to value of $1.00.

5.13 Meetings. Any Member may call meetings of the Company for any matters for which the Investor Member may vote as set forth in this Agreement. Within seven (7) days after receipt of Notice requesting a meeting, which Notice shall state the purpose of a meeting, the Managing Member shall provide the Investor Member with Notice (either in person or by certified mail) of a meeting and the purpose of such meeting to be held on a date not less than ten (10) nor more than twenty (20) days after receipt of said request, at a time convenient to the Investor Member, except in the case of an emergency such meeting to be held within two (2) days after receipt of a request. All meetings shall be held at the principal office of the Company.

5.14 Purchase Option. The Co-Managing Member shall have the right to purchase with respect to the Apartment Complex in accordance with the terms set forth in the Purchase Option Agreement.

ARTICLE 6
MANAGING MEMBER REPRESENTATIONS AND WARRANTIES

6.1 Representations, Warranties and Covenants. The Managing Member represents, warrants and covenants to the Company and the Investor Member, and their counsel for purposes of providing certain tax and other opinions, that the following are presently true and accurate:

(a) The Company is a duly organized limited liability company validly existing and in good standing under the laws of the State and has complied with all filing requirements necessary for the protection of the Investor Member, and it has no assets other than those relating to the Apartment Complex and has never engaged in any business or incurred any liabilities other than in respect of the Apartment Complex. The Company has taken all requisite action in order to conduct lawfully its business in the State and is not qualified to do business in and is not required to so qualify in any jurisdiction other than the State.
(b) The Land is and will be zoned for the operation of the Apartment Complex as a permitted use. There is no violation by the Company or the Managing Member of any zoning or similar regulation applicable to the Apartment Complex which could have a material adverse effect thereon, or, to the best of the knowledge of the Managing Member after due inquiry, of any environmental or similar regulation applicable to the Apartment Complex which could have a material adverse effect thereon, and the Company has complied with all applicable municipal and other laws, ordinances and regulations relating to such construction and use of the Apartment Complex.

(c) All appropriate public utilities, including water, electricity and gas (if called for in the Plans and Specifications), are or will be available and operating properly for each apartment unit in the Apartment Complex on the Occupancy Commencement Date.

(d) No event or proceeding (including, without limitation, legal actions or proceedings before any court, commission, administrative body or other governmental authority having jurisdiction over the zoning applicable to the Apartment Complex, labor disputes and acts of any governmental authority) has occurred or is pending or threatened to the best of the Managing Member’s knowledge after due inquiry, which may (i) materially adversely affect the Company, the Apartment Complex or related to the business or assets of the Company or of the Apartment Complex, or (ii) materially adversely affect the ability of the Managing Member or any of its Affiliates to perform their respective obligations hereunder or under any other agreement with respect to the Apartment Complex, other than legal proceedings which have been bonded against in such manner as to stay the effect of the proceedings or otherwise have been adequately provided for.

(e) No default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under this Agreement or under any material provision of the Project Documents, and the same are in full force and effect.

(f) There has been no violation by the Company, the Managing Member, the Guarantors or any Affiliate of the Managing Member or the Guarantors of Anti-Corruption Laws in connection with the execution of this Agreement, the Project Documents and all other instruments, documents and agreements pertaining to the Company or the Apartment Complex.

(g) After Conversion, no Member or Related Person will bear the Economic Risk of Loss with respect to the Loans. No Managing Member has, either on its own behalf or on behalf of the Company, incurred any financial responsibility with respect to the Company prior to the Closing Date, other than as disclosed in writing to the Investor Member or which will be satisfied at or prior to the execution of this Agreement.

(h) Reserved.

(i) Reserved.

(j) The Company owns a fee simple interest in the Apartment Complex, subject to no material liens, charges or encumbrances other than those which (i) are permitted by the Project Documents and are noted or excepted in the Title Commitment, or, after the issuance thereof, the Title Policy, and (ii) do not materially interfere with use of the Apartment Complex.
(or any part thereof) for its intended purpose or have a material adverse effect on the value of the Apartment Complex. The Managing Member has not made any misrepresentations or failed to make any disclosure that will or could result in the Company lacking title insurance coverage based on imputation of knowledge of the Managing Member to the Company.

(k) Reserved.

(l) Reserved.

(m) The execution and delivery of all instruments and the performance of all acts heretofore or hereafter made or taken pertaining to the Company or the Apartment Complex by each Affiliate of the Managing Member which is a corporation or limited liability company have been or will be duly authorized by all necessary organizational action, and the consummation of any such transactions with or on behalf of the Company will not constitute a breach or violation of, or a default under, the charter, bylaws, operating agreement or other organizational documents of such Affiliate or any agreement by which such Affiliate or any of its properties is bound, nor constitute a violation of any law, administrative regulation or court decree.

(n) Any Managing Member which is a corporation or limited liability company has been duly organized, is validly existing and in good standing under the laws of its state of organization and has all requisite power to be a Managing Member and to perform its duties and obligations as contemplated by this Agreement and the Project Documents. Neither the execution and delivery by such Managing Member of this Agreement nor the performance of any of the actions of such Managing Member contemplated hereby has constituted or will constitute a violation of (i) the articles of organization, by-laws, operating agreements or other organizational documents of such Managing Member, (ii) any agreement by which such Managing Member is bound or to which any of its property or assets is subject, or (iii) any law, administrative regulation or court decree.

(o) [Reserved].

(p) The only tenant eligibility requirements or rent restrictions with which the Apartment Complex and the Company must comply, including restrictions necessary to receive the full amount of the Projected Housing Tax Credits, are the following:

(i) 50 apartment units are subject to the rent restrictions and occupancy limitations that apply to residential units that satisfy the Application, Minimum Set-Aside Test and comply with the term of the Extended Use Agreement and are leased to Qualified Tenants (the “Housing Tax Credit Units”);

(ii) Unless the Investor Member gives its Consent, eight (8) of the apartment units shall at all times be rented or available for rent as “free market” (the “Market Rate Units”) units without regard to any rent restrictions and occupancy limitations imposed under the Code, the Agency, the Extended Use Agreement or from any other source;

(iii) 10 apartment units are subject to the restrictions of the Section 811 Subsidy Contract; and
(iv) [6] apartment units are subject to the restrictions of the HOME Loan.

(q) The Managing Member acknowledges that the HOME Loan has been funded with the proceeds of HOME Program funds pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1990, which is implemented by the HOME Investment Partnerships Program, 24 CFR Part 92, as amended (collectively, the “HOME Act”). The Managing Member shall cause the Company to comply in full with the HOME Act, if applicable, including, without limitation, rental restrictions and tenant income limitations, Davis-Bacon Act compliance requirements, and all requirements set forth in any regulatory agreement executed by the Company in connection with the HOME Loan.

(r) The term of the Extended Use Agreement will not exceed thirty-five (35) years and under the Extended Use Agreement.

(s) Saigebrook Development, LLC owns and shall continue to own at all times during the term hereof one hundred percent (100%) of all classes of interests of the Co-Managing Member and Lisa M. Stephens owns and shall continue to own at all times during the term hereof one hundred percent (100%) of all classes of interests of Saigebrook Development, LLC (subject to any estate planning transfers; provided that (A) any direct or indirect interest of Lisa M. Stephens in the Co-Managing Member is conveyed to a trust for the benefit of the spouse or children of Lisa M. Stephens, and (B) Lisa M. Stephens or Megan D. Lasch continues to control the Co-Managing Member). O-SDA Industries, LLC owns and shall continue to own at all times during the term hereof one hundred percent (100%) of all classes of interests of the Administrative Member and Megan D. Lasch owns and shall continue to own at all times during the term hereof one hundred percent (100%) of all classes of interests of O-SDA Industries, LLC (subject to any estate planning transfers; provided that (A) any direct or indirect interest of Megan D. Lasch in the Administrative Member is conveyed to a trust for the benefit of the spouse or children of Megan D. Lasch, and (B) Megan D. Lasch or Lisa M. Stephens continues to control the Administrative Member).

(t) Single Purpose Requirements.

(i) The Managing Member shall not engage, has not engaged and does not engage, in any business other than the business of making housing available to persons of low and moderate income other than with respect to the Market Rate Units and promoting social welfare and combating community deterioration, through acquisition, investment, funding, construction, rehabilitation, or any other means consistent with its charitable purposes.

(ii) The Managing Member shall not enter into and has not entered into any contract or agreement with any Affiliate of the Managing Member, any constituent party of the Managing Member, or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s length basis with third parties other than any such party.
(iii) The Managing Member has and shall continue to pay its debts and liabilities from its own assets as the same shall become due. No Affiliate has paid any debts or liabilities on behalf of the Managing Member.

(iv) The Managing Member has and shall continue to maintain books, financial records and bank accounts that are separate and distinct from the books, financial records and bank accounts of any other Person including any Affiliate.

(v) The Managing Member has and shall continue to maintain separate annual financial statements prepared in accordance with generally accepted accounting principles, consistently applied, showing its assets and liabilities separate and distinct from those of any other entity; in the event the financial statements of the Managing Member are consolidated with the financial statements of any other entity, the Managing Member has and shall continue to cause to be included in such consolidated financial statements: (i) a narrative description of the separate assets, liabilities, business functions, operations and existence of the Managing Member to ensure that such separate assets, liabilities, business functions, operations and existence are readily distinguishable by any entity receiving or relying upon a copy of such consolidated financial statements; and (ii) a statement that the Managing Member’s assets and credit are not available to satisfy the debts of such other entity or any other person.

(vi) The Managing Member or its members has and shall continue to file its own tax returns and pay its own taxes required to be paid under applicable law.

(vii) The Managing Member has and shall continue to (i) hold itself out as an entity separate and distinct from any other Person; (ii) not identify itself or any of its affiliates as a division or part of the other; (iii) correct any known misunderstanding regarding its separate status; and (iv) use separate stationery, invoices, checks, and the like bearing its own name.

(viii) The Managing Member has and shall continue to conduct its business in its own name so as to avoid or correct any misunderstanding on the part of any creditor concerning the fact that any invoices and other statements of account from creditors of the Managing Member are to be addressed and mailed directly to the Managing Member, though this provision shall not prohibit such mail to be delivered to the Managing Member c/o any other entity.

(ix) The Managing Member has and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(x) The Managing Member has not and shall not commingle any of its assets, funds or liabilities with the assets, funds or liabilities of any other Person or Affiliate.

(xi) The Managing Member has and shall continue to maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any party.
(xii) Except as provided for in this Agreement or under the Loan documents, the Managing Member has not and shall not, (i) assume or guaranty the debts of any other Person in a manner that includes a pledge, encumbrance, transfer or hypothecation (whether by operation of law or otherwise) of any assets or interests of the Company or, (ii) hold itself out to be responsible for the debts of another Person in a manner that includes the pledge, encumbrance, transfer or hypothecation of any assets or interests of the Company (whether by operation of law or otherwise), or (iii) otherwise pledge, encumber, transfer or hypothecate the assets of the Company for the benefit of another Person or permit the same to occur, or (iv) hold the Company’s credit as being available to satisfy the obligations of any other Person.

(xiii) All transactions carried out by the Managing Member have been and will be, in all instances, made in good faith and without intent to hinder, delay or defraud creditors of the Managing Member.

(u) On each date of funding by the Investor Member of a Capital Contribution, the Company shall have good and marketable title to the Apartment Complex, subject only to the permitted exceptions set forth in Section 6.1(f). All real estate taxes, assessments, water and sewer charges and other municipal charges, to the extent due and owing, have been paid in full on the Apartment Complex.

(v) No representation, warranty or statement of the Managing Member in this Agreement or in any document, certificate or schedule furnished or to be furnished to any Investor Member pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

(w) The Apartment Complex is not a scattered site project within the meaning of Code Section 42(g)(7).

(x) The Agency has designated the Apartment Complex as requiring an increase in Housing Tax Credits for financial feasibility under Section 42(d)(5)(B)(v) of the Code so that the Apartment Complex is treated as located in a “difficult development area” under Section 42(d)(5)(B) of the Code. Consequently, the Company will be entitled to increase the Eligible Basis of the buildings comprising the Apartment Complex to one hundred thirty percent (130%) of what it would otherwise be.

(y) The Managing Member represents, warrants and covenants that:

(i) By the Fourth Installment, the Accountants have certified that all amounts included in the determination of Eligible Basis as set forth in the Development Budget and in the Application are properly includable pursuant to the Code and Service rulings.

(ii) The Company’s total initial cost basis allocable to a class of property other than residential rental property shall not be increased by more than 25% of the amount set forth in the LIHTC Certificate attached hereto as Exhibit S.

(iii) No portion of the Apartment Complex’s Eligible Basis, including the portion of the Development Fee included in Eligible Basis, is allocable, under the Code and
(iv) Any portion of the Development Fee that is included in Eligible Basis, including any portion the payment of which is deferred, is properly includable in Eligible Basis under the Code and Service rulings.

(z) No Event of Bankruptcy has occurred with respect to the Managing Member, any Guarantor or any Affiliate of the Managing Member or any Guarantor.

(aa) Neither the Company nor any Managing Member has liabilities, contingent or otherwise, or pending or threatened litigation or any unasserted claim against any of them which would have a material adverse effect on the Managing Member, the Apartment Complex or the Company that have not been disclosed in writing to the Investor Member.

(bb) There is no litigation, demand, suit, action, inquiry, proceeding, investigation or claim pending or, to the best of the Managing Member’s knowledge, threatened, relating to any Anti-Corruption Laws with respect to the Company, the Managing Member, the Guarantor(s) or any Affiliate with respect to the Managing Member or the Guarantor(s).

(cc) All accounts of the Company required to be maintained under the terms of the Project Documents, including the Replacement Reserve, are currently funded to the levels required by the Lenders and/or any Agency, to the extent required by each such Lender and Agency.

(dd) Prior to Completion, the Guarantors will maintain collectively at least $1,000,000 in Liquid Assets. From the date of Completion through and including the Rental Achievement, the Guarantors will maintain collectively at least $500,000 in Liquid Assets. The Managing Member shall Notify the Investor Member whenever the requirements of this Section 6.1(dd) are not satisfied. [Any Development Fee paid at Closing will count towards the Guarantor’s Liquid Asset requirement on the date of Closing].

(ee) All payments and expenses required to be made or incurred in order to achieve Completion of the Apartment Complex in conformity with the Project Documents, to satisfy all requirements under the Project Documents and/or which form the basis for determining the principal sum of the Loans and to pay the Development Fee (other than the Deferred Development Fee) have been or will be paid or provided for utilizing only the Permitted Sources.

(ff) The amount of Housing Tax Credits which are expected to be allocated by the Company to the Investor Member is as set forth in the definition of Projected Housing Tax Credits.

(gg) The Apartment Complex is being developed in a manner which satisfies, and shall continue to satisfy, all restrictions, including tenant income and rent restrictions, applicable to projects generating Housing Tax Credits.
None of the costs to develop and construct the Apartment Complex has been paid for, directly or indirectly, from the proceeds of bonds the interest on which is exempt from tax under Section 103 of the Code, and the Eligible Basis of the Apartment Complex shall not include any costs financed with the proceeds of a federally funded grant pursuant to Section 42(d)(5)(A) of the Code.

The Managing Member has provided to the Investor Member a complete copy of the Environmental Documents. To the best of the knowledge of the Managing Member after due inquiry, except as disclosed in the Environmental Documents, no Managing Member, Affiliate of any Managing Member or Person for whose conduct any Managing Member is or was responsible has ever: (i) owned, occupied, or operated a Facility or Vessel on the Apartment Complex on which any Hazardous Material was or is stored, transported or disposed of (except if such storage, transport or disposal was and is at all times in compliance with all laws, including all Environmental Laws, ordinances and regulations pertaining thereto); (ii) directly or indirectly transported, or arranged for transport, of any Hazardous Material (except if such transport was and is at all times in compliance with all laws, including all Environmental Laws, ordinances and regulations pertaining thereto) to or from the Apartment Complex; (iii) caused or was legally responsible for any release or threat of release of any Hazardous Material to or from the Apartment Complex or the property adjacent thereto; (iv) received notification from any federal, state or other governmental authority or by any other Person of (x) any potential, known, or threat of release of any Hazardous Material at or from the Apartment Complex; or (y) the incurrence of any expense or loss by any such governmental authority or by any other Person in connection with the assessment, containment, or removal of any release or threat of release of any Hazardous Material from the Apartment Complex.

In connection with the acquisition of the Apartment Complex, the Company obtained a “Phase I” environmental site assessment of the Apartment Complex which establishes an innocent landowner defense pursuant to Section 9601(35) of CERCLA. The Managing Member has reviewed the “Phase I” environmental site assessment (and any subsequent studies recommended therein) and believes the same to be true, correct and complete in all respects. To the best knowledge of the Managing Member, after due inquiry, there is no fact, circumstance, event or condition, previously or subsequently occurring, which would or does make any statement in such survey untrue, false or misleading. None of the Company, the Managing Member nor any of its Affiliates has given any waiver or release of liability pursuant to any Environmental Law to any Person in the chain of title of the Land or the Apartment Complex.

To the best of the Managing Member’s knowledge, after due inquiry, except as disclosed by the Managing Member to the Investor Member in writing, neither the Company nor the Apartment Complex is in violation of any Environmental Law. Neither the Managing Member nor the Company has received any notice from any governmental agency or by any other Person that the Company, Apartment Complex or Land upon which it is located is in violation of any Environmental Law.

To the best of the Managing Member’s knowledge, after due inquiry, except as disclosed by the Managing Member to the Investor Member in writing or in the Environmental Documents, no Hazardous Material was ever or is now stored, transported or
disposed of (except to the extent any such storage, transport or disposal was at all times in compliance with all laws, including all Environmental Laws, ordinances and regulations pertaining thereto) on the Land.

(II) Except as contemplated in the Purchase Option Agreement, no Person or Entity other than the Company and those Persons holding indirect interests through the Company holds any equity interest in the Apartment Complex.

(mm) The Company has the sole responsibility to pay all maintenance and operating costs, including all taxes levied upon, and all insurance costs attributable to the Apartment Complex.

(nn) The Company, except to the extent that it is protected by insurance and excluding any risk borne by any Lender, bears the sole risk of loss if the Apartment Complex is destroyed or condemned, or if there is a diminution in value of the Apartment Complex.

(oo) No Person except the Company has the right to any proceeds after payment of all indebtedness, from the sale, refinancing or leasing of the Apartment Complex.

(pp) The fair market value of the Apartment Complex exceeds or, once constructed, is expected to exceed the total amount of indebtedness, including accrued interest thereon, encumbering the Apartment Complex and is expected to do so throughout the term of such indebtedness.

(qq) The Managing Member represents and warrants that (i) neither the Managing Member nor the Company has entered into any other enforceable agreement or commitment with any other Person to acquire the Housing Tax Credits, or, in the alternative, (ii) the Managing Member and/or the Company has obtained legally enforceable releases or termination agreements from other Persons with whom the Managing Member and/or the Company has previously entered into an agreement whereby said Persons may acquire the Housing Tax Credits. The Managing Member further warrants that it shall at all times indemnify and hold harmless the Hunt Indemnified Parties against and from any and all claims, suits, actions, damages, costs, judgments and expenses, of any nature whatsoever, suffered or incurred by the Hunt Indemnified Parties as a result of the Managing Member and/or the Company’s prior dealings, negotiations, agreements, and/or commitments with Persons.

(rr) The Managing Member has prepared its own financial analysis of the Apartment Complex and is not relying on any financial analysis, projection or forecast prepared by the Investor Member or any Affiliate thereof of the construction costs associated with the Apartment Complex or the Apartment Complex’s operations. There are sufficient sources of funds to complete the Apartment Complex in accordance with the Development Budget.

(ss) The Apartment Complex has been and will be constructed and operated in conformance with the Application submitted to the Agency.

(tt) No restrictions on the sale or refinancing of the Apartment Complex exist, other than restrictions under Code Section 42, the documents evidencing and securing the HOME Loan and the Extended Use Agreement, and no other such restrictions shall be placed
upon the sale or refinancing of the Apartment Complex at any time while the Investor Member is an Investor Member without the Consent of the Investor Member.

(uu) The Company has not made, and will not make, an election to be taxable as a corporation.

(vv) Other than as specifically provided in this Agreement, a creditor who makes a loan to the Company shall not have or acquire at any time as a result of making the loan, any interest in the profits, capital or property of the Company other than as a secured creditor.

(ww) The Managing Member has disclosed in writing to the Investor Member all material actions with respect to the Company taken by the Managing Member prior to the date hereof.

(xx) All material documents relating to the Company and the Apartment Complex have been made available to the Investor Member.

(yy) The Managing Member acknowledges that no Lender is or will be acting on behalf of or as agent for the Investor Member in connection with Loans.

(zz) The Managing Member, on behalf of itself and the Company, shall not bring any claim against any Lender or the Investor Member relating to the Loans based in any way upon Lender’s status as an investor in the Investor Member.

(aaa) Neither the Managing Member nor the Company (a) is in violation of the USA Patriot Act; (b) is a Person or entity described by section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49,079 (2001), or (c) to the best knowledge and belief of the Managing Member, neither the Managing Member or the Company engages in any dealings or transactions, or is otherwise associated, with any such Persons or entities.

(bbb) The Managing Member acknowledges that the fees to be paid by the Company and described in this Agreement and all exhibits thereto, including the Development Agreement, the Management Agreement and the Project Documents, are reasonable compensation for the services for which they will be paid.

(ccc) The Apartment Complex does not contain any commercial spaces.

(ddd) The Managing Member has performed suitable and adequate due diligence as is customary in the industry and, in connection therewith, and the Managing Member has discovered no condition (other than those previously disclosed to the Investor Member in writing) adverse to the development and operation of the Project or any of the assumptions, projections or proformas delivered to the Investor Member.

(eee) The Managing Member shall Notify the Investor Member of any groundbreaking, grand opening, ribbon-cutting or other public relations ceremony relating to the Apartment Complex (collectively, “Groundbreaking Activities”). In addition, the Managing
Member shall invite (in writing) a representative of the Investor Member to attend and actively participate in such Groundbreaking Activities, such written invitation shall be made no less than thirty (30) calendar days prior to the scheduled event. The Managing Member shall cause the Company to display a sign at the Apartment Complex during construction which clearly states the name of Hunt Capital Partners, LLC as the arranger of equity funds for the Project and at Hunt’s option, the name of the Investor Member or any member/partner of the Investor Member. The sign shall be erected, at the cost of the Company, in a prominent place on the site within fifteen (15) Business Days of receipt by the Managing Member of the Hunt Capital Partners, LLC image and directions. The Managing Member agrees to immediately remove such sign or reference to Hunt Capital Partners, LLC, its investors, and/or any member/partner of the Investor Member if requested by the Investor Member. The Managing Member hereby gives permission to the Investor Member, and any Affiliate thereof, to issue press releases and advertising relating to the equity commitment and the Investor Member’s participation in the transaction. Such media and marketing materials may include, among other things, photos, information about the location of the Apartment Complex, the number of units, the amenities associated with the Apartment Complex and the terms of the equity commitment. The Managing Member shall reference Hunt Capital Partners, LLC as the arranger of equity funds for the Project and at Hunt’s option, the name of the Investor Member or any member/partner of the Investor Member, in any press releases related to the Apartment Complex and shall provide the Investor Member with at least five (5) Business Days to review such items.

(fff) Reserved.

(ggg) to the Managing Member’s knowledge, it has complied in all material respects with, and has caused the Company to comply in all material respects with, all applicable local, state and federal laws, statutes, regulations, rules and ordinances (including, without limitation, (i) all applicable filing and disclosure requirements related thereto, (ii) the USA Patriot Act and (iii) the Currency and Foreign Transactions Reporting Act of 1970 and neither it nor the Company has entered into any transaction with any entity or country that, to its knowledge, is (A) sanctioned under Section 311 of the USA Patriot Act or (B) a Foreign Shell Bank; it has established anti-money laundering policies and procedures as may be required by the Bank Secrecy Act, as amended by USA Patriot Act, which policies and procedures shall also apply, as applicable, to the Company, and is in full compliance with the Financial Crimes Enforcement Network of the U.S. Department of Treasury (“FinCen”) regulations.

(hhh) At the written direction of the Investor Member, the Managing Members shall cause the Company to make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code. The Managing Member shall not otherwise make the foregoing election without the written direction of, or with the Consent of, the Investor Member. The Managing Member shall seek the direction and/or Consent of the Investor Member prior to filing of the Company’s 2019 tax returns or such earlier time as such election is to be made. Once made, the election will be irrevocable.

(iii) All of the representations, warranties and covenants contained herein shall survive the date of Conversion and the funding date of each Installment made by the Investor Member. The Managing Member shall indemnify and hold harmless the Hunt Indemnified Parties against a breach of any of the foregoing representations, warranties and covenants and
any damage, loss or claim caused thereby, including reasonable attorneys’ fees and costs and expenses of litigation and collection. In case such action is brought against any Hunt Indemnified Party, and it notifies the Managing Member of the commencement thereof as soon as practicable, the Managing Member will be entitled to participate in, and, to the extent that it chooses so to do, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to the Hunt Indemnified Party), and the Managing Member will assume the payment of all fees and expenses relating to such investigation and defense and will have the right to negotiate and consent to settlement thereof provided such settlement expressly and unconditionally releases the Hunt Indemnified Party from all liabilities and obligations with respect to the claim without prejudice and the settlement would not otherwise materially adversely affect the Hunt Indemnified Party. Any one or more of the Hunt Indemnified Parties will have the right to employ separate counsel in any such action and to participate in the defense thereof, but after notice from the Managing Member to such Hunt Indemnified Party of its election to assume the defense thereof, the fees and expenses of such separate counsel will be at the expense of such Hunt Indemnified Party unless (i) the employment of such counsel and the payment of such fees and expenses by the Managing Member has been specifically authorized in writing by the Managing Member, (ii) the Managing Member has not employed counsel to have charge of the defense of such action within a reasonable time after receipt of a request by the Hunt Indemnified Party to assume the defense of the action, or (iii) counsel for such Hunt Indemnified Party or Parties has reasonably concluded that there may be material defenses available to it or them which are different from or additional to those available to the Managing Member and other Hunt Indemnified Parties (in which case, the Managing Member will not have the right to direct the defense of such action on behalf of such Hunt Indemnified Party and the fees and expenses of counsel necessary as a result of the occurrence of the events described in (i), (ii), or (iii) above will be borne by the Managing Member). The Managing Member will not be liable for any settlement of any such action effected without its Consent, but if settled with the Consent of the Managing Member or if there is a final judgment for the plaintiff in any such action as to which the Managing Member has received Notice in writing as hereinabove required, the Managing Member agrees to indemnify and hold harmless the Hunt Indemnified Party from and against any loss or liability by reason of such settlement or judgment.

6.2 Environmental Representations, Warranties and Covenants. The Managing Member will establish operating and maintenance programs (an “O&M”) to instruct site staff and vendors on how to proceed when (i) maintaining the components of the electrical system that facilitate safe mixing of aluminum and copper components, and (ii) dealing with Hazardous Materials at the Apartment Complex, each as and if applicable. A copy of each such O&M report shall be furnished to the Investor Member and the Management Agent, and the Management Agreement shall obligate the Management Agent to act in accordance with the recommendations in any such O&M.

ARTICLE 7
EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. Any one or more of the following events, whether described in Section 7.1(a) or Section 7.1(b) is an Event of Default under this Agreement, and the term “Event of Default,” wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by
operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body. The Events of Default described in Section 7.1(a) may also give rise to the Investor Member’s repurchase right as described in Section 7.2(b)(iv), however, after the Company’s receipt of Forms 8609 and the funding of the Fifth Installment, the Investor Member’s repurchase right shall terminate.

(a) Events of Default That Are Repurchase Triggers.

(i) acts or omissions of the Managing Member that either (A) constitute fraud, bad faith, gross negligence, misconduct, or breach of fiduciary duty with respect to any material matter in the discharge of its duties as the Managing Member or (B) results in or is likely to result in a material detriment to or an impairment of the Apartment Complex, the Company, the Housing Tax Credits or any assets of the Company;

(ii) a Loan shall have been declared in default by Lender, which gives the Lender the right to foreclose on the Apartment Complex;

(iii) any interest rate lock-in has expired and is not replaced with a rate lock of equivalent terms, or the Apartment Complex only qualifies for a permanent loan that is insufficient to balance the sources and uses of funds;

(iv) [Reserved];

(v) other than due to a Tax Law Change, the amount of Actual Housing Tax Credits for any year are (with the exception of year 2020, so long as all adjuster payments due hereunder are funded in a timely manner), or are projected by the Accountants after the issuance of Forms 8609 to be less than eighty percent (80%) of Projected Housing Tax Credits;

(vi) For any reason whatsoever, the Apartment Complex does not generate any Actual Housing Tax Credits during 2021;

(vii) Placement in Service does not occur on or before the earlier to occur of (a) December 31, 2020, or (b) the date required by the Code and the Agency to preserve the Housing Tax Credits;

(viii) reserved;

(ix) reserved;

(x) IRS Forms 8609 are not issued for all buildings in the Apartment Complex on or before the date required under the Code or by the Agency to claim the Housing Tax Credits for the Apartment Complex in the year available (subject, in either case, to delays in issuance thereof solely due to inaction of the Agency);

(xi) The satisfaction of all First Installment Funding Conditions does not occur by June 30, 2019;
(xii) Rental Achievement does not occur on or before October 1, 2021;

(xiii) a casualty shall have occurred with respect to the Apartment Complex and insurance proceeds are insufficient to fully restore the Apartment Complex to its condition immediately prior to such casualty, or the Apartment Complex is not fully restored to its condition immediately prior to such casualty within twenty-four (24) months of such casualty or such earlier date as may be required by the Code or the Agency to preserve the Housing Tax Credits;

(xiv) reserved;

(xv) the Ten Percent Test is not met within earlier of the time specified by Section 42(h)(1)(E) of the Code or the date required by the Agency;

(xvi) reserved;

(xvii) the Managing Member and/or the Company fail to comply with any requirement of the Agency which may have a material adverse effect on the Carryover Allocation, including, without limitation, a reduction in the Projected Housing Tax Credits;

(xviii) at any time prior to Completion, an action is commenced to abandon or permanently enjoin the construction of the Apartment Complex;

(xix) non-achievement of the Minimum Set-Aside Test and/or the Rent Restriction Test by the end of the first year of the Credit Period;

(xx) the Company fails to execute and record an Extended Use Agreement by the close of the first year of the Credit Period;

(xxi) the Company fails to achieve Initial 100% Occupancy on or before October 31, 2021;

(xxii) at any time prior to Rental Achievement, the Managing Member and/or the Developer fail to provide or cause to be provided any funds required to be provided by the Managing Member hereunder or by the Developer under the Development Agreement;

(xxiii) reserved;

(xxiv) the occurrence of an Event of Bankruptcy prior to Rental Achievement, with respect to the Managing Member, the Company, the Guarantor or the Developer, or a Person with a Controlling Interest in any of them;

(xxv) the Managing Member shall have conducted its own affairs or the affairs of the Company in such a manner as would (1) cause the termination of the Company for federal income tax purposes or (2) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation; (3) cause the Company to fail to qualify as a limited liability company under the Uniform Act; or (4) cause the Investor Member to be liable for Company obligations in excess of its Capital Contribution; or (5) otherwise substantially
reduce tax benefits or substantially increase tax liabilities of the Investor Member for which the Investor Member is not compensated under this Agreement; or

(xxvi) any change of control of the Managing Member without the Consent of the Investor Member.

(b) Events of Default That are Not Repurchase Triggers.

(i) the Company fails to pay on a timely basis any of its real estate or personal property tax obligations (including any payments-in-lieu-of-taxes) to any county, city, town or other local government;

(ii) the occurrence of an Event of Bankruptcy after Rental Achievement with respect to the Managing Member, the Company, a Guarantor, the Developer, or a Person with a Controlling Interest in any of them;

(iii) any commission of, indictment or conviction for, or pleading of, nolo contendere with respect to a felony by the Managing Member or a Controlling Person of the Managing Member, or an Affiliate of the Managing Member, or there be a complaint filed against the Managing Member or a Controlling Person of the Managing Member, or an Affiliate of the Managing Member, alleging violation of any anti-fraud, registration or reporting provision of state or federal securities law or a judgment rendered against the Managing Member, a Controlling Person of the Managing Member, or an Affiliate of the Managing Member as a defendant (or admit to liability) in any action based upon civil fraud or misrepresentation, or a debarment or otherwise declaration of ineligibility to participate in any federal program or the Managing Member, a Controlling Person of the Managing Member or an Affiliate of the Managing Member is indicted by a grand jury. In the event a Controlling Person of the Co-Managing Member or an Affiliate of the Co-Managing Member is under investigation by a grand jury, voting rights and control belonging to the Co-Managing Member’s Interest shall vest to the Administrative Member until the conclusion of the investigation or the receipt by the Investor Member of a satisfactory letter from the Attorney General of the United States or the Texas Attorney General, as applicable. In the event a Controlling Person of the Administrative Member or an Affiliate of the Administrative Member is under investigation by a grand jury, voting rights and control belonging to the Administrative Member’s Interest shall vest to the Co-Managing Member until the conclusion of the investigation or the receipt by the Investor Member of a satisfactory letter from the Attorney General of the United States or the Texas Attorney General, as applicable. In the event a Controlling Person of both the Co-Managing Member and the Administrative Member or an Affiliate of the Co-Managing Member and an Affiliate of the Administrative Member is under investigation by a grand jury, voting rights and control belonging to the Interests of Co-Managing Member and the Administrative Member shall vest to the Investor Member until the conclusion of the investigation or the receipt by the Investor Member of a satisfactory letter from the Attorney General of the United States or the Texas Attorney General, as applicable;

(iv) a default by a Guarantor under the Guaranty;
(v) any representation or warranty made by the Managing Member herein, or in any document or certificate furnished to the Investor Member in connection herewith or pursuant hereto shall prove at any time to be false, incorrect or misleading as of the date made and which has an adverse impact upon the Company or the Investor Member;

(vi) the failure of the Managing Member to make any Capital Contributions or payments to the Investor Member required pursuant to Section 4.2(d);

(vii) the Managing Member shall fail in any respect to observe and perform or shall breach in any respect any covenant, condition, duty, obligation or agreement set forth in Articles 5, 6 and 8, which are not otherwise set forth in this Section and which has an adverse impact upon the Company or the Investor Member;

(viii) any act by the Managing Member outside the scope of its duties or obligations under this Agreement that has a material adverse effect on the Company, the Apartment Complex or the Investor Member;

(ix) the material breach by the Managing Member of any provision of this Agreement or a breach or default by the Company of any Project Document;

(x) the Apartment Complex or the Company is substantially mismanaged in any material respect;

(xi) the Managing Member fails to fund any Operating Deficits (regardless of whether the Operating Deficit Guaranty Period has expired or whether the Operating Deficit Cap has been reached);

(xii) the Managing Member withdraws, attempts to withdraw, or for any reason is deemed to have withdrawn from the Company;

(xiii) the Managing Member fails to provide or maintain any insurance required by this Agreement;

(xiv) the Managing Member shall have conducted its own affairs or the affairs of the Company in such a manner as would qualify as an event of removal or withdrawal with respect to a Managing Member under the Uniform Act; or

(xv) a Loan shall have been declared in default by Lender.

7.2 Notice and Remedies.

(a) Notice. Prior to or concurrently with the enforcement of any remedy in Section 7.2(b), the Investor Member shall give Notice of an Event of Default (“Notice of Default”) to the Managing Member and, with respect to certain Events of Default set forth in Section 7.2(c) only, the Managing Member shall have the right to cure such Event of Default.

(b) Remedies.
(i) Upon the occurrence of an Event of Default (and if the Event of Default is subject to cure under Section 7.2(c), upon a failure to cure such Event of Default by the expiration of the applicable cure period), the Investor Member may elect that, such Managing Member (a) shall immediately cease to be a Managing Member, (b) shall no longer have any Interest, (c) shall not be entitled to receive any fees, including but not limited to the MM Incentive Management Fees, which have not been fully paid prior to the date of the occurrence of the Event of Default or payment with respect to any Operating Deficit Loans or MM Loans (such removal of the Managing Member shall be an “Involuntary Withdrawal”). Notwithstanding the foregoing, upon the occurrence of the Event of Default described in Section 7.1(b)(ii) hereof, the Involuntary Withdrawal of the Managing Member shall occur immediately upon the occurrence of the Event of Default, without any election by the Investor Member.

(ii) Upon an Event of Default (and if the Event of Default is subject to cure under Section 7.2(c), upon a failure to cure such Event of Default by the expiration of the applicable cure period), the Investor Member’s designee, which may be a Hunt Entity or a qualified non-profit organization if required by the Application, shall be admitted as a replacement Managing Member (the “Replacement Managing Member”) on the terms set forth herein without any further action by any other Member. Upon any such admission of the Replacement Managing Member, the former Managing Member’s interest in all items of profits, losses, credits, distributions and Percentage Interest shall be transferred to the Replacement Managing Member and the Replacement Managing Member shall be paid all fees and loans, including but not limited to MM Incentive Management Fees, Operating Deficit Loans and MM Loans, which would have been payable to the removed Managing Member had an Event of Default not occurred. In addition, the obligation to pay any Development Fee, or portion thereof, that is not paid with the Managing Member’s Special Capital Contribution in accordance with Section 4.1(c), shall be automatically assigned to the Replacement Managing Member. The Replacement Managing Member shall be automatically admitted and become the managing member of the Company without the need for any approval from any Member, Agency or any Lender, unless otherwise required by the Agency or by any Lender, and shall be irrevocably delegated all of the power and authority of the Managing Member pursuant to Section 5.1. Each Member hereby grants to the Investor Member a special power of attorney, irrevocable to the extent permitted by law and coupled with an interest, to amend the Certificate and this Agreement and to do anything else which, in the view of the Investor Member, may be necessary or appropriate to accomplish the purposes of this Section 7.2(b)(ii) or to enable the Replacement Managing Member admitted pursuant to this Section 7.2(b)(ii) to manage the business of the Company. The admission of the Replacement Managing Member shall not relieve the former Managing Member of any of its obligations hereunder incurred as a Managing Member, and the former Managing Member shall fully indemnify and hold harmless the Replacement Managing Member from and against any and all losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained in connection with its capacity as a Managing Member. For the avoidance of doubt, the Managing Member shall not be responsible for obligations incurred or arising from the actions or inactions of the Replacement Managing Member on or after the Replacement Managing Member is admitted to the Company or for claims arising after its removal and not attributable to the former Managing Member’s actions or inactions.

(iii) The Investor Member hereby is granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the Members
and the Company as shall be legally necessary and sufficient to effect all of the foregoing provisions of this Section 7.2, including, without limitation, any amendment to the Certificate and this Agreement.

(iv) Upon the occurrence of an Event of Default by the Managing Member described in Section 7.1(a), the Investor Member may, at its option, at any time, require the Managing Member to, and the Managing Member shall, purchase the Investor Member’s Interest in the Company for an amount equal to the Capital Contribution paid by the Investor Member (together with interest thereon at an annual interest rate of ten percent (10%) compounded annually from the date on which each installment of the Investor Member’s Capital Contribution was actually advanced to the Company) plus all expenses (including, without limitation, reasonable costs of in house and outside legal counsel and accountants) incurred by the Investor Member in connection with its participation in the Company and enforcing their rights hereunder, plus the repayment in full of all outstanding IM Loans plus any federal income tax liability incurred by the Investor Member as a result of the payment of any amounts pursuant to this Section 7.2(b)(iv) less Housing Tax Credits allocated to the Investor Member that have not been or will not be recaptured. Upon receipt of such amount, the Investor Member’s interest as an Investor Member in the Company shall terminate, the Investor Member shall transfer its interest in the Company to the Managing Member or its designees, and the Managing Member shall indemnify and hold harmless the Hunt Indemnified Parties from and against any losses, damages, liabilities, costs or expenses (including reasonable attorneys’ fees) to which the Hunt Indemnified Parties (as a result of its participation hereunder) may be subject. In case such action is brought against any Hunt Indemnified Party, and it notifies the Managing Member of the commencement thereof as soon as practicable, the Managing Member will be entitled to participate in, and, to the extent that it chooses so to do, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to the Hunt Indemnified Party), and the Managing Member will assume the payment of all fees and expenses relating to such investigation and defense and will have the right to negotiate and consent to settlement thereof provided such settlement expressly and unconditionally releases the Hunt Indemnified Party from all liabilities and obligations with respect to the claim without prejudice and the settlement would not otherwise materially adversely affect the Hunt Indemnified Party. Any one or more of the Hunt Indemnified Parties will have the right to employ separate counsel in any such action and to participate in the defense thereof, but after Notice from the Managing Member to such Hunt Indemnified Party of its election to assume the defense thereof, the fees and expenses of such separate counsel will be at the expense of such Hunt Indemnified Party unless (i) the employment of such counsel and the payment of such fees and expenses by the Managing Member has been specifically authorized in writing by the Managing Member, or (ii) the Managing Member has not employed counsel to have charge of the defense of such action within a reasonable time after receipt of a request by the Hunt Indemnified Party to assume the defense of the action, (iii) counsel for such Hunt Indemnified Party or Parties has reasonably concluded that there may be material defenses available to it or them which are different from or additional to those available to the Managing Member and other Hunt Indemnified Parties (in which case, the Managing Member will not have the right to direct the defense of such action on behalf of such Hunt Indemnified Party and the fees and expenses of counsel necessary as a result of the occurrence of the events described in (i), (ii), or (iii) above will be borne by the Managing Member). The Managing Member will not be liable for any settlement of any such action effected without its Consent, but if settled with the Consent of the Managing Member or if there
is a final judgment for the plaintiff in any such action as to which the Managing Member has received Notice as hereinabove required, the Managing Member agrees to indemnify and hold harmless the Hunt Indemnified Party from and against any loss or liability by reason of such settlement or judgment.

(v) The Managing Member, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees that if the Managing Member becomes the subject of Bankruptcy proceedings pursuant to the United States Bankruptcy Code, as it may be amended (the “Bankruptcy Code”), then (i) any other Member shall thereupon be entitled to immediate relief from any automatic stay imposed by Section 362 of the Bankruptcy Code or otherwise, on or against the exercise of the rights and remedies available to such Member pursuant to this Agreement or otherwise, and (ii) any Member may apply or move the bankruptcy court in which the Bankruptcy proceedings are pending for a change of venue to the bankruptcy court where the Company has its principal place of business and the Managing Member agrees not to oppose or object to such application or motion in any way. The foregoing shall in no way preclude, restrict or prevent the Managing Member from filing for protection under the Bankruptcy Code.

(vi) This is an agreement under which applicable law excuses the Investor Member from accepting performance from any Managing Member which is a debtor in a case under the Bankruptcy Code, 11 U.S.C. § 101 et seq., from a trustee of any such debtor and from the assignee of any such debtor or trustee. The Managing Member acknowledges that the Investor Member has entered into this Agreement with the Managing Member in consideration of and in reliance upon its unique knowledge, experience and expertise, and that of its principals in the planning and implementation of the development of the Apartment Complex and in the area of affordable housing and development in general. The foregoing restriction on transfer is based in part on the above factors. The Managing Member expressly agrees that the Investor Member shall not be required to accept performance under this Agreement from any person other than the Managing Member, including, without limitation, any trustee of the Managing Member appointed under the Bankruptcy Code, 11 U.S.C. § 101 et seq., and any assignee of any such trustee or any receiver or examiner appointed under federal or state law.

(vii) Upon the occurrence of an Event of Default, the Company shall withhold payment of any installment of fees payable pursuant to Section 5.9 and the Managing Member shall be liable for the Company’s payment of any and all installments of the Development Fee payable pursuant to the Development Agreement. All amounts so withheld by the Company under this Section 7.2(b)(vii) shall be promptly released to the payees thereof only after the Managing Member has cured the default justifying the withholding, as demonstrated by evidence acceptable to the Investor Member.

(viii) In addition to the foregoing remedies, the Investor Member can take suits, actions or proceedings in equity or at law, either for the specific performance of any covenant or contract contained herein or in aid or execution of any right herein granted, or for any legal or equitable remedy as the Investor Member shall deem most effectual to protect and enforce this Agreement, the Guaranty and the Project Documents.
(c) **Cure.** After Notice from the Investor Member pursuant to Section 7.2(a), the Managing Member shall have the following opportunity to cure only the following Events of Default:

(i) There shall be no cure period with respect to Events of Default described in Section 7.1(a). There shall be no cure period with respect to Events of Default described in any of Sections 7.1(b)(ii) and (iii) (the “No Cure Sections”).

(ii) The Managing Member shall have ten (10) Business Days from the date of the Notice of Default to cure a monetary Event of Default described in Sections 7.1(b)(i), (iv), (vi), (xi), (xvi) and (xvii) in a manner acceptable to the Investor Member in its sole discretion.

(iii) In the case of an Event of Default in Section 7.1(b) that is susceptible of cure, the Managing Member shall have thirty (30) days from the date of the Notice of Default to cure such Event of Default in a manner acceptable to the Investor Member in its sole discretion or, if the Managing Member commences such cure within thirty (30) days from the date of the Notice of Default and proceeds diligently and in good faith to cure such Event of Default, ninety (90) days from the date of the Notice of Default; but only if the failure to cure such Event of Default within such ninety (90) day period does not have, or in the sole judgment of the Investor Member, will not have, a material adverse effect on the Company, the Apartment Complex or the Investor Member.

(iv) With respect to any Event of Default attributable solely to the Co-Managing Member and for which such Event of Default has been cured by the Administrative Member, the Administrative Member shall have the right to replace the Co-Managing Member with another entity Consented to by the Investor Member. With respect to any Event of Default attributable solely to the Administrative Member and for which such Event of Default has been cured by the Co-Managing Member, the Co-Managing Member shall have the right to replace the Administrative Member with another entity Consented to by the Investor Member.

(v) Any cure of an Event of Default by the Investor Member or an Affiliate of the Investor Member shall not constitute a cure by the Managing Member.

7.3 Nonexclusive Remedies. No remedy herein conferred upon or reserved to the Investor Member is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Investor Member to exercise any remedy reserved to it in this Article, it shall not be necessary to give any Notice other than such Notice as may be herein expressly required or as may be required by law.

7.4 Attorney’s Fees and Expenses. If an Event of Default shall exist under this Agreement and the Investor Member employs attorneys or incurs other expenses for the
collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Managing Member, Developer or Guarantor, the Managing Member shall upon demand pay to the Investor Member the reasonable fees of such attorneys and such other expenses so incurred.

7.5 Effect of Waiver. In the event any Event of Default is waived by the Investor Member, such waiver shall be limited to the particular Event of Default so waived and shall not be deemed to waive any other Event of Default hereunder. Any such waiver shall only be effective if signed in writing by the Investor Member.

ARTICLE 8
MANAGING MEMBER GUARANTEES

8.1 Construction Completion Guaranty.

(a) The Managing Member shall:

(i) Cause all of the dwelling units in the Apartment Complex to be Placed in Service on or before the Placed in Service Date;

(ii) Achieve Completion on or before the date that is ninety (90) days following the date set forth in Section 8.1(a)(i);

(iii) Cause the full funding of the HOME Loan by Conversion; and

(iv) Fulfill all actions required of the Company to assure that the Apartment Complex satisfies the Minimum Set-Aside Test and the Rent Restriction Test on or before by the end of the first year of the Credit Period.

(b) The Managing Member hereby is obligated to pay all Development Deficits when and as incurred. The Company shall have no obligation to pay any Development Deficits. Any amounts funded by the Managing Member pursuant to this clause (b) shall not be treated as a Capital Contribution or a Member Loan and shall not be repaid by the Company. Such Development Deficits may, at the Managing Member’s election together with the prior Consent of the Investor Member, be paid by the Managing Member, through the deferral of additional Development Fee as set forth in Section 3(b) of the Development Agreement, causing a portion of the unpaid Development Fee then due (not to exceed the lesser of the amount such Development Deficits or the unpaid cash portion of the Development Fee then due to the Developer) to be changed to a Deferred Development Fee in the manner provided in Section 3(b) of the Development Agreement (a “DDF Election”), provided, the Investor Member shall Consent to such deferral only if the Investor Member determines, in its sole discretion, that all of the Deferred Development Fee (including any additional deferral to pay Development Costs) can be repaid by the Company through distributions from the cash flow waterfall under Section 14.1(a) within thirteen years after Rental Achievement, further provided that such Consent shall not be required if the Deferred Development Fee is not necessary to be included in the Eligible Basis in order to generate Projected Housing Tax Credits and the Investor Member’s Capital Account is expected to remain positive throughout the period of eleven (11) taxable years beginning with the first taxable year of the Credit Period.
(c) The Managing Member shall pay any Development Deficits pursuant to Section 8.1 by the earlier of (i) the date required to avoid a default or penalties under Company obligations, including, without limitation, the Loans, (ii) the date required to keep all sources of funding for the Apartment Complex “in balance,” (iii) the date required to keep all expenses without a specific maturity date paid on a sixty (60) day current basis or (iv) such earlier date as may be set forth in this Agreement.

(d) If, as the result of any failure by the Sub-Contractor to fulfill its obligations under that certain agreement between Sub-Contractor and General Contractor with respect to the Apartment Complex, a Development Deficit exists and the Guarantor makes a payment of such Development Deficit under the Guaranty, any liquidated damages payment received by the Partnership under the Construction Contract shall be paid to the Guarantor to the extent the Guarantor makes such a payment.

8.2 Operating Deficit Guaranty. Subject to the Managing Member’s right under Section 5.10(b) to use funds in the Operating Deficit Reserve to pay Operating Deficits, if at any time during the Operating Deficit Guaranty Period, an Operating Deficit shall exist, the Managing Member shall make an Operating Deficit Loan to the Company as shall be necessary to pay such Operating Deficits; provided, however, that the Managing Member shall not be obligated to make an Operating Deficit Loan if and to the extent such loan would cause the aggregate amount of all Operating Deficit Loans then outstanding to exceed six (6) months of Operating Expenses and Debt Service Expense as reasonably determined by the Investor Member upon the achievement of Rental Achievement (the “Operating Deficit Loan Cap”). Any Operating Deficit Loan shall be on the following terms: (a) it shall be unsecured; (b) it shall not bear interest; (c) it shall be repayable solely from Cash Flow and proceeds of a Capital Transaction at the time and in the amounts set forth in Sections 14.1(a), 14.1(b) and 17.2(b) of this Agreement; and (d) it shall be fully subordinated to payment of the Loans, IM Loans, MM Loans and indebtedness of the Company to all Persons other than Members. The Managing Member shall be required to fund Operating Deficits pursuant to this Section 8.2 by the earlier of (A) the date required to avoid a default or penalties under Company obligations, including, without limitation, the Loans, and (B) the date required to keep all expenses without a specific maturity date paid on a sixty (60) day current basis. Proceeds of an Operating Deficit Loan may not be used to pay fees to the Management Agent if it is an Affiliate of the Managing Member, the Developer, or the Guarantors.

8.3 Housing Tax Credit Compliance Guaranty.

(a) If, at any time after the earlier to occur of (i) the date that the Investor Member’s Capital Contribution obligation has been reduced to zero or (ii) the occurrence of an Event of Default, there is a Housing Tax Credit Shortfall other than as a result of a Housing Tax Credit Disallowance Event, the Managing Member shall promptly, but in any event within five (5) calendar days after demand, pay the Investor Member an amount equal to (1) the amount of the Housing Tax Credit Shortfall for the fiscal year immediately preceding the Payment Date, (2) all penalties and interest imposed by the Code and assessed against the Investor Member, by the Service with respect to any Housing Tax Credit Shortfall, and (3) an amount sufficient to pay any tax liability owed by the Investor Member resulting from the receipt from the Managing Member of the amounts specified in the foregoing clauses (1), (2) and this clause (3) (such
calculation to be made assuming the Investor Member is subject to the highest federal and Texas state rate imposed on corporate taxpayers under the Code and applicable state law for the taxable year of the Investor Member in which such payment is taken into income by the Investor Member) together with interest on such amounts at the AFR accruing from such Payment Date if such payments in (i), (ii) and (iii) are not made on the Payment Date. There shall be no duplication between amounts paid under this Section 8.3(a) and amounts reflected as reductions in Capital Contributions (and/or payments by the Managing Member, if applicable) under Section 4.2(d).

(b) If at any time after the earlier to occur of (i) payment of the Investor Member’s Capital Contribution or (ii) the occurrence of an Event of Default, there is a Housing Tax Credit Disallowance Event, the Managing Member shall promptly, but in any event within five (5) days after demand, pay to the Investor Member the sum of the following amounts: (i) the amount of Housing Tax Credits previously allocated to the Investor Member, and subsequently disallowed because of such Housing Tax Credit Disallowance Event; (ii) the “credit recapture amount” (as defined in Code Section 42(j)(2)) allocated to the Investor Member because of such Housing Tax Credit Disallowance Event; (iii) all penalties and interest imposed by the Code and assessed against the Investor Member by the Service with respect to such Housing Tax Credit Disallowance Event; (iv) an amount sufficient to pay any tax liability owed by the Investor Member resulting from the receipt from the Managing Member of the amounts specified in the foregoing clauses (i), (ii), (iii), and this clause (iv) (such calculation to be made assuming the Investor Member is subject to the highest federal and Texas state rate imposed on corporate taxpayers under the Code and applicable state law for the taxable year of the Investor Member in which such payment is taken into income by the Investor Member) together with interest on such amounts at the AFR accruing from such Payment Date if such payments in (i), (ii) and (iii) are not made on the Payment Date. There shall be no duplication between amounts paid under this Section 8.3(a) and amounts reflected as reductions in Capital Contributions (and/or payments by the Managing Member, if applicable) under Section 4.2(d).

(c) If the Investor Member receives a payment under the Housing Tax Credit Compliance Guaranty and the Company has appealed the issue giving rise to such payment (but has not caused a stay of enforcement with respect to such issue), and if the Company prevails on such appeal based on a final ruling by a federal court of competent jurisdiction, then the Investor Member shall refund the excess payment under the Housing Tax Credit Compliance Guaranty which it had received.

(d) If there is a Tax Law Change, the Managing Member shall use its good faith, reasonable efforts to comply with such Tax Law Change and to avoid a Housing Tax Credit Shortfall or Housing Tax Credit Disallowance Event, based on such Tax Law Change. If despite the Managing Member’s good faith, reasonable efforts to comply with the Tax Law Change, such Tax Law Change results in a claim under Section 8.3 (a “Limited Recourse Liability”), then the sole recourse of the Investor Member with respect to the Limited Recourse
Liability shall be to the Pledged Payments (excluding only payments of the Development Fee) and the Managing Member shall have no personal liability for the payment of such Limited Recourse Liability (unless and to the extent it wrongfully received Pledged Payments or otherwise breached this Agreement) that should have been made to the Investor Member in satisfaction of the Limited Recourse Liability.

8.4 **Permanent Loan Funding Guaranty.**

(a) The Managing Member irrevocably and unconditionally guarantees and covenants that in no event shall the principal amount of the BBVA Loan shall result in a Debt Service Coverage Ratio being less than one hundred fifteen percent (115%), as determined by the Investor Member in its reasonable discretion. The principal balance of the permanent phase of the BBVA Loan shall not exceed $2,000,000 and the interest rate shall be fixed at [6.51]% over its eighteen (18) year term (thirty-five (35) year amortization schedule). Upon Conversion, all Loans shall be nonrecourse, except for customary carve-outs.

(b) A “Permanent Loan Shortfall” shall be the amount by which $2,000,000 exceeds the actual principal amount of the BBVA Loan after Conversion, not to exceed the amount which would result in an aggregate Debt Service Coverage Ratio equal to one hundred fifteen percent (115%), as determined by the Investor Member in its sole discretion. The Managing Member shall provide such funds to the Company or, with the Consent of the Investor Member, defer the Managing Member’s portion of the Development Fee to be paid as a Deferred Development Fee, as may be necessary to pay for any Permanent Loan Shortfall before Conversion; provided, the Investor Member shall Consent to such deferral only if the Investor Member determines, in its sole discretion, that all of the Deferred Development Fee (including any additional deferral to pay Development Costs) can be repaid by the Company through distributions from the cash flow waterfall under Section 14.1(a) within thirteen years after the Placed in Service Date, further provided that such Consent shall not be required if the Deferred Development Fee is not necessary to be included in the Eligible Basis in order to allocate Projected Housing Tax Credits to the Investor Member and the Investor Member’s Capital Account is expected to remain positive throughout the period of eleven (11) taxable years beginning with the first taxable year of the Credit Period. Any amounts funded by the Managing Member pursuant to this clause (b) shall not be treated as a Capital Contribution or a Member Loan and shall not be repaid by the Company. The Permanent Loan Shortfall shall be used by the Company to reduce the principal amount of the BBVA Loan to result in an aggregate Debt Service Coverage Ratio of not less than 1.15 to 1.00.

8.5 **Security Documents.** As security for the foregoing guarantees and the other obligations of the Managing Member under this Agreement and the Developer under the Development Agreement and concurrently with the execution of this Agreement, the Managing Member shall cause to be delivered to the Investor Member the following documents: (a) Managing Member Pledge; (b) Developer Pledge; and (c) Guaranty.
ARTICLE 9
WITHDRAWAL OF THE MANAGING MEMBER; ADMISSION OF NEW MANAGING MEMBER; REMOVAL OF A MANAGING MEMBER

9.1 Withdrawal.

(a) Except for an Involuntary Withdrawal, the Managing Member may not Withdraw from the Company or sell, transfer assign or encumber its Interest without the Consent of the Investor Member.

(b) In the case of a Managing Member who is an individual, upon the death or adjudication of incompetence of such Managing Member, such Managing Member shall cease to be a Managing Member and shall have no Interest in the Company.

9.2 Admission of Additional Managing Member(s) under Certain Circumstances.

(a) Except as otherwise provided in Article 7, a Person shall be admitted as a Managing Member (the “Additional Managing Member”) of the Company only if the following terms and conditions are satisfied, or waived by the Investor Member:

(i) except as otherwise provided in Article 7 or in the event of the Withdrawal of the Managing Member, the admission of such Person has been consented to by the Managing Member or its successor;

(ii) the admission of such Person has been Consented to by the Investor Member and, if required, by the Agency and the Lenders;

(iii) the successor or additional Person has accepted and agreed in writing to be bound by (i) all the terms and provisions of this Agreement, and (ii) all the terms and provisions of the documents executed in connection with each of the Loans and the Extended Use Agreement, by executing counterparts thereof, if required by the Lenders and/or the Agency, as applicable, and (iii) all the terms and provisions of such other documents or instruments as may be required or appropriate in order to admit such Person as a Managing Member, and (iv) if required under the Uniform Act as a condition precedent to the admission of a Managing Member, an amendment to the Certificate has been filed;

(iv) such Person has provided the Company with evidence satisfactory to Counsel for the Company of its authority to become a Managing Member, to do business in the State and to be bound by the terms and provisions of this Agreement; and

(v) Counsel for the Company has rendered an opinion that the admission of the successor or additional Person is in conformity with the Uniform Act and that none of the actions taken in connection with the admission of the successor Person will cause the termination or dissolution of the Company or will cause it to be classified other than as a limited liability company for federal income tax purposes.

9.3 Effect of Voluntary Withdrawal of Managing Member.
(a) In the event of the Voluntary Withdrawal of the Managing Member, the business of the Company shall be continued by the other Managing Member(s); provided, however, that if the withdrawn Managing Member is then the sole Managing Member, or if such Managing Member withdraws from the Company in contravention of the provisions of Section 9.1 of this Agreement, then the Company shall be terminated, unless within ninety (90) days after receiving Notice of such withdrawal, a majority-in-interest of the other Members elect to designate a successor Managing Member and continue the Company upon the admission of such successor Managing Member to the Company.

(b) If, at the time of the Voluntary Withdrawal of a Managing Member, the withdrawing Managing Member was not the sole Managing Member of the Company, the remaining Managing Member or Managing Members shall immediately (i) give Notice to the Investor Member of such Withdrawal, and (ii) make such amendments to this Agreement and execute and file such amendments or documents or other instruments as are necessary to reflect the disposition of the Interest of the withdrawing Managing Member pursuant to this Section 9.3. The remaining Managing Member or Managing Members are hereby granted an irrevocable power of attorney, coupled with an interest, to execute any or all documents on behalf of the Members and the Company and to file such documents as may be required to effectuate the provisions of this Section 9.3.

(c) Upon a Voluntary Withdrawal, (i) the Managing Member shall cease to have any Interest in the Company, (ii) the Managing Member shall not be entitled to any distributions or allocations from the Company, (iii) the Managing Member shall not be entitled to any repayment of Operating Deficit Loans and (iv) the Managing Member shall not be entitled to any payments of the MM Incentive Management Fee relating to the period of time after the date of its withdrawal. The Managing Member shall be entitled, however, to receive any fees expressly provided for under this Agreement which have been fully earned and accrued prior to the date of Withdrawal, which fee shall be paid when and as specified in this Agreement and shall be entitled to the payment of any MM Loans in the time and manner specified in this Agreement.

(d) If the Managing Member Withdraws from the Company, including, without limitation, an Involuntary Withdrawal, then the Managing Member shall be and shall remain liable for all damages to the Investor Member resulting from the Withdrawal of the Managing Member in breach of this Agreement and for all its obligations and liabilities under this Agreement, including, without limitation, all its liabilities and obligations under Article 5 (including, without limitation, its obligation to make a Managing Member’s Special Capital Contribution in an amount sufficient to pay the Deferred Development Fee on or before the date of such Deferred Development Fee as required to be paid under this Agreement); provided, however, that the Managing Member shall have no liability with respect to any actions or failure to act on the part of any Replacement Managing Member or for claims arising after its removal and not attributable to the former Managing Member’s actions or inactions.

(e) Upon a Voluntary Withdrawal, the Investor Member, or its designee shall, at the sole option of the Investor Member, be admitted as a Replacement Managing Member on the terms set forth in Section 7.2(b)(ii).

ARTICLE 10
RIGHTS OF THE INVESTOR MEMBER

10.1 Management of the Company. No Investor Member shall have the right to take part in the management or control of the business of the Company or to transact any business in the name of the Company. No provision of this Agreement which makes the Consent of any Investor Member a condition for the effectiveness of an action taken by the Managing Member is intended and no such provision shall be construed to give any Investor Member any participation in the control of the Company business.

10.2 Limitation on Liability of the Investor Member. The liability of each Investor Member shall be limited to its Capital Contribution as and when payable under the provisions of this Agreement, and as provided under the Uniform Act. No Investor Member shall have any other liability to contribute money to, or in respect of the liabilities or obligations of, the Company, nor shall any Investor Member be personally liable for any obligations of the Company, except as and to the extent provided in the Uniform Act. No Investor Member shall be obligated to make loans to the Company.

10.3 Other Activities. Any Investor Member may engage in or possess interests in other business ventures of every kind and description for its own account, including, without limitation, serving as managing or investor member of other companies which own, either directly or through interests in other partnerships, government-assisted housing projects similar to the Apartment Complex. Neither the Company nor any of the Members shall have any right by virtue of this Agreement in or to such other business ventures to the income or profits derived therefrom.

10.4 Full Disclosure of and Right to Revise Information. The Investor Member shall have the right to review information pertaining to the Company which is possessed by the Managing Member, and the right to receive on a regular basis timely and accurate reports, schedules and accountings to the Company’s financial performance, in each case as may be required pursuant to this Agreement or as requested by the Investor Member.

10.5 Fees to Hunt and its Affiliates. Commencing on the date first Unit in the Apartment Complex is Placed in Service, Hunt, its successor or an Affiliate thereof, shall earn an annual fee (pro rata for first year) for its services in connection with the Company’s accounting matters relating to the Investor Member, and assisting with the preparation of tax returns and the reports required by Section 18.7 in the original amount of $6,000 and then adjusted annually to reflect a 3% annual increase (the “Asset Management Fee”). The Asset Management Fee shall be payable from Cash Flow and proceeds of a Capital Transaction, in the manner and priority set forth in Article 14 on April 1 of each year. If, however, Cash Flow in any fiscal year is insufficient to pay the full amount of Asset Management Fee, the Asset Management Fee shall accrue without interest and be payable to Hunt until such time there is sufficient Cash Flow in the manner and priority set forth in Article 14. Any Asset Management Fee earned prior to
Rental Achievement shall accrue without interest until Rental Achievement at which time interest shall start to accrue on any unpaid portion.

10.6 **Control Over Investor Member Decisions.** Unless otherwise expressly provided, any decision required to be made by the Investor Member under this Agreement shall be made by the Investor Members. Any decision required to be made by the majority in interest of the Investor Members shall be made by the Investor Members of any class whose Percentage Interest in the Company exceeds fifty percent (50%) of the Percentage Interests of all Investor Members. The decision of the majority in interest of the Investor Members shall be effective after five (5) days’ Notice has been given to each Investor Member and the occurrence of any of the following: (i) a written document signed by the Investor Members; or (ii) a written document signed by the Investor Members who own more than fifty percent (50%) of the Percentage Interests of the Investor Members.

**ARTICLE 11**

**TRANSFERABILITY OF INVESTOR MEMBER INTERESTS**

11.1 **Assignment or Pledge of Investor Member Interests.**

(a) The Investor Member shall have the right at any time to make an Assignment of its Interests as follows:

(i) Prior to payment of all of its Capital Contributions:

   (A) to any Person without the Consent or approval of the Managing Member or any other Member, provided that an Affiliate of the Investor Member will serve as the manager or general partner of such Person; and

   (B) to a non-Affiliate with the approval of the Managing Member which approval shall not be unreasonably withheld or delayed.

(ii) After payment of its Capital Contributions:

   (A) to any Person without any restriction.

In connection with the Investor Member’s admission into the Company and acquisition of their respective Interests, the Managing Member acknowledges that the Investor Member intends to assign its Interest subsequent to the Closing Date and may pledge its Interests to the Equity Lender. The Investor Member shall Notify the Managing Member as to any Assignment.

(b) The Investor Member whose interest is being transferred shall pay such reasonable expenses as may be incurred by the Company in connection with such transfer.

(c) The Managing Member shall cooperate with the Investor in facilitating such Assignment by promptly furnishing complete and accurate financial and other relevant data regarding the Company, the Apartment Complex, the Managing Member and Affiliates of the Managing Member and any other matters reasonably necessary in the judgment of the Investor
Member to facilitate such Assignment, including any amendments to this Agreement or the Project Documents so long as such amendments do not materially adversely affect the Managing Member.

(d) Within five (5) days of receipt of notification, the Managing Member shall execute the form of Assignment and shall cause Counsel for the Company, at the Managing Member’s expense, to deliver to the Investor Member an opinion as to the enforceability of such Assignment, if not already provided (the form of such Assignment is attached hereto as Exhibit M).

11.2 Admission of Substitute Investor Member.

(a) Subject to the other provisions of this Article 11, an assignee of the Interest of an Investor Member (which shall be understood to include any purchaser, transferee, donee, or other recipient of any disposition of such Interest) shall be deemed admitted as a Substitute Investor Member of the Company only upon the satisfactory completion of the following:

(i) Consent of the Managing Member (which may not be unreasonably withheld), and the consent of the BBVA Lender, if required, has been given; such Consent of the Managing Member may be evidenced by the execution by the Managing Member of an amended Agreement and/or Certificate evidencing the admission of such Person as an Investor Member pursuant to the requirements of the Uniform Act; provided, however, the Investor Member may transfer its Interest to an Affiliate and to any tax credit syndication fund of which the Investor Member or an Affiliate thereof is the general partner or managing member, pursuant to the Assignment, in the form attached hereto as Exhibit M, without obtaining the consent of Managing Member or any Lender;

(ii) the assignee has accepted and agreed to be bound by the terms and provisions of this Agreement by executing a counterpart thereof or an appropriate amendment hereto, and such other documents or instruments as the Managing Member may reasonably require in order to effect the admission of such Person as an Investor Member; and

(iii) if required by the Act, an amended Agreement and/or Certificate evidencing the admission of such Person as an Investor Member shall be filed.

(b) For the purpose of allocation of profits, losses and credits, and for the purpose of distributing cash of the Company, a Substitute Investor Member shall be treated as having become, and as appearing in, the records of the Company as a Member upon its signing of an amendment to this Agreement agreeing to be bound hereby.

(c) The Managing Member shall cooperate with the Person seeking to become a Substitute Investor Member by preparing the documentation required by this Section and making all official filings and publications. The Company shall take all such action, including the filing, if required, of any amended Agreement and/or Certificate, if obtainable, evidencing the admission of any Person as an Investor Member, bringing forward the effective date of the Title Policy and issuing any new or modified endorsements to the Title Policy that the Substitute Investor Member may require, and the making of any other official filings and publications, as
promptly as practicable after the satisfaction by the assignee of the Interest of an Investor Member of the conditions contained in this Article 11 to the admission of such Person as an Investor Member of the Company. Any cost or expense incurred in connection with such admission (including any transfer taxes) shall be borne by the Substitute Investor Member.

11.3 Rights of Assignee of Limited Liability Company Interest.

(a) Except as provided in this Article 11 and as required by operation of law, the Company shall not be obligated for any purpose whatsoever to recognize the assignment by any Investor Member of its Interest until the Company has received actual Notice thereof.

(b) Any Person who is the assignee of all or any portion of an Investor Member’s Interest, but does not become a Substitute Investor Member, and who desires to make a further assignment of such Interest, shall be subject to all the provisions of this Article 11 to the same extent and in the same manner as any Investor Member desiring to make an assignment of its Interest.

11.4 Equity Lender. The Members acknowledge that the Equity Lender may advance funds to the Investor Member prior to the admission of investors into the funds sponsored by the Investor Member and, to the extent that the Investor Member has loans outstanding from the Equity Lender in order to finance their Capital Contributions, all Members hereby Consent to the admission of the Equity Lender as a Substitute Investor Member if the Equity Lender finds itself in the position of enforcing certain remedies in connection with its loan to the Investor Member. Each Member hereby agrees to cooperate with the Equity Lender, as the Investor Member may from time to time reasonably request, by delivering to the Equity Lender information concerning the Company and documents executed by such Member.

11.5 Funds Sponsored by Investor Member(s). All Members hereby agree to cooperate with the Investor Member, as may be reasonably requested by the Investor Member, in connection with the admission of investors into the funds sponsored by the Investor Member. In addition to such Opinion of Counsel (which Opinion of Counsel shall be at the expense of the Company), if the Investor Member request then the Managing Member shall cause, from time to time, one or more updates to the Opinion of Counsel to be delivered to the Investor Member, which updates shall be at the expense of the Company.

ARTICLE 12
BORROWINGS

12.1 Borrowings. The Company is authorized to receive Operating Deficit Loans, IM Loans and MM Loans on the terms set forth in this Agreement. In addition, if (a) additional funds are required by the Company for any purpose relating to the business of the Company or for any of its obligations, expenses, costs or expenditures, and (b) the Company has not received an Operating Deficit Loan, IM Loan or MM Loan to pay such amounts, then the Company may borrow such funds as are needed from a Person or organization other than a Member in accordance with the terms of this Section 12.1, for such period of time and on such terms as the Managing Member and the Investor Members may agree; provided, however, that no such additional loans shall be secured by any mortgage or other encumbrance on the property of the
Company without the prior approval of the Investor Member and, to the extent required, the Consent of the Agency and/or the Lenders. Nothing in this Section 12.1 shall modify or affect the obligation of the Managing Member to make Operating Deficit Loans and to perform its obligations when and as required by this Agreement.

ARTICLE 13
ALLOCATIONS

13.1  Allocation of Profits, Losses and Housing Tax Credits from Operations. After giving effect to the special allocations set forth in Section 13.4, all profits, losses and Housing Tax Credits incurred or accrued by the Company, other than those arising from a Capital Transaction, shall be allocated to the Members in accordance with the Members’ Percentage Interests.

13.2  Allocation of Profits and Losses From Capital Transactions. After giving effect to the special allocations set forth in Section 13.4, all profits and losses recognized by the Company from a Capital Transaction in any fiscal year shall be allocated in the following manner:

(a)  Profits. (i) First, profits shall be allocated to the Members with negative Adjusted Capital Account balances, that portion of profits (including any treated as ordinary income for federal income tax purposes) which is equal in amount to, and in proportion to, such Members’ respective negative Adjusted Capital Accounts in the Company; provided that no profit shall be allocated under this Section 13.2(a) to a Member once such Member’s Adjusted Capital Account balance is brought to zero and (ii) second, profits in excess of the amount allocated under (i) shall be allocated to the Members in the amounts and to the extent necessary to increase the Members’ respective positive Capital Accounts so that the proceeds distributed in accordance with the Members’ respective positive Capital Account balances under Section 17.2(b)(iv) below will equal the amounts that would have been received if the proceeds were instead distributed under Section 14.1(b)(viii) below.

(b)  Losses. (i) First, losses shall be allocated to the Members in the amount and to the extent necessary so that the proceeds distributed in accordance with the Members’ respective positive Capital Account balances under Section 17.2(b)(iv) below will equal the amounts that would have been received if the proceeds were instead distributed under Section 14.1(b)(viii) below, and (ii) second, any remaining losses shall be allocated to the Members in accordance with the manner in which they bear the economic risk of loss associated with such losses or, if none, to the Members in accordance with their Percentage Interests.

13.3  Determination of Profits and Losses. The terms “profits” and “losses” used in this Agreement shall mean income and losses, and each item of income, gain, loss, deduction or credit entering in to the computation thereof determined in accordance with the method of accounting followed by the Company and computed in accordance with Code Sections 703(a) and 704(b), and Regulation Section 1.704-1(b)(2)(iv). Every item of income, gain, loss, deduction, credit or tax preference entering into the computation of such profits or losses, or applicable to the period during which such profits and losses are allocated to such partner, shall
be considered allocated to each Member in the same proportion as profits and losses are allocated to such Member.

13.4 Special Allocations. Notwithstanding the foregoing provisions of this Article 13:

(a) Recourse Obligations.

(i) If the Company incurs losses from extraordinary events that are not recovered from insurance or otherwise, including casualty losses, losses resulting from liability to third parties for tortious injury, losses resulting from a breach of legal duty by the Company or by the Managing Member, and losses resulting from other liabilities which are not incurred in the ordinary course of business ("Recourse Obligations"), such losses shall be allocated to the Managing Member. Nothing in this Section 13.4(a)(i) shall prevent the Company from recovering an extraordinary loss from a Managing Member who is liable therefor by law or under this Agreement.

(ii) If the Company incurs Recourse Obligations secured by Company property with respect to which the Managing Member or a related person of the Managing Member bears the risk of loss, then except to the extent otherwise required by the Regulations, deductions attributable to the Recourse Obligations shall be allocated to the Members in accordance with their Percentage Interests provided, however, that any such deductions which, if allocated to the Investor Members, would cause or increase a negative balance in their Capital Accounts shall be allocated to the Managing Member. Upon the disposition of such property, any income or gain shall be allocated first to the Managing Member to the extent of any deductions specially allocated to the Managing Member under this Section 13.4(a)(ii) and then to the Members in accordance with their Percentage Interests.

(b) Recapture Allocation. If any profit arises from the sale or other disposition of any Company asset which shall be treated as ordinary income under the depreciation recapture provisions of the Code including, but not limited to, Sections 1245 and 1250, then the full amount of such ordinary income shall be allocated among the Members in the proportions that the Company deductions from the depreciation giving rise to such recapture were actually allocated. If subsequently-enacted provisions of the Code result in other recapture income, no allocation of such recapture income shall be made to any Member who has not received the benefit of those items giving rise to such other recapture income.

(c) Tax Allocations, Section 704(c). Income, gain, loss and deduction with respect to any asset which has a variation between its basis computed in accordance with Regulation Section 1.704-1(b) and its basis computed for federal income tax purposes shall be shared among the Members so as to take account of such variation in a manner consistent with the principles of Section 704(c) of the Code and Regulation Section 1.704-1(b)(2)(iv)(g).

(d) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during a Company taxable year, each Member will be allocated (without duplication of items allocated in 13.4(a) and 13.4(b)) items of income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to such Member’s share of the net decrease in Company Minimum Gain during the year, before any
other allocation of Company items for such taxable year. A Member shall not be subject to this mandatory allocation of income or gain to the extent that any of the exceptions provided in Regulation Section 1.704-2(f)(2)-(5) apply. All allocations pursuant to this Section 13.4(d) shall be in accordance with Regulation Section 1.704-2(f). This provision is a “minimum gain chargeback” within the meaning of Regulation 1.704-2(f) and shall be construed as such.

(c) **Member Nonrecourse Debt Minimum Gain.** If the Company incurs Member Nonrecourse Liability in which a Member or a related person to the Member bears the risk of loss, then partner nonrecourse deductions (within the meaning of Regulations Section 1.704-2(i)(2)) shall be allocated to such Member. If there is a net decrease in Member Nonrecourse Debt Minimum Gain during a Company taxable year, then each Member with a share of the minimum gain attributable to such debt at the beginning of such year will be allocated items of income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member’s share of the net decrease in Member Nonrecourse Debt Minimum Gain during the year. A Member is not subject to this Member Nonrecourse Debt Minimum Gain chargeback to the extent that any of the exceptions provided in Regulation Section 1.704-2(i)(4) applied consistently with Regulation Section 1.704-2(f)(2)-(5) apply. Such allocations shall be made in a manner consistent with the requirements of Regulation Section 1.704-2(i)(4) under Section 704 of the Code.

(f) **Qualified Income Offset.** If an Investor Member unexpectedly receives (i) an allocation of loss or deduction or expenditures described in Section 705(a)(2)(B) of the Code made (A) pursuant to Section 704(e)(2) of the Code to a donee of an Interest, (B) pursuant to Section 706(d) of the Code as the result of a change in any Member’s Interest or (C) pursuant to Regulation Section 1.751-1(b)(2)(ii) as a result of a distribution by the Company of unrealized receivables or inventory items or (ii) a distribution, and such allocation and/or distribution would cause the negative balance in such Member’s Capital Account to exceed (1) such Member’s share of Company Minimum Gain plus (2) the amount of such Member’s obligation (actual or deemed) to restore a negative balance in such Member’s Capital Account plus (3) such Member’s share of Member Nonrecourse Debt Minimum Gain, then such Member shall be allocated items of income and gain in an amount and manner sufficient to eliminate such negative balance as quickly as possible. For purposes of Section 13.6, a Member’s Capital Account shall be treated as reduced by Qualified Income Offset Items. This provision is a “qualified income offset” under the meaning of Regulation Section 1.704-1(b)(2)(ii)(d)(3) and shall be interpreted and applied in a manner consistent with such Regulation.

(g) **Nondeductible Items.** If any fee payable to any Managing Member or any Affiliate thereof shall instead be determined to be a nondeductible, noncapitalizable distribution from the Company to a Member for federal income tax purposes, then there shall be allocated to such Managing Member in the year(s) of payment an amount of gross income equal to the amount of such distribution in such year(s).

(h) **Member Loans.** If a Member makes any Member Loans pursuant to Article 4, any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to such Member and if there is a repayment of all or part of such funds in any year, such Member shall be allocated in such year an amount of gross income equal to the amount of such repayment.
(i) **Operating Deficit Loans.** Subject to Section 13.4(a), if the Managing Member funds any Operating Deficit Loans pursuant to Section 8.2, any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to the Managing Member, and if there is a repayment of all or part of such funds in any year, the Managing Member shall be allocated in such year an amount of gross income equal to the amount of such repayment.

(j) **Gross Income Allocation for Unanticipated Gross Income.** Notwithstanding any other provision of this Agreement, before any other allocation of gross income and gain is made under this Agreement, in the event that any unanticipated gross income arises from a subsequent recharacterization of a tax reporting position of the Company, it is the intent of the Members that all such gross income shall be allocated to the Managing Member.

(k) **Gross Income Allocation for Unanticipated Fee Recharacterization.** If any fee payable by the Company to any Member or any Affiliate thereof shall instead be determined to be a nondeductible, noncapitalizable distribution from the Company to a Member for federal income tax purposes, then there shall be allocated to such Member in the year of payment an amount of gross income equal to the amount of distribution in such year(s).

(l) **Construction Period Income.** One hundred percent (100%) of the Company’s net taxable income incurred during the Construction Period shall be specially allocated to the Managing Member.

(m) **Nonrecourse Deductions.** “Nonrecourse deductions” (within the meaning of Regulation Section 1.704-2(b)(1)) shall be allocated to the Members in accordance with their Percentage Interests. “Member nonrecourse deductions” (within the meaning of Regulation section 1.704-2(c)) shall be allocated to the Member who bears the economic risk of loss associated with such deductions, in accordance with Regulation Section 1.704-2(i).

13.5 **Authority of the Managing Member to Vary Allocations to Preserve and Protect the Members’ Intent.**

(a) It is the intent of the Members that each Member’s distributive share of profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (and items thereof) shall be determined and allocated in accordance with this Agreement to the fullest extent permitted by Section 704(b) of the Code. In order to preserve and protect the determinations and allocations provided for in this Agreement, subject to the prior written Consent of the Investor Member, the Managing Member is hereby authorized and directed to allocate profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (and items thereof) arising in any year differently than otherwise provided for in this Agreement to the extent that allocating profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures or credits (or any item thereof) in the manner provided for herein would cause the determinations and allocations of each Member’s distributive share of profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures or credits (or any item thereof) not to be permitted by Section 704(b) of the Code. Any allocation made pursuant to this Section 13.5 shall be deemed to be a complete substitute for any allocation otherwise provided.
for in this Agreement, and no amendment of this Agreement or approval of any Member shall be required.

(b) In making any allocation under Section 13.5(a) (a “New Allocation”), the Managing Member is authorized to act only after having been advised in writing by the Accountants or the Investor Member that, under Section 704(b) of the Code, (i) the New Allocation is necessary, and (ii) the New Allocation is the minimum modification of the allocations otherwise provided for in this Agreement necessary in order to assure that, either in the then-current year or in any preceding year, each Member’s distributive share of profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (or any item thereof) is determined and allocated in accordance with this Agreement to the fullest extent permitted by Section 704(b) of the Code.

(c) If the Managing Member is required by Section 13.5(a) to make any New Allocation in a manner less favorable to the Investor Member than is otherwise provided for herein, then the Managing Member is authorized and directed, only after having been advised in writing by the Accountants or the Investor Member that such an allocation is permitted by Section 704(b) of the Code, to allocate profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (and any item thereof) arising in later years in such manner so as to bring the allocations of profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (and each item thereof) to the Members as nearly as possible to the allocations thereof otherwise contemplated by this Agreement.

(d) New Allocations made by the Managing Member under Section 13.5(a) and Section 13.5(c) in reliance upon the advice of the Accountants shall be deemed to be made pursuant to the fiduciary obligation of the Managing Member to the Company and the Members, and no such allocation shall give rise to any claim or cause of action by any Member.

13.6 Capital Account.

(a) An individual Capital Account shall be established and maintained on behalf of each Member, including any additional or Substitute Investor Member who shall hereafter receive an interest in the Company. In accordance with Regulation Section 1.704-1(b), the Capital Account of each Member shall consist of (i) the amount of cash such Member has contributed to the Company plus (ii) the fair market value of any property such Member has contributed to the Company net of any liabilities assumed by the Company or to which such property is subject plus (iii) the amount of profits or income (including tax-exempt income) allocated to such Member less (iv) the amount of losses and deductions allocated to such Member less (v) the amount of all cash distributed to such Member less (vi) the fair market value of any property distributed to such Member net of any liabilities assumed by such Member or to which such property is subject less (vii) such Member’s share of any other expenditures which are not deductible by the Company for federal income tax purposes or which are not allowable as additions to the basis of Company property and shall be (viii) subject to such other adjustments as may be required under the Code. Each Member’s Capital Account shall be maintained and adjusted in accordance with the Code and the Regulations. It is the intention of the partners that the Capital Accounts maintained under this Agreement be determined and maintained throughout the full term of this Agreement in accordance with the accounting rules of Regulation Section
1.704-1(b)(2)(iv), and the foregoing provisions shall be interpreted and applied in a manner consistent with such Regulation.

(b) If the Company is liquidated within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g) and if the Managing Member’s Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), the Managing Member shall make Capital Contributions in the amount of such deficit in compliance with Regulation Section 1.704-1(b)(2)(ii)(b)(3). Notwithstanding the foregoing, if the Company is liquidated within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g) but no event has occurred under Section 17.1 to dissolve the Company, the Company assets shall not be liquidated, the Company’s liabilities shall not be paid or discharged, and the Company’s affairs shall not be wound up.

(c) The original Capital Account established for any Substitute Investor Member shall be in the same amount as, and shall replace, the Capital Account of the Member which such Substitute Investor Member succeeds, and, for the purposes of this Agreement, such Substitute Investor Member shall be deemed to have made the Capital Contribution, to the extent actually paid in, of the Member which such Substitute Investor Member succeeds. To the extent a Substitute Investor Member receives less than one hundred percent (100%) of the Interest of a Member it succeeds, the original Capital Account of such transferee Substitute Investor Member and his Capital Contribution shall be in proportion to the portion of the transferor Member’s Interest prior to the transfer which the transferee receives, and the Capital Account of the transferor Member who retains a portion of its former Interest and its Capital Contribution shall continue, and not be replaced, in proportion to the portion of the transferor Member’s Interest prior to the transfer which the transferor Member retains. Nothing in this Section 13.6 shall affect the limitations on transferability of Interests set forth in Article 11.

13.7 Excess Nonrecourse Liabilities. The Members agree that, except as otherwise determined by the Investor Member pursuant to this Section, the Members’ interests in the Company profits for such purposes of determining such Members’ interests in Company profits for purposes of such Members’ share of the excess nonrecourse liabilities of the Company under Treasury Regulation Section 1.752-3(a)(3) shall be determined by the Members’ allocable share of profits from Section 13.2(a); provided, however, that the Members agree that, upon giving written notice to the Managing Member, the Investor Member shall have the right at any time to cause the Company to use the alternative method under Treasury Regulation Section 1.752-3(a)(3) if the Investor Member reasonably determines that such alternative method would (or could reasonably be expected to) avoid or mitigate any tax or economic detriment to the Investor Member or its Affiliates (as a result of an actual or pending change in law, change in circumstance or otherwise). Without limiting the foregoing, the Managing Member shall provide written notice to the Investor Member no later than 45 days following the close of any taxable year of the Company in which the Investor Member’s adjusted basis in the Company interest is or is reasonably likely to be zero.
ARTICLE 14
DISTRIBUTIONS AND PAYMENTS

14.1 Distributions and Payments of Cash Flow (Other than Cash From a Capital Transaction and Other Than in Connection with a Liquidation).

(a) Cash Flow. Subject to Agency and Lender approval (if required) and after Rental Achievement, Cash Flow of the Company for each fiscal year or portion thereof shall be applied and distributed on the following Payment Date in the following priority:

(i) to the Housing Tax Credit Shortfall Payment, if required under Section 4.2(d)(iii);

(ii) to the Investor Member or other Hunt Indemnified Parties to the extent of any amounts owing to it by reason of any indemnification or guaranty obligations of the Managing Member pursuant to this Agreement or of the Guarantors pursuant to the Guaranty;

(iii) (A) to the payment of the Excess IM Loan Amount, (B) then to the payment of the Excess MM Loan Amount, and (C) then to the payment of IM Loans and MM Loans, pro rata based on their respective outstanding balances;

(iv) [Reserved];

(v) to the payment of the Asset Management Fee for such year, and any accrued and unpaid Asset Management Fee;

(vi) one hundred percent (100%) of the remaining Cash Flow to the payment of any Deferred Development Fee as described in the Development Agreement;

(vii) to the repayment of any accrued and outstanding interest due under the HOME Loan;

(viii) to replenish any draws from the Operating Reserve;

(ix) to the repayment of any Operating Deficit Loans;

(x) to the payment of any unpaid and accrued Management Agent fees under Section 16.2;

(xi) then:

(A) if the Managing Member’s Capital Account is less than or equal to zero, then until the Managing Member has received payments of the MM Incentive Management Fee under this clause 14.1(a)(xi)(A) equal to the maximum amount for the preceding fiscal year, Cash Flow under this clause 14.1(a)(xi)(A) shall be paid and distributed ninety percent (90%) to the Managing Member as payment of the MM Incentive Management Fee (of which 67.5% shall be paid to the Co-Managing Member and 32.5% shall be paid to the
(A) if the Managing Member’s Capital Account is greater than zero, then until the Managing Member’s Capital Account equals zero, Cash Flow under this clause 14.1(a)(xi)(B) shall be distributed ninety percent (90%) to the Managing Member as a distribution (of which 67.5% shall be paid to the Co-Managing Member and 32.5% shall be paid to the Administrative Member), and ten percent (10%) to the Investor Member as a distribution; and

(xii) the balance thereof, if any, shall be paid and distributed ninety percent (90%) to the Managing Member (of which 67.5% shall be paid to the Co-Managing Member and 32.5% shall be paid to the Administrative Member and ten percent (10%) to the Investor Member as a distribution.

Additionally, notwithstanding the foregoing, during such time as Agency and Lender regulations are applicable to the Apartment Complex, the total amount of Cash Flow which may be so distributed to the Members in respect to any fiscal year shall not exceed such amounts as Agency and Lender regulations permit to be distributed.

(b) Distributions of Cash From Capital Transaction (Other Than in Connection with a Liquidation). Within thirty (30) days of a Capital Transaction, Cash From Capital Transaction (other than a sale or other disposition of the property of the Company in connection with a liquidation and dissolution of the Company which is governed by Article 17 below) or cash proceeds from a refinancing of the Loans, shall be applied or distributed in the following order of priority:

(i) to the Housing Tax Credit Shortfall Payment if required under Section 4.2(d)(iii);

(ii) to the payment of any amounts owing to the Investor Member or other Hunt Indemnified Parties by reason of any unpaid indemnification or guaranty obligation of the Managing Member pursuant to this Agreement or of the Guarantors pursuant to the Guaranty;

(iii) (A) to the payment of the Excess IM Loan Amount, (B) then to the payment of the Excess MM Loan Amount and (C) then to the payment of IM Loans and MM Loans, pro rata based on their respective outstanding balances;

(iv) to the payment of the Asset Management Fee for such year, and any accrued and unpaid Asset Management Fee;

(v) to the payment of any outstanding Deferred Development Fee as described in the Development Agreement until paid;

(vi) to the repayment of any Operating Deficit Loans;

(vii) to the repayment of the HOME Loan; and
(viii) any balance 10% to the Investor Member and 90% to the Managing Member (of which 67.5% shall be paid to the Co-Managing Member and 32.5% shall be paid to the Administrative Member).

14.2 Distribution of Cost Savings. If Cost Savings exist, on the date no earlier than funding of the Fifth Installment, the Company shall use and distribute such savings as follows: (i) first, until the Deferred Development Fee has been paid in full, one hundred percent (100%) to the payment of the Deferred Development Fee; and (ii) then, one hundred percent (100%) as determined by the Investor Member in its sole discretion, either (A) to the repay the BBVA Loan and/or (B) to fund a supplemental operating reserve. The Investor Member shall determine the amount of Cost Savings on or before the date of funding of the Fifth Installment.

ARTICLE 15
PARTNERSHIP AUDIT PROCEDURES

15.1 Defined Terms. For purposes of this Article 15, the following terms shall have the meanings set forth below:

Administrative Adjustment Request means an administrative adjustment request under Code Section 6227.

Affected Member means at any point in time, with respect to any Administrative Adjustment Request or proposed Partnership Adjustment, any person who is a then current Member or a Former Member.

Former Member means any Person who was a Reviewed Year Member but is not a Member in the year of an Administrative Adjustment Request or proposed Partnership Adjustment.

Imputed Underpayment has the meaning set forth in Section 6225 of the Code.

Partnership Adjustment means any adjustment to any item of income, gain, loss, deduction, or credit of the Company, or any Member’s distributive share thereof, in either case as described in any applicable Regulations or other guidance prescribed by the Service.

Reviewed Year means the Company taxable year to which a Partnership Adjustment relates.

Reviewed Year Member means any Person who held an interest in the Company at any time during the Reviewed Year.

Revised Partnership Audit Rules means Subchapter 63C of the Code (as amended by the Bipartisan Budget Act of 2015, P.L. 114-74 and the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113), and the Treasury Regulations promulgated thereunder, as amended from time to time.

Taxes means any tax, penalties, additions to tax, additional amounts, and interest as described in Section 6226 of the Code.
15.2 Partnership Representative

(a) Appointment and Designation. The Members hereby authorize the Company to appoint the Co-Managing Member as the initial partnership representative of the Company pursuant to Section 6223(a) of the Code (the “Partnership Representative”). The Partnership Representative shall timely designate, with the Consent of the Investor Member, an individual to serve as the sole individual through whom the Partnership Representative will act for purposes of the Revised Partnership Audit Rules (the “Designated Individual”). The Designated Individual must agree in writing to be bound by the same obligations and restrictions imposed on the Partnership Representative under this Article 15 prior to and as condition of such designation.

(b) Resignation; Revocation. The Company shall revoke the designation of the Co-Managing Member as the Partnership Representative for all taxable years during which such designation was in effect by written notice to the Partnership Representative and the Service: (i) upon withdrawal or removal of the Co-Managing Member for any reason, (ii) upon request of the Investor Member at a time when there exists any Event of Default and any notice of Partnership Adjustment has been issued by the Service, or (iii) upon request of the Investor Member in the event of a default by the Partnership Representative or Designated Individual of its/his/her duties and obligations under this Article 15. The designation of the Designated Individual as the Designated Individual shall automatically terminate on the effective date of the resignation or revocation of the applicable entity as Partnership Representative. If a Designated Individual becomes unable to perform the tasks required of a Designated Individual, no longer has the “capacity to act” within the meaning of the Revised Partnership Audit Rules, or the Partnership Representative otherwise determines that such individual should be removed as the Designated Individual, the Partnership Representative shall promptly notify the Investor Member of such determination and take all necessary actions to effectuate the resignation of such individual as Designated Individual for all applicable taxable years. Notice of any revocation of a Partnership Representative or Designated Individual shall be given to the Service in the time and manner prescribed by the Service and shall include the designation of another Person selected by the Investor Member as the successor Partnership Representative and/or the designation of another Person selected by the Partnership Representative (with the Consent of the Investor Member) as the successor Designated Individual. The resigning or removed Partnership Representative and/or Designated Individual shall remain obligated hereunder in such capacity until the replacement is acknowledged by the Service. The Co-Managing Member hereby constitutes and appoints the Investor Member, with full power of substitution, its true and lawful attorney-in-fact in its name, place and stead to carry out fully the provisions of this Section 15.2(b) and take any action which the Investor Member may deem necessary or appropriate in connection herewith. The power of attorney hereby granted shall be deemed to be coupled with an interest, shall be irrevocable and shall survive and shall not be affected by the subsequent incapacity, dissolution, resignation, revocation or other termination of the Co-Managing Member as the Partnership Representative.

(c) Successor Partnership Representative. Any successor Partnership Representative and/or Designated Individual must satisfy all statutory and regulatory requirements imposed by the Revised Partnership Audit Rules and must agree in writing to be bound by the terms of this Article 15.
(d) **Notice of Communications; Cooperation.** The Partnership Representative shall: (i) give all Affected Members prompt notice of any inquiry, notice, or other communication received from the Service or other applicable tax authority regarding the tax treatment of the Company or the Members, (ii) consult with the Affected Members in good faith on the strategy and substance of any tax audit or contest, and (iii) shall, to the extent possible, give the Affected Members prior notice of and a reasonable opportunity to review and comment upon any written communication the Partnership Representative intends to make to any such taxing authority in connection with any examination, audit or other inquiry involving the Company and the nature and content of all actions to be taken and defenses to be raised by the Company in response to any tax audit or contest (including without limitation the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous Service proceeding against the Company or otherwise. Without limiting the generality of the foregoing, the Company immediately shall send to all Affected Members copies of any notice of a proposed or final Partnership Adjustment received by the Company and/or the Partnership Representative from the Service. To the extent requested by the Affected Member and permitted under Treasury Regulations or by the Service or other taxing authority in a particular tax audit or contest, the Partnership Representative shall cooperate in allowing the Affected Member or its representative to participate, at its own expense, in such tax audit or contest.

(e) **Duties and Limitations on Authority.** The Partnership Representative and any Designated Individual shall have all power and authority of a partnership representative and designated individual, respectively, as set forth in Section 6223 of the Code, and shall represent the Company and its Members in all dealings with the Service and state and local taxing authorities. If the Company receives notice of a final Partnership Adjustment from the Service, the Partnership Representative shall so notify the Affected Members, and if requested to do so by the Investor Member, (i) the Partnership Representative shall file a petition for readjustment within the time frame required by Treasury Regulations or Service guidance, and/or (ii) the Partnership Representative shall cause the Company to seek any and all available judicial review of such final Partnership Adjustment as is available under applicable law. Notwithstanding the foregoing, except as specifically provided in Section 15.3 below, the Partnership Representative shall not, without the Consent of the Investor Member (and, in the case of (C), (D) and (F), the Investor Member for the Reviewed Year), have any power or authority to do any or all of the following:

(A) make an election to opt out of the application of the Revised Partnership Audit Rules to the Company;

(B) make a Push-Out Election, or request a modification to an Imputed Underpayment;

(C) file an Administrative Adjustment Request;

(D) select any judicial forum for the litigation of any Company tax dispute;

(E) extend the statute of limitations for the Company; or,
(F) take any other action (or fail to take any action) that would have the effect of finally determining any tax audit or contest.

(f) Fiduciary Relationship. The relationship of the Partnership Representative to the Investor Member shall be that of a fiduciary, and the Partnership Representative shall have a fiduciary obligation to perform its duties in such manner as will serve the best interests of the Investor Member.

(g) Indemnification. To the extent of available funds, the Company shall indemnify the Partnership Representative against judgments, fines, amounts paid in settlement and expenses (including attorneys’ fees) reasonably incurred by the Partnership Representative in its capacity as the Partnership Representative, and not its capacity as a Member or a Former Member, in connection with any audit or administrative or judicial proceeding in which the Partnership Representative is involved solely by reason of being the Partnership Representative of the Company, provided that the same were not the result of negligence, misconduct, fraud, breach of fiduciary duty or breach of this Agreement on the part of the Partnership Representative and were the result of a course of conduct which the Partnership Representative, in good faith, reasonably believed to be in the best interests of the Investor Member and within the scope of its authority under this Article 15.

15.3 Modifications and Company Elections

(a) Modifications to Imputed Underpayment. If requested to do so by the Investor Member, the Managing Member shall request modification of an Imputed Underpayment in accordance with any applicable Treasury Regulations, forms, instructions, and other guidance prescribed by the Service. With any such request, the Investor Member shall describe the modifications or adjustment factors that the Investor Member believes affect the calculation of the Imputed Underpayment in sufficient detail to substantiate the request for modification and timely provide all required supporting documents or information.

(b) Amended Returns. If requested to do by the Investor Member, the Partnership Representative shall request a modification of an Imputed Underpayment based on an amended return (or, to the extent permitted by law, any similar statement) filed by a Member (or its owners) that takes account of all of the Partnership Adjustments properly allocable to such Member (or its owners). Any such request shall be accompanied by an affidavit from the requesting Member that each required amended return (or similar statement) has been filed and all Taxes due as a result of taking into account the adjustments in the first affected year and all modification years have been paid, as required by any applicable Regulations, forms, instructions, and other guidance prescribed by the Service.

(c) Push-Out Election. If requested to do so by the Investor Member, the Partnership Representative shall timely make and implement an election (a “Push-Out Election”) under Section 6226 of the Code with respect to an Imputed Underpayment. Except as hereinafter provided, if a Push-Out Election is made, each Reviewed Year Member shall take into account its allocable share of the Partnership Adjustments that relate to the specified Imputed Underpayment (as determined with the Consent of the Investor Member for such Reviewed
(d) **Reimbursement of Allocable Share of Imputed Underpayment.** If the Company becomes obligated to make an Imputed Underpayment under Code Section 6225, each of the Members (including any Former Member) to whom such liability relates (as determined with the Consent of the Investor Member) shall be obligated, within thirty (30) days after written notice from the Managing Member, to pay an amount that, on an After-Tax Basis if such payment is treated as a taxable payment to the Company, is equal to its allocable share of such amount to the Company; *provided, however*, that if and to the extent that the Company’s liability results from a loss, disallowance or recapture of Housing Tax Credits for which a Housing Tax Credit Shortfall Payment is due to such Person and has not been paid, the amount otherwise payable by such Person to the Company under this Section 15.3(d) shall be reduced by the amount of any unpaid Housing Tax Credit Shortfall Payment payable to such Person so that the Company will bear the portion of the Imputed Underpayment equal to such reduction, and such Housing Tax Credit Shortfall Payment shall be paid to the Company and applied to the Imputed Underpayment. Any amount not paid by a Member (or Former Member) within such 30-day period shall accrue interest at Prime Rate plus 2% until paid. Any such payment made by any Member shall be treated as a Capital Contribution and, if and to the extent permitted by the Code and Regulations, any Capital Account reduction attributable to the Imputed Underpayment shall be allocated to the Members in proportion to such Capital Contributions.

(e) **Withholding.** Notwithstanding anything to the contrary contained herein, the Managing Member shall cause the Company to withhold from any distribution or payment due to any Member (or Former Member) under this Agreement any amount due to the Company from such Member (or Former Member) under clause (d) above. Any amount(s) so withheld shall be applied by the Company to discharge the obligation in respect of which such amount was withheld. All amounts withheld pursuant to the provisions of this Section 15.3(e) with respect to a Member (or Former Member) shall be treated as if such amounts were distributed or paid, as applicable, to such Member (or Former Member).

(f) **Indemnity.** To the extent that a portion of the Taxes imposed under Code Section 6225 relates to a Former Member, the Managing Member shall require such Former Member to indemnify the Company for its allocable portion of such tax (including any penalties, additions to tax, additional amounts, and interest) to the extent such amounts have not been withheld pursuant to the provisions of Section 15.3(e). Each Member acknowledges that, notwithstanding the transfer or liquidation of all or any portion of its Interest in the Company, it shall remain liable for Taxes with respect to its allocable share of income and gain of the Company for the Company’s taxable years (or portions thereof) prior to such transfer or liquidation and entitled to the Consent rights provided to it in this Article 15 with respect to such taxable years unless otherwise agreed to in writing by the Members during the taxable year(s) (or portion thereof) to which the Taxes relate and all Former Members during the Company’s taxable year(s) (or portion(s) thereof) to which the Taxes relate.

(g) **Continuing Obligations.** Whether the liability is assessed to the Company or the Members (or Former Members), the parties hereto acknowledge and agree that nothing in this Article 15 is intended, nor shall it be construed, to modify or waive any obligations of the
15.4 Related Tax Items

(a) Tax Counsel or Accountants. The Partnership Representative, with the reasonable Consent of the Investor Member, shall employ experienced tax counsel and/or accountants to represent the Company in connection with any audit or investigation of the Company by the Service or any other taxing authority and in connection with all subsequent administrative and judicial proceedings arising out of such audit. Such counsel and/or accountants shall be responsible for representing the Company; it shall be the responsibility of the Members, at their expense, to employ tax counsel or accountants to represent their respective separate interests.

(b) Survival. The rights and obligations of each Member or Former Member under this Section shall survive the transfer, redemption or liquidation by such Member of its Company Interest and the termination of this Agreement or the dissolution of the Company.

(c) Amendments. Upon the promulgation of revised Treasury Regulations implementing the Revised Partnership Audit Rules or upon further amendment of the Revised Partnership Audit Rules, the Members will evaluate and consider options available with respect to preserving the allocation of responsibility and authority described in this Article 15, while conforming with the applicable provisions of the Revised Partnership Audit Rules. The Members agree to work together in good faith to make elections and amend this Agreement (if any party determines that an amendment is required) to maintain the intent of the parties with respect to the obligations and limitations of the Partnership Representative.

(d) State and Local Income Tax Matters. The provisions of this Article 15 shall also apply to state and local income tax matters affecting the Company to the extent the terms and conditions hereof have any application to audit procedures at the state and local level.

ARTICLE 16
MANAGEMENT AGENT

16.1 Appointment of Management Agent. The Managing Member shall cause the Company at all times during which the Company owns the Apartment Complex to engage a Management Agent subject to the approval of the Investor Member in its sole discretion (which may be a Managing Member or an Affiliate thereof if approved by the Investor Member in its sole discretion, and if approved by the Lenders and by the Agency, to the extent such approval by a Lender and/or the Agency is required) to provide management services for the Company with respect to the Apartment Complex pursuant to a Management Agreement meeting the requirements of this Agreement. Accolade Property Management, Inc. is approved as the initial Management Agent. Such engagement shall occur no later than the date on which the first certificate of occupancy for any unit in the Apartment Complex is issued and shall continue thereafter for so long as the Company owns the Apartment Complex. Concurrently with execution of the Management Agreement, the Management Agent shall execute and deliver to
the Company and the Investor Member consent in the form attached hereto after the signature pages of the Members.

16.2 Management Agreement. The Management Agreement shall be subject to the Consent of the Investor Member in its sole discretion and, unless the Investor Member otherwise Consents, must satisfy the following terms and conditions: (a) the Company shall pay the Management Agent a monthly Management Fee not to exceed the greater of (a) five percent (5%) of the Gross Operating Revenues (as defined in the Management Agreement) of the Apartment Complex for the month preceding payment and (b) $2,000 per month; and (b) the Management Agreement must have a term which does not exceed one (1) year and provide that it is terminable by the Company on thirty (30) days’ Notice by the Company without cause. Notwithstanding the foregoing, if at any time the Management Agent is an Affiliate of any Managing Member, Guarantor or Developer, payment of the Management Fee shall be subordinated to payment of Operating Expenses, Debt Service Expenses and funding of any reserve required under this Agreement, and any portion of the Management Fee which is not paid shall accrue without interest and be paid from available Cash Flow in accordance with Section 14.1(a) hereof. If the Management Agent is an Affiliate of the Managing Member, the Developer or the Guarantors, then the Management Fee shall not be paid from either the Operating Reserve or an Operating Deficit Loan.

16.3 Removal of Management Agent. If (a) the Apartment Complex shall be subject to a building code violation the Investor Member shall deem material and which shall not have been timely cured after notice from the applicable agency or department; (b) an Event of Bankruptcy shall occur with respect to the Management Agent; (c) the Management Agent shall commit misconduct or negligence in the performance of its duties and obligations under the Management Agreement, or fails to promptly and competently perform (after any applicable notice and cure period) all duties of the Management Agent under the Management Agreement or materially mismanage the Apartment Complex; (d) the Managing Member Withdraws; (e) there is change in ownership of the Managing Member without the Consent of the Investor Member; (f) the Management Agent is cited by any Agency for a violation or alleged violation of any applicable rules, regulations or requirements, including noncompliance with the Minimum Set-Aside Test, the HOME Minimum Set-Aside Test or any other Lender or Set-Aside Test, the Rent Restriction Test or any other Housing Tax Credit-related provision; (g) from or after Rental Achievement, the Company experiences Operating Deficits (prior to the effect of subordinating payment of the Management Fee, if applicable) for six (6) consecutive months; (h) the Company’s actual Housing Tax Credits are less than 95% of the Projected Housing Tax Credits or the Revised Projected Housing Tax Credits, as applicable, (i) the Management Agent fails to comply with any applicable compliance rule, recordkeeping and/or reporting requirement under Section 42 of the Code and the Regulations, rulings and policies related thereto (which is not timely cured); or (j) the Investor Member funds Default IM Loans or Excess IM Loans, then, upon Notice from the Investor Member and subject to any Lender or Agency approval, if required, the Managing Member must cause the Company to promptly terminate the Management Agreement with the Management Agent.

16.4 Replacement of Management Agent. Upon termination of the Management Agreement with the Management Agent, the Managing Member shall appoint a new Management Agent which is not an Affiliate of the Managing Member, Developer or Guarantor,
subject to the Consent of the Investor Member, to the extent required, the Lenders, and on the terms set forth in Section 16.2.

ARTICLE 17
SALE, DISSOLUTION AND LIQUIDATION

17.1 Dissolution of the Company. The Company shall be dissolved upon the earlier of the expiration of the term of the Company, or upon:

(a) the Withdrawal of the Managing Member who is at that time the sole Managing Member, subject to the provisions of Section 7.2(b)(ii), unless a majority in Interest of the other Members, within ninety (90) days after receiving Notice of such withdrawal, Bankruptcy, death, dissolution or adjudication of incompetence, elects to designate a successor Managing Member(s) and continue the Company upon the admission of such successor Managing Member(s) to the Company;

(b) the sale or other disposition of all or substantially all of the assets of the Company or liquidation as defined in Treasury Regulation Section 1.704-1(b)(2)(ii)(g);

(c) the election by the Managing Member, with the Consent of a majority in interest of the other Members; or

(d) any other event causing the dissolution of the Company under the laws of the State.

17.2 Winding Up and Liquidation.

(a) Upon the dissolution of the Company pursuant to Section 17.1, (i) a Certificate of Cancellation shall be filed in such offices within the State as may be required or appropriate, and (ii) the Company business shall be wound up and its assets liquidated as provided in this Section 17.2.

(b) The net proceeds resulting from the dissolution and liquidation of the Company shall be distributed and applied in the following order of priority:

(i) to the payment of all debts and liabilities of the Company (including amounts due pursuant to all Loans and all expenses of the Company incident to any such dissolution and liquidation), other than its Members and Affiliates;

(ii) to the payment of debts and liabilities (including unpaid fees) owed to the Members or their Affiliates by the Company for Company obligations (limited to those debts that have been Consented to by the Investor Member as provided in this Agreement); provided, however, that the foregoing debts and liabilities owed to the Members and their Affiliates shall be paid or repaid, as applicable, in the following order of priority, if and to the extent applicable: (A) to the payment of any amounts owing to the Investor Member or other Hunt Indemnified Parties by reason of any unpaid indemnification or guaranty obligation of the Managing Member pursuant to this Agreement or of the Guarantors pursuant to the Guaranty; (B) to the payment of any outstanding Excess IM Loan Amount until paid in full, then to the
payment of the Excess MM Loan Amount and then to the payment of any remaining IM Loans and MM Loans pro rata based on their respective outstanding balances until paid in full; (C) to the payment of any accrued and unpaid Asset Management Fee; (D) to the payment of amounts due under the Development Agreement (including any Deferred Development Fee); (E) to the payment of amounts due with respect to Operating Deficit Loans; and (F) to the payment of any other such debts and liabilities;

(iii) to the setting up of any reserves which the Liquidator deems reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Company; and

(iv) thereafter, to the Members in accordance with the Members’ respective positive Capital Account balances as determined by taking into account all Capital Account adjustments required by Section 13.2 and otherwise required by this Agreement.

17.3 Rights and Obligations of Investor Member upon Dissolution. Except as otherwise expressly provided in this Agreement, the Investor shall look solely to the assets of the Company for the return of its Capital Account balance. Notwithstanding the provisions of Section 17.2 or any other provision of this Agreement, except as otherwise elected by the Investor Member pursuant to Section 4.2(c)(ii) or this Section 17.3, the Investor shall not have any obligation to restore any deficit in its Capital Account upon the liquidation of the Company. Notwithstanding the foregoing, or anything to the contrary contained in this Agreement, the Investor Member may from time to time elect to be obligated to restore a deficit in its Capital Account up to a limited dollar amount. Such election shall be made by the Investor Member’s delivery of a Notice of election to the Managing Member no later than April 15 following the taxable year for which such election is to be effective and shall specify the dollar amount of the deficit in its Capital Account that the Investor Member agrees to restore. Such election shall be irrevocable and shall be binding on subsequent transferees of the Investor Member’s Company Interest.

17.4 Filing of Certificate of Dissolution. The Liquidator shall file all certificates and notices of the dissolution of the Company required by law. The Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Company’s property and assets; provided, however, that if the Liquidator shall determine that an immediate sale of part or all of the Company property would cause undue loss to the Members, then in order to avoid such loss, the Liquidator may, except to the extent provided by the Uniform Act, defer the liquidation as may be necessary to satisfy the debts and liabilities of the Company to Persons other than the Members. Upon the complete liquidation and distribution of the Company assets, the Members shall cease to be Members of the Company, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by the law to terminate the Company. Upon the dissolution of the Company pursuant to Section 17.1, the Accountants shall promptly prepare, and the Liquidator shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Accountants shall prepare, and the Liquidator shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.
ARTICLE 18
BOOKS AND RECORDS, ACCOUNTING,
TAX ELECTIONS, ETC.

18.1 Books and Records. Every Member, or its duly authorized representatives, shall at all times have access to the records of the Company at the principal office of the Company at any and all reasonable times, and may inspect and copy any of such records. A list of the names and addresses of all of the Members shall be maintained as part of the books and records of the Company and shall be mailed to any Member upon request. The Company may charge reasonable costs for duplication and mailing.

18.2 Bank Accounts. Except as provided in Section 5.10 with respect to the Operating Reserve, the bank accounts of the Company shall be maintained in the Company’s name with one commercial bank as the Managing Member shall determine with the reasonable Consent of the Investor Member; provided, however, that no such account may be held in a bank which is an Affiliate of the Managing Member unless the Consent of the Investor Member shall have been received with respect thereto. Withdrawals shall be made only in the regular course of Company business on such signature or signatures as the Managing Member may determine. All deposits (including security deposits and other funds required to be escrowed by any Lender or Agency) and other funds not needed in the operation of the business shall be deposited, in the following: (a) cash deposits (including certificates of deposits) at commercial banks; (b) obligations of the United States or any State or Municipality, thereof, that have an initial or remaining term of 60 days or greater; or (c) money market mutual funds that are registered investment companies under the Investment Company Act of 1940. To the extent the Managing Member seeks to invest in either (b) or (c), it agrees that it will hold such instrument for at least 60 days following such purchase prior to sale. The Managing Member agrees that it will monitor any investments to ensure that they comply with the aforesaid requirements and will promptly notify the Investor Member in the case of any instances of non-compliance have been detected. The Managing Member shall not be obligated to maximize the interest rates received on Company funds. Tenant security deposits shall be maintained in a bank account separate from any other bank accounts. The tenant security deposit account shall be maintained with a balance equal to the corresponding liability, and shall in all other respects comply with applicable laws.

18.3 Accountants.

(a) The Accountants shall prepare, for execution by the Managing Member, all tax returns of the Company. Prior to the filing of the Company tax returns, and in no event later than February 28 of each year, the Accountants shall deliver draft financial statements for the Company and the tax returns for such year to the Investor Member for its review and comment. If a dispute arises between the Accountants and the Investor Member over the proper preparation of the financial statements and the tax returns and such dispute cannot be resolved by the Accountants and the Investor Member by March 1 of such year, then the Investor Member shall make the final decision on whether any changes are necessary and must have a rationale for such decision. The Company shall reimburse the Investor Member or its Affiliates for all costs and expenses related to the aforementioned review.
(b) The Accountants shall audit and certify all annual financial reports to the Members in accordance with generally accepted auditing standards, and shall deliver a draft of such financial reports not later than February 28 of each year and a final version of such financial reports not later than March 31.

(c) If the Company fails to fulfill any of its obligations under Sections 18.3(a), 18.3(b) or 18.7(a) within the time periods set forth therein, at any time thereafter upon Notice from the Investor Member that a change in the identity of the Accountants is desired and the foregoing failure is due to the Accountants second or more violation which caused such failure, the Managing Member, on behalf of the Company, shall promptly terminate the Company’s engagement of the Accountants, and the Consent of the Investor Member must be received to the appointment of replacement Accountants. If the Managing Member has not designated replacement Accountants within ten (10) days of the Notice from the Investor Member to replace the Accountants, then the Investor Member shall appoint replacement Accountants of its own choosing, the cost of which shall be borne by the Company as a Company expense. All Members hereby grant to the Investor Member a special power of attorney, irrevocable to the extent permitted by law, coupled with an interest, to so appoint replacement Accountants and to do anything else which in the view of the Investor Member may be necessary or appropriate to accomplish the purpose of this Section 18.3(c).

18.4 Cost Recovery and Elections.

(a) Except as otherwise required in Section 5.2(oo), the Managing Member shall also cause the Company to make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code and will cause the Company to use the Alternative Depreciation System (ADS) to the extent required by such election. The Managing Member shall also cause the Company to use “bonus” depreciation to the extent not inconsistent with the foregoing.

(b) Subject to the provisions of Section 18.5, all other elections required or permitted to be made by the Company under the Code shall be made by the Managing Member with the Consent of the Investor Member.

18.5 Special Basis Adjustments. In the event of a transfer of all or any part of the Interest of the Investor Member or a transfer of all or any part of an interest of a partner of the Investor Member, the Company shall elect, upon the request of the Investor Member, pursuant to Section 754 of the Code, to adjust the basis of the Company property. Any adjustments made pursuant to said Section 754 shall affect only the successor in interest to the transferring Member or partner thereof. Each Member will furnish the Company all information necessary to give effect to such election.

18.6 Fiscal Year. The fiscal and tax year of the Company shall be the calendar year. The books of the Company shall be kept on an accrual basis.

18.7 Information Reporting to Members.

(a) The Managing Member shall cause to be prepared and distributed to all Persons who were Members at any time during a fiscal year of the Company:
(i) During the construction of the Apartment Complex, within fifteen (15) days after the end of each month, copies of draw requests which may be submitted simultaneously with the draw request provided to the BBVA Lender.

(ii) During the initial lease-up period, and ending on the date on which Initial 100% Occupancy occurs:

(A) a leasing report provided weekly in the form approved by Investor Member;

(B) a vacancy report and rent roll provided monthly in the form approved by the Investor Member;

(C) a low income housing credit monitoring form, an occupancy/rental report in the form approved by the Investor Member, provided monthly in arrears, within seven (7) days of the end of the month being reported;

(D) on the last day of each calendar quarter until Initial 100% Occupancy has been achieved, copies of the complete tenant files for each tenant (including both returning and new tenants) initially occupying a unit during such quarter;

(iii) Within forty-five (45) days after the Occupancy Commencement Date, the Managing Member shall:

(A) cause the Accountants to prepare, and deliver to each Investor Member a Housing Tax Credit eligible basis worksheet for each building in the Apartment Complex, all in a form approved by the Investor Member;

(B) or cause the Management Agent to provide a draft of the Annual Budget.

(iv) The Company shall send to the Investor Member, on or before the tenth (10th) day of each month beginning with initial lease up of the Apartment Complex:

(A) copies of all applicable periodic reports covering the status of project operations from the previous period, as may be required by the Agency; and

(B) copies of all initial tenant leases and associated application information, including third party verification information and copy of the audit, for leases entered into or renewed during the preceding month, and as requested copies of all leases other than initial leases and any related back-up documentation.

(v) Within twenty (20) days after the end of each month, beginning with the month in which the Occupancy Commencement Date occurs, a report, which may be unaudited, that is reasonably satisfactory to the Investor Member, and at minimum contains each of the following:
(A) a consolidated balance sheet of the Company for the month then ended;

(B) a statement of income and expenses for the month then ended;

(C) a statement of cash flows for the month then ended;

(D) a year-to-date trial balance of all Company accounts, prepared using Microsoft Excel and showing a beginning balance, gross debits, gross credits, and an ending balance for each account;

(E) after Initial 100% Occupancy, rent rolls and occupancy/rental report for each month;

(F) a certification of the Managing Member that the Apartment Complex and its tenants are in compliance with all applicable federal, state and local requirements and regulations; and

(G) at the request of the Investor Member, such other information which would be pertinent to a reasonable investor regarding the Company and its activities during the month covered by the report.

(vi) No later than February 28 of each year, drafts of (A) a balance sheet as of the end of such fiscal year, a statement of income, a statement of partners’ equity, and a statement of cash flows, each for the year then ended, all of which, except the statement of cash flows, shall be prepared in accordance with generally accepted accounting principles and accompanied by a report of the Accountant containing an opinion of the Accountant, and (B) a report of the activities of the Company during the period covered by the report. The report called for shall separately identify distributions from (1) Cash Flow from operations during the period, (2) Cash Flow from operations during a prior period which had been held as reserves, (3) proceeds from disposition of property and investments, (4) lease payments on net leases with builders and sellers, (5) reserves from the gross proceeds of the Capital Contribution of the Investor Member, (6) borrowed monies, and (7) transactions outside of the ordinary course of business with a description thereof.

(A) No later than March 31, but not prior to approval of the Investor Member, a final version of the aforementioned reports will be provided.

(B) No later than February 28, drafts of the Form K-1 and all other information which is necessary, in view of the Accountant, for the preparation of the Investor Member’s federal income tax returns.

(C) The final Form K-1 will be delivered to the Investor Member no later than March 31, but not prior to approval of the Investor Member, for the preceding fiscal year.
(vii) Within the latest of (a) forty-five (45) days after the end of each fiscal year of the Company or (b) two (2) weeks of receipt by the Company from the Agency, a copy of the annual report on Form(s) 8609A to be filed with the United States Treasury concerning the status of the Apartment Complex as low-income housing and, if required, a certificate to the appropriate state agency concerning the same and any reports filed in connection with the compliance monitoring conducted by the Agency on behalf of the State.

(viii) By November 1 of each year, a draft of the Annual Budget for the Company for the next year, which budget shall have been prepared by the Managing Member or the Management Agent and shall be subject to the approval of the Investor Member, with such approval not to be unreasonably withheld.

(b) Upon the written request of the Investor Member for further information with respect to any matter covered in item (a) above, the Managing Member shall furnish such information within thirty (30) days of receipt of such request.

(c) Prior to October 15 of each year, the Company shall send to the Investor Member an estimate of each Investor Member’s share of the Housing Tax Credits, profits and losses of the Company for federal income tax purposes for the current fiscal year. Such estimate shall be prepared by the Managing Member and the Accountants.

(d) Within ninety (90) days after the end of each fiscal year of the Company, the Managing Member shall provide to the Investor Member:

(i) a certification from the Managing Member that (A) all payments payable with respect to all Loans and all taxes and insurance with respect to the Apartment Complex are current as of the date of the year-end report, (B) there is no default under the Project Documents or this Agreement, or if there is any such default, a detailed description thereof, and (C) there is no building, health or fire code violation or similar violation of a governmental law, ordinance or regulation against the Apartment Complex or, if there is any such violation, a detailed description thereof; and

(ii) a descriptive statement of all transactions during the fiscal year between the Company and any Managing Member or any Affiliate thereof, including the nature of the transaction and the payments involved.

(e) The Managing Member shall send the Investor Member a detailed report within five (5) Business Days after the occurrence of any of the following events:

(i) there is a default by the Company under any Project Document or in the payment of any mortgage, taxes, interest or other obligation on secured or unsecured debt;

(ii) any reserve has been reduced or terminated by application of funds therein for purposes materially different from those for which such reserve was established;

(iii) the Managing Member has received any notice of a fact which may materially affect further distributions or Housing Tax Credit allocations to any Investor Member; or
(iv) any Member has pledged or collateralized its Interest in the Company.

(f) On or before ninety (90) days after the expiration of each fiscal year of the Managing Member or its members, such Managing Member or its members shall send to the Investor Member copies of the balance sheet and income statement of such Managing Member or its members for such fiscal year, which financial statements shall be audited by an independent certified public accountant in the case of a Managing Member or its members which is an Entity.

(g) The Managing Member shall promptly send to the Investor Member a copy of each draw requisition with respect to the Loans and any notification or correspondence from any Lender indicating that any such draw will not be paid as requisitioned.

(h) Promptly upon receipt, the Managing Member shall send to the Investor Member copies of all documents evidencing any Carryover Allocation pursuant to Section Code 42(h) and the Form(s) 8609 evidencing the Housing Tax Credit allocation.

(i) Promptly after Construction Loan Closing, the Managing Member shall send to the Investor Member closing binders containing photocopies of the fully-executed versions of all documents signed in connection with the Loans.

(j) The Managing Member hereby Consents to any Agency providing the Investor Member with copies of all material communications between any such office and the Managing Member and/or the Company, including any notices of default.

(k) The Managing Member shall promptly Notify the Investor Member if it becomes aware of any violation of Anti-Corruption Laws, or circumstances likely to give rise to such a violation by the Company, the Developer, the Managing Member, the Guarantors or any Affiliate of the Managing Member, the Developer or the Guarantors. Upon request by the Investor Member, the Managing Member will provide information verifying compliance with Anti-Corruption Laws by the Company, the Developer, the Managing Member, the Guarantors or any Affiliate of the Managing Member, the Developer or the Guarantors.

(l) If the Managing Member does not cause the Company to fulfill its obligations under this Section 18.7, the Managing Member shall pay as damages the sum of $100.00 per day to the Investor Member until such obligations shall have been fulfilled. Such damages shall be immediately paid by the Managing Member, and failure to so pay shall constitute a material default of the Managing Member hereunder. In addition, if the Managing Member shall so fail to pay, the Managing Member shall cease to be entitled to the MM Incentive Management Fee and to the payment of any Cash Flow or Capital Transaction proceeds to which it may otherwise be entitled hereunder. Such payments of the MM Incentive Management Fee, Cash Flow and Capital Transaction proceeds shall be restored only upon the payment of such damages in full, and any amount of such damages not so paid shall be deducted against payments of the MM Incentive Management Fee, Cash Flow and Capital Transaction proceeds due to the Managing Member. The imposition of this fee does not affect the other
rights and remedies the Investor Member has under this Agreement and all such rights and remedies are expressly reserved.

18.8 Expenses of the Company. All expenses of the Company shall be billed directly to and paid by the Company.

18.9 Housing Tax Credit Compliance Records. Except to the extent that another record storage method shall have been Consented to by the Investor Member, the Managing Member shall cause all tenant leases, income certifications and other records required by the Code and the Agency to evidence that all tenants occupying Housing Tax Credit Units are Qualified Tenants to be stored in fireproof file cabinets in a secure location. Without limiting the foregoing, all such records relating to initial occupancy of each Low-Income Apartment Unit by Qualified Tenants and evidencing timely satisfaction of the Minimum Set-Aside Test and the HOME Minimum Set-Aside Test shall be stored for a period of not less than 21 years.

18.10 Compliance Audit. The Investor Member may, at its own expense, conduct or cause to be conducted an audit or review of the Company’s compliance with all regulations and procedures relating to the operation of the Apartment Complex as a qualified Tax Credit project within the meaning of Section 42(h) of the Code. Such audit or review shall be conducted upon not less than thirty (30) or more than ninety (90) days prior Notice. The Managing Member shall cooperate with any such audit by making appropriate personnel of the Managing Member and the Management Agent and all books and records of the Apartment Complex and Company available to the Investor Member or its representatives at the offices of the Company during regular business hours.

18.11 Inspections. The Investor Member, at its sole cost and expense, shall have the right to conduct physical inspections of the Apartment Complex on an annual basis (or more frequently if the Investor Member in its sole discretion determines it necessary or advisable) and the Managing Member shall take all reasonable steps necessary to cooperate therewith.

18.12 Guarantors’ Financial Statements. The Managing Member shall cause to be delivered to the Investor Member financial statements of each of the Guarantors to include a schedule of contingent liabilities, together with bank statements for each Guarantor who is an individual, within ninety (90) days of the end of each fiscal year of such Guarantor, unless waived by the Investor Member in writing.

ARTICLE 19
GENERAL PROVISIONS

19.1 Notices. Any Notice or Notification called for under this Agreement shall be in writing and shall be deemed adequately given if actually delivered or if sent by registered or certified mail, postage prepaid, sent by express courier or electronic mail, to such Member at such Member’s address as specified below on the date of receipt thereof (or the next business day if the date of receipt is not a business day) (or in the case of registered or certified mail the date of registry thereof or the date of the certification receipt, as applicable) being deemed the date of such notice (“Notice”, “Notification” or “Notify”); provided, however that any written
To the Investor Member:  
HCP-ILP, LLC  
15910 Ventura Boulevard, Suite 1100  
Encino, California 91436  
Attention: Jeffrey N. Weiss  
Email: jeff.weiss@huntcompanies.com

With a copy to:  
Nixon Peabody LLP  
799 9th Street NW, Suite 500  
Washington, DC 20001-5327  
Attention: Matthew W. Mullen  
Email: mmullen@nixonpeabody.com

To the Co-Managing Member:  
Saigebrook Canova, LLC  
220 Adams Drive Ste. 280 #138  
Weatherford, Texas 76086  
Attention: Lisa Stephens  
Email: lisa@saigebrook.com

To the Administrative Member:  
O-SDA Canova, LLC  
5714 Sam Houston Circle  
Austin, Texas 78731  
Attention: Megan D. Lasch  
Email: megan@o-sda.com

With a copy to:  
Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, Florida 33131  
Attention: Gary J. Cohen  
Email: gcohen@shutts.com

With a copy to:  
Shackelford, Bowen, McKinley & Norton, LLP  
9201 N. Central Expressway, Fourth Floor  
Dallas, Texas 75231  
Attention: John Shackelford  
Email: jshack@shackelfordlaw.net

19.2 Word Meanings. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The words “includes,” “including” and the like shall in each case mean “including without limitation.” References to “Sections” and “Articles” refer to Sections and
Articles of this Agreement, unless otherwise specified. References to any Regulations (permanent or temporary) or Revenue Procedures shall include any successor provisions.

19.3 Binding Effect. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

19.4 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State.

19.5 Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

19.6 Entire Agreement. This Agreement sets forth all (and is intended by all parties to be an integration of all) of the representations, promises, agreements and understandings among the parties hereto with respect to the Company, the Company’s business and the property of the Company, and there are no representations, promises, agreements or understandings, oral or written, express or implied, among them other than as set forth or incorporated herein.

19.7 Reserved.

19.8 Separability of Provisions. Each provision of this Agreement shall be considered separable and (a) if for any reason any provision is determined to be invalid, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, or (b) if for any reason any provision would cause any Investor Member to be bound by the obligations of the Company (other than the rules and regulations of any Agency and the requirements of any Lender), such provision or provisions shall be deemed void and of no effect.

19.9 Paragraph Titles. All article and section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any article or section.

19.10 Project Lender Provisions. Notwithstanding anything to the contrary, all required Lender consents must be obtained for the following actions: (a) permitting the withdrawal of a Managing Member from the Company; (b) admitting a new Managing Member to the Company; (c) substituting a Managing Member; (d) amending this Agreement or the Company’s Certificate of Formation; (e) selling all or substantially all of the Company’s assets; (f) dissolving, liquidating or terminating the Company; or (g) borrowing funds from a Managing Member or any third party.

19.11 No Continuing Waiver. The waiver by any party of any breach of this Agreement or any full or partial condition for performance hereunder shall not operate as or be construed to be a waiver of any subsequent breach or condition.

19.12 Amendment Procedure. This Agreement may be amended by the Managing Member only with the Consent of the Investor Member. To the extent that the Investor Member(s) has or have loans outstanding from the Equity Lender in order to finance their
Capital Contribution(s), no amendment may be made to Article 14 without the Consent of the Equity Lender. The Managing Member agrees to execute amendments proposed by the Investor Member which do not affect the obligations of the Managing Member under this Agreement and (a) increase or impose upon the Investor Member the obligation to restore a deficit balance in its Capital Account, or (b) prospectively decrease the obligation of the Investor Member to restore a deficit balance in its Capital Account in a subsequent fiscal year of the Company. The Managing Member agrees to cooperate and to act promptly with respect to amendments proposed by the Investor Member.

19.13 Waiver of Jury Trial. (A) EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER OPPORTUNITY FOR CONSULTATION WITH INDEPENDENT COUNSEL, WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OR OBLIGATIONS (I) UNDER THIS AGREEMENT, (II) ARISING FROM THE FINANCIAL RELATIONSHIP BETWEEN THE PARTIES IN CONNECTION WITH THIS AGREEMENT OR (III) ARISING FROM ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENT (VERBAL OR WRITTEN) OR ACTION OF THE PARTIES IN CONNECTION WITH SUCH FINANCIAL RELATIONSHIP; (B) NO PARTY HERETO WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED; (C) THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS; (D) NO PARTY HERETO HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND (E) THIS SECTION IS A MATERIAL INDUCEMENT FOR THE INVESTOR MEMBER TO ENTER INTO THIS AGREEMENT.

19.14 No Third-Party Rights. No creditor or other third party having dealings with the Company shall have the right to enforce the right or obligation of any Member to make Capital Contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the parties hereto and their respective successors and assigns. None of the rights or obligations of the Members herein set forth to make Capital Contributions or loans to the Company shall be deemed an asset of the Company for any purpose by any creditor or other third party until such Capital Contribution is made or loan is advanced nor may such rights or obligations be sold, transferred or assigned by the Company or pledged or encumbered by the Company to secure any debt or other obligation of the Company or of any of the Members. Without limiting the generality of the foregoing, a deficit Capital Account of a Member shall not be deemed to be a liability of such Member nor an asset or property of the Company.

19.15 Forbearance. Any forbearance by the Investor Member in exercising any right or remedy under this Agreement, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The enforcement by the Investor Member of any right herein shall not constitute an
election by the Investor Member of remedies so as to preclude the exercise of any other right available to the Investor Member.

19.16 Review with Counsel. THE MEMBERS ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT AND HAVE BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)
WITNESS the execution hereof as of the Closing Date.

CO-MANAGING MEMBER:
SAIGEBROOK CANOVA, LLC,
a Texas limited liability company
By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: [Signature]
Name: Lisa M. Stephens
Title: Manager

ADMINISTRATIVE MEMBER:
O-SDA CANOVA, LLC,
a Texas limited liability company
By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: [Signature]
Name: Megan D. Lasch
Title: Managing Member

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
WITNESS the execution hereof as of the Closing Date.

**CO-MANAGING MEMBER:**

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By: Saigebrook Development, LLC,
a Florida limited liability company

Its: Managing Member

By:
Name: Lisa M. Stephens
Title: Manager

**ADMINISTRATIVE MEMBER:**

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company

Its: Sole Member

By:
Name: Megan D. Lasch
Title: Managing Member

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
WITNESS the execution hereof as of the Closing Date.

INVESTOR MEMBER:

HCP-ILP, LLC,
a Nevada limited liability company

By: Hunt Capital Partners, LLC,
a Delaware limited liability company
Its: Manager

By: [Signature]
Name: Jeffrey N. Weiss
Title: President

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
WITNESS the execution hereof as of the Closing Date.

WITHDRAWING INVESTOR MEMBER:
LISA M. STEPHENS, an individual

[Signature]
DEVELOPER CONSENT AND AGREEMENT

The undersigned, being the Developer for Canova Palms, LLC (the “Company”), hereby consents to the provisions in Sections 4.1(c), 5.9(a), 5.11, 7.2(b)(ii) and 8.5 of the foregoing First Amended and Restated Operating Agreement of the Company, notwithstanding any provision of the Development Agreement to the contrary.

DEVELOPER:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company

By: __________________________
Name: Lisa M. Stephens
Title: Manager

O-SDA INDUSTRIES, LLC,
a Texas limited liability company

By: __________________________
Name: Megan D. Lasch
Title: Managing Member
DEVELOPER CONSENT AND AGREEMENT

The undersigned, being the Developer for Canova Palms, LLC (the “Company”), hereby consents to the provisions in Sections 4.1(c), 5.9(a), 5.11, 7.2(b)(ii) and 8.5 of the foregoing First Amended and Restated Operating Agreement of the Company, notwithstanding any provision of the Development Agreement to the contrary.

DEVELOPER:

SAIGEBROOK DEVELOPMENT, LLC,

a Florida limited liability company

By: 
Name: Lisa M. Stephens
Title: Manager

O-SDA INDUSTRIES, LLC,

a Texas limited liability company

By: 
Name: Megan D. Lasch
Title: Managing Member
MANAGEMENT AGENT CONSENT AND AGREEMENT

The undersigned, being the Management Agent for Canova Palms, LLC (the “Company”), hereby consents to the provisions in Article 16 of the foregoing First Amended and Restated Operating Agreement of the Company, notwithstanding any provision of the Management Agreement to the contrary.

MANAGEMENT AGENT:

ACCOLADE PROPERTY MANAGEMENT, INC.,
a Texas corporation

By: __________________________
Name: Stephanie Baker
Title: President

[Signature to be added prior to full funding of the First Installment]
MEMBER INFORMATION SCHEDULE
TO THE
FIRST AMENDED AND RESTATED OPERATING AGREEMENT
CANOA PALMS, LLC

<table>
<thead>
<tr>
<th>Name and Address</th>
<th>Capital Contribution</th>
<th>Taxpayer Identification No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-Managing Member:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saigebrook Canova, LLC</td>
<td>$100.00</td>
<td>45-3062708</td>
</tr>
<tr>
<td>220 Adams Drive Ste. 280 #138</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weatherford, Texas 76086</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Member:</td>
<td></td>
<td></td>
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<tr>
<td>O-SDA Canova, LLC</td>
<td>$100.00</td>
<td>80-0641068</td>
</tr>
<tr>
<td>5714 Sam Houston Circle</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Austin, Texas 78731</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investor Member:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HCP-ILP, LLC</td>
<td>$8,373,153</td>
<td>27-4320633</td>
</tr>
<tr>
<td>15910 Ventura Boulevard, Suite 1100</td>
<td>(subject to adjustment as provided in the Agreement)</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT A

LEGAL DESCRIPTION OF LAND

Tract 1: (Fee Simple)

Being Lot 1, in Block A, of J D I, LLC, ADDITION, an Addition to the City of Irving, Dallas County, Texas, according to the Map thereof recorded under cc# 20080220250, Real Property Records, Dallas County, Texas.

Tract 2: (Easement Estate)

Non-Exclusive Access Easement as shown and created on plat across a portion of Lot 2, Block A, of J D I, LLC, ADDITION, an Addition to the City of Irving, Dallas County, Texas, according to the Map thereof recorded under cc# 20080220250, Real Property Records, Dallas County, Texas.
EXHIBIT B

DEVELOPMENT BUDGET,
SOURCES AND USES
and
SUMMARY OF LOANS

[To be attached at the full funding of the First Installment.]
### SUMMARY OF LOANS

<table>
<thead>
<tr>
<th>Lender</th>
<th>Related Party (Yes or No)</th>
<th>Principal Amount</th>
<th>Interest Rate</th>
<th>Hard Debt Payment Terms</th>
<th>Soft Debt Payment Terms</th>
<th>Construction or Permanent or Both</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBVA Compass.</td>
<td>No</td>
<td>Up to $7,563,000; Up to $2,000,000 upon Conversion</td>
<td>6.51% during construction; fixed upon Conversion</td>
<td>24-month term, interest only payable monthly; 18-year term, amortizing at 35 years upon Conversion</td>
<td>N/A</td>
<td>Both</td>
</tr>
<tr>
<td>City of Irving (HOME Loan)</td>
<td>No</td>
<td>$1,000,000</td>
<td>1%; Fixed</td>
<td>N/A</td>
<td>Payable from Cash Flow -40 year term</td>
<td>Both</td>
</tr>
</tbody>
</table>
EXHIBIT C

FUNDING CONDITIONS

Payment Certificate. The obligation of the Investor Member to pay each Installment (or disbursement of each Installment) is conditioned upon delivery by the Managing Member to the Investor Member of a written certificate (the “Payment Certificate”) in the form attached hereto as Exhibit R. The Payment Certificate for each Installment subsequent to the First Installment shall be dated and delivered not less than fifteen (15) nor more than thirty (30) days prior to the due date for such Installment.

First Installment Funding Conditions ($837,315) The Limited Partner has agreed to fund $1,000 of the First Installment upon its admission to the Partnership, which shall be used to pay for a portion of the expense reimbursement due to an affiliate of the Limited Partner under Article 4.8. The balance of the First Installment, subject to adjustment, shall be funded once the all First Installment Funding Conditions are satisfied.

1. Admission of the Investor Member to the Company.
2. Proof of property and liability insurance in accordance with Exhibit D to the Agreement.
3. No Event of Default of the Managing Member has occurred.
4. Receipt by the Investor Member of an LIHTC Certificate in the form attached hereto as Exhibit S.
5. Receipt by the Company of the Carryover Allocation and satisfaction by the Company of all conditions to the effectiveness of the Carryover Allocation which are to be satisfied prior to Closing imposed by the Code, the Agency or otherwise.
6. Closing and funding of the BBVA Loan on terms approved by the Investor Member, with such funds to be used solely for site acquisition, development and construction costs, including an expense reimbursement of $65,000 to an Affiliate of the Investor Member for its review and approval costs in connection with the Closing.
7. Closing and initial funding of the HOME Loan on terms approved by the Investor Member, with such funds to be used solely for purposes set forth in the HOME Loan documents.
8. The Title Policy meeting the requirements set forth in Exhibit Q.
9. The Predevelopment Loan shall have been paid in full or will be paid in full concurrently with the funding of the First Installment.
10. An Opinion of Counsel of the Managing Member confirming such tax, corporate and partnership matters, and in such form, as the Investor Member or its counsel may reasonably request. Such opinion shall expressly permit reliance thereon by the Investor
Member and counsel engaged by the Investor Member in connection with the admission of the Investor Member to the Company and confirm that, upon an Assignment of the Investor Member’s Interest in the Company pursuant to an Assignment executed substantially in the form attached to the Agreement as Exhibit M, (1) the Assignee of the Investor Member’s Interest will, except for the payment of its Capital Contribution, have no liability with respect to obligations of the Company except as provided under the provisions of the Uniform Act, and (2) the Assignment will not affect the validity of the Guaranty Agreement, the benefits of which will run to the Assignee of the Investor Member’s Interest.

11. The Development Agreement between the Company and the Developer, in the form attached to the Agreement as Exhibit E, pursuant to which the Developer will be paid a Development Fee as described therein.

12. The Guaranty Agreement in the form attached to the Agreement as Exhibit F.

13. The ALTA Survey certified to the Company and the Investor Member and meeting the requirements set forth in Exhibit Q.


15. The Management Agreement between the Company and the Management Agent, in the form attached to the Agreement as Exhibit I.

16. Receipt of the fully executed Section 811 Subsidy Contract, in a form acceptable to the Investor Member.

17. Building permits for the Apartment Complex or will issue letter.

18. Receipt of the fully executed copy of the Assignment and Assumption of Limited Liability Company Interests and Amendment to First Amended and Restated Operating Agreement of Company, in a form reasonably acceptable to the Investor Member.

19. The Due Diligence Documents and any other documents as the Investor Member may require in its sole and absolute discretion.

Second Installment Funding Conditions ($837,315)

1. The date determined by the Architect (pursuant to a standard AIA Form G702 and Form G703) and as approved by the Investor Member, that the Apartment Complex is fifty percent (50%) complete.

2. Carryover Certification with paid invoices to confirm satisfaction of the Ten Percent Test.

3. No Event of Default of the Managing Member has occurred.
4. Proof that all insurance requirements continue to be satisfied in accordance with Exhibit D to the Agreement.

5. Receipt of all other reports required to be submitted to date according to Article 18, including but not limited to budgets, tax returns, audits and compliance documentation.

6. Satisfaction of all conditions for the payment of the First Installment.

7. Such additional documentation as the Investor Member may reasonably require.


**Third Installment Funding Conditions ($837,315)**

1. Substantial Completion has occurred.

2. Receipt of Draws and related Draw Documents for Capital Contributions to pay costs of constructing the Apartment Complex, which are approved by the Investor Member pursuant to Section 4.4 of the Agreement.

3. If available, a date down endorsement to the Title Policy dated within thirty (30) days of funding the Third Installment, in form and substance reasonably acceptable to the Investor Member.

4. Unconditional lien waivers for previous Draws and Conditional lien waivers for current Draw.

5. A certification of the Managing Member, in form and substance acceptable to the Investor Member, confirming that any asserted violations of building codes or Environmental Laws that were to be corrected or remediated during Construction of the Apartment Complex have been timely and fully corrected or remediated in strict compliance with applicable law.

6. A report from the Investor Member’s construction consultant that Substantial Completion has been achieved, that completed construction work is good quality and generally in accordance with the Plans and Specifications and the Apartment Complex is completely operable and inhabitable. The Investor Member shall cause its consultant to deliver a copy of its report (or the pertinent portions thereof) promptly to the Managing Member if there are any construction or other development items which the Investor Member claims are unsatisfactory based upon the findings in the report.

7. Engineer’s Report.

8. Receipt of Draws and related Draw Documents for Capital Contributions to pay costs of constructing the Apartment Complex, which are approved by the Investor Member pursuant to Section 4.4 of the Agreement.

9. Updated Sources and Uses of Development Budget.
10. Proof that all insurance requirements continue to be satisfied in accordance with Exhibit D to the Agreement.

11. Receipt of all other reports required to be submitted to date according to Article 18, including but not limited to budgets, tax returns, audits and compliance documentation.

12. Satisfaction of all conditions for the payment of the Second Installment.

13. Such additional documentation as the Investor Member may reasonably require.


**Fourth Installment Funding Conditions ($5,811,208)**

1. Completion has occurred, and all Completion Documentation has been received and approved by the Investor Member.

2. The ALTA As-Built Survey.

3. A final report from the Investor Member’s construction consultant that all design, site, construction and finishing work necessary for the completion of the Apartment Complex and any necessary utilities have been finished in a good and workmanlike manner, free from defects in design and construction and substantially in accordance with the Plans and Specifications, which shall additionally include evidence of the delivery and installation of all necessary and appropriate fixtures, equipment and personal property. The Investor Member shall cause its consultant to deliver a copy of its report (or the pertinent portions thereof) promptly to the Managing Member if there are any construction or other development items which the Investor Member claims are unsatisfactory based upon the findings in the report.

4. Rental Achievement.

5. An unaudited balance sheet of the Company, dated no earlier than thirty (30) days prior to such Installment, certified by the Managing Member as true, complete and correct.

6. An estimate of the likely adjustment to Capital Contributions, if any, that may be due under Section 4.2(d).

7. Evidence that all warranties relating to the Construction have been issued to the Company, including the commencement and termination date and product information.

8. Copies of all maintenance and operating agreements for the Apartment Complex.

9. Executed and recorded Extended Use Agreement; provided however, if a recorded copy is not yet available, evidence of submission of the executed Extended Use Agreement for recording.

10. Evidence that the Operating Reserve and Replacement Reserve have been funded in accordance with the terms of the Agreement.
11. Receipt by the Company of the Cost Certification and such documentation as may be reasonably required by the Investor Member to support the Cost Certification, together with an estimate of the likely adjustment to Capital Contributions, if any, that may be due under Section 4.2(d)(i).

12. Update of each Guarantor’s financial statements to include a schedule of contingent liabilities, together with bank statements for each Guarantor who is an individual, dated no later than ninety (90) days prior to the Fourth Installment Funding.

13. Proof that all insurance requirements continue to be satisfied in accordance with Exhibit D to the Agreement.

14. Date down endorsement, if available, to the Title Policy dated on at the time of Conversion, in form and substance reasonably acceptable to the Investor Member, and issuance of an ALTA zoning 3.1 endorsement, a comprehensive endorsement for improved land, a revised survey endorsement reflecting and referring to the ALTA As-Built Survey, and any other endorsements requested by the Investor Member, all in form reasonably satisfactory to the Investor Member.

15. Satisfaction of all conditions for the payment of the Third Installment.

16. Such additional documentation as the Investor Member may reasonably require.


**Fifth Installment Funding Conditions (550,000)**

1. Receipt of Internal Revenue Service Forms 8609 for each building in the Apartment Complex.

2. Receipt of all other reports required to be submitted to date according to Article 18, including but not limited to budgets, tax returns, audits and compliance documentation.

3. Copies of all initial tenant files.

4. The completion of Investor Member’s first year Tenant File Audit.

5. Final calculation of the adjustments to Capital Contributions, if any, that may be due under Section 4.2(d)(i) and 4.2(d)(ii).

6. Proof that all insurance requirements continue to be satisfied in accordance with Exhibit D to the Agreement.

7. Satisfaction of all conditions for the payment of the Fourth Installment.

8. Such additional documentation as the Investor Member may reasonably require.

EXHIBIT D

INSURANCE REQUIREMENTS

I. Immediately upon purchase of the land and building(s) upon which new construction will take place and/or building(s) will be rehabilitated, and throughout the term of this Agreement, The Managing Member shall obtain, and maintain in full force and effect, the following policies of insurance for the Company:

A. Commercial General Liability Insurance:
   1. $1,000,000 per occurrence;
   2. $2,000,000 general aggregate;
   3. $2,000,000 product liability/completed operations aggregate;
   4. Personal and Advertising injury: $1,000,000;
   5. The Investor Member and any other party as designated by the Investor Member shall be included as an additional insured using form CG2026 Designated Person or Organization or form CG2027 Co-Owner of Insured Premise or its equivalent. If these or equivalent endorsements are not available it must specifically state on the certificate “Who is an insured includes all members & partners per policy form {state policy form number} attached”. The additional insured form/endorsement or policy form must be attached to the certificate of Insurance.
   6. Include Terrorism Coverage as per the Terrorism Risk Insurance Act of 2002 and as extended or equivalent replacement coverage if the Act is not extended, without any exclusions or limitations for Other Acts of Terrorism.
   7. Deductible/SIR not greater than $10,000; and
   8. Premium amount to be shown on certificate or copy of premium invoice or coverage proposal provided.

B. Automobile Insurance, only required if the Apartment Complex has employees or owns or uses any autos (must provide written statement stating the Apartment Complex has no employees, owns or uses any autos if proof of coverage is not provided):
   1. Liability with $1,000,000 combined single limit for personal injury and property damage (including all hired and non-owned vehicles).
   2. Physical Damage, including comprehensive and collision, for any owned autos

C. Worker’s Compensation Insurance, only required if the Company has employees (must provide written statement that the Company has no employees if proof of coverage is not provided):
1. State Benefits and Employer’s liability: $1,000,000.

D. Umbrella/Excess Liability Insurance:

1. $5,000,000 per occurrence and aggregate (primary and umbrella/excess liability can be combined to achieve minimum limit of $6,000,000 per occurrence and $7,000,000 Aggregate); Higher limits may be required depending on project characteristics, location and size.

2. The Commercial General Liability, Automobile Liability and Employers Liability policies should be scheduled as underlying policies; and

E. All coverages to be shown on an ACORD 25 Form with 30 days’ Notice of Cancellation deleting the words “endeavor to” and “but failure to…”, listing the Investor Member and any other party as designated by the Investor Member as Certificate Holder. A separate certificate shall be issued for each requested Certificate Holder.

F. All coverage shall be primary and any insurance carried by the Investor Member or any other partners shall be excess and non-contributory. All insurance companies shall agree to waive their right of subrogation against the Investor Member or any other partners or party as designated by the Investor Member.

G. Other forms or types of insurance which the Investor Member may now or hereafter reasonably require.

II. Prior to the commencement of any construction or rehabilitation of the Apartment Complex, The Managing Member shall obtain (or cause to be obtained by the Contractor/Architect) and keep in force until construction is completed, accepted and initial occupancy of any portion of the Apartment Complex:

A. Builder’s Risk Insurance:

1. “Special Form” Builder’s Risk policy;

2. Replacement Cost;

3. New construction – limit of insurance must be equal to the full value of the completed project;

4. Rehabilitation/Reconstruction limit of insurance must be equal to the value of the building after demolition is completed, plus the full construction/rehab value, including labor;

5. Deductible not greater than $10,000;

6. Completed Value Form; Reporting form policies of any kind will not be acceptable.
7. Earthquake/DIC coverage for all properties located in UBC Seismic Zones 3 & 4; For projects with an approved seismic study indicating a loss prediction of less than 20%, earthquake insurance may be waived; with limits and deductibles that are acceptable to the Investor Member.

8. Flood coverage (for all properties located in FEMA Flood Zones A, V, and D); with limits equal to 50% of the replacement cost of the completed project.

9. Include Terrorism Coverage as per the Terrorism Risk Insurance Act of 2002 and as extended or equivalent replacement coverage if the Act is not extended, without any exclusions or limitations for Other Acts of Terrorism.

10. To be shown on an ACORD 27/28 Form with 30 days’ Notice of Cancellation deleting the words “endeavor to” and “but failure to…”, listing the Investor Member or any other party as designated by the Limited Liability Company as Certificate Holder and Loss Payee using form CP1218 or its equivalent with a waiver of subrogation; The loss payee form/endorsement must be attached to the certificate. A separate certificate shall be issued for each Certificate Holder.

11. Premium amount to be shown on certificate or copy of premium invoice or coverage proposal provided.

12. Soft Cost Endorsement, including increased engineering/architectural fees, interest expense, insurance, real estate taxes, and other miscellaneous expenses associated with project completion delays resulting from a loss.

13. Hail, Named Storms, Windstorm Coverage with deductibles that are acceptable to the Investor Member.

14. Waiver of Coinsurance or Agreed Amount Endorsement.

15. Policy shall contain a Permission to Occupy provision

16. Coverage shall include costs for Debris Removal

B. Evidence of insurance from the Contractor:

1. Worker’s Compensation insurance including state benefits and employers liability of not less than $1,000,000; with a waiver of subrogation in favor of the Company, the Investor Member and any other party as designated by the Investor Member.

2. Commercial Liability insurance coverage of $6,000,000 per occurrence and $7,000,000 aggregate naming the Company, the Investor Member and any other party as designated by the Investor Member as an Additional Insured including Products and Completed Operations for the appropriate statute of limitations.

3. Auto Liability insurance with limits not less than $1,000,000 combined single limit covering all owned, hired & non-owned autos.
4. Contractors Pollution Liability with limits not less than $1,000,000 per occurrence and aggregate if work involves any environmental remediation such as asbestos, lead or other pollutants on structures or the site

5. All coverage shall be primary and any insurance carried by the Company, Investor Member or Members shall be excess and non-contributory. All insurance companies shall agree to waive their right of subrogation against the Company, the Investor Member or any other party as designated by the Investor Member.

6. To be shown on an ACORD 25 Form with 30 days’ Notice of Cancellation deleting the words “endeavor to” and “but failure to…”, listing the Company, the Investor Member and any other party designated by the Investor Member as Certificate Holder. A separate certificate shall be issued for each Certificate Holder.

7. The Managing Member shall make sure the Investor Member and any other party designated by the Investor Member are included in any construction contracts so as to trigger the benefit of any blanket additional insured, primary wording or waiver of subrogation insurance endorsements where written contract is required so that the above requirements are met.

C. Evidence of insurance from the Architect and Engineer:

1. Errors & Omissions insurance coverage of $1,000,000 per occurrence and in the aggregate; and

2. To be shown on an ACORD 25 Form with 30 days’ Notice of Cancellation deleting the words “endeavor to” and “but failure to…”, listing the Investor Member and any other party designated by the Investor Member as Certificate Holder.

III. Prior to the Occupancy Commencement Date, the Managing Member shall obtain, and shall maintain in full force and effect throughout the term of this Agreement, the following policies of insurance:

A. Property Insurance:

1. “Special Form” policy at replacement cost excluding land;

2. Loss of Rents: greater than or equal to 12 months’ rental income, maximum deductible 72 hours

3. Building Contents: full replacement cost on “Special Form” basis;

4. Waiver of Co-insurance or agreed amount endorsement;

5. Include Terrorism Coverage as per the Terrorism Risk Insurance Act of 2002 and as extended or equivalent replacement coverage if the Act is not extended, without any exclusions or limitations for Other Acts of Terrorism.
6. Earthquake/DIC coverage (for all properties located in UBC Seismic Zones 3 & 4; Projects with an approved seismic study indicating a loss prediction of less than 20%, earthquake insurance may be waived); with limits and deductibles that are acceptable to the Investor Member.

7. Deductibles not greater than $10,000;

8. Flood coverage (for all properties located in FEMA Flood Zones A, V, and D) with limits not less than 50% of the replacement value of the completed project.

9. Hail, Named Storms, Windstorm Coverage with deductibles that are acceptable to the Investor Member.

10. Building Ordinance or Law A, B & C $500,000 for properties that contain any type of non-conformance under current building, zoning, or land use laws or ordinances.

11. Boiler & Machinery/Equipment Breakdown insurance at 100% replacement cost of building(s) that houses equipment with deductibles same as property insurance for all properties with any centralized HVAC, boiler, water heater or other type of pressure-fired vessel

12. To be shown on an ACORD Form 27/28 with 30 days’ Notice of Cancellation listing the Investor Member and any other party designated by the Investor Member as Certificate Holder and adding as Loss Payees per form CP 1218 (form/endorsement must be attached to the certificate) with a waiver of subrogation, with the words “endeavor to” and “but failure to” struck from the notice;

13. Premium amount to be shown on certificate or copy of premium invoice or coverage proposal provided

B. Management Agent Insurance:

1. Worker’s Compensation insurance including state benefits and employers liability of not less than $1,000,000; with a waiver of subrogation in favor of the Company, the Investor Member and any other party as designated by the Investor Member.

2. General Liability insurance coverage of $6,000,000 per occurrence and $7,000,000 aggregate; and

3. Professional Liability Insurance with limits of $1,000,000 per occurrence and aggregate with deductible/SIR not greater than $10,000

4. Auto Liability insurance with limits not less than $1,000,000 combined single limit covering all owned, hired & non-owned autos.

5. Employee Dishonesty Crime Coverage or similar Fidelity Bond coverage in an amount not less than the equivalent of 2 months gross income of the project.
6. To be shown on an ACORD Form 25 with 30 days’ Notice of Cancellation listing the Company, the Investor Member and any other party designated by the Investor Member as certificate holder with the words “endeavor to” and “but failure to” struck from the notice. A separate certificate shall be issued for each Certificate Holder.

IV. All policies of insurance described on this Exhibit D shall be underwritten by companies licensed to write such insurance in the state where the Apartment Complex is located and shall be rated in the A.M. Best’s Insurance Rating Guide with a rating of at least A VII. Notice of any replacement of any policy shall be made at least 10 days prior to such replacement, and shall be in the form of a copy of the replacement policy, or by certificate, as noted above. If any Acord Forms or other evidences of insurance do not contain a notice provision for the benefit of the Certificate Holder it shall be the obligation of the Managing Member to Notify all Certificate Holders of any cancelation, non-renewal or material reduction in coverage of all required insurance.

V. All liability insurance maintained by the Company and General Contractor shall include a provision that is primary and any such insurance maintained by the Investor Member or other party designated by the Investor Member is excess and non-contributory.

VI. All parties and their respective insurers are required and must agree to waive their rights of subrogation against the Investor Member or any other party designated by the Investor Member.

VII. The Managing Member is advised to obtain whatever additional insurance is deemed prudent to adequately protect the Company. These insurance requirements are considered minimum standards.
EXHIBIT E

DEVELOPMENT AGREEMENT
DEVELOPMENT AGREEMENT

THIS AGREEMENT (this “Agreement”) is made and entered into as of February 1, 2019, between Canova Palms, LLC, a Texas limited liability company (the “Company”), SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company (“Saigebrook”) and O-SDA INDUSTRIES, LLC, a Texas limited liability company (“O-SDA” and together with Saigebrook, the “Developer”).

A. The Company is governed by its First Amended and Restated Operating Agreement dated as of February 1, 2019 (the “Operating Agreement”) (capitalized terms used herein without definition shall have the definitions given them in the Operating Agreement).

B. The Company has been formed to develop, construct, own, maintain and operate a 110-unit multifamily apartment complex intended for rental to families of low and moderate income and for rental to families at market rates, to be known as Canova Palms, and to be located at 1717 Irving Blvd., Irving, Dallas County, Texas (the “Apartment Complex”).

C. Saigebrook Canova, LLC, a Texas limited liability company, O-SDA Canova, LLC, a Texas limited liability company and HCP-ILP, LLC, a Nevada limited liability company (the “Investor Member”) are the sole Members in the Company.

D. The Company desires to appoint the Developer to provide certain services for the Company with respect to overseeing the development of the Apartment Complex until all development work is completed.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Appointment. The Company hereby appoints the Developer to render services for the Company, and confirms and ratifies the appointment of the Developer with respect to services rendered for the Company to date, in supervising and overseeing the development of the Apartment Complex as herein contemplated.

2. Authority. In conformity with the provisions of the Operating Agreement, the Developer shall have, and has had, the authority and the obligation to:

   a. select the architect (“Architect”), coordinate the preparation of the plans and specifications (the “Plans and Specifications”) and recommend alternative solutions whenever design details affect construction feasibility or schedules;

   b. insure that the Plans and Specifications are in compliance with all applicable codes, laws, ordinances, rules and regulations;

   c. cause the General Contractor to negotiate all necessary contracts and subcontracts (other than the Construction Contract) for the construction of the Apartment Complex;
(d) verify the utilization of the products and materials necessary to equip the Apartment Complex in a manner which satisfies all requirements of the BBVA Loan and the Plans and Specifications;

(e) monitor disbursement and payment of amounts owed Architects and the subcontractors;

(f) insure that the Apartment Complex is constructed free and clear of all mechanics’ and materialmen’s liens;

(g) obtain an Architect’s certificate that the work on the Apartment Complex is substantially complete and inspect the Architect’s work;

(h) secure all building code approvals and obtain certificates of occupancy for all of the residential units of the Apartment Complex;

(i) cause the Apartment Complex to be completed in a prompt and expeditious manner, consistent with good workmanship, and in compliance with the following:

   (i) the Plans and Specifications as they may be amended by the agreement of the parties hereto and with the consent of the mortgagee under the BBVA Loan; and

   (ii) any and all zoning regulations, county ordinances, including health, fire and safety regulations, and any other requirements of federal, state and local laws, rules, regulations and ordinances applicable to construction of the Apartment Complex;

(j) cause to be performed in a diligent and efficient manner the following:

   (i) construction of the Apartment Complex pursuant to the Plans and Specifications, including any required off-site work; and

   (ii) general administration and supervision of construction of the Apartment Complex;

(k) cause the General Contractor to administer and supervise activities of subcontractors and their employees and agents, and others employed as to the Apartment Complex in a manner which complies in all respects with the BBVA Loan and the Plans and Specifications;

(l) keep, or cause to be kept, accounts and cost records as to the construction of the Apartment Complex;

(m) maintain, or cause to be maintained, at its expense, all office and accounting facilities and equipment necessary to adequately perform the foregoing functions;

(n) make available to the Company, during normal business hours and upon the Company’s written request, copies of all material contracts and subcontracts;
(o) deliver to the Company the ALTA As-Built Survey and “as-built” drawings of the Apartment Complex construction;

(p) cause the General Contractor to provide and periodically update an Apartment Complex construction time schedule which coordinates and integrates Architect’s services with construction schedules;

(q) cause the General Contractor to investigate and recommend a schedule for purchase by the Company of all materials and equipment requiring long lead time procurement, coordinate the schedule with Architect and expedite and coordinate delivery of such purchases;

(r) cause the General Contractor to prepare prequalification criteria for bidders interested in participating in the construction of the Apartment Complex, establish bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques with any special systems, materials or methods;

(s) cause the General Contractor to receive bids, prepare bid analyses and make recommendations to the Company for award of contracts or rejection of bids;

(t) coordinate the work of Architect to complete the Apartment Complex in accordance with the objectives as to cost, time and quality, and provide sufficient personnel at the Apartment Complex with authority to achieve such objectives;

(u) cause the General Contractor to provide a detailed schedule of realistic activity sequences and durations, allocation of labor and materials and processing of shop drawings and samples;

(v) provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and the probable Substantial Completion Date, review the schedule for work not started or incomplete, recommend to the Partnership Adjustments in the schedule to meet the probable Substantial Completion Date, provide summary reports of such monitoring, and document all changes in the schedule;

(w) recommend courses of action to the Company when requirements of subcontracts are not being fulfilled;

(x) revise and refine the approved estimate of construction cost, incorporate changes as they occur, and develop cash flow reports and forecasts as needed;

(y) provide regular monitoring of the approved estimate of construction cost, show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs and advise the Company whenever projected Costs exceed budgets or estimates;

(z) cause the General Contractor to develop and implement a system for review and processing of change orders as to construction of the Apartment Complex;
(aa) develop and implement a procedure for the review and processing of applications by subcontractors for progress and final payments;

(bb) in collaboration with Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples; and

(cc) record the progress of the Apartment Complex and submit written progress reports to the Company and Architect, including the percentage of completion and the number and amounts of change orders.

Notwithstanding the foregoing, the Developer shall not provide any services which are the sole responsibility of the Managing Member, including, without limitation, the following: (i) organization of the Company and negotiation of any sale of a Company Interest; (ii) obtaining permanent financing for the Apartment Complex; and (iii) the acquisition and preparation of the Land prior to commencing construction of the Apartment Complex.

3. Development Fee.

(a) For services performed and to be performed under Sections 1 and 2 of this Agreement, the Company shall pay the Developer a Development Fee in the aggregate amount of One Million Forty Thousand Fifth-Six Dollars ($1,040,056) as its sole compensation for the performance of its services under and in connection with this Agreement. Payment of the Development Fee shall be subject to the terms and conditions of the Operating Agreement. Subject to the terms of the Operating Agreement, the Company shall pay the Development Fee as follows: (i) $245,000 (of which 60% shall be paid to Saigebrook and 40% shall be paid to O-SDA) of the Development Fee shall be paid solely from the Cash Flow of the Company available pursuant to Section 14.1(a) of the Operating Agreement, from Cost Savings pursuant to Section 14.2, and from proceeds of the dissolution and liquidation of the Company pursuant to Section 17.2(b)(ii)(D) of the Operating Agreement (the “Deferred Development Fee”); (ii) $250,000 (of which 60% shall be paid to Saigebrook and 40% shall be paid to O-SDA) of the Development Fee shall be paid at the time the Investor Member makes the First Installment, (iii) $250,000 (of which 60% shall be paid to Saigebrook and 40% shall be paid to O-SDA) of the Development Fee shall be paid at the time the Investor Member makes the Third Installment, (iv) $250,000 (of which 60% shall be paid to Saigebrook and 40% shall be paid to O-SDA) of the Development Fee shall be paid at the time the Investor Member makes the Fourth Installment, (v) $50,000 (of which 60% shall be paid to Saigebrook and 40% shall be paid to O-SDA) of the Development Fee shall be paid at the time the Investor Member makes the Fifth Installment. The Development Fee, including but not limited to any Deferred Development Fee, shall be paid 60% to Saigebrook and 40% to O-SDA, on a pro rata basis.

(b) Notwithstanding the foregoing, if, at any time prior to the payment of the Development Fee in full, including the Deferred Development Fee, there are Development Deficits required to be paid to Saigebrook and O-SDA by the Managing Member pursuant to Section 8.1(b) of the Operating Agreement, the Developer and the Company agree that the Managing Member shall have the right, with the Consent of the Investor Member, to elect to fund such Development Deficits by causing the Company and the Developer to change some or all of the cash portion of the Development Fee that would otherwise be paid to Saigebrook and
O-SDA in accordance with Sections 3(a)(ii) through (v) above (but in no event to exceed the lesser of $[572,717] or the unpaid cash portion of the Development Fee) into Deferred Development Fee (a “DDF Election”); provided, the Investor Member shall Consent to such deferral if the Investor Member determines, in its sole discretion, that all of the Deferred Development Fee (including any additional deferral to pay Development Costs) can be repaid by the Company through distributions from the cash flow waterfall under Section 14.1(a) within thirteen years after the Placed in Service Date, further provided that such Consent shall not be required if the Deferred Development Fee is not necessary to be included in the Eligible Basis in order to generate the Projected Housing Tax Credits and the Investor Member’s Capital Account is expected to remain positive throughout the period of eleven (11) taxable years beginning with the first taxable year of the Credit Period. Any Deferred Development Fee resulting from a DDF Election shall be paid in accordance with Section 3(a)(i) hereof and the payments to Saigebrook, O-SDA shall be adjusted pro rata. In no event shall the total amount of the Development Fee be increased as a result of such DDF Election.

(c) No interest shall accrue on the outstanding Deferred Development Fee (including, without limitation, any Deferred Development Fee resulting from a DDF Election). All payments made to the Deferred Development Fee shall be applied to the outstanding balance of the Deferred Development Fee until the Deferred Development Fee is paid in full. Any outstanding balance shall be payable by the earlier of thirteen (13) years following the Placed in Service Date or the date of liquidation of the Company.

(d) Notwithstanding the timing of the payment of the Capital Contributions of the Investor Member, in any event the Company shall pay the entire earned and accrued amount of the Development Fee (other than the Deferred Development Fee including, without limitation, any Deferred Development Fee resulting from a DDF Election) within three (3) years from the date of this Agreement.

(e) For those services performed on or before the Closing Date, as set forth in Section 2 hereof, twenty percent (20%) of the Development Fee shall be deemed earned as of such date. The balance of the Development Fee shall be earned during construction proportionate to the percentage of completion of construction, with the entire Development Fee earned upon issuance of certificates of occupancy for all buildings in the Apartment Complex.

4. Developer Guaranty of Costs of Construction. The Developer warrants that the aggregate costs to the Company for the items includable in Development as identified on the Development Budget shall not exceed the aggregate amounts for such items reflected on the Development Budget (the “Developer Cost Guaranty”). If the aggregate costs to the Company for the items includable in Development Costs exceed the aggregate amount for such items reflected in the Development Budget and such excess costs cannot be funded by Permitted Sources, including DDF Election, the Developer shall pay such excess when and as incurred. Any amounts paid by the Developer pursuant to this Section 4 shall not be repaid by the Company, shall not be credited to the Capital Amount of any Member, or otherwise change the interest of any Person in the Company, but shall be bound by the Developer under the terms of this Agreement.
5. **Withholding of Fee Payments.** If (a) the Developer or the Managing Member, or any successor Managing Member, shall not have substantially complied with any material provisions under this Agreement and the Operating Agreement, (b) an Event of Default has occurred under the Operating Agreement, (c) any financing commitment of any Lender or any agreement entered into by the Company for financing related to the Apartment Complex shall have terminated prior to its respective termination date(s), or (d) foreclosure proceedings have been commenced against the Apartment Complex, or against any apartment complex owned by an Affiliated Entity, then the Developer shall be in default of this Agreement, and the Company shall withhold payment of any installment of the fee payable to the Developer pursuant to Section 3 of this Agreement. All amounts so withheld by the Company under this Section 5 shall be promptly released to the Developer only after the Developer has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Investor Member. Either Saigebrook or O-SDA shall be entitled to effect such cure on behalf of the Developer.

6. **Assignment of Fees.** The Developer shall not assign, pledge or otherwise encumber, for security or otherwise, the Development Fee set forth above to be made by the Company, or any portion(s) thereof or any right(s) of the Developer thereto, without the Consent of the Investor Member.

7. **Reserved.**

8. **Successors and Assigns.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns. However, this Agreement may not be assigned by any party hereto without the Consent of the Investor Member, nor may it be terminated without the Consent of the Investor Member.

9. **Termination.** If the Managing Member withdraws from the Company for any reason whatsoever, including the removal of the Managing Member pursuant to Section 7.2 of the Operating Agreement, this Agreement shall terminate effective on the date of such withdrawal (an “Early Termination”) unless the Company and the Investor Member otherwise elect in writing. If an Early Termination occurs, then Developer shall not be entitled to any payments of the Development Fee and the Developer shall forfeit as additional damages any Development Fee which has not been paid as of the date of such Early Termination. If an Early Termination occurs, the Developer shall remain liable for all damages, liabilities and claims (“Claims”) arising under or in connection with this Agreement which are based on acts or omissions prior to the date of such termination, including Claims which do not become manifest until after the date of such termination. The Developer shall have no right to terminate this Agreement without the Consent of the Company and the Investor Member, which Consent may be withheld in the sole discretion of any party. The Developer shall have no right to terminate this Agreement without the Consent of the Company and the Investor Member and both Saigebrook and O-SDA, which Consent may be withheld in the sole discretion of any party.

10. **No Lien Filings.** The Developer hereby represents, warrants and covenants that neither it nor its Affiliates shall file a mechanic’s lien, materialmen’s lien or other lien against the Apartment Complex or any other assets of the Company, and hereby waives and releases any right it may have or may hereafter acquire to file such a lien against the Apartment Complex or any other assets of the Company. The Developer shall indemnify and hold harmless the
Company and the Investor Member from any losses, damages, and/or liabilities, to or as a result of a breach of this provision.

11. **Separability of Provisions.** Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

13. **Waiver of Jury Trial.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS DEVELOPMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT HEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

14. **No Continuing Waiver.** The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

15. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of Texas.

16. **Third Party Beneficiary.** The Investor Member is a third party beneficiary of this Agreement, and the Company and the Developer hereby expressly agree that any amendment to this Agreement shall not be effective unless and until same is Consented to by the Investor Member.

*(SIGNATURES APPEAR ON THE FOLLOWING PAGE)*
IN WITNESS WHEREOF, the parties have caused this Development Agreement to be
duly executed as of the date first written above.

COMPANY:

CANOVA PALMS, LLC,
a Texas limited liability company

By: Saigebrook Canova, LLC,
a Texas limited liability company
Its: Managing Member

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: 
Name: Lisa M. Stephens
Title: Manager

DEVELOPER:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company

By: 
Name: Lisa M. Stephens
Title: Manager

O-SDA INDUSTRIES, LLC,
a Texas limited liability company

By: 
Name: Megan D. Lasch
Title: Managing Member

Signature Page to
Development Agreement
Canova Palms, LLC
IN WITNESS WHEREOF, the parties have caused this Development Agreement to be duly executed as of the date first written above.

COMPANY:

CANOVA PALMS, LLC,
a Texas limited liability company

By:    Saigebrook Canova, LLC,
a Texas limited liability company
Its:   Managing Member

By:    Saigebrook Development, LLC,
a Florida limited liability company
Its:   Managing Member

By:_________________________
Name: Lisa M. Stephens
Title:  Manager

DEVELOPER:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company

By:_________________________
Name: Lisa M. Stephens
Title:  Manager

O-SDA INDUSTRIES, LLC,
a Texas limited liability company

By:_________________________
Name: Megan D. Losch
Title:  Managing Member
EXHIBIT F

GUARANTY AGREEMENT
GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this “Guaranty”), made as of February 1, 2019, is by SAIGEBROOK CANOVA, LLC, a Texas limited liability company ("Co-Managing Member"), O-SDA CANOVA, LLC, a Texas limited liability company ("Administrative Member"), SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company ("Saigebrook Development"), O-SDA INDUSTRIES, LLC, a Texas limited liability company ("O-SDA Developer"), Lisa M. Stephens, individually and Megan D. Lasch, individually, (jointly and severally Co-Managing Member, Administrative Member, Saigebrook Development, O-SDA Developer, Lisa M. Stephens and Megan D. Lasch are individually and collectively referred to herein as the “Guarantors”), each of whose address is set forth below, for the benefit of HCP-ILP, LLC, a Nevada limited liability company (the “Investor Member”), whose address is 15910 Ventura Boulevard, Suite 1100, Encino, California 91436.

A. Co-Managing Member and Administrative Member are the managing members of Canova Palms, LLC, a Texas limited liability company (the “Company”).

B. The Company is governed by its First Amended and Restated Operating Agreement dated as of February 1, 2019 (the “Operating Agreement”). Capitalized terms used herein and not defined shall have the meanings given them in the Operating Agreement.

C. The Developer and the Company have entered into that certain Development Agreement dated as of the date hereof (the “Development Agreement”).

D. The Investor Member has been requested to enter into the Operating Agreement and the Company with the Managing Member.

E. Each Guarantor is, or is an Affiliate of, the Managing Member and/or the Developer, and believes it shall substantially benefit, directly or indirectly, from the Investor Member entering into the Operating Agreement and the Company with the Managing Member.

F. As a condition to entering into the Operating Agreement and the Company, the Investor Member has required the Guarantors to jointly and severally guarantee to the Investor Member certain of the obligations of the Managing Member under the Operating Agreement, of the Developer under the Development Agreement and certain other items as herein set forth.

NOW, THEREFORE, in order to induce the Investor Member to enter into the Operating Agreement and the Company in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Guarantor, in his, her or its respective individual and/or fiduciary capacity, hereby jointly and severally covenants and agrees as follows:

1. Each Guarantor irrevocably and unconditionally fully guarantees the due, prompt and complete performance of each and every one of the following obligations: (a) the payment and performance by the Managing Member of each and every obligation of the Managing Member due under Sections 4.2(d), 5.2(i), 5.2(j), 5.2(cc), 5.8(a), 5.8(c), 5.10(b), 5.10(d), 7.2(b)(iv), 8.1, 8.2, 8.3, and 8.4 of the Operating Agreement; (b) the payment and performance by the Managing Member of each and every obligation of the Managing Member under the Operating Member
Pledge; and (c) the due, prompt and complete payment of all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred by the Investor Member in collection of the enforcement of this Guaranty against the Guarantors (the obligations described in this Paragraph 1 are hereinafter collectively referred to as the “Indebtedness”).

2. Each Guarantor hereby grants to the Investor Member, in the sole discretion of the Investor Member, and without notice to any Guarantor, the power and authority to deal in any lawful manner with the Indebtedness and the other obligations guaranteed hereby, and without limiting the generality of the foregoing, further power and authority, from time to time:

(a) to renew, compromise, extend, accelerate or otherwise change the time or place of payment of or to otherwise change the terms of the Indebtedness;

(b) to modify or to waive any of the terms of the Operating Agreement, the Development Agreement and/or any other obligations guaranteed hereby;

(c) to take and hold security for the payment of the Indebtedness and/or performance of the other obligations guaranteed hereby and to impair, exhaust, exchange, enforce, waive or release any such security;

(d) to direct the order or manner of sale of any such security as the Investor Member, in its sole discretion, may determine;

(e) to grant any indulgence, forbearance or waiver with respect to the Indebtedness or any of the other obligations guaranteed hereby;

(f) to release or waive rights against any one or more Guarantors without releasing or waiving any rights against any other Guarantor; and/or

(g) to agree to any valuation by the Investor Member of any collateral securing payment of any of the Indebtedness in any proceedings under the United States Bankruptcy Code concerning the Investor Member or the Guarantors.

The liability of each Guarantor hereunder shall not be affected, impaired or reduced in any way by any action taken by the Investor Member under the foregoing provisions or any other provision hereof, or by any delay, failure or refusal of the Investor Member to exercise any right or remedy either may have against the Managing Member or any other person, firm or corporation, including other guarantors, if any, liable for all or any part of the Indebtedness or any of the other obligations guaranteed hereby.

3. Prior to Completion, the Guarantors will maintain collectively at least $1,000,000 in Liquid Assets. From the date of Completion through and including the Rental Achievement, the Guarantors will maintain collectively at least $500,000 in Liquid Assets. The Managing Member shall Notify the Investor Member whenever the requirements of this Section 3 are not satisfied.
4. On or before ninety (90) days after the expiration of each fiscal year of each Guarantor, such Guarantor shall send to the Investor Member copies of the balance sheet and income statement of such Guarantor for such fiscal year.

5. The Guarantors agree that if any of the Indebtedness is not fully and timely paid or performed according to the tenor thereof, whether by acceleration or otherwise, the Guarantors shall immediately upon receipt of written demand therefor from the Investor Member pay all of the Indebtedness hereby guaranteed in like manner as if the Indebtedness constituted the direct and primary obligation of the Guarantors. The Guarantors shall not have any right of subrogation as a result of any payment hereunder or any other payment made by the Guarantors or a Guarantor on account of the Indebtedness, and each Guarantor hereby waives, releases and relinquishes any claim based on any right of subrogation, any claim for unjust enrichment or any other theory that would entitle a Guarantor to a claim against the Managing Member based on any payment made hereunder or otherwise on account of the Indebtedness until the Indebtedness is paid in full.

6. This Guaranty and the obligations of the Guarantors hereunder shall be continuing and irrevocable until the Indebtedness has been satisfied in full. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by the Investor Member from a Guarantor under or with respect to this Guaranty is or must be rescinded or returned for any reason whatsoever (including, without limitation, determination that said payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then Guarantors’ obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous receipt of payment by the Investor Member, and Guarantors’ obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to the Investor Member had never been made. The provisions of the foregoing sentence shall survive termination of this Guaranty, and shall remain a valid and binding obligation of each Guarantor until satisfied.

7. Each Guarantor hereby waives notice of acceptance of this Guaranty by the Investor Member, and this Guaranty shall immediately be binding upon each Guarantor. Any Guarantor who executes this Agreement shall be fully bound hereby regardless of whether or not any other Guarantor subsequently executes this Guaranty.

8. Each Guarantor hereby waives and agrees not to assert or take advantage of:

(a) any right to require the Managing Member or the Company to proceed against any other person or to proceed against or exhaust any security held by the Managing Member or the Company at any time or to pursue any other remedy in the Managing Member’s or Company’s power before proceeding against any one or more Guarantors hereunder;

(b) any right to require the Investor Member to proceed against the Managing Member or any other person or to proceed against or exhaust any security held by the Investor Member at any time or to pursue any other remedy in the power of the Investor Member before proceeding against any one or more Guarantors hereunder;
(c) the defense of the statute of limitations in any action hereunder or in any action for the collection of the Indebtedness or the performance of any other obligations guaranteed hereby;

(d) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of the Investor Member to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(e) demand, presentment for payment, notice of non-payment, protest, notice of protest and all other notices of any kind, including, without limitation, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Investor Member or any endorser or creditor of either the Investor Member or any Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by the Investor Member or in connection with the Indebtedness;

(f) any defense based upon an election of remedies by the Investor Member, and until the Indebtedness is paid in full, the right of Guarantors to proceed against the Investor Member for reimbursement, or both, or if contrary to the express agreement of the parties;

(g) any election by the Investor Member to exercise any right or remedy it may have against the Company or any security held by the Investor Member, including, without limitation, the right to foreclose upon any such security by judicial or non-judicial sale, without affecting or impairing in any way the liability of Guarantors hereunder, except to the extent the Indebtedness has been paid, and until the Indebtedness is paid in full, any default arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of the Guarantors against the Company or any such security whether resulting from such election by the Investor Member or otherwise. The Guarantors understand that if all or any part of the liability of the Company to the Investor Member for the Indebtedness is secured by real property the Guarantors shall be liable for the full amount of their liability hereunder, notwithstanding foreclosure on such real property by trustee sale or any other reason impairing the Guarantors’ right to proceed against the Company; and

(h) all duty or obligation on the part of the Investor Member to perfect, protect, not impair, retain or enforce any security for the payment of the Indebtedness or performance of any of the other obligations guaranteed hereby.

9. Until the Indebtedness is paid in full, all existing and future indebtedness of the Managing Member to the Guarantors or to any person controlled or owned in whole or in part by any of the Guarantors and, the right of the Guarantors to withdraw or to cause or permit any person controlled or owned in whole or in part by any of the Guarantors to withdraw any capital invested by any Guarantor or such person in the Managing Member, is hereby subordinated to the Indebtedness at any time after a default exists under the Indebtedness. Furthermore, at any time after a default exists under the Indebtedness, without the prior written Consent of the Investor Member, such subordinated indebtedness shall not be paid and such capital shall not be withdrawn in whole or in part nor shall any Guarantor accept or cause or permit any person...
controlled or owned in whole or in part by a Guarantor to accept any payment of or on account of any such subordinated indebtedness or as a withdrawal of capital. Any payment received by the Guarantors in violation of this Guaranty shall be received by the person to whom paid in trust for the Investor Member, and Guarantors shall cause the same to be paid to the Investor Member immediately on account of the Indebtedness. No such payment shall reduce or affect in any manner the liability of the Guarantors under this Guaranty.

10. The amount of each Guarantor’s liability and all rights, powers and remedies of the Investor Member hereunder shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to the Investor Member under the Operating Agreement, any document or agreement relating in any way to the terms and provisions thereof or otherwise by law. With respect to each Guarantor, this Guaranty is in addition to and exclusive of the guaranty of any other Guarantor executing this Guaranty or any other person or entity which guarantees the Indebtedness and/or the other obligations guaranteed hereby.

11. The liability of each Guarantor under this Guaranty shall be an absolute, direct, immediate and unconditional guarantee of payment and not of collectability. The obligations of each Guarantor hereunder are independent of the obligations of the Managing Member or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder guaranteed and each other Guarantor, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any one or more Guarantors, whether or not the Managing Member is joined therein or a separate action or actions are brought against the Managing Member. The Investor Member may maintain successive actions for other defaults. The Investor Member’s rights hereunder shall not be exhausted by its exercise of any of their rights or remedies or by any such action or by any number of successive actions until and unless the Indebtedness has been paid in full.

12. The Investor Member, in its sole discretion, may at any time enter into agreements with the Managing Member or with any other person to amend, modify or change the Operating Agreement or any document or agreement relating in any way to the terms and provisions thereof, or may at any time waive or release any provision or provisions thereof and, with reference thereto, may make and enter into all such agreements as the Investor Member may deem proper or desirable, without any notice or further assent from any Guarantor and without in any manner impairing or affecting this Guaranty or any of the rights of the Investor Member or each Guarantor’s obligations hereunder.

13. The Guarantors hereby agree to pay to the Investor Member, upon demand, reasonable attorneys’ fees and all costs and other expenses which the Investor Member expends or incurs in collecting or compromising the Indebtedness or in enforcing this Guaranty against each Guarantor whether or not suit is filed, including, without limitation, all costs, attorneys’ fees and expenses incurred by the Investor Member in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving a Guarantor which in any way affect the exercise by the Investor Member of its rights and remedies hereunder. Any and all such costs, attorneys’ fees and expenses not so paid shall bear interest at an annual interest rate equal to the lesser of (i) 18%, or (ii) the highest rate permitted by applicable law, from the date incurred by the Investor Member until paid by the Guarantors.
14. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

15. No provision of this Guaranty or right of the Investor Member hereunder can be waived nor can any Guarantor be released from such Guarantor’s obligations hereunder except by a writing duly executed by the Investor Member. This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever except by the express terms of a writing duly executed by the Investor Member.

16. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The word “person” as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

17. If any or all of the Indebtedness is assigned by the Investor Member, this Guaranty shall automatically be assigned therewith in whole or in part, as applicable, without the need of any express assignment and when so assigned, each Guarantor shall be bound as set forth herein to the assignee(s) without in any manner affecting such Guarantor’s liability hereunder for any part of the Indebtedness retained by the Investor Member.

18. Each Guarantor is jointly and severally liable with each other Guarantor.

19. Co-Managing Member’s Employer Identification Number is 45-3062708. Administrative Member’s Employer Identification Number is 80-0641068. Saigebrook Development’s Employer Identification Number is 45-3062708. O-SDA Developer’s Employer Identification Number is 80-0641068. Lisa M. Stephens’ and Megan D. Lasch’s Social Security Numbers have been provided to the Investor Member.

20. This Guaranty shall inure to the benefit of and bind the heirs, legal representatives, administrators, executors, successors and assigns of the Investor Member and Guarantors.

21. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflicts of law, except to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case, such Federal law shall so govern and be controlling. In any action brought under or arising out of this Guaranty, each Guarantor hereby consents to the jurisdiction of any competent court within the State of Texas and consents to service of process by any means authorized by the laws of such state. Except as provided in any other written agreement now or at any time hereafter in force between the Investor Member and any Guarantor, this Guaranty shall constitute the entire agreement of Guarantors with the Investor Member with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon the Investor Member or any Guarantor unless expressed herein.

22. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same
with Federal Express for next business day delivery or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Investor Member:  
HCP-ILP, LLC  
15910 Ventura Boulevard, Suite 1100  
Encino, California 91436  
Attention: Jeffrey N. Weiss

Guarantors:  
Saigebrook Canova, LLC  
220 Adams Drive Ste. 280 #138  
Weatherford, Texas 76086  
Attention: Lisa Stephens

O-SDA Canova, LLC  
5714 Sam Houston Circle  
Austin, Texas 78731  
Attention: Megan D. Lasch

Saigebrook Development, LLC  
220 Adams Drive Ste. 280 #138  
Weatherford, Texas 76086  
Attention: Lisa Stephens

O-SDA Industries, LLC  
5714 Sam Houston Circle  
Austin, Texas 78731  
Attention: Megan D. Lasch

Lisa M. Stephens  
689 FM 3028  
Millsap, Texas 76066

Megan D. Lasch  
5714 Sam Houston Circle  
Austin, Texas 78731

All notices, demands and requests shall be effective upon such personal delivery or upon being deposited with Federal Express or in the United States mail as required above. However, with respect to notices, demands or requests so deposited with Federal Express or in the United States mail, the time period in which a response to any such notice, demand or request must be given shall commence to run from the next business day following any such deposit with Federal Express or, in the case of a deposit in the United States mail as provided above, the date on the return receipt of the notice, demand or request reflecting the date of delivery or rejection of the same by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least 30 days’ written
notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

23. Each Guarantor hereby agrees that this Guaranty, the Indebtedness and all other obligations guaranteed hereby shall remain in full force and effect at all times hereinafter until paid and/or performed in full notwithstanding any action or undertakings by, or against, the Investor Member, any Guarantor, and/or any partner and/or member in the Investor Member in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by the Investor Member pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure as same may be applicable from time to time.

24. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS GUARANTY, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT HEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

25. Any married person who signs this Guaranty hereby agrees that recourse may be had against his or her separate property for all of his or her obligations.

26. This Guaranty may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, with the same effect as if all parties hereto had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages. Execution by any Guarantor shall bind such Guarantor regardless of whether any one or more other Guarantors execute this Guaranty.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, the undersigned Guarantors have executed this Guaranty as of the day and year first above written.

GUARANTORS:

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By:  Saigebrook Development, LLC,
a Florida limited liability company
Its:  Managing Member

By:  
Name: Lisa M. Stephens
Title:  Manager

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF __________

The foregoing instrument was acknowledged before me this 28th day of February, 2019, by Lisa M. Stephens, as Manager of Saigebrook Development, LLC, managing member of Saigebrook Canova, LLC.

WITNESS my hand and official seal.

My commission expires: 03-25-21

JEFF PACKARD
Notary ID #12281059
My Commission Expires
March 25, 2021

Notary Public
IN WITNESS WHEREOF, the undersigned Guarantors have executed this Guaranty as of the day and year first above written.

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company

By:  
Name: Lisa M. Stephens
Title: Manager

ACKNOWLEDGMENT

STATE OF TEXAS       )
COUNTY OF Pecos     ) ss.

The foregoing instrument was acknowledged before me this 28th day of February, 2019, by Lisa M. Stephens, as Manager of Saigebrook Development, LLC.

Witness my hand and notarial seal.

My commission expires: 03-25-21

JEFF PACKARD
Notary ID #12281069
My Commission Expires
March 25, 2021

Notary Public
IN WITNESS WHEREOF, the undersigned Guarantors have executed this Guaranty as of the day and year first above written.

LISA M. STEPHENS, an individual

[Signature]

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF

) ss.

The foregoing instrument was acknowledged before me this 28th day of February, 2019, by Lisa M. Stephens, an individual.

WITNESS my hand and official seal.

My commission expires: 03-25-2021

[Stamp]

JEFF PACKARD
Notary ID #12281069
My Commission Expires
March 25, 2021

Notary Public
IN WITNESS WHEREOF, the undersigned Guarantors have executed this Guaranty as of the day and year first above written.

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: [Signature]
Name: Megan D. Lasch
Title: Managing Member

ACKNOWLEDGMENT

STATE OF TEXAS )
COUNTY OF Travis ) ss.

The foregoing instrument was acknowledged before me this 28th day of February, 2019, by Megan D. Lasch, as Managing Member of O-SDA Industries, LLC, the Sole Member of O-SDA Canova, LLC.

WITNESS my hand and official seal.

My commission expires: 08/12/2022

[Signature]
Notary Public
IN WITNESS WHEREOF, the undersigned Guarantors have executed this Guaranty as of the day and year first above written.

O-SDA INDUSTRIES, LLC,
a Texas limited liability company

By: [Signature]
Name: Megan D. Lasch
Title: Managing Member

ACKNOWLEDGMENT

STATE OF TEXAS )
COUNTY OF Travis ) ss.

The foregoing instrument was acknowledged before me this 28th day of February, 2019, by Megan D. Lasch, as Managing Member of O-SDA Industries, LLC, sole member of O-SDA Canova, LLC.

WITNESS my hand and official seal.

My commission expires: 08/12/2022

[Signature]
Notary Public
IN WITNESS WHEREOF, the undersigned Guarantors have executed this Guaranty as of the day and year first above written.

MEGAN D. LASCH, an individual

[Signature]

ACKNOWLEDGMENT

STATE OF TEXAS )
COUNTY OF Travis ) ss.

The foregoing instrument was acknowledged before me this 28th day of February, 2019, by Megan D. Lasch.

WITNESS my hand and official seal.

My commission expires: 08/12/2022

Notary Public

[Seal]

MARISSA C. PETERSON
MY COMMISSION EXPIRES 08/12/2022
NOTARY ID: 12499900-1
SPOUSAL CONSENT TO GUARANTY

I acknowledge that I am the spouse of Lisa M. Stephens, a guarantor who signed that certain Guaranty Agreement (the “Guaranty Agreement”), dated as of February 1, 2019 for the benefit of HCP-ILP, LLC, a Nevada limited liability company. I acknowledge that I have read the Guaranty Agreement and know its contents. I am aware that the Guaranty Agreement may affect community property, and I hereby consent to the terms of the Guaranty Agreement and agreed to be bound by the terms thereof. I hereby waive any right that I may have to set aside the Guaranty Agreement.

Dated: As of 2/2019

Shawn Stephens
Print Name of Spouse

Signature of Spouse
SPOUSAL CONSENT TO GUARANTY

I acknowledge that I am the spouse of Megan D. Lasch, a guarantor who signed that certain Guaranty Agreement (the “Guaranty Agreement”), dated as of February 1, 2019 for the benefit of HCP-ILP, LLC, a Nevada limited liability company. I acknowledge that I have read the Guaranty Agreement and know its contents. I am aware that the Guaranty Agreement may affect community property, and I hereby consent to the terms of the Guaranty Agreement and agreed to be bound by the terms thereof. I hereby waive any right that I may have to set aside the Guaranty Agreement.

Dated: As of 2-2-19

Print Name of Spouse

Signature of Spouse
EXHIBIT G-1

PLEDGE AND SECURITY AGREEMENT

(CO-MANAGING MEMBER)
PLEDGE AND SECURITY AGREEMENT

(Co-Managing Member)

THIS PLEDGE AND SECURITY AGREEMENT (this “Agreement”) is made as of February 1, 2019 by SAIGEBROOK CANOVA, LLC, a Texas limited liability company (“Saigebrook”), whose address is 220 Adams Drive Ste. 280 #138, Weatherford, Texas 76086 (the “Debtor”), for the benefit of HCP-ILP, LLC, a Nevada limited liability company (the “Secured Party”), whose address is 15910 Ventura Boulevard, Suite 1100, Encino, California 91436, Attention: Jeffrey N. Weiss.

A. Debtor is the managing member and Secured Party is the investor member in Canova Palms, LLC, a Texas limited liability company (the “Company”), and the Company is governed by its First Amended and Restated Operating Agreement dated as of February 1, 2019 (the “Operating Agreement”). Capitalized terms not otherwise defined herein shall have the definitions given them in the Operating Agreement.

B. Saigebrook Development, LLC, a Florida limited liability company and O-SDA Industries, LLC, a Texas limited liability company (collectively, the “Developer”), and the Company have entered into that certain Development Agreement dated as of February 1, 2019 (the “Development Agreement”), pursuant to which the Developer has been appointed to render certain services in connection with its supervising and overseeing the development of the “Apartment Complex” (as defined therein). Developer is an Affiliate of the Debtor.

C. In order to secure: (a) the full payment and performance by Debtor of all of Debtor’s obligations, duties, expenses and liabilities under or in connection with the Operating Agreement, as the Operating Agreement may be now or hereafter amended, modified or restated; and (b) the full payment and performance by the Developer of all of the Developer’s obligations, duties, expenses and liabilities under or in connection with the Development Agreement, as the Development Agreement may be now or hereafter amended, modified or restated (such obligations, duties, expenses and liabilities described in clauses (a) and (b) above are collectively referred to herein as the “Obligations”), Debtor is entering into this Agreement for the benefit of Secured Party.

NOW, THEREFORE, in order to induce Secured Party to enter into the Operating Agreement with the Debtor, and in consideration of the recitals, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

(a) “Collateral” shall consist of all of the personal property of Debtor, wherever located, and whether now owned or hereafter acquired, including accounts, chattel paper, inventory, equipment, instruments (including promissory notes), investment property, documents, deposit accounts, letter of credit rights, general intangibles (including payment intangibles), and supporting obligations and including, without limitation, the following specific items of personal property:
(i) All of Debtor’s right, title and interest in the Company, whether now owned or hereafter acquired, including, without limitation, its general limited liability company interest in the Company and its right to receive distributions, allocations and payments under the Operating Agreement, as the Operating Agreement may be modified from time to time with the consent of Secured Party;

(ii) All fees and charges to be paid by the Company to Debtor, whether paid or unpaid, whether now owned or hereafter acquired, and whether arising under the Operating Agreement, or otherwise, including, without limitation, the MM Incentive Management Fee;

(iii) All indebtedness of the Company to Debtor of any kind or description, including, without limitation, Debtor’s right to receive payment of Operating Deficit Loans or other loans to the Company; and

(iv) To the extent not listed above as original collateral, all products and proceeds, whether cash proceeds or noncash proceeds, of any and all of the foregoing.

(b) “Event of Default” shall mean an event of default described in Paragraph 8 herein.

2. Pledge of Collateral and Grant of Security Interest. Debtor does hereby unconditionally and irrevocably assign, pledge, convey, transfer, deliver, set over and grant unto Secured Party, its successors and assigns, as security for Debtor’s complete and timely payment and performance of the Obligations, a continuing first priority security interest under the Uniform Commercial Code of the State of Texas in the Collateral. Debtor agrees, upon request, to deliver any other documents which Secured Party may reasonably request from time-to-time to further evidence, perfect or secure the liens and security interests created by this Agreement. Debtor acknowledges that Secured Party shall prepare and file UCC Financing Statements in the appropriate jurisdictions with respect to the Collateral and consents to such filing.

3. Delivery to Secured Party.

(a) Debtor agrees to execute and to cause all other necessary parties, and any successors and assigns thereof, to execute and deliver to Secured Party such other agreements, instruments and documentation as Secured Party may reasonably request from time to time to effect the conveyance, transfer, and grant to Secured Party of each and all of Debtor’s right, title and interest in and to the Collateral as security for the Obligations.

(b) Concurrently with the execution of this Agreement, Debtor shall cause the managing member and the investor member of the Company to execute the Consent and Waiver in the form attached hereto as Exhibit A (the “Consent”) evidencing the Consent of the managing member and the investor member to the assignment of Debtor’s limited liability company interests and its agreement to be bound by Paragraph 4 of this Agreement, and covenants to execute, if required by Secured Party, an amendment to the Agreement in such form as Secured Party may require to reflect the substitution of Secured Party in place of Debtor as a managing member in the Company. Debtor further agrees to execute and to cause the other members of the Company to execute and deliver to Secured Party such other agreements, instruments and
documentation as Secured Party may reasonably request from time to time to effectuate the conveyance, transfer, assignment and grant to Secured Party of all of Debtor’s right, title and interest in and to the Collateral and to evidence the substitution of Secured Party in place of Debtor as a managing member in the Company.

4. **Proceeds and Products of the Collateral.**

    (a) Unless and until there occurs an Event of Default, Secured Party agrees to forbear in exercising its right to receive all benefits pertaining to the Collateral, and Debtor shall be permitted to exercise all rights and to receive all benefits of the Collateral, including, without limitation, the right to exercise all voting, approval, consent and similar rights of Debtor pertaining to the Collateral, payments due under, proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral and retain and enjoy the same, provided, however, that Debtor shall not cast any vote or give any approval, consent, waiver or ratification or take any action which would be inconsistent with or violate any provision of this Agreement.

    (b) Debtor acknowledges and agrees with Secured Party, that unless Secured Party otherwise consents, in Secured Party’s sole discretion, Debtor shall not exercise any voting, approval, consent or other rights with respect to the Collateral at any time (i) after the occurrence of an Event of Default, and (ii) delivery of notice from Secured Party instructing Debtor not to exercise any such voting, approval, consent or other rights with respect to the Collateral; provided, however, that Debtor shall exercise any such right it may have under the Operating Agreement with respect to the business affairs of the Company as is reasonably necessary to protect and preserve the Collateral.

    (c) Upon or at any time after the occurrence of an Event of Default, Secured Party, at its option to be exercised in its sole discretion, may exercise all rights and remedies granted under this Agreement, including, without limitation, the right to require the obligors under the Collateral to make all payments due under and to pay all proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral to Secured Party. Upon the giving of any such notice, the security constituted by this Agreement shall become immediately enforceable by Secured Party, without any presentment, further demand, protest or other notice of any kind, all of which are hereby expressly and irrevocably waived by Debtor. Debtor hereby authorizes and directs each respective obligor under the agreements constituting the Collateral, upon receipt of written notice from Secured Party of an Event of Default by Debtor hereunder, to assign, set over, transfer, distribute, pay and deliver any and all Collateral or said payments, proceeds or products of the Collateral to Secured Party, at such address as Secured Party may direct, at such time and in such manner as Collateral and such payments, proceeds and products of the Collateral would otherwise be distributed, transferred, paid or delivered to Debtor. The respective obligors under the agreements constituting the Collateral shall be entitled to conclusively rely on such notice and make all such assignments and transfers of the Collateral and all such payments with respect to the Collateral and pay all such proceeds and products of the Collateral to Secured Party and shall have no liability to Debtor for any loss or damage Debtor may incur by reason of said reliance.

5. **No Assumption.** Notwithstanding any of the foregoing, whether or not an Event of Default has occurred, and whether or not Secured Party elects to foreclose on its security
interest in the Collateral as set forth herein, neither the execution of this Agreement, receipt by Secured Party of any of Debtor’s right, title and interest in and to the Collateral and the payments, proceeds and products of the Collateral, now or hereafter due to Debtor from any obligor of the Collateral, nor Secured Party’s foreclosure of its security interest in the Collateral, shall in any way be deemed to obligate Secured Party to assume any of Debtor’s obligations, duties, expenses or liabilities under the Collateral or any agreements constituting the Collateral, as presently existing or as hereafter amended, or under any and all other agreements now existing or hereafter drafted or executed (collectively, “Debtor’s Liabilities”), unless Secured Party otherwise agrees to assume any or all of Debtor’s Liabilities in writing. In the event of foreclosure by Secured Party of its security interest in the Collateral, Debtor shall remain bound and obligated to perform its Debtor’s Liabilities and Secured Party shall not be deemed to have assumed any of Debtor’s Liabilities, except as provided in the preceding sentence. If the entity or person acquiring the Collateral at a foreclosure sale elects to assume Debtor’s Liabilities, such assignee shall agree to be bound by the terms and provisions of the applicable agreement.

6. Indemnification. Debtor hereby agrees to indemnify, defend and hold Secured Party, its successors and assigns harmless from and against any and all damages, losses, claims, costs or expenses (including reasonable attorneys’ fees) and any other liabilities whatsoever that Secured Party or its successors or assigns may incur by reason of this Agreement or by reason of any assignment by Debtor of Debtor’s right, title and interest in and to any or all of the Collateral.

7. Representations, Warranties and Covenants. In addition to the representations made by Debtor in the Operating Agreement, Debtor makes the following representations and warranties, which shall be deemed to be continuing representations and warranties in favor of Secured Party, and covenants and agrees to perform all acts necessary to maintain the truth and correctness, in all material respects, of the following:

(a) Debtor owns the Collateral free and clear of all claims, liens or encumbrances.

(b) Debtor has delivered to Secured Party true and complete copies of the Operating Agreement and any other agreements pertinent to the Collateral, and such agreements are currently in full force and effect and have not been amended or modified except as disclosed to Secured Party in writing.

(c) Debtor has the full right and title to its interest in the Collateral and has the full power, legal right and authority to pledge, convey, transfer and assign such interest. None of the Collateral is subject to any existing or subsequent assignment, claim, lien, pledge, transfer or other security interest of any character, or to any attachment, levy, garnishment or other judicial process or to any claim for set-off, counterclaim, deduction or discount. Debtor shall not, without the prior written consent of Secured Party, which consent may be granted or denied in Secured Party’s sole discretion, further convey, transfer, set over or pledge to any party any of its interests in the Collateral. Debtor agrees to (i) warrant and defend its title to the Collateral and the security interest created by this Agreement against all claims of all persons (other than Secured Party and persons claiming through Secured Party), and (ii) maintain and preserve the Collateral and such security interests.
(d) Debtor’s Employer Identification Number is 45-3062708, and its principal place of business is located at 220 Adams Drive Ste. 280 #138, Weatherford, Texas 76086.

(e) Debtor agrees that it shall not, without at least thirty (30) days’ prior written notification to Secured Party, move or otherwise change its principal place of business or state of formation.

(f) Debtor shall not exercise any voting rights, or give any approvals, consents waiver or other ratifications in respect to the Collateral which would violate or contravene, or which would cause or otherwise authorize Debtor to violate or contravene, any provision of this Agreement.

(g) This Agreement and consummation of the transactions contemplated herein are not in conflict with and will not result in a breach of any of the terms, provisions or conditions of any other agreement or instrument to which Debtor may be bound, including, without limitation, the organizational documents for Debtor, or of any order, judgment, law, rule or regulation of any court or governmental body or administrative agency applicable to Debtor.

8. Event of Default. Each of the following shall constitute an Event of Default hereunder:

   (a) An Event of Default (as defined in the Operating Agreement) has occurred under the Operating Agreement or the Development Agreement and such default shall not have been cured within any applicable grace period provided therein; or

   (b) Any warranty, representation or statement of Debtor in this Agreement proves to have been false in any material respect when made or furnished; or

   (c) There occurs the issuance of a writ, order of attachment or garnishment with respect to any of the Collateral and such writ, order of attachment or garnishment is not dismissed and removed within fifteen (15) days thereafter; or

   (d) A material breach or violation of any covenant or agreement contained herein has occurred, which is not cured within ten (10) days after notice has been given to Debtor by Secured Party.

Any Event of Default under this Agreement shall be an event of default by Debtor under the Agreement.

9. Remedies.

   (a) Upon the occurrence of an Event of Default, Secured Party may, by giving notice of such Event of Default, at its option, do any one or more of the following:

      (i) Declare all of the Obligations secured hereby to be immediately due and payable, whereupon all unpaid principal and interest on said Obligations and other amounts declared due and payable shall become immediately due and payable without presentment, demand, protest or notice of any kind; and
(ii) Take possession of all or any of the Collateral, collect, and apply against the Obligations, all payments due, proceeds, whether cash proceeds or noncash proceeds, and products from any obligor under the agreements constituting the Collateral, that would otherwise be paid to Debtor; and

(iii) Either personally, or by means of a court appointed receiver, take possession of all or any of the Collateral and exclude therefrom Debtor and all others claiming under Debtor, and thereafter exercise all rights and powers of Debtor with respect to the Collateral or any part thereof. If Secured Party demands, or attempts to take possession of any of the Collateral in the exercise of any rights under this Agreement, Debtor promises and agrees to promptly turn over and deliver complete possession thereof to the Secured Party; and

(iv) Without notice to or demand upon Debtor, make such payments and do such acts as Secured Party may deem necessary to protect its security interest in the Collateral, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith; and

(v) Require Debtor to take all actions necessary to deliver such Collateral to Secured Party, or an agent or representative designated by it. Secured Party, and its agents and representatives, shall have the right to enter upon any or all of Debtor’s premises and property to exercise Secured Party’s rights hereunder; and

(vi) Foreclose upon this Agreement as herein provided or in any manner permitted by law, and exercise any and all of the rights and remedies conferred upon Secured Party by the Operating Agreement, or in any other document executed by Debtor in connection with the Obligations secured hereby, either concurrently or in such order as Secured Party may determine; and sell or cause to be sold in such order as Secured Party may determine, as a whole or in such parcels as Secured Party may determine, the Collateral, without affecting in any way the rights or remedies to which Secured Party may be entitled under the other such instruments; and

(vii) Sell or otherwise dispose of the Collateral at public sale, without having the Collateral at the place of sale, and upon terms and in such manner as Secured Party may determine. Secured Party may be a purchaser at any sale; and

(viii) Exercise any remedies of Secured Party under the Uniform Commercial Code of the State of Texas or any other applicable law; and

(ix) Exercise any remedies available to Secured Party under the Agreement, including, without limitation, the removal of Debtor as a Managing Member of the Company and exercise of any rights of offset in favor of Secured Party as a managing member of the Company; and

(x) Notwithstanding anything to the contrary contained in this Agreement, at any time after an Event of Default, Secured Party may, by delivering written notice to the Company and to Debtor, succeed, or designate its nominee or designee to succeed,
to all right, title and interest of Debtor (including, without limitation, the right, if any, to vote on
or take any action with respect to Company matters) as a managing member of the Company in
respect of the Collateral. Debtor hereby irrevocably authorizes and directs the Company on
receipt of any such notice (a) to deem and treat Secured Party or such nominee or designee in all
respects as a managing member (and not merely an assignee of a managing member) of the
Company, entitled to exercise all the rights, powers and privileges (including the right to vote on
or take any action with respect to Company matters pursuant to the Operating Agreement, to
receive all distributions, to be credited with the capital account and to have all other rights,
powers and privileges appertaining to the Collateral to which Debtor would have been entitled
had the Collateral not been transferred to Secured Party or such nominee or designee), and (b) to
file an amended certificate of Company, if required, admitting Secured Party or such nominee or
designee as managing member of the Company in place of Debtor; and

(xi) The rights granted to Secured Party under this Agreement are of a
special, unique, unusual and extraordinary character. The loss of any of such rights cannot
reasonably or adequately be compensated by way of damages in any action at law, and any
material breach by Debtor of any of Debtor’s covenants, agreements or obligations under this
Agreement will cause Secured Party irreparable injury and damage. In the event of any such
breach, Secured Party shall be entitled, as a matter of right, to injunctive relief or other equitable
relief in any court of competent jurisdiction to prevent the violation or contravention of any of
the provisions of this Agreement or to compel compliance with the terms of this Agreement by
Debtor. Secured Party is absolutely and irrevocably authorized and empowered by Debtor to
demand specific performance of each of the covenants and agreements of Debtor in this
Agreement. Debtor hereby irrevocably waives any defense based on the adequacy of any
remedy at law which might otherwise be asserted by Debtor as a bar to the remedy of specific
performance in any action brought by Secured Party against Debtor to enforce any of the
covenants or agreements of Debtor in this Agreement.

(b) Unless the Collateral is perishable or threatens to decline speedily in value
or is of a type customarily sold on a recognized market, Secured Party shall give Debtor at least
ten (10) days’ prior written notice of the time and place of any public sale of the Collateral
subject to this Agreement or other intended disposition thereof to be made. Such notice shall be
conclusively deemed to have been delivered to Debtor at the address set forth in Paragraph 7(d)
of this Agreement, unless Debtor shall Notify Secured Party in writing of its change of its
principal place of business and provide Secured Party with the address of its new principal place
of business.

(c) The proceeds of any sale under Paragraph 9(a) above shall be applied as
follows:

(i) To the repayment of the costs and expenses of retaking, holding
and preparing for the sale and the selling of the Collateral (including actual legal expenses and
attorneys’ fees) and the discharge of all assessments, encumbrances, charges or liens, if any, on
the Collateral prior to the lien hereof (except any taxes, assessments, encumbrances, charges or
liens subject to which such sale has been made);
(ii) To the payment of the whole amount then due and unpaid of the
Obligations;

(iii) To the payment of all other amounts then secured hereby; and

(iv) The aggregate surplus, if any, shall be paid to Debtor in a lump
sum, without recourse to Secured Party, or as a court of competent jurisdiction may direct.

(d) Secured Party has the right to enforce one or more remedies under this
Agreement and under the Operating Agreement, successively or concurrently, and such action
shall not operate to estop or prevent Secured Party from pursuing any further remedy which it
may have, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof
shall not operate to release Debtor until full payment of any deficiency has been made in cash.

(e) DEBTOR ACKNOWLEDGES THAT SECURED PARTY MAY BE
UNABLE TO EFFECT A PUBLIC SALE OF ALL OR ANY PART OF THE COLLATERAL
AND MAY BE COMPelled TO RESORT TO ONE OR MORE PRIVATE SALES TO A
RESTRICTED GROUP OF PURCHASERS WHO WILL BE OBLIGATED TO AGREE,
AMONG OTHER THINGS, TO ACQUIRE THE COLLATERAL FOR THEIR OWN
ACCOUNT, FOR INVESTMENT AND NOT WITH A VIEW TO THE DISTRIBUTION OR
RESALE THEREOF. DEBTOR FURTHER ACKNOWLEDGES THAT ANY SUCH
PRIVATE SALES MAY BE AT PRICES AND ON TERMS LESS FAVORABLE THAN
THOSE OF PUBLIC SALES, AND AGREES THAT SUCH PRIVATE SALES SHALL BE
DEEMED TO HAVE BEEN MADE IN A COMMERCiALLY REASONABLE MANNER
AND THAT SECURED PARTY HAS NO OBLIGATION TO DELAY SALE OF ANY
COLLATERAL TO PERMIT THE ISSuer THEREOF TO REGISTER IT FOR PUBLIC
SALE UNDER THE SECURITIES ACT OF 1933. DEBTOR AGREES THAT SECURED
PARTY SHALL BE PERMITTED TO TAKE SUCH ACTIONS AS SECURED PARTY
DEEMS REASONABLY NECESSARY IN DISPOSING OF THE COLLATERAL TO AVOID
CONDUCTING A PUBLIC DISTRIBUTION OF SECURITIES IN VIOLATION OF THE
SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE, AS NOW
ENACTED OR AS THE SAME MAY IN THE FUTURE BE AMENDED, AND
ACKNOWLEDGES THAT ANY SUCH ACTIONS SHALL BE COMMERCiALLY
REASONABLE. IN ADDITION, DEBTOR AGREES TO EXECUTE, FROM TIME TO
TIME, ANY AMENDMENT TO THIS AGREEMENT OR OTHER DOCUMENT AS
SECURED PARTY MAY REASONABLY REQUIRE TO EVIDENCE THE
ACKNOWLEDGMENTS AND CONSENTS OF DEBTOR SET FORTH IN THIS
PARAGRAPH.

10. Right to Make Distributions. Except upon the occurrence and during the
continuance of an Event of Default (without regard to any cure period), Debtor shall have the
right without the consent of Secured Party to make distributions to its members (“Permitted
Distributions”) of proceeds of any distributions and payments received by Debtor from the
Company or from any capital contributions of its members. Any such Permitted Distributions
shall be free and clear of the lien created by this Agreement.
11. **Attorneys’ Fees.** Debtor agrees to pay to Secured Party, without demand, reasonable attorneys’ fees and all costs and other expenses which Secured Party expends or incurs in collecting any amounts payable by Debtor hereunder or in enforcing this Agreement against Debtor whether or not suit is filed.

12. **Further Documentation.** Debtor hereby agrees to execute, from time to time, one or more financing statements and such other instruments as may be required to perfect the security interest created hereby, including any continuation or amendments of such financing statements, and pay the cost of filing or recording the same in the public records specified by Secured Party.

13. **Waiver and Estoppel.** Debtor represents and acknowledges that it knowingly waives each and every one of the following rights, and agrees that it will be estopped from asserting any argument to the contrary: (a) any promptness in making any claim or demand hereunder; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of Debtor or the failure to file or enforce a claim against Debtor’s estate (in administration, bankruptcy or any other proceeding); (c) any defense based upon an election of remedies by Secured Party which destroys or otherwise impairs any or all of the Collateral; (d) the right of Debtor to proceed against Secured Party or any other person, for reimbursement; (e) all duty or obligation of Secured Party to perfect, protect, retain or enforce any security for the payment of amounts payable by Debtor hereunder; and (f) any defense based on modification of the indebtedness secured hereby.

14. **Waiver of Jury Trial.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT HEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

15. **No Continuing Waiver.** No delay or failure on the part of Secured Party in the exercise of any right or remedy against Debtor or any other party against whom Secured Party may have any rights, shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by Secured Party of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy whether
contained in this Agreement or in any of the other documents regarding the Obligations, including, without limitation, the Operating Agreement. No waiver of the rights of Secured Party hereunder or in connection herewith and no release of Debtor shall be effective unless in writing executed by Secured Party. No actions of Secured Party permitted under this Agreement shall in any way impair or affect the enforceability of any agreement or obligation contained herein.

16. **Independent Obligations.** The obligations of Debtor are independent of the obligations of any other party which may be initially or otherwise responsible for performance or payment of the Obligations, and a separate action or actions for payment, damages or performance may be brought and prosecuted by Secured Party against Debtor, individually, for the full amount of the Obligations then due and payable, whether or not an action is brought against any other party, whether or not Secured Party is involved in any proceedings and whether or not Secured Party or Debtor or other person is joined in any action or proceedings.

17. **No Offset Rights of Debtor.** No lawful act of commission or omission of any kind or at any time upon the part of Debtor shall in any way affect or impair the rights of Secured Party to enforce any right, power or benefit under this Agreement, and no set-off, recoupment, counterclaim, claim, reduction or diminution of any obligation or any defense of any kind or nature which Debtor has or may have against any Secured Party or against any other party shall be available against Secured Party in any suit or action brought by Secured Party to enforce any right, power or benefit under this Agreement.

18. **Power of Attorney.** Debtor hereby appoints Secured Party as its attorney-in-fact to execute and file on its behalf any financing statements, continuation statements or other documentation required to perfect or continue the security interest created hereby. This power, being coupled with an interest, shall be irrevocable until all amounts secured hereby have been paid, satisfied and discharged in full.

19. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE PARTIES HERETO AGREE THAT IN THE EVENT OF DEFAULT, THIS AGREEMENT MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION IN THE STATE OF TEXAS AND ANY STATE IN WHICH ALL OR ANY PART OF THE COLLATERAL IS LOCATED AND THEY DO HEREBY SUBMIT TO THE JURISDICTION OF ANY AND ALL SUCH COURTS REGARDLESS OF THEIR PRINCIPAL PLACE OF BUSINESS OR WHERE THIS AGREEMENT MAY BE EXECUTED.

20. **Successors and Assigns.** All agreements, covenants, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

21. **Notices.** Whenever any party hereto shall desire to, or be required to, give or serve any notice, demand, request or other communication with respect to this Agreement, each such notice, demand, request or communication shall be in writing and shall be effective only if the same is delivered by personal service (including, without limitation, courier or express service) or mailed certified or registered mail, postage prepaid, return receipt requested, or sent
by electronic mail to the parties at the addresses and email addresses shown throughout this Agreement or such other addresses which the parties may provide to one another in accordance herewith. If notice is sent to Secured Party, a copy of such notice shall also be given to Matthew W. Mullen, Esq., Nixon Peabody LLP, 799 9th Street NW, Suite 500, Washington, DC 20001-5327; Email: mmullen@nixonpeabody.com. Notices delivered personally will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the Return Receipt Requested.

22. **Consent of Debtor.** Debtor consents to the exercise by Secured Party of any rights of Debtor in accordance with the provisions of this Agreement.

23. **Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

24. **Amendment.** This Agreement may be modified or rescinded only by a writing expressly relating to this Agreement and signed by all of the parties.

25. **Termination.** This Agreement shall terminate, and shall be of no further force or effect, upon the earlier to occur of the repayment in full of the Obligations of Debtor or upon the mutual consent of Debtor and Secured Party.

(SIGNATURE APPEARS ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, Debtor has executed this Pledge and Security Agreement as of the date first above written.

DEBTOR:

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By:   Saigebrook Development, LLC,
a Florida limited liability company
Its:  Managing Member

By:   [Signature]
Name: Lisa M. Stephens
Title: Manager
EXHIBIT A
TO
PLEDGE AND SECURITY AGREEMENT
(CO-MANAGING MEMBER)
CONSENT AND AGREEMENT OF MEMBERS
CONSENT TO SECURITY INTEREST AND AGREEMENT
OF MEMBERS OF
CANOVA PALMS, LLC, A TEXAS LIMITED LIABILITY COMPANY

The undersigned, being all the members of Canova Palms, LLC, a Texas limited liability company (the “Company”), hereby represent and certify to HCP-ILP, LLC, a Nevada limited liability company (“Secured Party”), as follows:

Each has received notice from Secured Party that Secured Party has a security interest in the following: 100% of the Limited Liability Company Interest in the Company owned by Saigebrook Canova, LLC, a Texas limited liability company and O-SDA Industries, LLC, a Texas limited liability company (“Debtor”), and registered to Debtor (the “Collateral”).

1. Other than the notice from Secured Party referred to above, the undersigned has not received any notice from any entity or person claiming an adverse claim against, lien on or security interest in the Collateral.

2. The security interest of Secured Party referred to above was duly registered in the books and records of the Company effective February 1, 2019.

3. Interests in the Company are not represented in any certificate, instrument or document, and such interest may be assigned, transferred or pledged without the party receiving such assignment, transfer or pledge taking physical possession of any certificate, instrument or document.

4. The Members hereby consent to the execution and delivery of the Pledge and Security Agreement by Debtor and agree hereby to be bound by Paragraph 4 thereof to assign, set over, transfer, distribute, pay and deliver the Collateral and any and all payments, proceeds or products due to Debtor under the Collateral to Secured Party.

5. The Members hereby consent to the admission of Secured Party, its nominee, designee or any person acquiring its interest under the Pledge and Security Agreement, as a managing member of the Company upon receipt of notice by Secured Party of an Event of Default by Debtor thereunder, and agree that Secured Party or such nominee, designee or person acquiring Secured Party’s interest thereunder shall not be deemed to have assumed any of Debtor’s liability by virtue of such admission as the managing member of the Company.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, the undersigned have executed this Consent to Security Interest and Agreement of Members of Canova Palms, LLC as of the date first above written.

CO-MANAGING MEMBER:

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: ____________________________
Name: Lisa M. Stephens
Title: Manager

ADMINISTRATIVE MEMBER:

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: ____________________________
Name: Megan D. Lasch
Title: Managing Member

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, the undersigned have executed this Consent to Security Interest and Agreement of Members of Canova Palms, LLC as of the date first above written.

CO-MANAGING MEMBER:

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: __________________________
Name: Lisa M. Stephens
Title: Manager

ADMINISTRATIVE MEMBER:

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: __________________________
Name: Megan D. Lasch
Title: Managing Member

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, the undersigned have executed this Consent to Security Interest and Agreement of Members of Canova Palms, LLC as of the date first above written.

INVESTOR MEMBER:

HCP-ILP, LLC,
a Nevada limited liability company

By: Hunt Capital Partners, LLC,
a Delaware limited liability company
Its: Manager

By: ____________________________
Name: Jeffrey M. Weiss
Title: President
EXHIBIT G-2
PLEDGE AND SECURITY AGREEMENT
(Administrative Member)
PLEDGE AND SECURITY AGREEMENT

(Administrative Member)

THIS PLEDGE AND SECURITY AGREEMENT (this “Agreement”) is made as of February 1, 2019 by O-SDA Canova, LLC, a Texas limited liability company (“O-SDA”), whose address is 5714 Sam Houston Circle, Austin, Texas 78731 (the “Debtor”), for the benefit of HCP-ILP, LLC, a Nevada limited liability company (the “Secured Party”), whose address is 15910 Ventura Boulevard, Suite 1100, Encino, California 91436, Attention: Jeffrey N. Weiss.

A. Debtor is the administrative member and Secured Party is the investor member in Canova Palms, LLC, a Texas limited liability company (the “Company”), and the Company is governed by its First Amended and Restated Operating Agreement dated as of February 1, 2019 (the “Operating Agreement”). Capitalized terms not otherwise defined herein shall have the definitions given them in the Operating Agreement.

B. Saigebrook Development, LLC, a Florida limited liability company and O-SDA Industries, LLC, a Texas limited liability company (collectively, the “Developer”), and the Company have entered into that certain Development Agreement dated as of February 1, 2019 (the “Development Agreement”), pursuant to which the Developer has been appointed to render certain services in connection with its supervising and overseeing the development of the “Apartment Complex” (as defined therein). Developer is an Affiliate of the Debtor.

C. In order to secure: (a) the full payment and performance by Debtor of all of Debtor’s obligations, duties, expenses and liabilities under or in connection with the Operating Agreement, as the Operating Agreement may be now or hereafter amended, modified or restated; and (b) the full payment and performance by the Developer of all of the Developer’s obligations, duties, expenses and liabilities under or in connection with the Development Agreement, as the Development Agreement may be now or hereafter amended, modified or restated (such obligations, duties, expenses and liabilities described in clauses (a) and (b) above are collectively referred to herein as the “Obligations”), Debtor is entering into this Agreement for the benefit of Secured Party.

NOW, THEREFORE, in order to induce Secured Party to enter into the Operating Agreement with the Debtor, and in consideration of the recitals, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

(a) “Collateral” shall consist of all of the personal property of Debtor, wherever located, and whether now owned or hereafter acquired, including accounts, chattel paper, inventory, equipment, instruments (including promissory notes), investment property, documents, deposit accounts, letter of credit rights, general intangibles (including payment intangibles), and supporting obligations and including, without limitation, the following specific items of personal property:
(i) All of Debtor’s right, title and interest in the Company, whether now owned or hereafter acquired, including, without limitation, its general limited liability company interest in the Company and its right to receive distributions, allocations and payments under the Operating Agreement, as the Operating Agreement may be modified from time to time with the consent of Secured Party;

(ii) All fees and charges to be paid by the Company to Debtor, whether paid or unpaid, whether now owned or hereafter acquired, and whether arising under the Operating Agreement, or otherwise, including, without limitation, the MM Incentive Management Fee;

(iii) All indebtedness of the Company to Debtor of any kind or description, including, without limitation, Debtor’s right to receive payment of Operating Deficit Loans or other loans to the Company; and

(iv) To the extent not listed above as original collateral, all products and proceeds, whether cash proceeds or noncash proceeds, of any and all of the foregoing.

(b) “Event of Default” shall mean an event of default described in Paragraph 8 herein.

2. Pledge of Collateral and Grant of Security Interest. Debtor does hereby unconditionally and irrevocably assign, pledge, convey, transfer, deliver, set over and grant unto Secured Party, its successors and assigns, as security for Debtor’s complete and timely payment and performance of the Obligations, a continuing first priority security interest under the Uniform Commercial Code of the State of Texas in the Collateral. Debtor agrees, upon request, to deliver any other documents which Secured Party may reasonably request from time-to-time to further evidence, perfect or secure the liens and security interests created by this Agreement. Debtor acknowledges that Secured Party shall prepare and file UCC Financing Statements in the appropriate jurisdictions with respect to the Collateral and consents to such filing.

3. Delivery to Secured Party.

(a) Debtor agrees to execute and to cause all other necessary parties, and any successors and assigns thereof, to execute and deliver to Secured Party such other agreements, instruments and documentation as Secured Party may reasonably request from time to time to effect the conveyance, transfer, and grant to Secured Party of each and all of Debtor’s right, title and interest in and to the Collateral as security for the Obligations.

(b) Concurrently with the execution of this Agreement, Debtor shall cause the managing member and the investor member of the Company to execute the Consent and Waiver in the form attached hereto as Exhibit A (the “Consent”) evidencing the Consent of the managing member and the investor member to the assignment of Debtor’s limited liability company interests and its agreement to be bound by Paragraph 4 of this Agreement, and covenants to execute, if required by Secured Party, an amendment to the Agreement in such form as Secured Party may require to reflect the substitution of Secured Party in place of Debtor as a managing member in the Company. Debtor further agrees to execute and to cause the other members of the Company to execute and deliver to Secured Party such other agreements, instruments and
documentation as Secured Party may reasonably request from time to time to effectuate the conveyance, transfer, assignment and grant to Secured Party of all of Debtor’s right, title and interest in and to the Collateral and to evidence the substitution of Secured Party in place of Debtor as a managing member in the Company.

4. **Proceeds and Products of the Collateral.**

   (a) Unless and until there occurs an Event of Default, Secured Party agrees to forbear in exercising its right to receive all benefits pertaining to the Collateral, and Debtor shall be permitted to exercise all rights and to receive all benefits of the Collateral, including, without limitation, the right to exercise all voting, approval, consent and similar rights of Debtor pertaining to the Collateral, payments due under, proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral and retain and enjoy the same, provided, however, that Debtor shall not cast any vote or give any approval, consent, waiver or ratification or take any action which would be inconsistent with or violate any provision of this Agreement.

   (b) Debtor acknowledges and agrees with Secured Party, that unless Secured Party otherwise consents, in Secured Party’s sole discretion, Debtor shall not exercise any voting, approval, consent or other rights with respect to the Collateral at any time (i) after the occurrence of an Event of Default, and (ii) delivery of notice from Secured Party instructing Debtor not to exercise any such voting, approval, consent or other rights with respect to the Collateral; provided, however, that Debtor shall exercise any such right it may have under the Operating Agreement with respect to the business affairs of the Company as is reasonably necessary to protect and preserve the Collateral.

   (c) Upon or at any time after the occurrence of an Event of Default, Secured Party, at its option to be exercised in its sole discretion, may exercise all rights and remedies granted under this Agreement, including, without limitation, the right to require the obligors under the Collateral to make all payments due under and to pay all proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral to Secured Party. Upon the giving of any such notice, the security constituted by this Agreement shall become immediately enforceable by Secured Party, without any presentment, further demand, protest or other notice of any kind, all of which are hereby expressly and irrevocably waived by Debtor. Debtor hereby authorizes and directs each respective obligor under the agreements constituting the Collateral, upon receipt of written notice from Secured Party of an Event of Default by Debtor hereunder, to assign, set over, transfer, distribute, pay and deliver any and all Collateral or said payments, proceeds or products of the Collateral to Secured Party, at such address as Secured Party may direct, at such time and in such manner as Collateral and such payments, proceeds and products of the Collateral would otherwise be distributed, transferred, paid or delivered to Debtor. The respective obligors under the agreements constituting the Collateral shall be entitled to conclusively rely on such notice and make all such assignments and transfers of the Collateral and all such payments with respect to the Collateral and pay all such proceeds and products of the Collateral to Secured Party and shall have no liability to Debtor for any loss or damage Debtor may incur by reason of said reliance.

5. **No Assumption.** Notwithstanding any of the foregoing, whether or not an Event of Default has occurred, and whether or not Secured Party elects to foreclose on its security
interest in the Collateral as set forth herein, neither the execution of this Agreement, receipt by Secured Party of any of Debtor’s right, title and interest in and to the Collateral and the payments, proceeds and products of the Collateral, now or hereafter due to Debtor from any obligor of the Collateral, nor Secured Party’s foreclosure of its security interest in the Collateral, shall in any way be deemed to obligate Secured Party to assume any of Debtor’s obligations, duties, expenses or liabilities under the Collateral or any agreements constituting the Collateral, as presently existing or as hereafter amended, or under any and all other agreements now existing or hereafter drafted or executed (collectively, “Debtor’s Liabilities”), unless Secured Party otherwise agrees to assume any or all of Debtor’s Liabilities in writing. In the event of foreclosure by Secured Party of its security interest in the Collateral, Debtor shall remain bound and obligated to perform its Debtor’s Liabilities and Secured Party shall not be deemed to have assumed any of Debtor’s Liabilities, except as provided in the preceding sentence. If the entity or person acquiring the Collateral at a foreclosure sale elects to assume Debtor’s Liabilities, such assignee shall agree to be bound by the terms and provisions of the applicable agreement.

6. Indemnification. Debtor hereby agrees to indemnify, defend and hold Secured Party, its successors and assigns harmless from and against any and all damages, losses, claims, costs or expenses (including reasonable attorneys’ fees) and any other liabilities whatsoever that Secured Party or its successors or assigns may incur by reason of this Agreement or by reason of any assignment by Debtor of Debtor’s right, title and interest in and to any or all of the Collateral.

7. Representations, Warranties and Covenants. In addition to the representations made by Debtor in the Operating Agreement, Debtor makes the following representations and warranties, which shall be deemed to be continuing representations and warranties in favor of Secured Party, and covenants and agrees to perform all acts necessary to maintain the truth and correctness, in all material respects, of the following:

(a) Debtor owns the Collateral free and clear of all claims, liens or encumbrances.

(b) Debtor has delivered to Secured Party true and complete copies of the Operating Agreement and any other agreements pertinent to the Collateral, and such agreements are currently in full force and effect and have not been amended or modified except as disclosed to Secured Party in writing.

(c) Debtor has the full right and title to its interest in the Collateral and has the full power, legal right and authority to pledge, convey, transfer and assign such interest. None of the Collateral is subject to any existing or subsequent assignment, claim, lien, pledge, transfer or other security interest of any character, or to any attachment, levy, garnishment or other judicial process or to any claim for set-off, counterclaim, deduction or discount. Debtor shall not, without the prior written consent of Secured Party, which consent may be granted or denied in Secured Party’s sole discretion, further convey, transfer, set over or pledge to any party any of its interests in the Collateral. Debtor agrees to (i) warrant and defend its title to the Collateral and the security interest created by this Agreement against all claims of all persons (other than Secured Party and persons claiming through Secured Party), and (ii) maintain and preserve the Collateral and such security interests.
(d) Debtor’s Employer Identification Number is 80-0641068, and its principal place of business is located at 5714 Sam Houston Circle, Austin, Texas 78731, Austin, Texas 78731.

(e) Debtor agrees that it shall not, without at least thirty (30) days’ prior written notification to Secured Party, move or otherwise change its principal place of business or state of formation.

(f) Debtor shall not exercise any voting rights, or give any approvals, consents waiver or other ratifications in respect to the Collateral which would violate or contravene, or which would cause or otherwise authorize Debtor to violate or contravene, any provision of this Agreement.

(g) This Agreement and consummation of the transactions contemplated herein are not in conflict with and will not result in a breach of any of the terms, provisions or conditions of any other agreement or instrument to which Debtor may be bound, including, without limitation, the organizational documents for Debtor, or of any order, judgment, law, rule or regulation of any court or governmental body or administrative agency applicable to Debtor.

8. Event of Default. Each of the following shall constitute an Event of Default hereunder:

(a) An Event of Default (as defined in the Operating Agreement) has occurred under the Operating Agreement or the Development Agreement and such default shall not have been cured within any applicable grace period provided therein; or

(b) Any warranty, representation or statement of Debtor in this Agreement proves to have been false in any material respect when made or furnished; or

(c) There occurs the issuance of a writ, order of attachment or garnishment with respect to any of the Collateral and such writ, order of attachment or garnishment is not dismissed and removed within fifteen (15) days thereafter; or

(d) A material breach or violation of any covenant or agreement contained herein has occurred, which is not cured within ten (10) days after notice has been given to Debtor by Secured Party.

Any Event of Default under this Agreement shall be an event of default by Debtor under the Agreement.

9. Remedies.

(a) Upon the occurrence of an Event of Default, Secured Party may, by giving notice of such Event of Default, at its option, do any one or more of the following:

(i) Declare all of the Obligations secured hereby to be immediately due and payable, whereupon all unpaid principal and interest on said Obligations and other
amounts declared due and payable shall become immediately due and payable without presentment, demand, protest or notice of any kind; and

(ii) Take possession of all or any of the Collateral, collect, and apply against the Obligations, all payments due, proceeds, whether cash proceeds or noncash proceeds, and products from any obligor under the agreements constituting the Collateral, that would otherwise be paid to Debtor; and

(iii) Either personally, or by means of a court appointed receiver, take possession of all or any of the Collateral and exclude therefrom Debtor and all others claiming under Debtor, and thereafter exercise all rights and powers of Debtor with respect to the Collateral or any part thereof. If Secured Party demands, or attempts to take possession of any of the Collateral in the exercise of any rights under this Agreement, Debtor promises and agrees to promptly turn over and deliver complete possession thereof to the Secured Party; and

(iv) Without notice to or demand upon Debtor, make such payments and do such acts as Secured Party may deem necessary to protect its security interest in the Collateral, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith; and

(v) Require Debtor to take all actions necessary to deliver such Collateral to Secured Party, or an agent or representative designated by it. Secured Party, and its agents and representatives, shall have the right to enter upon any or all of Debtor’s premises and property to exercise Secured Party’s rights hereunder; and

(vi) Foreclose upon this Agreement as herein provided or in any manner permitted by law, and exercise any and all of the rights and remedies conferred upon Secured Party by the Operating Agreement, or in any other document executed by Debtor in connection with the Obligations secured hereby, either concurrently or in such order as Secured Party may determine; and sell or cause to be sold in such order as Secured Party may determine, as a whole or in such parcels as Secured Party may determine, the Collateral, without affecting in any way the rights or remedies to which Secured Party may be entitled under the other such instruments; and

(vii) Sell or otherwise dispose of the Collateral at public sale, without having the Collateral at the place of sale, and upon terms and in such manner as Secured Party may determine. Secured Party may be a purchaser at any sale; and

(viii) Exercise any remedies of Secured Party under the Uniform Commercial Code of the State of Texas or any other applicable law; and

(ix) Exercise any remedies available to Secured Party under the Agreement, including, without limitation, the removal of Debtor as a Managing Member of the Company and exercise of any rights of offset in favor of Secured Party as a managing member of the Company; and
(x) Notwithstanding anything to the contrary contained in this Agreement, at any time after an Event of Default, Secured Party may, by delivering written notice to the Company and to Debtor, succeed, or designate its nominee or designee to succeed, to all right, title and interest of Debtor (including, without limitation, the right, if any, to vote on or take any action with respect to Company matters) as a managing member of the Company in respect of the Collateral. Debtor hereby irrevocably authorizes and directs the Company on receipt of any such notice (a) to deem and treat Secured Party or such nominee or designee in all respects as a managing member (and not merely an assignee of a managing member) of the Company, entitled to exercise all the rights, powers and privileges (including the right to vote on or take any action with respect to Company matters pursuant to the Operating Agreement, to receive all distributions, to be credited with the capital account and to have all other rights, powers and privileges appertaining to the Collateral to which Debtor would have been entitled had the Collateral not been transferred to Secured Party or such nominee or designee), and (b) to file an amended certificate of Company, if required, admitting Secured Party or such nominee or designee as managing member of the Company in place of Debtor; and

(xi) The rights granted to Secured Party under this Agreement are of a special, unique, unusual and extraordinary character. The loss of any of such rights cannot reasonably or adequately be compensated by way of damages in any action at law, and any material breach by Debtor of any of Debtor’s covenants, agreements or obligations under this Agreement will cause Secured Party irreparable injury and damage. In the event of any such breach, Secured Party shall be entitled, as a matter of right, to injunctive relief or other equitable relief in any court of competent jurisdiction to prevent the violation or contravention of any of the provisions of this Agreement or to compel compliance with the terms of this Agreement by Debtor. Secured Party is absolutely and irrevocably authorized and empowered by Debtor to demand specific performance of each of the covenants and agreements of Debtor in this Agreement. Debtor hereby irrevocably waives any defense based on the adequacy of any remedy at law which might otherwise be asserted by Debtor as a bar to the remedy of specific performance in any action brought by Secured Party against Debtor to enforce any of the covenants or agreements of Debtor in this Agreement.

(b) Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party shall give Debtor at least ten (10) days’ prior written notice of the time and place of any public sale of the Collateral subject to this Agreement or other intended disposition thereof to be made. Such notice shall be conclusively deemed to have been delivered to Debtor at the address set forth in Paragraph 7(d) of this Agreement, unless Debtor shall Notify Secured Party in writing of its change of its principal place of business and provide Secured Party with the address of its new principal place of business.

(c) The proceeds of any sale under Paragraph 9(a) above shall be applied as follows:

(i) To the repayment of the costs and expenses of retaking, holding and preparing for the sale and the selling of the Collateral (including actual legal expenses and attorneys’ fees) and the discharge of all assessments, encumbrances, charges or liens, if any, on
the Collateral prior to the lien hereof (except any taxes, assessments, encumbrances, charges or liens subject to which such sale has been made);

(ii) To the payment of the whole amount then due and unpaid of the Obligations;

(iii) To the payment of all other amounts then secured hereby; and

(iv) The aggregate surplus, if any, shall be paid to Debtor in a lump sum, without recourse to Secured Party, or as a court of competent jurisdiction may direct.

(d) Secured Party has the right to enforce one or more remedies under this Agreement and under the Operating Agreement, successively or concurrently, and such action shall not operate to estop or prevent Secured Party from pursuing any further remedy which it may have, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall not operate to release Debtor until full payment of any deficiency has been made in cash.

(e) DEBTOR ACKNOWLEDGES THAT SECURED PARTY MAY BE UNABLE TO EFFECT A PUBLIC SALE OF ALL OR ANY PART OF THE COLLATERAL AND MAY BE COMPELLED TO RESORT TO ONE OR MORE PRIVATE SALES TO A RESTRICTED GROUP OF PURCHASERS WHO WILL BE OBLIGATED TO AGREE, AMONG OTHER THINGS, TO ACQUIRE THE COLLATERAL FOR THEIR OWN ACCOUNT, FOR INVESTMENT AND NOT WITH A VIEW TO THE DISTRIBUTION OR RESALE THEREOF. DEBTOR FURTHER ACKNOWLEDGES THAT ANY SUCH PRIVATE SALES MAY BE AT PRICES AND ON TERMS LESS FAVORABLE THAN THOSE OF PUBLIC SALES, AND AGREES THAT SUCH PRIVATE SALES SHALL BE DEEMED TO HAVE BEEN MADE IN A COMMERCIALLY REASONABLE MANNER AND THAT SECURED PARTY HAS NO OBLIGATION TO DELAY SALE OF ANY COLLATERAL TO PERMIT THE ISSUER THEREOF TO REGISTER IT FOR PUBLIC SALE UNDER THE SECURITIES ACT OF 1933. DEBTOR AGREES THAT SECURED PARTY SHALL BE PERMITTED TO TAKE SUCH ACTIONS AS SECURED PARTY DEEMS REASONABLY NECESSARY IN DISPOSING OF THE COLLATERAL TO AVOID CONDUCTING A PUBLIC DISTRIBUTION OF SECURITIES IN VIOLATION OF THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE, AS NOW ENACTED OR AS THE SAME MAY IN THE FUTURE BE AMENDED, AND ACKNOWLEDGES THAT ANY SUCH ACTIONS SHALL BE COMMERCIAL REASONABLE. IN ADDITION, DEBTOR AGREES TO EXECUTE, FROM TIME TO TIME, ANY AMENDMENT TO THIS AGREEMENT OR OTHER DOCUMENT AS SECURED PARTY MAY REASONABLY REQUIRE TO EVIDENCE THE ACKNOWLEDGMENTS AND CONSENTS OF DEBTOR SET FORTH IN THIS PARAGRAPH.

10. Right to Make Distributions. Except upon the occurrence and during the continuance of an Event of Default (without regard to any cure period), Debtor shall have the right without the consent of Secured Party to make distributions to its members ("Permitted Distributions") of proceeds of any distributions and payments received by Debtor from the
Company or from any capital contributions of its members. Any such Permitted Distributions shall be free and clear of the lien created by this Agreement.

11. **Attorneys’ Fees.** Debtor agrees to pay to Secured Party, without demand, reasonable attorneys’ fees and all costs and other expenses which Secured Party expends or incurs in collecting any amounts payable by Debtor hereunder or in enforcing this Agreement against Debtor whether or not suit is filed.

12. **Further Documentation.** Debtor hereby agrees to execute, from time to time, one or more financing statements and such other instruments as may be required to perfect the security interest created hereby, including any continuation or amendments of such financing statements, and pay the cost of filing or recording the same in the public records specified by Secured Party.

13. **Waiver and Estoppel.** Debtor represents and acknowledges that it knowingly waives each and every one of the following rights, and agrees that it will be estopped from asserting any argument to the contrary: (a) any promptness in making any claim or demand hereunder; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of Debtor or the failure to file or enforce a claim against Debtor’s estate (in administration, bankruptcy or any other proceeding); (c) any defense based upon an election of remedies by Secured Party which destroys or otherwise impairs any or all of the Collateral; (d) the right of Debtor to proceed against Secured Party or any other person, for reimbursement; (e) all duty or obligation of Secured Party to perfect, protect, retain or enforce any security for the payment of amounts payable by Debtor hereunder; and (f) any defense based on modification of the indebtedness secured hereby.

14. **Waiver of Jury Trial.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT HEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

15. **No Continuing Waiver.** No delay or failure on the part of Secured Party in the exercise of any right or remedy against Debtor or any other party against whom Secured Party
may have any rights, shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by Secured Party of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy whether contained in this Agreement or in any of the other documents regarding the Obligations, including, without limitation, the Operating Agreement. No waiver of the rights of Secured Party hereunder or in connection herewith and no release of Debtor shall be effective unless in writing executed by Secured Party. No actions of Secured Party permitted under this Agreement shall in any way impair or affect the enforceability of any agreement or obligation contained herein.

16. Independent Obligations. The obligations of Debtor are independent of the obligations of any other party which may be initially or otherwise responsible for performance or payment of the Obligations, and a separate action or actions for payment, damages or performance may be brought and prosecuted by Secured Party against Debtor, individually, for the full amount of the Obligations then due and payable, whether or not an action is brought against any other party, whether or not Secured Party is involved in any proceedings and whether or not Secured Party or Debtor or other person is joined in any action or proceedings.

17. No Offset Rights of Debtor. No lawful act of commission or omission of any kind or at any time upon the part of Debtor shall in any way affect or impair the rights of Secured Party to enforce any right, power or benefit under this Agreement, and no set-off, recoupment, counterclaim, claim, reduction or diminution of any obligation or any defense of any kind or nature which Debtor has or may have against any Secured Party or against any other party shall be available against Secured Party in any suit or action brought by Secured Party to enforce any right, power or benefit under this Agreement.

18. Power of Attorney. Debtor hereby appoints Secured Party as its attorney-in-fact to execute and file on its behalf any financing statements, continuation statements or other documentation required to perfect or continue the security interest created hereby. This power, being coupled with an interest, shall be irrevocable until all amounts secured hereby have been paid, satisfied and discharged in full.

19. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE PARTIES HERETO AGREE THAT IN THE EVENT OF DEFAULT, THIS AGREEMENT MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION IN THE STATE OF TEXAS AND ANY STATE IN WHICH ALL OR ANY PART OF THE COLLATERAL IS LOCATED AND THEY DO HEREBY SUBMIT TO THE JURISDICTION OF ANY AND ALL SUCH COURTS REGARDLESS OF THEIR PRINCIPAL PLACE OF BUSINESS OR WHERE THIS AGREEMENT MAY BE EXECUTED.

20. Successors and Assigns. All agreements, covenants, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

21. Notices. Whenever any party hereto shall desire to, or be required to, give or serve any notice, demand, request or other communication with respect to this Agreement, each
such notice, demand, request or communication shall be in writing and shall be effective only if the same is delivered by personal service (including, without limitation, courier or express service) or mailed certified or registered mail, postage prepaid, return receipt requested, or sent by electronic mail to the parties at the addresses and email addresses shown throughout this Agreement or such other addresses which the parties may provide to one another in accordance herewith. If notice is sent to Secured Party, a copy of such notice shall also be given to Matthew W. Mullen, Esq., Nixon Peabody LLP, 799 9th Street NW, Suite 500, Washington, DC 20001-5327; Email: mmullen@nixonpeabody.com. Notices delivered personally will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the Return Receipt Requested.

22. Consent of Debtor. Debtor consents to the exercise by Secured Party of any rights of Debtor in accordance with the provisions of this Agreement.

23. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

24. Amendment. This Agreement may be modified or rescinded only by a writing expressly relating to this Agreement and signed by all of the parties.

25. Termination. This Agreement shall terminate, and shall be of no further force or effect, upon the earlier to occur of the repayment in full of the Obligations of Debtor or upon the mutual consent of Debtor and Secured Party.

(SIGNATURE APPEARS ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, Debtor has executed this Pledge and Security Agreement as of the date first above written.

DEBTOR:

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: [Signature]
Name: Megan D. Dasch
Title: Managing Member
EXHIBIT A
TO
PLEDGE AND SECURITY AGREEMENT
(ADMINISTRATIVE MEMBER)

CONSENT AND AGREEMENT OF MEMBERS
CONSENT TO SECURITY INTEREST AND AGREEMENT
OF MEMBERS OF
CANOVA PALMS, LLC, A TEXAS LIMITED LIABILITY COMPANY

The undersigned, being all the members of Canova Palms, LLC, a Texas limited liability company (the “Company”), hereby represent and certify to HCP-ILP, LLC, a Nevada limited liability company (“Secured Party”), as follows:

Each has received notice from Secured Party that Secured Party has a security interest in the following: 100% of the Limited Liability Company Interest in the Company owned by Saigebrook Canova, LLC, a Texas limited liability company and O-SDA Industries, LLC, a Texas limited liability company (“Debtor”), and registered to Debtor (the “Collateral”).

1. Other than the notice from Secured Party referred to above, the undersigned has not received any notice from any entity or person claiming an adverse claim against, lien on or security interest in the Collateral.

2. The security interest of Secured Party referred to above was duly registered in the books and records of the Company effective February 1, 2019.

3. Interests in the Company are not represented in any certificate, instrument or document, and such interest may be assigned, transferred or pledged without the party receiving such assignment, transfer or pledge taking physical possession of any certificate, instrument or document.

4. The Members hereby consent to the execution and delivery of the Pledge and Security Agreement by Debtor and agree hereby to be bound by Paragraph 4 thereof to assign, set over, transfer, distribute, pay and deliver the Collateral and any and all payments, proceeds or products due to Debtor under the Collateral to Secured Party.

5. The Members hereby consent to the admission of Secured Party, its nominee, designee or any person acquiring its interest under the Pledge and Security Agreement, as a managing member of the Company upon receipt of notice by Secured Party of an Event of Default by Debtor thereunder, and agree that Secured Party or such nominee, designee or person acquiring Secured Party’s interest thereunder shall not be deemed to have assumed any of Debtor’s liability by virtue of such admission as the managing member of the Company.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, the undersigned have executed this Consent to Security Interest and Agreement of Members of Canova Palms, LLC as of the date first above written.

CO-MANAGING MEMBER:

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: [Signature]
Name: Lisa M. Stephens
Title: Manager

ADMINISTRATIVE MEMBER:

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: [Signature]
Name: Megan D. Lasch
Title: Managing Member

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, the undersigned have executed this Consent to Security Interest and Agreement of Members of Canova Palms, LLC as of the date first above written.

CO-MANAGING MEMBER:

SAIGEBROOK CANOVA, LLC
a Texas limited liability company

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: _____________________________
Name: Lisa M. Stephens
Title: Manager

ADMINISTRATIVE MEMBER:

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: _____________________________
Name: Megan D. Lasch
Title: Managing Member

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, the undersigned have executed this Consent to Security Interest and Agreement of Members of Canova Palms, LLC as of the date first above written.

INVESTOR MEMBER:

HCP-ILP, LLC,
a Nevada limited liability company

By: Hunt Capital Partners, LLC,
a Delaware limited liability company
Its: Manager

By: [Signature]
Name: Jeffrey M. Weiss
Title: President
EXHIBIT H
PLEDGE AND SECURITY AGREEMENT
(DEVELOPER)
PLEDGE AND SECURITY AGREEMENT

(Developer)

THIS PLEDGE AND SECURITY AGREEMENT (this “Agreement”) is made as of February 1, 2019, by SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company (“Saigebrook”) and O-SDA Industries, LLC, a Texas limited liability company (“O-SDA” and together with Saigebrook, the “Debtor”), whose addresses are set forth below, for the benefit of the HCP-ILP, LLC, a Nevada limited liability company (the “Secured Party”), whose address is 15910 Ventura Boulevard, Suite 1100, Encino, California 91436, Attention: Jeffrey N. Weiss.

A. Saigebrook Canova, LLC, a Texas limited liability company (the “Co-Managing Member”), is the co-managing member, O-SDA Canova, LLC, a Texas limited liability company (the “Administrative Member”) is the administrative member and Secured Party is the investor member in Canova Palms, LLC, a Texas limited liability company (the “Company”), and the Company is governed by its First Amended and Restated Operating Agreement dated as of February 1, 2019 (the “Operating Agreement”). Capitalized terms not otherwise defined herein shall have the definitions given them in the Operating Agreement.

B. The Company and Debtor have entered into that certain Development Agreement (the “Development Agreement”) dated of even date herewith, wherein, among other things, the Company agrees to pay Debtor a Development Fee under the terms of the Development Agreement (the “Development Fee”).

C. In order to secure the full payment and performance by: (a) Debtor of all of Debtor’s obligations, duties, expenses and liabilities under or in connection with the Development Agreement as the Development Agreement may be now or hereafter amended, modified or restated; and (b) the Managing Member of all of the Managing Member’s obligations, duties, expenses and liabilities under or in connection with the Operating Agreement and the Managing Member Pledge, as the Operating Agreement and the Managing Member Pledge may be now or hereafter amended, modified or restated (such obligations, duties, expenses and liabilities set forth in clauses (a) and (b) hereof and all other sums of any kind which may or shall become due thereunder are collectively referred to herein as the “Obligations”), Debtor is entering into this Agreement for the benefit of Secured Party.

NOW, THEREFORE, in order to induce Secured Party to enter into the Operating Agreement with the Managing Member, and in consideration of the recitals, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

(a) “Collateral” shall mean the following:

(i) Any and all fees and charges to be paid by the Company to Debtor, whether paid or unpaid, whether now owned or hereafter acquired, and whether arising under the
Operating Agreement, the Development Agreement, or otherwise, including, without limitation, the Development Fee; and

(ii) All proceeds, whether cash proceeds or noncash proceeds, and products of any and all of the foregoing.

(b) “Event of Default” shall mean an event of default described in Paragraph 8 herein.

2. Pledge of Collateral and Grant of Security Interest. Debtor does hereby unconditionally and irrevocably assign, pledge, convey, transfer, deliver, set over and grant unto Secured Party, its successors and assigns, as security for Debtor’s, the Company’s and the Managing Member’s complete and timely payment and performance of the Obligations, a continuing first priority security interest under the Uniform Commercial Code of the State of Texas in the Collateral and Debtor agrees, upon request, to deliver any other documents which Secured Party may reasonably request from time-to-time to further evidence, perfect or secure the liens and security interests created by this Agreement. Debtor acknowledges that Secured Party shall prepare and file UCC Financing Statements suitable for filing in the appropriate jurisdictions with respect to the Collateral and consents to such filing.

3. Delivery to Secured Party. Debtor agrees to execute and to cause all other necessary parties, and any successors and assigns thereof, to execute and deliver to Secured Party such other agreements, instruments and documentation as Secured Party may reasonably request from time to time to effect the conveyance, transfer, and grant to Secured Party of each and all of Debtor’s right, title and interest in and to the Collateral as security for the Obligations.

4. Proceeds and Products of the Collateral.

(a) Unless and until there occurs an Event of Default, Secured Party agrees to forbear in exercising its right to receive all benefits pertaining to the Collateral, and Debtor shall be permitted to exercise all rights and to receive all benefits of the Collateral, including, without limitation, the right to exercise all voting, approval, consent and similar rights of Debtor pertaining to the Collateral, payments due under, proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral and retain and enjoy the same, provided, however, that Debtor shall not cast any vote or give any approval, consent, waiver or ratification or take any action which would be inconsistent with or violate any provision of this Agreement.

(b) Debtor acknowledges and agrees with Secured Party, that unless Secured Party otherwise consents, in Secured Party’s sole discretion, Debtor shall not exercise any voting, approval, consent or other rights with respect to the Collateral at any time (i) after the occurrence of an Event of Default, and (ii) delivery of notice from Secured Party instructing Debtor not to exercise any such voting, approval, consent or other rights with respect to the Collateral; provided, however, that Debtor shall exercise any such right it may have under the Development Agreement as is reasonably necessary to protect and preserve the Collateral.

(c) Upon or at any time after the occurrence of an Event of Default, Secured Party, at its option to be exercised in its sole discretion, may exercise all rights and remedies granted under this Agreement, including, without limitation, the right to require the obligors
under the Collateral to make all payments due under and to pay all proceeds, whether cash
proceeds or noncash proceeds, and products of the Collateral to Secured Party. Upon the giving
of any such notice, the security constituted by this Agreement shall become immediately
enforceable by Secured Party, without any presentment, further demand, protest or other notice
of any kind, all of which are hereby expressly and irrevocably waived by Debtor. Debtor hereby
authorizes and directs each respective obligor under the agreements constituting the Collateral,
that upon receipt of written notice from Secured Party of an Event of Default by Debtor
hereunder, to assign, set over, transfer, distribute, pay and deliver any and all Collateral or said
payments, proceeds or products of the Collateral to Secured Party, at such address as Secured
Party may direct, at such time and in such manner as Collateral and such payments, proceeds and
products of the Collateral would otherwise be distributed, transferred, paid or delivered to
Debtor. The respective obligors under the agreements constituting the Collateral shall be entitled
to conclusively rely on such notice and make all such assignments and transfers of the Collateral
and all such payments with respect to the Collateral and pay all such proceeds and products of
the Collateral to Secured Party and shall have no liability to Debtor for any loss or damage
Debtor may incur by reason of said reliance.

5. No Assumption. Notwithstanding any of the foregoing, whether or not an Event
of Default has occurred, and whether or not Secured Party elects to foreclose on its security
interest in the Collateral as set forth herein, neither the execution of this Agreement, receipt by
Secured Party of any of Debtor’s right, title and interest in and to the Collateral and the
payments, proceeds and products of the Collateral, now or hereafter due to Debtor from any
obligor of the Collateral, nor Secured Party’s foreclosure of its security interest in the Collateral,
shall in any way be deemed to obligate Secured Party to assume any of Debtor’s obligations,
duties, expenses or liabilities under the Collateral or any agreements constituting the Collateral,
as presently existing or as hereafter amended, or under any and all other agreements now existing
or hereafter drafted or executed (collectively, “Debtor’s Liabilities”), unless Secured Party
otherwise agrees to assume any or all of Debtor’s Liabilities in writing. In the event of
foreclosure by Secured Party of its security interest in the Collateral, Debtor shall remain bound
and obligated to perform its Debtor’s Liabilities and Secured Party shall not be deemed to have
assumed any of Debtor’s Liabilities, except as provided in the preceding sentence. If the entity
or person acquiring the Collateral at a foreclosure sale elects to assume Debtor’s Liabilities, such
assignee shall agree to be bound by the terms and provisions of the applicable agreement.

6. Indemnification. Debtor hereby agrees to indemnify, defend and hold Secured
Party, its successors and assigns harmless from and against any and all damages, losses, claims,
costs or expenses (including reasonable attorneys’ fees) and any other liabilities whatsoever that
Secured Party or its successors or assigns may incur by reason of this Agreement or by reason of
any assignment by Debtor of Debtor’s right, title and interest in and to any or all of the
Collateral.

7. Representations, Warranties and Covenants. In addition to the representations,
warranties and covenants made by the Debtor in the Development Agreement, the Debtor makes
the following representations and warranties, which shall be deemed to be continuing
representations and warranties in favor of Secured Party, and covenants and agrees to perform all
acts necessary to maintain the truth and correctness, in all material respects, of the following
(provided that, each such representation, warranty, and covenant is made by Saigebrook and O-SDA only as to itself and not the other Debtor):

(a) Debtor owns the Collateral free and clear of any and all claims, liens or encumbrances.

(b) Debtor has delivered to Secured Party true and complete copies of the Development Agreement and any other agreements pertinent to the Collateral, and such agreements are currently in full force and effect and have not been amended or modified except as disclosed to Secured Party in writing.

(c) Debtor has the full right and title to its interest in the Collateral and has the full power, legal right and authority to pledge, convey, transfer and assign such interest. None of the Collateral is subject to any existing or subsequent assignment, claim, lien, pledge, transfer or other security interest of any character, or to any attachment, levy, garnishment or other judicial process or to any claim for set-off, counterclaim, deduction or discount. Debtor shall not, without the prior written consent of Secured Party, which consent may be granted or denied in Secured Party’s sole discretion, further convey, transfer, set over or pledge to any party any of its interests in the Collateral. Debtor agrees to (i) warrant and defend its title to the Collateral and the security interest created by this Agreement against all claims of all persons (other than Secured Party and persons claiming through Secured Party), and (ii) maintain and preserve the Collateral and such security interests.

(d) Saigebrook’s Employer Identification Number is 45-3062708, and its principal place of business is located at 412 W 3rd Street, Suite 1504, Austin, Texas 78701. O-SDA’s Employer Identification Number is 80-0641068, and its principal place of business is located at 5714 Sam Houston Circle, Austin, Texas 78731.

(e) Debtor agrees that it shall not, without at least thirty (30) days’ prior written notification to Secured Party, move or otherwise change its principal place of business or state of formation.

(f) Debtor shall not exercise any voting rights, or give any approvals, consents waiver or other ratifications in respect to the Collateral which would violate or contravene, or which would cause or otherwise authorize Debtor to violate or contravene, any provision of this Agreement.

(g) This Agreement and consummation of the transactions contemplated herein are not in conflict with and will not result in a breach of any of the terms, provisions or conditions of any other agreement or instrument to which Debtor may be bound, including, without limitation, the organizational documents for Debtor, or of any order, judgment, law, rule or regulation of any court or governmental body or administrative agency applicable to Debtor.

8. **Event of Default.** Each of the following shall constitute an Event of Default hereunder:
(a) An event of default has occurred under the Development Agreement or the Operating Agreement, and such default shall not have been cured within any applicable grace period provided therein; or

(b) Any warranty, representation or statement of Debtor in this Agreement proves to have been false in any material respect when made or furnished; or

(c) There occurs the issuance of a writ, order of attachment or garnishment with respect to any of the Collateral and such writ, order of attachment or garnishment is not dismissed and removed within fifteen (15) days thereafter; or

(d) A material breach or violation of any covenant or agreement contained herein has occurred, which is not cured within ten (10) days after notice has been given to Debtor by Secured Party.

9. Remedies.

(a) Upon the occurrence of an Event of Default, Secured Party may, by giving notice of such Event of Default, at its option, do any one or more of the following:

(i) Declare all of the Obligations secured hereby to be immediately due and payable, whereupon all unpaid principal and interest on said Obligations and other amounts declared due and payable shall become immediately due and payable without presentment, demand, protest or notice of any kind; and

(ii) Take possession of all or any of the Collateral, collect, and apply against the Obligations, all payments due, proceeds, whether cash proceeds or noncash proceeds, and products from any obligor under the agreements constituting the Collateral, that would otherwise be paid to Debtor; and

(iii) Either personally, or by means of a court appointed receiver, take possession of all or any of the Collateral and exclude therefrom Debtor and all others claiming under Debtor, and thereafter exercise all rights and powers of Debtor with respect to the Collateral or any part thereof. If Secured Party demands, or attempts to take possession of any of the Collateral in the exercise of any rights under this Agreement, Debtor promises and agrees to promptly turn over and deliver complete possession thereof to the Secured Party; and

(iv) Without notice to or demand upon Debtor, make such payments and do such acts as Secured Party may deem necessary to protect its security interest in the Collateral, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith; and

(v) Require Debtor to take all actions necessary to deliver such Collateral to Secured Party, or an agent or representative designated by it. Secured Party, and its agents and representatives, shall have the right to enter upon any or all of Debtor’s premises and property to exercise the Secured Party’s rights hereunder; and
(vi) Foreclose upon this Agreement as herein provided or in any manner permitted by law, and exercise any and all of the rights and remedies conferred upon Secured Party by the Development Agreement or the Operating Agreement, or in any other document executed by Debtor in connection with the Obligations secured hereby, either concurrently or in such order as Secured Party may determine; and sell or cause to be sold in such order as Secured Party may determine, as a whole or in such parcels as Secured Party may determine, the Collateral, without affecting in any way the rights or remedies to which Secured Party may be entitled under the other such instruments; and

(vii) Sell or otherwise dispose of the Collateral at public sale, without having the Collateral at the place of sale, and upon terms and in such manner as Secured Party may determine. Any Secured Party may be a purchaser at any sale; and

(viii) Exercise any remedies of Secured Party under the Uniform Commercial Code of the State of Florida, Uniform Commercial Code of the State of Texas or any other applicable law; and

(ix) The rights granted to Secured Party under this Agreement are of a special, unique, unusual and extraordinary character. The loss of any of such rights cannot reasonably or adequately be compensated by way of damages in any action at law, and any material breach by Debtor of any of Debtor’s covenants, agreements or obligations under this Agreement will cause Secured Party irreparable injury and damage. In the event of any such breach, Secured Party shall be entitled, as a matter of right, to injunctive relief or other equitable relief in any court of competent jurisdiction to prevent the violation or contravention of any of the provisions of this Agreement or to compel compliance with the terms of this Agreement by Debtor. Secured Party is absolutely and irrevocably authorized and empowered by Debtor to demand specific performance of each of the covenants and agreements of Debtor in this Agreement. Debtor hereby irrevocably waives any defense based on the adequacy of any remedy at law which might otherwise be asserted by Debtor as a bar to the remedy of specific performance in any action brought by Secured Party against Debtor to enforce any of the covenants or agreements of Debtor in this Agreement.

(b) Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party shall give Debtor at least ten (10) days’ prior written notice of the time and place of any public sale of the Collateral subject to this Agreement or other intended disposition thereof to be made. Such notice shall be conclusively deemed to have been delivered to Debtor at the address set forth in Paragraph 7(d) of this Agreement, unless Debtor shall Notify Secured Party in writing of its change of its principal place of business and provide Secured Party with the address of its new principal place of business.

(c) The proceeds of any sale under Paragraph 9(a) above shall be applied as follows:

(x) To the repayment of the costs and expenses of retaking, holding and preparing for the sale and the selling of the Collateral (including actual legal expenses and attorneys’ fees) and the discharge of all assessments, encumbrances, charges or liens, if any, on
the Collateral prior to the lien hereof (except any taxes, assessments, encumbrances, charges or
liens subject to which such sale has been made);

(xi) To the payment of the whole amount then due and unpaid of the
Obligations;

(xii) To the payment of all other amounts then secured hereby; and

(xiii) The aggregate surplus, if any, shall be paid to Debtor in a lump
sum, without recourse to Secured Party, or as a court of competent jurisdiction may direct.

(d) Secured Party has the right to enforce one or more remedies hereunder
and/or under the Development Agreement, successively or concurrently, and such action shall
not operate to estop or prevent Secured Party from pursuing any further remedy which it may
have, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall
not operate to release Debtor until full payment of any deficiency has been made in cash.

(e) DEBTOR ACKNOWLEDGES THAT SECURED PARTY MAY BE
UNABLE TO EFFECT A PUBLIC SALE OF ALL OR ANY PART OF THE COLLATERAL
AND MAY BE COMPELLED TO RESORT TO ONE OR MORE PRIVATE SALES TO A
RESTRICTED GROUP OF PURCHASERS WHO WILL BE OBLIGATED TO AGREE,
AMONG OTHER THINGS, TO ACQUIRE THE COLLATERAL FOR THEIR OWN
ACCOUNT, FOR INVESTMENT AND NOT WITH A VIEW TO THE DISTRIBUTION OR
RESALE THEREOF. DEBTOR FURTHER ACKNOWLEDGES THAT ANY SUCH
PRIVATE SALES MAY BE AT PRICES AND ON TERMS LESS FAVORABLE THAN
THOSE OF PUBLIC SALES, AND AGREES THAT SUCH PRIVATE SALES SHALL BE
DEEMED TO HAVE BEEN MADE IN A COMMERCIALY REASONABLE MANNER
AND THAT SECURED PARTY HAS NO OBLIGATION TO DELAY SALE OF ANY
COLLATERAL TO PERMIT THE ISSUER THEREOF TO REGISTER IT FOR PUBLIC
SALE UNDER THE SECURITIES ACT OF 1933. DEBTOR AGREES THAT SECURED
PARTY SHALL BE PERMITTED TO TAKE SUCH ACTIONS AS SECURED PARTY
DEEMS REASONABLY NECESSARY IN DISPOSING OF THE COLLATERAL TO AVOID
CONDUCTING A PUBLIC DISTRIBUTION OF SECURITIES IN VIOLATION OF THE
SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE, AS NOW
ENACTED OR AS THE SAME MAY IN THE FUTURE BE AMENDED, AND
ACKNOWLEDGES THAT ANY SUCH ACTIONS SHALL BE COMMERCIALY
REASONABLE. IN ADDITION, DEBTOR AGREES TO EXECUTE, FROM TIME TO
TIME, ANY AMENDMENT TO THIS AGREEMENT OR OTHER DOCUMENT AS
SECURED PARTY MAY REASONABLY REQUIRE TO EVIDENCE THE
ACKNOWLEDGMENTS AND CONSENTS OF DEBTOR SET FORTH IN THIS
PARAGRAPH.

10. Attorneys’ Fees. Debtor agrees to pay to Secured Party, without demand,
reasonable attorneys’ fees and all costs and other expenses which Secured Party expends or
incurs in collecting any amounts payable by Debtor hereunder or in enforcing this Agreement
against Debtor, whether or not suit is filed.
11. **Further Documentation.** Debtor hereby agrees to execute, from time to time, one or more financing statements and such other instruments as may be required to perfect the security interest created hereby, including any continuation or amendments of such financing statements, and pay the cost of filing or recording the same in the public records specified by Secured Party.

12. **Waiver and Estoppel.** Debtor represents and acknowledges that it knowingly waives each and every one of the following rights, and agrees that it will be estopped from asserting any argument to the contrary: (a) any promptness in making any claim or demand hereunder; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of Debtor or the failure to file or enforce a claim against Debtor’s estate (in administration, bankruptcy or any other proceeding); (c) any defense based upon an election of remedies by Secured Party which destroys or otherwise impairs any or all of the Collateral; (d) the right of Debtor to proceed against Secured Party or any other person, for reimbursement; (e) all duty or obligation of Secured Party to perfect, protect, retain or enforce any security for the payment of amounts payable by Debtor hereunder; and (f) any defense based on modification of the indebtedness secured hereby.

13. **Waiver of Jury Trial.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT HEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

14. **No Continuing Waiver.** No delay or failure on the part of Secured Party in the exercise of any right or remedy against Debtor or any other party against whom Secured Party may have any rights, shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by Secured Party of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy whether contained in this Agreement or in any of the other documents regarding the Obligations, including, without limitation, the Development Agreement and the Operating Agreement. No waiver of the rights of Secured Party hereunder or in connection herewith and no release of Debtor shall be effective unless in writing executed by Secured Party. No actions of Secured
Party permitted under this Agreement shall in any way impair or affect the enforceability of any agreement or obligation contained herein.

15. **Independent Obligations.** The obligations of Debtor are independent of the obligations of any other party which may be initially or otherwise responsible for performance or payment of the Obligations, and a separate action or actions for payment, damages or performance may be brought and prosecuted by Secured Party against Debtor, individually, for the full amount of the Obligations then due and payable, whether or not an action is brought against any other party, whether or not Secured Party is involved in any proceedings and whether or not Secured Party or Debtor or other person is joined in any action or proceedings.

16. **No Offset Rights of Debtor.** No lawful act of commission or omission of any kind or at any time upon the part of Debtor shall in any way affect or impair the rights of Secured Party to enforce any right, power or benefit under this Agreement, and no set-off, recoupment, counterclaim, claim, reduction or diminution of any obligation or any defense of any kind or nature which Debtor has or may have against Secured Party or against any other party shall be available against Secured Party in any suit or action brought by Secured Party to enforce any right, power or benefit under this Agreement.

17. **Power of Attorney.** Debtor hereby appoints Secured Party as its attorney-in-fact to execute and file on its behalf any financing statements, continuation statements or other documentation required to perfect or continue the security interest created hereby. This power, being coupled with an interest, shall be irrevocable until all amounts secured hereby have been paid, satisfied and discharged in full.

18. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE PARTIES HERETO AGREE THAT IN THE EVENT OF DEFAULT, THIS AGREEMENT MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION IN THE STATE OF TEXAS, AND ANY STATE IN WHICH ALL OR ANY PART OF THE COLLATERAL IS LOCATED AND THEY DO HEREBY SUBMIT TO THE JURISDICTION OF ANY AND ALL SUCH COURTS REGARDLESS OF THEIR PRINCIPAL PLACE OF BUSINESS OR WHERE THIS AGREEMENT MAY BE EXECUTED.

19. **Successors and Assigns.** All agreements, covenants, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

20. **Notices.** Whenever any party hereto shall desire to, or be required to, give or serve any notice, demand, request or other communication with respect to this Agreement, each such notice, demand, request or communication shall be in writing and shall be effective only if the same is delivered by personal service (including, without limitation, courier or express service) or mailed certified or registered mail, postage prepaid, return receipt requested, or sent by electronic mail to the parties at the addresses and email addresses shown throughout this Agreement or such other addresses which the parties may provide to one another in accordance herewith. If notice is sent to Secured Party, a copy of such notice shall also be given to to Matthew W. Mullen, Esq., Nixon Peabody LLP, 799 9th Street NW, Suite 500, Washington, DC
21. **Consent of Debtor.** Debtor consents to the exercise by Secured Party of any rights of Debtor in accordance with the provisions of this Agreement.

22. **Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

23. **Amendment.** This Agreement may be modified or rescinded only by a writing expressly relating to this Agreement and signed by all of the parties.

24. **Termination.** This Agreement shall terminate, and shall be of no further force or effect, upon the earlier to occur of the repayment in full of the Obligations of Debtor or upon the mutual consent of Debtor and Secured Party.

25. **Expenses.** Debtor shall pay all reasonable out-of-pocket fees and charges incurred by Secured Party in connection with this Agreement and the documents entered into in connection therewith, including, without limitation, reasonable attorneys’ fees incurred by Secured Party.

(SIGNATURE APPEARS ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, Debtor has executed this Pledge and Security Agreement as of the date first above written.

DEBTOR:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company

By: [Signature]
Name: Lisa M. Stephens
Title: Manager

O-SDA INDUSTRIES, LLC,
a Texas limited liability company

By: [Signature]
Name: Megan D. Lasch
Title: Managing Member
IN WITNESS WHEREOF, Debtor has executed this Pledge and Security Agreement as of the date first above written.

DEBTOR:

SAIGEBROOK DEVELOPMENT, LLC,
a Florida limited liability company

By: __________________________
Name: Lisa M. Stephens
Title: Manager

O-SDA INDUSTRIES, LLC,
a Texas limited liability company

By: __________________________
Name: Megan D. Lasch
Title: Managing Member
EXHIBIT I

MANAGEMENT AGREEMENT

[To be attached at the full funding of the First Installment.]
[SCHEDULE III TO EXHIBIT I]
MANAGEMENT AGREEMENT
MANAGEMENT PLAN

[To be attached at the full funding of the First Installment.]
SCHEDULE [___] TO EXHIBIT I
MANAGEMENT AGREEMENT

FORM OF LEASE DOCUMENTS

[To be attached at the full funding of the First Installment.]
This Lease Contract is void if Mailed out before January 1, 2016.

Apartment Lease Contract

This is a binding contract. Read carefully before signing.

Date of Lease Contract: (when this Lease Contract is filled out)

Moving in — General Information

1. Parties. This Lease Contract ("Lease") is between you, the resident(s) listed below, and the owner, La Ventana Apartments.

(name of apartment community or title holder). You are renting Apartment No. ____________________________

(street address).

(city), Texas, 75531. Zip code for use as a private residence only. The terms "you" and "your" refer to the person(s) named above; and "we" and "our" refer to the owner listed above and not to property managers or anyone else.

Neither we nor any of our representatives have made any oral promises, representations, or agreements. This Lease is the entire agreement between you and us.

2. Occupants. The apartment will be occupied only by you and (list all other occupants not signing the Lease):

—and no one else. Anyone not listed here cannot stay in the apartment for more than 14 consecutive days without our prior written consent, and no more than twice that many days in any one month.

If the previous space isn't filled in, 3 days total per month will be the limit.

3. Lease Term. The initial term of the Lease begins on the day of __________ (month), __________ (year), and ends at midnight the day of __________ (month), __________ (year).

After that, this Lease will automatically renew month-to-month unless either party gives at least 60 days written notice of termination or intent to move-out as required by Par. 36. If the number of days isn't filled in, notice of at least 30 days is required.

4. Security Deposit. The total security deposit for all residents is $____00. Due on or before the date this Lease is signed. This amount (check one): $________ does or does not include an animal deposit. Any animal deposit will be designated in an animal addendum. Security deposit refund check and any deduction notifications will be by (check one):

—on one check jointly payable to all residents and mailed to any one resident who is chosen, or

—on check payable to and mailed to ________________________________

(specify name of one resident).

If neither option is checked here, the second applies. Any resident, occupant, or spouse who, according to a remaining resident's affidavit, has permanently moved out or is under court order not to enter the apartment, is (at our option) no longer entitled to occupancy. Keys, and other access devices for:

5. Keys, Move-Out, and Furniture. You'll be given 2 __________ apartment key(s), 1 __________ mailbox key(s), and other access devices for:

Before moving out, you must give us a representative advance written move-out notice as stated in Par. 36. The move-out date in your notice (check one): (i) must be the last day of the month, or (ii) may be the exact day designated in your notice. If neither option is checked here, the second applies. You, the occupant, or spouse who, according to a remaining resident's affidavit, has permanently moved out or is under court order not to enter the apartment, is (at our option) no longer entitled to occupancy. Keys, and other access devices. Your apartment will be:

(check one): Unfurnished or Unfurnished.

6. Rent and Charges. You will pay $________ per month for rent, in advance and without demand (check one):

— at the office(s) of the management office;

— through our online payment site.

— through our online payment site.

Praedent rent of $________ is due for the remainder of the lease (check one): 1st month or 2nd month, on the __________ day of the month (year).

You must pay your rent on or before the 1st day of each month (due date). There is no grace period. Cash is not acceptable without our prior written permission. You cannot withhold or offset rent unless authorized by law. We may, at our option, require at any time that you pay all rent and any sums in cash. certified or cashier's check. money order, or one monthly check rather than multiple checks. If you don't pay all rent on or before the __________ day of the month, you'll pay an initial late charge of $________, plus a daily late charge of $________ per day after that date until the amount due is paid in full. Daily late charges cannot exceed 15 days for any single month's rent.

We won't impose late charges until at least the third day of the month. You'll also pay a charge of $________ per each returned check or rejected electronic payment, plus any interest and late charges, until we receive acceptable payment. If you don't pay rent on time, you'll be in default and subject to all remedies under state law and this Lease. If you violate the animal restrictions of Par. 27 or another animal rules, you'll pay an initial charge of $100.00 per animal (not to exceed $1,000.00 per animal) and a daily charge of $10.00 per animal (not to exceed $100.00 per animal) from the date the animal was brought into your apartment until it is removed. We'll also have all other remedies for such violations.

7. Utilities and Services. We'll pay for the following items, if checked:

— gas;

— water;

— electricity;

— trash/recycling;

— cable/satellite;

— internet;

— stormwater drainage;

— other __________________;

You'll pay for all other utilities and services, related deposits, and any charges or fees on such utilities and services during your Lease term. See Par. 11 for other related provisions regarding utilities and services.

8. Insurance. Our insurance doesn't cover the loss of or damage to your personal property. You, the resident, are required to buy and maintain renter's or liability insurance (see attached addendum), or if required to buy renter's or liability insurance, if neither option is checked here, the second applies. Even if not required, we urge you to get your own insurance for losses due to theft, fire, water, pipe leaks, and similar occurrences. Renter's insurance doesn't cover losses due to a flood. Information on renter's insurance is available from the Texas Department of Insurance.

9. Special Provisions. The following or attached special provisions and any addenda or written rules furnished to you at or before signing will become a part of this Lease and will supersede any conflicting provisions of this printed Lease form.

10. Unlawful Early Move-Out And Reletting Charge. 10.1 Your Responsibility. You'll be liable for a reletting charge of (not to exceed 85% of the highest monthly rent during the Lease term) if (a) fail to move in, or (b) fail to give written move-out notice as required by Par. 29, or (c) move out without paying rent in full for the entire lease term or renewal period. (d) move out at our demand because of your default or (e) are judicially evicted. The reletting charge is not a cancellation fee and does not release you from your obligations under this Lease. See the next section.
10.2 Not a Release. The reletting clause is neither a lease cancellation nor a buyout fee. It is a liquidated amount covering only part of our damages—for our time, effort, and expenses in finding and processing a replacement resident. These damages are uncertain and hard to ascertain—particularly those relating to inconvenience, paperwork, advertising showing apartments, utilities for showing, checking prospects, overhead, marketing costs, and broker-service fees. You agree that the reletting charge is a reasonable estimate of our damages and that the charge is due whether or not our reletting attempts succeed. If no amount is stipulated, you must pay our actual reletting costs as far as they can be determined. The reletting charge doesn’t release you from continued liability for future or past-due rent; for cleaning, repairing, repainting, or dealing with unreturned keys or other sums due.


11.1 What We Provide. Texas Property Code Secs. 92.131, 92.133, and 92.134 require, with some exceptions, that we provide at no cost to you when occupancy begins: (A) a window latch on each window; (B) a door viewer (peep-hole) on each exterior door; (C) a pin lock on each sliding door; (D) either a door-handle latch or a security bar on each sliding door; (E) a keyless bolting device (deadbolt) on each exterior door; and (F) either a keyed deadbolt lock or a keyed deadbolt lock on one entry door. Keyed locks will be replaced after the prior resident moves out. The rekeying will be done either before you move in or within 7 days after you move in, as required by law. If we fail to install or rekey security devices as required by law, you have the right to do so and deduct the reasonable cost from your next rent payment under Texas Property Code Sec. 92.134. We may rekey or replace or install keyless bolting devices on your doors if (A) you or an occupant in the dwelling is over 55 or disabled, and (B) the requirements of Texas Property Code Sec. 92.134(f) or (f) are satisfied.

11.2 Who Pays What. We’ll pay for installing security devices that are required by law. You/Tenant(s) pay for any required repairs or replacements because of misuse or damage by you or your family, your occupants, your guests, or you. You must pay immediately after the work is done unless state law authorizes advance payment. You may also pay in advance for any additional or changed security devices you request.

12. Other Utilities and Services. Television channels that are provided may be changed during the lease term if the change applies to all residents. You may use utilities only for normal household purposes and must not waste them. If your electricity is interrupted, you must use only battery-operated lighting (no flames). You must not allow any utilities (other than cable or internet) to be cut off or switched off for any reason—including disconnection for not paying your bill—until the lease term or renewal period ends. If a utility is subcontracted or provided by an allocation formula, we’ll attach an addendum to this lease in compliance with state-agency rules. If your utility is individualized, it must be connected in your name and you must notify the provider of your move-in date so the meter can be turned on. If you delay getting it turned on in your name by the lease’s start date or cause it to be transferred back into our name before you surrender or abandon the apartment, you’ll be liable for a $50.00 charge (not to exceed $50 per violation) plus the actual estimated cost of the utilities used while the utility should have been connected in your name. If you’re in an area open to competition and your apartments are individually metered, you may choose or change your electric utility provider at any time. You qualify, your provider will be the same as ours, unless you choose a different provider. If you choose or change your provider, you must give us written notice. You must pay all applicable provider fees, including any fees to change service back into our name after you move out.

Special Provisions and “What If” Clauses


13.3 Damage in the Apartment Community. You must promptly pay or reimburse us for loss, damage, consequential damages, government fines or charges, or cost of repairs or service in the apartment community because of a lease or rules violation (including use, negligence, conduct by you, your invitees, your occupants, or your guests; or any other cause not due to our negligence or fault as allowed by law, except for damages by acts of God to the extent they couldn’t be mitigated by your action or inaction.

13.4 Indemnification by You. You will defend, indemnify and hold us harmless from all liability, costs or claims, including actions or suits brought by your conduct or that of your invitees, your occupants, your guests, or any representatives who at your request perform services not contemplated in this lease.

13.5 Damage and Wastewater Stoppage. Unless damage or wastewater stoppage is due to some negligence, we’re not liable for—and you must pay for—repairs, replacements, and damage of the following kind if occurring during the lease term or renewal period: (A) damage to doors, windows, or screens; (B) damage from windows or doors left open; and (C) damage from wastewater stoppages caused by improper objects in lines exclusive of serving your apartment.

13.6 Waiver. We may require payment at any time, including advance payment to repair damage that you are liable for. Delay in demanding sums you owe is not a waiver.


14.1 Lien Against Your Property for Rent. All property in the apartment (unless exempt under Texas Property Code Sec. 54.014) is subject to a contractual lien to secure payment of delinquent rent (except as prohibited by Texas Government Code Sec. 2206.678A, for owners supported by housing-tax-credit allocations). For this purpose, “apartment” excludes common areas but includes the interior living areas and common spaces, balconies, attached garages, and any storage for your exclusive use.

14.2 Removal After We Exercise Lien for Rent. If your rent is delinquent, our representative may peacefully enter the apartment, and remove and store all property subject to lien. All property in the apartment is presumed to be yours unless otherwise proved. After the property is removed, we’ll make a written notice of entry leaving a copy in a conspicuous place on your apartment—indicating a list of items removed, the amount of delinquent rent due, and the place, address, and phone number of the person to contact. The notice must also state that the property will be promptly released returned when the delinquent rent is fully paid.

14.3 Removal After Surrender, Abandonment, or Eviction. We, or our officers, may remove and store all property remaining in the apartment or in common areas (including any vehicles you or any occupant or guest owns or uses if you’re judicially evicted or if you surrender or abandon the apartment [see definitions in Par. 4(b)]).

14.4 Storage.

(A) No duty. We’ll store property removed under a contractual lien. We may—but we have no duty to—store property removed after judicial eviction, surrender, or abandonment of the apartment.

(B) No liability. We’re not liable for casualty loss, damage, or theft, except for property removed under a contractual lien.

(C) Changes you pay. You must pay reasonable charges for our packing, storing, removing, and selling of any property.

(D) Our lien. We have a lien on all property removed and stored after surrender, abandonment, or judicial eviction for all sums you owe, with one exception: our lien on property listed under Texas Property Code Sec. 54.019 is limited to changes for packing, removing, and storing.

15. Redemption.

(A) Property on which we have a lien. If we’ve seized and stored property under a contractual lien for rent as authorized by law, you may redeem the property by paying all delinquent rent due at the time of seizure. But if notice of your right to redeem (Par. 16.02) is given before you seek redemption, you may redeem only by paying the delinquent rent plus our reasonable charges for packing, storing, removing, and selling.

(B) Property removed after surrender, abandonment, or judicial eviction. If we’ve removed and stored property after surrender, abandonment, or judicial eviction, you may redeem only by paying all sums you owe, including rent, late charges, reletting charges, storage charges, damages, etc.

(C) Place and payment for return. We may return redeemed property at the place of storage, the management office, or the apartment (at our option). We may require payment by cash, money order, or certified check.

14.6 Disposition or Sale.

(A) Our options. Except for animals and property removed after the death of a sole resident, we may throw away or give to a charitable organization all personal property that:
(I left the apartment after surrender or abandonment; or
(I left outside more than one hour after work of possession is executed, following judicial eviction.

(B) Animals. An animal removed after surrender, abandonment, or eviction may be kennelled or turned over to a local authority, humane society, or other organization.

(C) Sale or property. Property not thrown away or given to charity may be disposed of by sale, which must be held no sooner than 30 days after written notice of the date, time, and place of sale's being sent by both regular mail and certified mail (return receipts requested) to your last known address. The notice must itemize the amounts you owe and provide the name, address, and phone number of the person to contact about the sale, the amount owed, and your right to redeem the property. The sale may only be public or private is subject to any third-party ownership or lien claims, must be to the highest cash bidder; and may be in bulk, in batches, or by item by item. If the proceeds from the sale are more than you owe, the excess amount must be mailed to you at your last known address within 30 days after sale.

15. Failing to Pay First Month's Rent. If you do not pay the first month's rent when the lease begins, all future rent for the lease term will be automatically accelerated without notice and become immediately due. We also may end your right of occupancy and receive damages, future rent, attorney's fees, court costs, and other lawful charges. Our rights, remedies and duties under Par. 10 and 32 apply to acceleration under this paragraph.

16. Rent Increases and Lease Changes. No rent increase or lease changes are allowed after the initial lease term ends, except for those allowed by special provisions or Par. 10, by written agreement signed by you and us, or by reason able changes of apartment rules allowed under Par. 19. At least five days before the advance-notice deadline referred to in Par. 3, we will give you written notice of rent increases or lease changes that become effective when the Lease term or renewal period ends, this Lease will automatically extend month to month with the increased rent or lease changes. The new modified lease will begin on the date stated in the notice (without needing your signature) unless you give us written move-out notice under Par. 36. The written move-out notice under Par. 36 applies only to the end of the current Lease or renewal period.

17. Delay of Occupancy.

17.1 Lease Remains In Force. We are not responsible for any delay of your occupancy caused by construction, repairs, cleaning, or a previous resident's holding over. This Lease will remain in force subject to:
(A) abatement of rent on a daily basis during delay, and
(B) your right to terminate the lease in writing as set forth below.

17.2 Your Termination Rights. Termination notice must be in writing. After termination, you are entitled only to refund of any deposit and any rent paid. Termination or lease termination does not apply if the delay is for cleaning or repairs that don't prevent you from moving into the apartment.

17.3 Notice of Delay. If there is a delay of your occupancy and we haven't given notice of delay as set forth immediately below, you may terminate this Lease up to the date when the apartment is ready for occupancy, but not later.
(a) if we give written notice to any of you or your occupants when or after the Lease begins—and the notice states that occupancy has been delayed because of construction or a previous resident's holding over, and that the apartment will be ready on a specific date—you may terminate the Lease within 3 days after you receive written notice, but no less.
(b) if we receive any of you written notice before the date the Lease begins and the notice states that a construction delay is expected and that the apartment will be ready for you to occupy on a specific date, you may terminate the Lease within 7 days after receiving written notice, but no later. The readiness date stated in the written notice becomes the new effective lease date for all purposes. This new date can't be moved to an earlier date unless we and you agree in writing.

18. Disclosure of Information. If someone requests information about you or your rental history for law enforcement, government, or business purposes, we may provide it. At our request, any utility provider may give us information about pending or actual connections or disconnections of utility service to your apartment.

19. Community Policies and Rules. 19.1 Generally. Our rules are considered part of this Lease. You, your occupants, and your guests must comply with all written apartment rules and community policies, including instructions for care of our property. We may regulate:
(A) the use of patios, balconies, and porches; (B) the conduct of furniture movers and delivery persons; and (C) activities in common areas. We may make reasonable changes to written rules, and those rules can become effective immediately if the rules are distributed and applicable to all units in the apartment community and do not increase the dollar amount on pages 1 or 2 of this Lease.

19.2 Some Specifics. Your apartment and other areas reserved for your primary use must be kept clean. Trash must be disposed of at least weekly in appropriate receptacles in accordance with local ordinances. Pets are permitted only for entry or exit. Any swimming pools, saunas, spas, tennis courts, exercise rooms, storage rooms, laundry rooms, and similar areas must be used with care in accordance with apartment rules and posted signs.

19.3 Limitations on Conduct. Glass containers are prohibited in or near pools and all other common areas. Within the apartment community, you, your occupants, and your guests must not use candles or kerosene lamps or heaters without our prior written approval, or use on balconies or outside. You, your occupants, and your guests must not solicit business or contributions. Conducting any kind of business (including child care services) in your apartment or in the apartment community is prohibited—except that any lawful business conducted at home by computer, mail, or telephone is permissible if customers, clients, patients, or other business associates do not come to your apartment for business purposes.

19.4 Exclusion of Persons. We may exclude from the apartment community any guests or others who, in our judgment, have violated our rules, or disturbing other residents, neighbors, visitors, or officer representatives. We may also exclude from any outside area or common area anyone who refuses to show photo identification or refuses to identify himself or herself as a resident, an occupant, or a guest of a specific resident in the community.

19.5 Notice of Violations and Registration. You must notify us within 15 days if you or any of your occupants are convicted of (A) any felony, or (B) any misdemeanor involving a controlled substance, violence, or destruction of property. You must also notify us within 15 days if you or any of your occupants register as a sex offender. Informing us of a criminal conviction or sex-offender registration doesn't waive any rights we may have against you.

20. Prohibited Conduct. You, your occupants, and your guests may not engage in the following activities:
(a) criminal conduct; manufacturing, delivering, or possessing a controlled substance or drug paraphernalia, engaged in or threatening violence possessing a weapon prohibited by state law; discharging a firearm in the apartment community; displaying or possessing a gun, knife, or other weapon in the common area in a way that may alarm others
(b) behaving in a loud or notorious manner;
(c) disturbing or threatening the rights, comfort, health, safety, or convenience of others (including our agents and employees) in or near the apartment community;
(d) disposing of our business operations;
(e) storing anything in closets containing gas appliances;
(f) tampering with utilities or telecommunications;
(g) bringing hazardous materials into the apartment community;
(h) using windows for entry or exit;
(i) heating the apartment with a gas-operated cooking stove or oven;
(j) injuring our reputation by making bad faith allegations against us or others.

21. Parking. We may regulate the time, manner, and place of parking all cars, trucks, motorcycles, bicycles, boats, trailers, and recreational vehicles. Motorcycles or motorized bikes must not be parked inside an apartment, or sidewalks, under stairwells, or in handicapped parking areas. We may have any unauthorized and illegally parked vehicles towed or booted according to state law at the owner or operator's expense at any time if the vehicle:
(a) has a flat tire or is otherwise inoperable;
(b) is on jack stands, blocks, or a tire missing;
(c) takes up more than one parking space;
22. Release of Resident.

22.1 Generally. You may have the right under Texas law to terminate the Lease early in certain situations involving family violence, certain sexual offenses, or stalking. Otherwise, unless you’re entitled to terminate this Lease under Par. 8, 17, 23, 31, or 36, you won’t be released from this Lease for any reason—including voluntary or involuntary school withdrawal or transfer, voluntary or involuntary job transfer, marriage, separation, divorce, reconciliation, loss of close friends, loss of employment, bad health, property purchase, or death.

22.2 Death of Sole Resident. If you are the sole resident and die during the Lease term, an authorized representative of your estate may terminate the Lease without penalty by giving at least 30 days’ written notice. Your estate will be liable for paying rent until the latter of: (A) the termination date or (B) removal of all personal effects in the apartment. Your estate will also be liable for all changes and damages until the apartment is vacated, and any removal or storage costs.


23.1 Termination Rights. You may have the right under Texas law to terminate the Lease in certain situations involving military deployment or transfer. You may terminate the Lease if you are on active duty, or are deployed, for a period of at least 90 days in response to a national emergency declared by the President and: (a) are a member of the U.S. Armed Forces or Reserves; or (b) are a member of the National Guard called to active duty for more than 30 days in response to a national emergency declared by the President.

23.2 How to Terminate. Under this Par. 23, you must furnish a copy of your military orders, such as permanent-change-of-station orders, call-up orders, or deployment orders (or letter equivalent). Military permission for base housing doesn’t constitute a permanent-change-of-station order. If the resident is deployed, return your written termination notice, after which the Lease will be terminated under this military leave 90 days after the date your military reinstatement pay is due. After your move-out, we’ll return your security deposit, less lawful deductions.

23.3 Who May Be Released. For purposes of this Lease, orders described in (a) under this Par. 23.1 above will release only the resident who qualifies under both (a) and (b) above and receives the order during the Lease term, plus that resident’s spouse or legal dependents living in the resident’s household. A consistent who is not the spouse or dependent of a military resident cannot terminate under this military clause.

23.4 Your Representations. Unless you state otherwise in Par. 9 you represent when signing this Lease that: (a) you do not already have deployment or change-of-station orders; and (b) you will not be retiring from the military during the Lease term and (c) the terms of your enlistment or obligation will not end before the Lease term ends. You must notify us immediately if you’re called to active duty or receive deployment or permanent-change-of-station orders.

23.5 Damages for False Representations. Liquidated damages for making a false representation of the above will be the amount of unpaid rent for the remainder of the Lease term when and if you move out, minimized from others received in mitigation under Par. 32.6.


24.1 Disclaimer. We disclaim any express or implied warranties of safety. We care about your safety and that of other occupants and guests. You agree to make every effort to follow any Security Guidelines Addendum attached to this Lease. No security system is foolproof. Even the best system can’t prevent harm. Always turn off security systems don’t exist since they are subject to malfunction, tampering, and human error. The best security measures are the ones you take as a matter of common sense and habit.

24.2 Your Duty of Due Care. You, your occupants, and your guests must exercise due care for your own and others’ safety and security, especially in using smoke alarms and other detection devices, door and window locks, and other safety or security devices. Windows screens are not for security or to keep people from falling out of windows.

24.3 Laws and Detection Devices.

(A) What we’ll do. We’ll furnish smoke alarms or other detection devices required by law or ordinance. We may install additional detectors not so required. We’ll test them and provide working batteries when you first take possession of your apartment. Upon request, we’ll provide, as required by law, a smoke alarm capable of alerting a person with a hearing impairment disabled.

(b) Your duties. You must pay for and replace batteries as needed, unless the law provides otherwise. We may re- place dead or missing batteries at your expense, without prior notice to you. You must immediately report alarms or detector malfunctions to us. Neither you nor others may disable an alarm or detector.

If you damage or disable the smoke alarm, or remove a bat- tery without replacing it with working battery, you may be liable to us under Texas Property Code sec. 92.261 for $200 plus one month’s rent, actual dam- ages, and attorney’s fees. You’ll be liable to us and others if you fail to report malfunctions, or fail to report any fumes, damages, or fires resulting from flames, smoke, or water.

24.4 Loss. Unless otherwise required by law, we’re not liable to any resident, guest, or occupant for personal injury or damage, loss of personal property, or loss of business or personal income, from any cause, including fire, smoke, rain, flood, water leaks, hail, ice, snow, lightning, wind, explosions, interruption of utilities, pipe leaks, theft, vandalism, and negligent or intentional acts of residents, occupants, or guests. We have no duty to remove any ice, snow, or snow plow may remove any amount with or without no- tice. Unless we instruct otherwise, during freezing weather you must for 24 hours a day: (A) keep the apartment heated to at least 75° Fahrenheit; (B) keep cabinet and dis- eet doors open; and (C) keep hot and cold water faucets open. You’ll be liable for any damage to our and others’ property caused by broken water pipes due to your violating these requirements.

24.5 Crime or Emergency, Immediately dial 911 or call local medical-emergency, fire, or police personnel in case of accident, fire, smoke, suspected criminal activity, or any other emergency involving human harm. You should then contact our representative. None of our security measures are an express or implied warranty of security—or a guarantee against crime or of reduced risk of crime. Unless otherwise provided by law, we’re not liable to you, your occupants, or your guests for injury damage, or loss to person or property caused by crime or of other persons, including theft, burglary, assault, vandalism, or other crimes. Even if provided, we’re not obliged to furnish security personnel, patrol, lighting, gates, fences, or other forms of security services required. We’re not responsible for obtaining similar-hindsight similar to any residents, occupants, guests, or contractors in the apartment community. If you, your occupants, or your guests are affected by a crime, you must make a written report to the appropriate local law enforcement agency and to our representative. You must then give the law enforcement agency’s incident report number upon request.

25. Condition of the Premises and Alterations.

25.1 As-Is. We disclaim all implied warranties. You accept the apartment, fixtures, and furnishings as is, except for conditions materially affecting the health or safety of ordinary persons. You’ll be given an Inventory & Condition form on or before move-in. Within 45-days after move-in, you must note on the form any defects or damage, sign the form, and return it to us. Otherwise, everything will be considered to be in a clean, safe, and good working condition.

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25.3 Standards and Improvements. You must use customary diligence and care in maintaining the apartment and not damaging or littering the common areas. Unless authorized by law or by us in writing, you must not do any repairs, painting, wall-papering, carpeting, electrical changes, or otherwise alter our property. No holes or stickers are allowed inside or outside the apartment. Unless we state otherwise, we will permit a reasonable number of small nail holes for hanging pictures on sheetrock walls and grooves of wood-paneled walls. No water furniture, washing machines, extra phone or television outlets, alarm systems, or lock changes, additions, or rekeying is permitted unless allowed by law or we consent in writing. You may install a satellite dish or antenna lease addendum, which complies with reasonable restrictions allowed by federal law. You must not alter, damage, or remove our property, including alarm systems, detection devices, furnaces, telephones, television wiring, screens, locks, and security devices. When you move in, we’ll supply light bulbs for fixtures we furnish, including exterior fixtures operated from inside the apartment. After that, you’ll replace them at your expense with bulbs of the same type and wattage. Your improvements to the apartment (made with or without our consent) become ours unless we agree otherwise in writing.

25.4 Fair Housing. We are committed to the principles of fair housing. In accordance with fair housing laws, we’ll make reasonable accommodations to our rules, policies, practices, or services. We’ll allow reasonable modifications of your lease and these additional laws to deny disabled persons access to and use of this apartment community. We may require you to sign an addendum regarding the implementation of any accommodations or modifications, as well as your restoration obligations, if any.

26. Requests, Repairs, and Malfunctions. 26.1 Written Requests Required. If you or any occupant need to send a notice or request—for example, for repairs, installations, services, ownership disclosure, or security-related matters—we must be written, signed, and delivered to our designated representative (in case of fire, smoke, gas, explosion, overflowing sewerage, uncontrollable running water, electrical shorts, crime in progress, or fair housing accommodations or modifications). Your written request must not constitute a written request from you. Our complying with or responding to any oral request regarding security or any other matter doesn’t waive the strict requirement for written requests to us.

26.2 Required Notifications. You must promptly notify us in writing of water leaks, mold, electrical problems, malfunctioning lights, broken or missing locks or latches, and other conditions that pose a hazard to property, health, or safety.

26.3 Utilities. We may change or install utility lines or equipment serving the apartment if the work is done reasonably without substantially increasing your utility costs. We may turn off equipment and interrupt utilities as needed to avoid property damage or to perform work. If utilities malfunction or are damaged by fire, water, or similar cause, you must notify our representative immediately.

26.4 Air-Conditioning and Other Equipment. Air-conditioning problems are normally not emergencies. If any air-conditioning or other equipment malfunctions, you must notify us as soon as possible on a business day. We’ll act with customary diligence to make repairs and reconstructions, taking into consideration when casualty-insurance proceeds are received. Your rent will not be abated in whole or in part.

26.5 Our Right to Terminate. If we believe that fire or catastrophic damage is substantial, or that performance of needed repairs poses a danger to you, we may terminate this Lease by giving you at least 30 days’ written notice of termination. If we are demolishing your apartment or closing it, you will not be allowed to reside for restoration purposes for at least 3 months. If the lease is not terminated, we’ll refund procured rent and all deposits, less lawful deductions. We may also remove personal property if it causes a health or safety hazard.

27. Animals.

27.1 No Animals Without Consent. No animals (including mammals, reptiles, birds, fish, rodents, amphibians, arachnids, and insects) are allowed, even temporarily, anywhere in the apartment or apartment community unless we’ve given written permission. If we allow an animal, you must sign a separate animal addendum and, except as set forth in the addendum, pay an animal deposit. An animal deposit is considered a general security deposit.

The animal addendum includes information governing animals, including assistance or service animals. We authorize an assistance or support animal for a disabled person without requiring an animal deposit. We may require verification of your disability and the need for such an animal. You must not feed stray or wild animals.

27.2 Violations of Animal Policies. (A) Charges for Violations. If you or any guest or occupant violates animal restrictions (with or without our consent), you’ll be subject to charges, damages, eviction, and other remedies provided in this Lease. If an animal is left in the apartment at any time during your term of occupancy (with or without our consent), we’ll charge you for cleaning and repair costs, including de-fleaing, deodorizing, and shampooing. Initial and daily animal-violation charges and animal-removal charges are liquidated damages for our time, inconvenience, and overhead (plus any fees and litigation costs) caused by your violation of animal restrictions and rules.

(B) Removal and Return of Animal. We may remove an unauthorized animal by (1) leaving, in a conspicuous place in the apartment, a written notice of our intent to remove the animal within 24 hours; and (2) following the procedures of Par. 28. We may keep or kennel the animal, or turn it over to a humane society, local authority or rescue organization. You must pay for the animal’s reasonable care and kenneling charges. We’ll return the animal to you upon request if it has not already been turned over to a humane society, local authority, or rescue organization. We have no lien on the animals for any purpose.

28. When We May Enter. If you or any guest or occupant is present, then repairs, services, contractors, laws officers, government representatives, lenders, appraisals, prospective residents or buyers, insurance agents, persons seeking to enter under your rental application, or our representatives may peacefully enter the apartment at reasonable times for reasonable business purposes. If nobody is in the apartment, then any person may enter peacefully and at reasonable times by duplicate key or master key or by breaking a window or other means when necessary for reasonable business purposes if written notice of the entry isn’t left in a conspicuous place in the apartment immediately after the entry.

29. Multiple Residents. Each resident is jointly and severally liable for all Lease obligations. If you or any guest or occupant violates the Lease or rules, all residents are considered to have violated the Lease. Our requests and notice (including call notices) to any resident constitute notice to all residents and occupants. Notices and requests from any resident or occupant constitute notice to all residents. Your notice of lease termination may be given only by a resident. In eviction suits, each resident is considered the agent of all other residents in the apartment for service of process. Any resident who defaults under this Lease will indemnify the nondefaulting residents and their guarantors.

30. Replacements and Subletting.

30.1 When Allowed. Replacing a resident, subletting, or assigning a resident’s rights is allowed only when we consent in writing. If you or any other resident finds a replacement resident acceptable to us before moving out and we expressly consent to the replacement, subletting, or assignment, then:

(a) a sublease or rental agreement will be due.
(b) a reasonable administrative (paperwork) fee will be due, and a sublease will be due if the subleasing is re-quested or requested.
(c) the departing and remaining residents will remain liable for all Lease obligations for the rest of the original Lease term.

30.2 Procedures forReplacement. If we approve a replacement resident, then, at our option (A) the replacement resident must sign this Lease with us or without an increase in the total security deposit or (B) the remaining and replacement residents must sign an entirely new Lease. Unless we agree otherwise in writing, the departing resident’s security deposit will automatically transfer to the replacement resident as of the date we approve the departing resident. The departing resident will no longer have a right to return to the security deposit refund, but will remain liable for the remainder of the original Lease term unless we are otherwise in writing—even if a new Lease is signed.
31. Our Responsibilities.

31.1 Generally. We act with customary diligence to:

(a) keep common areas reasonably clean, subject to Fair, 25;
(b) maintain fixtures, not water, heating, and air-condi-
tioning equipment;
(c) substantially comply with all applicable laws regarding
safety, comfort, and fair housing; and
(d) make all reasonable repairs, subject to your obligation
to pay for damages for which you’re liable.

31.2 Your Request for a Return of the Deposit. If you possibly terminate this Lease and exercise other remedies under Texas Property Code Sec. 92.051(b) by following this procedure:

(a) all rent must be current, and you must make a writ-
ten request for return of the security deposit or refund of any
rent paid in advance, subject to Fair, 25;
(b) you must make a written request for return of the deposit
after which we’ll have a reasonable time for repair or remedy;
(c) if we fail to do so, you must make a second written re-
quest for the repair or remedy; to make sure that there’s
been no miscommunication between you—after which we’ll have a reasonable time for repair or remedy,
and
(d) if the repair or remedy still hasn’t been accomplished
within that reasonable time period, you may immedi-
ately terminate this Lease by giving us a final written	notice.

You also may exercise other statutory remedies, includ-
ing those under Texas Property Code Sec. 92.051(b).

31.3 Request by Mail. Instead of giving the two written re-
quests referred to above, you may give us one request by
certified mail, return receipt requested, or by registered
certified mail, return receipt requested, or by registered
mail—after which we’ll have a reasonable time for repair or remedy. Reasonable times accounts for the nature of the problem and the reasonable availability of materials, labor, and utilities; your rent must be current when you make any request. We’ll refund security deposits and prorated rent as requested.

32. Default by Resident.

32.1 Acts of Default. You’ll be in default if you:

(a) you don’t timely pay rent or other amounts you owe;
(b) you or any guest or occupant violates this Lease, apartment rules, or fire, safety,
health, or criminal laws, regardless of whether or where arrest or conviction occurs;
(c) you abandon the apartment;
(d) you give incorrect or false answers in a rental application;
(e) you or any occupant is arrested, charged, detained, convicted, or given deferred adjudication or pre-
trial diversion for a felony offense involving actual or poten-
tial physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, mari-
jua, or drug paraphernalia as defined in the Texas Con-
trolled Substances Act, or (f) any sex-related crime, includ-
ing a misdemeanor; or (g) you’re found to have any illegal drugs or paraphernalia in your apartment; or (h) you or any occupant, in bad faith, makes an invalid habitability com-
plain to an official or employee of a utility company or the
government.

32.2 Eviction. If you default or fail over, we may end your right of occupancy by giving you at least a 24-hour writ-
ten notice to vacate. Notice may be given by: (A) regular mail, (B) certified mail, return receipt requested; (C) per-
personal notice to any resident; (D) personal delivery at the apartment to any occupant over 18 years old or (E) when-
notices to the inside of the apartment’s main entrance door.

Notices by mail will be considered delivered on the earli-
est of actual delivery or 3 days following Sundays and Fed-
eral holidays after the notice is deposited in the U.S. Postal
Service with postage. Termination of your possession rights or a later relisting doesn’t release you from liability for fu-
ture rent or other lease obligations. After giving notice to vacate or filing an eviction suit, we may still accept rent or other sums due: the filing or acceptance doesn’t waive or impair any right of eviction in any other contractural or statutory right. Accepting money at any time doesn’t waive
our right to damages, to past or future rent or other sums, or to our continuing with eviction proceedings.

32.3 Acceleration. Unless we elect not to accelerate rent, all monies required at the end of the lease term or renewal pe-
riod will be accelerated automatically without notice or demand subjects to or other conditions, and will be immedi-
ately due and delinquent if without our written consent:
(A) you move out, remove property in preparing to move
out, or you or any occupant gives us a written notice of intent to move out before the lease term or renewal pe-
riod ends; and (B) you haven’t paid all rent for the entire
lease term or renewal period. Such conduct is considered
a default for which we need not give you notice. Remain-
ing rent will also be accelerated if you’re judicially evicted or move out when we demand because you’ve defaulted.

32.4 Holdover. You, any occupant, invitee, or guest must not hold over beyond the date contained in your move-out
notice or our notice to vacate or beyond a different move-
out date agreed to by the parties in writing. If a holdover occurs, then (A) holdover rent is due in advance on a daily
basis and may become delinquent without notice or de-
mand; (B) rent for the holdover period will be increased by
25% over the then-existing rental, without notice; and (C) you’ll be liable to us (subject to our mitigation duties) for any
rent for the full term of the previously-awarded lease of a new
resident who can’t occupy because of the holdover; and
(D) at our option, we may extend the Lease term—for up to one month from the date of notice of lease exten-
sion—by delivering written notice to you or your apart-
ment while you continue to hold over.

3.5 Other Remedies. We may report unpaid amounts to cred-
itors. If we or a third-party debt collector we use try to
collect any money you owe us, you agree that we or the
debt collector may call you on your cellphone and may use
automated dialers. If you default, you will pay us:

(a) all other sums due; and (b) all other amounts over $100
that state to be delinquent and that agree to in writing. Upon your default, we have all other remedies, including tax
termination and statutory lockout under Texas Property Code serv. 92.088, except as lockouts and fines are pro-
hibited by Texas Government Code serv. 2306.07.38 for
owners supported by housing tax-credit allocations.

A prevailing party may recover reasonable attorney’s fees and all other litigation costs from the nonprevailing par-
ty, except a party may not recover attorney’s fees and li-
tigation costs in connection with a party’s claims seeking personal injury, sentimental, exemplary or punitive dam-
ages. We may recover attorney’s fees in connection with
enforcing your rights under this Lease. You agree that fees
and charges are liquidated damages representing a reason-
able estimate of the value of our time, inconvenience, and
overhead associated with collecting late rent (but are not
for attorney’s fees and litigation cost). All unpaid amounts
you owe, including judgments, bear 18% interest per year from the due date, compounded annually. You must pay all collection agency fees if you don’t pay all sums due within
10 days after we mail you a letter demanding payment and
stating that collection agency fees will be added if you

32.6 Mitigation of Damages. If you move out early, you’ll be subject to the 10% and 10% other remedies. We’ll waive customarily deferent and minimize damages. We’ll credit all other rent that we actually receive from subse-
quent residents against your liability for past-due and fu-
ture rent and other sums due.

General Clauses

33. Other Important Provisions.

33.1 Representatives’ Authority: Waivers: Notice. Our rep-
resentatives (including management personnel, em-
ployees, and agents) have no authority to waive, amend,

or terminate this Lease or any part of it unless in writing, and
no authority to make promises or representations, or
enter into agreements that impose security duties or other obli-
gations on us or our representatives, unless in writing. Any
dimensions and sizes provided to you relative to the apart-
ment are only approximations or estimates; actual dimen-
sions and sizes vary. No action or omission by us will be
considered a waiver of our rights or any subsequent
violation, default, or time for performance. Our not
notifying or helping enforce written notice requirements,
rental due dates, acceleration, fees, or other rights isn’t a waiver under any circumstances. Except when no-
tice or demand is required by law, you waive any notice and
demand for performance from us if you default. If any
one else has guaranteed performance of this Lease, a sepa-
rate Lease Guaranty for each guarantor must be executed. Written notice to or from our managers constitutes notice to or from us. Any person giving a notice under this Lease
should keep a copy of the memo, letter, or fax that was
given (and any transmission verification) fax or electroni-

ic signature are binding. All notices must be mailed. Un-
less this lease or the law requires otherwise, any notice re-
quired to be provided, sent, or otherwise written may be
given electronically, subject to our rules.

33.2 Miscellaneous. All remedies are cumulative. Exercising
one remedy won’t constitute an election of waiver of other
remedies. All provisions regarding our nonliability or non- 
duty apply to our employees, agents, and management companies. No employee, agent, or management compa- 
nny is personally liable for any of our contractual, statutory, or other obligations merely by virtue of acting on our be- 
half. This Lessee bears sole responsibility for this Lease. This Lessee is sub- 
ordinate to existing and future recorded mortgages, unless 
the owner’s lender chooses otherwise. All Lessee obliga- 
tions must be performed in the county where the apart- 
ment is located. Neither an invalid clause nor the omission of initials on any page invalidates this Lease. If you have in- 
insurance covering the apartment or your personal belong- 
ings at the time you or we suffer or allege a loss, you and 
we agree to waive any insurance subrogation rights. All no- 
tices and documents may be in English and, at our option, in 
any other language that you read or speak. The term “in- 
cluding” in this Lease should be interpreted to mean “in- 
cluding but not limited to.”

34. Payments. Payment of each sum due is an independent covenant. When we receive money, other than sale proceeds under Par. 14 or utility payments subject to government regulation, we may apply it at our option and without notice first to any of your unpaid obli- 
gations, then to current rent. We may do so regardless of notices 
on checks or money orders unless either of when the obligations 
are due. All sums other than rent are due on demand. After 
the due date, we do not have to accept any payments.

35. TAA Membership. We represent, that at the time of signing this Lease, we, the management company representing us, or any 
locators thereof that proceed you is a member in good stand- 
ing of both the Texas Apartment Association and the affiliated 
local apartment association for the area where the apartment is 
located. The member is either an ownership-management compa- 
nny member or an associate member doing business as a local 
serviceman whose name and address must be disclosed on page 5. 
First, the following applies: (A) This Lease is voidable at your 
option at no cost to us (except for property damages); and (B) we may not recover past due or future rent or other charges. 
The above notices are required if both of the following occur: (1) the 
Lease is automatically renewed on a month-to-month basis more than once since membership in TAA and the local associa- 
tion was qualified; and (2) either the owner or the management 
company is a member of TAA and the local association during the 
third automatic renewal. A signed affidavit from the associ- 
ated local apartment association attesting to nonmembership 
when the lease was renewed or signed will be conclusive evi- 
dence of nonmembership. Governmental entities may use TAA 
forms if TAA in writing.

36. When Moving Out

36.1 Requirements and Compliance. Your move-out notice doesn’t release you from liability for the full term of the Lease or renewal term. You’ll be liable for the entire Lease term if you move out early except under Par. 17, 19, 23, or 31. Your move-out notice must comply with all of the following:

(a) We must receive advance written notice of your move- 
out date. You must give notice in advance by at least 
the number of days required in Par. 17 or in special pro- 
visions. If you do not comply, we may cancel or extend the Lease.

(b) You must give us notice of a future move-out date at least 30 days before the move-out date. If you fail to give notice, the move-out date will be the same as the date of the first move-out notice. If you fail to give notice, the move-out date will be the same as the date of the first move-out notice.

(c) Your notice of move-out must be in writing. An oral notice of move-out will not be accepted and will not termi- 
minate your Lease.

(d) Your move-out notice must not terminate the Lease sooner than the last of the month in which your written notice was received.

(e) We will require you to give us more than 30 days’ written notice to move out before the end of the Lease term, we will give you 1 written reminder notice not less than 5 nor more than 90 days before your deadline for giving us 
your written move-out notice. You fail to give a mov- 
e-out notice, your written move-out notice will be disregarded.

36.2 Unacceptable Notice. Your notice is not acceptable if it doesn’t comply with all of the above. We recommend that you use our written move-out form to ensure that you provide all the information required. You must get from us written acknowledgment of your notice. If you fail to give a reminder notice, 30 days’ written notice to move out is required. If we terminate the Lease, we must give you the same notice as above unless you are in default.

37. Move-Out Procedures. The move-out date cannot be changed unless you and we both agree in writing. You won’t move out before the Lease term or renewal period ends unless all rent for the entire Lease term or renewal period is in full. Certain fees (if you re- 
For the following charges, if applicable: unpaid rent; un- 
paid utilities; unremedied breach; repairs or damages 
caused by negligence, recklessness, accident, or abuse, in- 
cluding broken windows, scratches, tears, burns, stains, or unapproved holes; replacement cost of your property that was in or attached 
and its condition; and its value has not decreased or been damaged); and (B) you may not recover damages or other charges.

16. Move-Out Inspection. You should agree with our represen- 	
tative for a move-out inspection. Our representative has no au- 

tority to bind you or limit us on deductions for repairs, damages, or charges. Any statements or estimates by us or our representative are subject to our correction, modification, or dis- 

17. Security Deposit Deductions and Other Charges. You’ll be 


4826-0680-0520.3 I-21
### SUMMARY OF KEY INFORMATION

The lease will control if there's a conflict with this summary.

- **Address:**
- **Beginning date of Lease (Par. 2):**
- **Number of days notice for termination (Par. 2):**
- **Total security deposit (Par. 4):** $200.00
- **Security deposit (Par. 6):** $20.00
- **Prepaid rent (Par. 6):** $200.00
- **Total monthly rent (Par. 6):** $200.00
- **Late charges if not paid on or before (Par. 6):** $5.00
- **Initial late charge (Par. 6):** $20.00
- **Retainer check charge (Par. 6):** $50.00
- **Monthly animal rent (if any):** $50.00
- **Monthly pest control (if any):** $5.00
- **Utilities paid by owner (Par. 7):**
- **Utility connection charge (Par. 10):** $50.00
- **Agreed reletting charge (Par. 11):**
- **Special provisions (Par. 9):**

---

### Signatures and Attachments

42. **Attachments.** We will provide you with a copy of the Lease as required by statute. This may be in paper format, in an electronic format (if you request it) or by e-mail if we have communicated by e-mail about this Lease. Our rules and community policies, if any, will be attached to the lease and given to you at signing. When an Inventory and Condition Form is completed, both you and we should retain a copy. The items checked below are attached to and become part of this lease and are binding even if not initialed or signed:

- Access Gate Addendum
- Additional Special Provisions
- Allocation Addendum for: elect, gas, water, trash, recycling
- central system costs
- cable/satellite
- stormwater drainage
- online payment site
- Animal Addendum
- Apartment Rules or Community Policies
- asbestos (if present)
- Bed Bug Addendum
- Early Termination Addendum
- Enclosed Garage Citizen or Storage Unit Addendum
- Intrusion Alarm Addendum
- Inventory & Condition Form
- Lease Contract Guarancy (guarantees, if more than one)
- Legal Description of Apartment (optional, if rental term longer than one year)
- Military Addendum
- Mold Information and Prevention Addendum
- Move-Out Cleaning Instructions
- Notice of Intent to Move Out Form
- Parking Permit or Sticker (quantity, if applicable)
- Renters’ Liability Insurance Addendum
- Repair or Service Request Form
- Security Deposit or Antenna Addendum
- Security Guidelines Addendum
- P.O. Tenant Guide to Water Allocation
- Utility Submetering Addendum: elect, gas, water
- Other
- Other
- Other
- Other

---

**You are legally bound by this document. Please read it carefully. A facsimile or electronic signature on this Lease is as binding as an original signature. Before submitting a rental application or signing a Lease, you may take a copy of these documents to review and/or consult an attorney. Additional provisions or changes may be made in the Lease if agreed to in writing by all parties. You are entitled to receive a copy of this Lease after it is fully signed. Keep it in a safe place. This lease is the entire agreement between you and us. You are NOT relying on any oral representations.**

**Resident or Residents (all sign below)**

- **Name of Resident:**
- **Date signed:**

**Owner or Owner's Representative (signing on behalf of owner)**

- **Name of Owner:**
- **Date signed:**

---

Your Initials: ____________ Initials of Owner/Representative: ____________

Date: ____________

4826-0680-0520.3 I-22
Lease Contract Addendum for Units Participating in Government Regulated Affordable Housing Programs

1. Addendum. This is an addendum to the Lease Contract ("Lease") executed by you, the resident(s) on the dwelling you have agreed to rent. That dwelling is:

Apartment: __________________________

(name of apartment)
or another dwelling located at __________________________

(street address of house, duplex, etc.)

City/State where dwelling is located ____________

2. Participation in Government Program. We, as the owner of the dwelling you are renting, are participating in a government regulated affordable housing program. This program requires both you and us to verify certain information and to agree to certain provisions contained in this addendum.

3. Accuracy Information in Application. By signing this addendum, you are certifying that the information provided in the Rental Application or any Supplemental Rental Application regarding your household annual income is true and accurate.

4. Request(s) for Information. By signing this addendum, you agree that the annual income and other eligibility requirements for participation in this government regulated affordable housing program are substantial and material obligations under the Lease. Within seven days after our request, you agree to comply with our requests for information regarding annual income and eligibility, including requests by the owner and the appropriate government monitoring agency. These requests to you may be made to you now and any time during the Lease term or renewal period.

5. Failure to Answer or Inaccurate Information May Be Good Cause Grounds for Eviction. If you refuse to answer or do not provide accurate information in response to the requests in Par. 4 above, it may be considered a substantial violation of the Lease and good cause grounds for terminating and/or not renewing your Lease and for an eviction. It makes no difference whether the inaccuracy of the information you furnished was intentional or unintentional.

6. Termination or Non-Renewal of Lease for Housing Tax Credit (HTC) and HOME Program Units. Provisions in Par. 4.6.3 of this Addendum shall apply only to residents living in a dwelling covered by either the HTC program or the HOME program. Par. 4.6.3 of this Addendum also overrides any contrary provisions contained in Par. 32 and Par. 38 of the Lease. We will not evict a resident solely on the basis that the resident is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

6.1 Housing Tax Credit Program. For rental properties participating in the HTC program, IRS Revenue Bulletin 2008-42 provides that a property owner may not evict a resident or terminate a tenancy except for good cause. In addition, for HTC units, we must provide the notice required under 32.3 of the Lease, if evicting during the lease term, or Par. 3 of the Lease, if terminating your residency at the end of an initial or renewal term.

6.2 HOME Program. For rental properties participating in the HOME program, federal regulation 24 CFR 92.253 provides that a property owner may not evict a resident or refuse to renew a Lease except for good cause. In addition, for HOME program units, the property owner must provide a resident with at least 30 days written notice before either seeking an eviction or not renewing a Lease. The written notice must specify the grounds for eviction or nonrenewal of the Lease.

6.3 Good Cause. If challenged by a resident, a court may determine if a property owner has good cause to evict, terminate a tenancy or not renew the Lease. "Good cause" may include, but is not limited to, non-payment of rent, failure to answer or provide accurate information, as required by Par. 4 and 5 of this Addendum, serious or repeated Lease violations, or breaking the law.

7. No Lien or Lockout for Unpaid Sums. For rental properties that are supported by HTC allocations, sec. 2306.6738, Texas Government Code, prohibits such property owners from threatening or conducting a lockout unless allowed by judicial process; necessary to perform repairs or construction work; or responding to an emergency. Personal property of a resident may not be seized or threatened to be seized except by judicial process unless the premises has been abandoned as required by 24 CFR 92.253. This paragraph overrides any contrary provisions contained in Par. 14 of Par. 32 of the Lease.

8. Student Status. By signing this addendum, you agree to notify the owner, in writing, if there are any changes in the student status of any residents (including replacement residents) occupying this unit.

9. Conflict with Governing Law. To the extent that any part of your Lease or this addendum conflicts with applicable federal, state, or local laws or regulations, the law or regulation overrides that portion of your Lease or this addendum.

Resident or Residents (all sign below)

(Name of Resident) Date signed

(Name of Resident) Date signed

(Name of Resident) Date signed

(Name of Resident) Date signed

(Name of Resident) Date signed

Owner or Owner’s Representative (sign below)

Date signed

You are entitled to receive a copy of this Addendum after it is fully signed. Keep it in a safe place.

Copyright 2015, Texas Apartment Association, Inc.
REPORTING REQUIREMENTS

The Operations Manager shall prepare and provide in a form approved by the Owner:

a) **Lease-up Monitoring.** Beginning with the Occupancy Commencement Date and ending on the date on which Initial 100% Occupancy occurs, a weekly report:
   
i) A summarized discussion of activities for the reporting period
   
ii) Marketing activities to generate interest
   
iii) Traffic Summary/Traffic stop reports
   
iv) Vacancy Report and Rent Rolls

b) **Compliance.** On or before the tenth (10th) day of each month beginning with the initial leasing period:
   
i) A low income housing credit monitoring form, an occupancy/rental report in the form approved by the Investor Member, provided monthly one month in arrears, within ten (10) days of the end of the month being reported
   
ii) copies of all initial tenant leases and associated application information, including third party verification information and copy of the audit, for leases entered into or renewed during the preceding month, and as requested copies of all leases other than initial leases and any related back-up documentation.

c) **Monthly Reporting.** Within twenty (20) days after the end of each month, beginning with the initial leasing period of the Apartment Complex, a report containing:
   
i) A summarized discussion of Apartment Complex operations and activities for the reporting period.
   
ii) Financial Statements (unaudited) in Month to Date and Year to Date format:
      
(1) Balance Sheet

(2) Income Statement

(3) Cash flow statement
(4) Trial Balance in Excel format or equivalent form approved by the Owner

(5) Statements for the reserve account

(6) Complete Detailed General Ledger for the reporting period

(7) Mortgage Statements

iii) A LIHTC Monthly Housing Credit Form

iv) A Rent Roll/Occupancy Report

v) A certification of the Company Manager that Apartment Complex and its tenants are in compliance with all applicable federal, state and local requirements and regulations

vi) All other information, which would be pertinent to the Owner regarding the Apartment Complex activities during the reporting period.

d) **First Year Operations.** Operations Manager shall prepare and provide to Owner a first year (1st) operating budget at least forty-five (45) days prior to the start of occupancy.

e) **Annual Reporting Requirement.**

i) By October 15, of each year an annual pro-forma operating budget or the company for the next year, which budget shall have been prepared by Management Agent.

ii) Capital improvement plan

iii) All other information, which would be pertinent to the Owner regarding the Apartment Complex activities.

Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Operating Agreement.
EXHIBIT J

FORM OF REQUEST FOR PAYMENT
REQUEST FOR PAYMENT

REQUEST NO. __________

DATE: ________________

DRAW #: Amount: $

1. Pursuant to that certain Amended and Restated Operating Agreement dated as of February 1, 2019 and any modifications thereof (the “Agreement”) of Canova Palms, LLC, a Texas limited liability company (the “Company”), between Saigebrook Canova, LLC, a Texas limited liability company (the “Co-Managing Member”), O-SDA Canova, LLC, a Texas limited liability company (the “Administrative Member”), and HCP-ILP, LLC, a Nevada limited liability company (the “Investor Member”), the Company hereby requests a Draw of proceeds of [the Loans/Capital Contributions]. The Investor Member has appointed Hunt Capital Partners, LLC, a Delaware limited liability company (“Hunt”), as its agent for reviewing and approving Draw requests.

2. The Company has furnished to Hunt a waiver of liens to date, in form and content approved by Hunt, from the Contractor, and each of the subcontractors who were paid by the Company with the proceeds from all preceding advances, upon request of Hunt.

3. The Managing Member covenants and agrees herewith that:
   (a) Each of the Managing Member and the Company has complied with all duties and obligations required to date to be carried out and performed pursuant to the terms of the Agreement and each Project Document.
   (b) All representations and warranties made in the Agreement are true and correct in all material respects as of the date of this certification (other than representations and warranties made as to a specific date).
   (c) No default or Event of Default has occurred and is continuing under the Agreement or any Project Document.
   (d) The Apartment Complex has not been damaged by fire or other casualty or, in such event, to the extent permitted under the terms and provisions of the Agreement and the Project Documents, the Apartment Complex shall have been fully repaired and restored, or be in the process of being fully repaired and restored, to the state of completion achieved immediately before the casualty.
   (e) All funds previously disbursed have been used solely for the purposes as set forth in the Agreement and the Project Documents.
   (f) All construction prior to the date of this request has been accomplished substantially in accordance with the approved Plans and Specifications.
(g) All sums advanced by Hunt on account of this Draw will be used solely for the purpose of reimbursing the Company for amounts paid by the Company as shown on the documentation provided or as otherwise provided for in the Agreement or Project Documents.

(h) There are no liens outstanding against the Premises or its equipment except as permitted under the Agreement.

(i) The amount of undisbursed funds is sufficient to pay the cost of completing the project in accordance with the approved Plans and Specifications.

4. The terms used herein have the same meaning and definitions as those set forth in the Agreement.

5. The Company certifies that the statements made in this certification and any documents submitted herewith and identified herein are true and has duly caused this certification to be signed on its behalf by the undersigned authorized agent to request disbursements.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS whereof, this Request for Payment is dated as of the date set forth above.

SAIGEBROOK CANOVA, LLC, a Texas limited liability company

By: Saigebrook Development, LLC, a Florida limited liability company, its managing member

By: ______________________________
Name: Lisa M. Stephens
Its: Manager
EXHIBIT L

RESERVED
EXHIBIT M

FORM OF ASSIGNMENT AND ASSUMPTION AND AMENDMENT
ASSIGNMENT AND ASSUMPTION OF LIMITED LIABILITY COMPANY INTERESTS
AND
AMENDMENT TO FIRST AMENDED AND RESTATED OPERATING AGREEMENT
OF
CANOVA PALMS, LLC

This Assignment and Assumption of Limited Liability Company Interests and Amendment to First Amended and Restated Operating Agreement of Canova Palms, LLC (the “Assignment and Assumption Agreement”), dated as of [__________] (the “Assignment Date”), is entered into by and among HCP-ILP, LLC, a Nevada limited liability company (the “Assignor”); Canova Palms, LLC, a Texas limited liability company (the “Company”); Saigebrook Canova, LLC, a Texas limited liability company and O-SDA Canova, LLC, a Texas limited liability company in their capacity as the managing members of the Company (collectively, the “Managing Member”); Hunt Capital Partners Tax Credit Fund ______, LP, a Delaware limited partnership (the “Assignee”); and the Managing Member, in its role as guarantor, Saigebrook Development, LLC, a Florida limited liability company (“Saigebrook Development”), O-SDA Industries, LLC, a Texas limited liability company (“O-SDA Developer”), Lisa M. Stephens, individually and Megan D. Lasch, individually, (jointly and severally Managing Member, Saigebrook Development, O-SDA Developer, Lisa M. Stephens and Megan D. Lasch are individually and collectively referred to herein as the “Guarantors”). The Assignor and Assignee are sometimes referred to together as the “Assigning Parties”; all other parties are sometimes referred to collectively as the “Non-Assigning Parties”.

WHEREAS, the Assignor acquired a Limited Liability Company Interest in the Company (the “ILP Interest”) pursuant to a First Amended and Restated Operating Agreement of the Company dated as of February 1, 2019 (the “Agreement”);

WHEREAS, Section 11.1 of the Agreement permits Assignors to make an assignment of the ILP Interest to Assignee;

WHEREAS, Section 11.2 of the Agreement authorizes the substitution of the Assignee as a Substitute Investor Member;

WHEREAS, the Assignor wishes to assign the ILP Interest to the Assignee, as of the Assignment Date, and the Assignee wishes to accept such assignment of the ILP Interest for the consideration and upon the terms and conditions hereinafter set forth;

WHEREAS, the Assignee is willing to undertake all of the remaining obligations of Assignor under the Agreement (the “Obligations”); and

WHEREAS, the Guarantors entered into that certain Guaranty Agreement dated as of February 1, 2019 (the “Guaranty”) in which they agreed to guarantee certain obligations of the Managing Member under the Agreement;

WHEREAS, the Non-Assigning Parties desire to acknowledge such undertaking of the respective Obligations by the Assignees and to release the Assignors from the Obligations;
NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration hereinafter described, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Capitalized terms used but not defined herein shall have the respective meanings attributed thereto in the Agreement.

2. The Assignor hereby assigns to the Assignee and the Assignee hereby accepts from the Assignor, one hundred percent (100%) of the Assignor’s right, title and interest in and to the ILP Interest. The ILP Interest consists of the Assignor’s entire right to allocations of profits, gain, income or losses and tax credits and all items entering into the computation thereof, and to distributions of cash, however denominated, under the Agreement.

3. In consideration of the assignment effected hereby, the Assignee hereby assumes and agrees to discharge all of the Obligations. In addition, the Assignee shall promptly reimburse the Assignor for all Capital Contributions heretofore made by the Assignor to the Company and for such other expenditures heretofore incurred by the Assignor relating to its acquisition of the ILP Interest as the Assignor and the Assignee shall mutually determine.

4. The Non-Assigning Parties hereby (i) acknowledge the assignment of the ILP Interest and assumption by Assignee of the Obligations pursuant to this Assignment and Assumption Agreement and (ii) release Assignor from all of its respective Obligations. Accordingly, from and after the Assignment Date, the Assignee shall be responsible for all of the Obligations of the Assignor under the Agreement.

5. By its execution hereof, Assignee hereby agrees to become a Substitute Investor Member of the Company and, subject to the foregoing provisions of this Assignment and Assumption Agreement, agrees to be bound (to the same extent as Assignor was bound) by the Project Documents to which the Assignor was a party and by the provisions of the Agreement as they relate to the Assignor or the ILP Interest.

6. Assignee is hereby admitted to the Company as a Substitute Investor Member for all purposes of the Agreement.

7. The Assignor represents, warrants and covenants to the Assignee that (i) the Assignor is the sole owner of the ILP Interest, free and clear of all undisclosed liens, encumbrances, security interests or claims of third parties of any kind or description; (ii) the Assignor has the power and authority to effect the assignment of the ILP Interest as provided herein and such assignment does not violate any law or constitute a default under any agreement to which the Assignor is a party or by which the Assignor is bound; (iii) this Assignment and Assumption Agreement is sufficient in all respects to assign to the Assignee the ILP Interest and (iv) the Assignor will take no action inconsistent with or in derogation of the assignment of the ILP Interest effected hereunder.

8. The Assignee represents, warrants and covenants to the Assignor that the Assignee has the power and authority to acquire the ILP Interest as provided herein and assume the Obligations such acquisition and assumption do not violate any law or constitute a default under any agreement to which the Assignee is a party or by which the Assignee is bound.
9. The Member Information Schedule to the Agreement is deleted in its entirety and the attached Amended Member Information Schedule substituted therefor. From and after the Assignment Date, the attached Amended Member Information Schedule shall be the Member Information Schedule for all purposes of the Agreement.

10. The Guarantors hereby reaffirm and confirm their respective obligations under the Guaranty for the benefit of the Assignee and acknowledge that the Assignee shall succeed to all rights of the Assignor pursuant to the Guaranty.

11. The parties hereto hereby confirm the continuing validity and enforceability of the Agreement, acknowledging that the Assignee shall succeed to all rights and obligations of the Assignor thereunder as of the Assignment Date. This provision shall be construed to amend the Agreement to the extent necessary to reflect the admission of the Assignee to the Company as a Substitute Investor Member and to give effect to the other provisions of this Assignment and Assumption Agreement.

12. The parties agree that the assignment of the ILP Interest, the admission of the Assignee to the Company as a Substitute Investor Member and the other transactions effected hereby shall be effective for all purposes as of the Assignment Date.

13. The parties hereto agree to cooperate in good faith to effect any further amendments to the Agreement or Project Documents and to take such other steps as may be necessary or appropriate in order to more fully reflect and further evidence the assignment of the ILP Interest and the other transactions effected hereby.

14. This instrument may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties have not signed the original or the same counterpart.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption Agreement to be executed and delivered as a sealed instrument as of the Assignment Date.

ASSIGNOR:

HCP-ILP, LLC,
a Nevada limited liability company

By: Hunt Capital Partners, LLC,
a Delaware limited liability company

Its: Manager

By: ___________________________
Name: Jeffrey N. Weiss
Title: President

ASSIGNEE:

HUNT CAPITAL PARTNERS TAX CREDIT FUND ______, LP, a Delaware limited partnership

By: HCP GP _____, LLC, a Nevada limited liability company, its general partner

By: Hunt Capital Partners, LLC, a Delaware limited liability company, its sole member

By:_____________________________
Jeffrey N. Weiss, President

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
COMPANY:

CANOVA PALMS, LLC,
a Texas limited liability company

By:  Saigebrook Canova, LLC,
a Texas limited liability company
Its:  Managing Member

By:  Saigebrook Development, LLC,
a Florida limited liability company
Its:  Managing Member

By:    __________________________
Name:  Lisa M. Stephens
Title:  Manager

CO-MANAGING MEMBER:

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By:  Saigebrook Development, LLC,
a Florida limited liability company
Its:  Managing Member

By:    __________________________
Name:  Lisa M. Stephens
Title:  Manager

ADMINISTRATIVE MEMBER:

O-SDA CANOVA, LLC,
a Texas limited liability company

By:  O-SDA Industries, LLC,
a Texas limited liability company
Its:  Sole Member

By:    __________________________
Name:  Megan D. Lasch
Title:  Managing Member
# AMENDED MEMBER INFORMATION SCHEDULE

TO THE  
FIRST AMENDED AND RESTATED  
OPERATING AGREEMENT OF  
CANOVA PALMS, LLC

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<thead>
<tr>
<th>Name and Address</th>
<th>Capital Contribution</th>
<th>Taxpayer Identification No.</th>
</tr>
</thead>
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<td><strong>Managing Members:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saigebrook Canova, LLC</td>
<td>$100.00</td>
<td>45-3062708</td>
</tr>
<tr>
<td>220 Adams Drive Ste. 280 #138&lt;br&gt;Weatherford, Texas 76086</td>
<td></td>
<td></td>
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<tr>
<td><strong>Administrative Member:</strong></td>
<td></td>
<td></td>
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<tr>
<td>O-SDA Canova, LLC</td>
<td>$100.00</td>
<td>80-0641068</td>
</tr>
<tr>
<td>5714 Sam Houston Circle&lt;br&gt;Austin, Texas 78731</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Investor Member:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hunt Capital Partners Tax Credit Fund, LP</td>
<td>$__________</td>
<td>[__________]</td>
</tr>
<tr>
<td>15910 Ventura Boulevard, Suite 1100&lt;br&gt;Encino, California 91436</td>
<td>(subject to adjustment as provided in the Agreement)</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT N

RESERVED
EXHIBIT O

PURCHASE OPTION AGREEMENT
PURCHASE OPTION AGREEMENT

This Purchase Option Agreement (this “Agreement”) is made and entered into as of February 1, 2019, by and between Canova Palms, LLC, a Texas limited liability company (“Owner”), Saigebrook Canova, LLC, a Texas limited liability company (the “Offeree”), HCP-ILP, LLC, a Nevada limited liability company (the “Investor Member”) with reference to the following recitals of fact:

RECEDALS:

A. WHEREAS, Owner owns that certain real property located in the City of Irving, State of Texas and more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and owns certain improvements situated thereon, commonly known as “Canova Palms,” a 58-unit low income housing development (collectively, the “Property” or the “Project”);

B. WHEREAS, Owner desires to grant to the Offeree an option to purchase the Property;

C. WHEREAS, the Investor Member is the sole investor member of the Owner and owns a 99.99% investor member interest (the “Interest”) in the Owner;

D. WHEREAS, the Investor Member desires to grant to the Offeree an option to purchase the Interest; and

E. WHEREAS, the parties hereto desire to set forth the terms of the option granted herein from the Owner to the Offeree to purchase the Property.

NOW, THEREFORE, the parties hereto agree as follows:

AGREEMENT:

1. Grant of Option. Owner and Investor Member hereby grants to the Offeree, or its nominee, which nominee may be O-SDA Canova, LLC, a Texas limited liability company (the “Administrative Member”), an option (the “Option”) to purchase the Property or the Interest on the terms and conditions set forth in this Agreement.

2. Term of Option. The term of the Option shall commence on the first day following the expiration of the Compliance Period and shall expire at 11:59 p.m. (Pacific Standard Time) on the last day of the 24th month following its commencement (the “Option Term”); provided, however, that the Option Term shall terminate upon the earlier removal and/or withdrawal of the Offeree as a managing member of the Owner pursuant to the terms of Owner’s First Amended and Restated Operating Agreement of even date herewith (as the same may be amended from time to time, the “Operating Agreement”); further provided, however, that if the Administrative Member remains the administrative member of the Owner pursuant to the terms of the Operating Agreement and is not in default under the Operating Agreement, then the Administrative Member will become the Offeree.
3. **Manner of Exercising Option.** The Offeree may exercise the Option by delivering to the Owner, at any time during the Option Term, written notice of such exercise, provided, however, that the Option may not be exercised if an Event of Default has occurred under the Operating Agreement and has not been cured under any applicable cure period. The notice of exercise shall state that the Option is exercised without condition or qualification.

4. **Purchase Price.**

   (a) **Purchase Price for the Project.** The purchase price for the Project pursuant to the Option shall be the greater of the following amounts, subject to the provisos set forth herein below:

   (i) **Debt and Taxes.** The sum of (i) the amount of any outstanding indebtedness secured by the Project, which indebtedness may be assumed by the Offeree, if permitted by the lenders associated therewith, (ii) the amount of federal, state and local tax liability that the partners of Owner would incur as a result of such sale, including any tax liability on amounts paid under this clause (ii) and clauses (iii) and (iv) below, (iii) the amount of unreimbursed deficiency in Code Section 42 low income housing tax credits recognized by the Investor Member as an investor member of Owner with respect to the Project as compared to the level agreed to be provided to the Investor Member by the Owner, and (iv) any Tax Credit Shortfall Payments and Asset Management Fees and other indemnification payments otherwise due and owing to the Investor Member under the terms of the Agreement.

   (ii) **Fair Market Value.** The fair market value of the Project (without regard to any customary costs) appraised as a low-income housing development to the extent continuation of such use is required under any restrictions applicable to the Project. The fair market value of the Project shall be determined as follows: Owner and the Offeree shall select a mutually acceptable appraiser. In the event the parties are unable to agree upon an appraiser the Owner and the Offeree shall each select an appraiser. For purposes of this subparagraph 4(b), the parties hereto agree that, on behalf of Owner, Investor Member, or a successor investor member in Owner, shall have the right to select the appraiser(s) that Owner is entitled to select hereunder. If the difference between the two appraisals is less than or equal to ten percent (10%) of the lower of the two appraisals, the fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser whose determination of fair market value shall be deemed binding on all parties. If the two appraisers are unable jointly to select a third appraiser, either the Owner or the Offeree may, upon written notice to the other, request that the appointment be made by the Case Management Center of the American Arbitration Association for Texas. The Owner and the Offeree shall each pay the costs of an appraiser they each select and shall share the cost equally of any appraiser jointly selected or any third appraiser, including any appraiser chosen by the American Arbitration Association chapter president.

   (b) **Purchase Price for the Interest.** The purchase price for the Interest pursuant to the Option shall be equal to (i) what the Investor Member would have received under the Operating Agreement assuming the Project was sold using the purchase price determined by Section 4(a) above.
5. Reserved.

6. Completion of Sale.

(a) Prior to the close of escrow on the Property following exercise of the Option, the Owner shall cause a title company to issue, upon close of escrow, an ALTA owner’s policy of title insurance dated as of the close of escrow, in an amount equal to the purchase price for the Property, showing title to the Property vested in the Offeree and showing as exceptions all encumbrances of record.

(b) Escrow for the sale of the Property shall close no earlier than the later of ninety (90) days after Owner’s receipt of the Offeree’s written notice of exercise of the Option, or the last day of the Compliance Period, at which time the purchase price shall be due and payable. The Offeree shall use its best efforts to obtain the consent to the sale of the holders of any mortgages or deeds of trust on the Property, if required. Owner shall convey the Property to the Offeree by means of a grant deed. The costs of such sale shall be apportioned between Owner and the Offeree according to the custom then in effect in Irving, Texas. The following shall apply to the sale of the Property: (i) the sale of the Property shall be on an as-is, where-is basis, without representation or warranty, except such representations or warranties as are customarily included in a grant deed in Texas; and (ii) rents, insurance, taxes and debt service then due and payable shall be apportioned as of the day the grant deed is actually recorded in the official records of Irving, Texas.

7. Quitclaim Deed and Termination of Option. Upon termination of the Option, the Offeree agrees, upon the Owner’s request, to (a) execute and deliver to the Owner a quitclaim deed, releasing all of the Offeree’s right, title and interest in and to the Option within thirty (30) days after termination of the Option Term, and (b) execute, acknowledge and deliver such other documents as may be reasonably required by the Owner’s title company to remove the cloud of the Option from title to the Property.

8. Notices. Notices, demands and communications between the parties shall be in writing and shall be served personally or by depositing the same in the certified United States mail, return receipt requested, post prepaid, and,

if intended for the Owner shall be addressed to:

Canova Palms, LLC
220 Adams Drive Ste. 280 #138
Weatherford, Texas 76086
Attention: Lisa Stephens
Email: lisa@saigebrook.com
with a copy to:

Saigebrook Canova, LLC
220 Adams Drive Ste. 280 #138
Weatherford, Texas 76086
Attention: Lisa Stephens
Email: lisa@saigebrook.com

with a copy to:

Shutts & Bowen LLP
200 South Biscayne Boulevard, Suite 4100
Miami, Florida 33131
Attention: Gary J. Cohen
Email: gcohen@shutts.com

and:

HCP-ILP, LLC
15910 Ventura Boulevard, Suite 1100
Encino, California 91436
Attention: Jeffrey N. Weiss
Email: jeff.weiss@huntcompanies.com

with a copy to:

Nixon Peabody LLP
799 9th Street NW, Suite 500
Washington, DC 20001-5327
Attention: Matthew W. Mullen
Email: mmullen@nixonpeabody.com

if intended for Offeree shall be addressed to:
9. **Attorney’s Fees.** In the event of any action or proceeding at law or in equity between any of the parties hereto to enforce any provision of this Agreement or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to the litigation shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys’ fees incurred therein by the prevailing party, and if the prevailing party recovers judgment in any action or proceeding, the costs, expenses and attorney’s fees shall be included in and as part of the judgment.

10. **Miscellaneous.**

   (a) The Owner and the Offeree each represent and warrant that neither has had or will have any dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the transactions contemplated hereby. Each party hereto hereby agrees to indemnify and hold harmless the other party from and against costs, expenses or liabilities for compensation, commissions or charges which may be claimed by any broker, finder or similar party by reason of any actions of the indemnifying party.

   (b) The rights and obligations of the Owner and the Offeree under this Agreement shall inure to the benefit of and bind the respective successors and assigns.

   (c) The captions used herein are for convenience of reference only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

   (d) Time is of the essence of each and every agreement, covenant and condition of this Agreement.

   (e) This Agreement shall be interpreted in accordance with, and governed by, the laws of the State of Texas.
(f) This Agreement constitutes the entire agreement by and among the Owner and the Offeree with respect to the subject matter hereof, and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the Owner and the Offeree; 

provided, however, that no amendment or modification shall be effective unless consented to in writing by the Investor Member as the investor member of the Owner.

(g) Owner and the Offeree shall subordinate this Agreement to the lien of any deed of trust necessary to develop the Property.

(h) The parties shall not record this Agreement or a Memorandum of Purchase Option Agreement in the official records of Irving Texas or Texas.

(i) Capitalized terms not otherwise defined herein shall have the meanings set forth in the Operating Agreement.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, Owner and the Offeree have executed this Agreement as of the date first above written.

OWNER:

CANOVA PALMS, LLC,
a Texas limited liability company

By: Saigebrook Canova, LLC,
a Texas limited liability company
Its: Managing Member

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: [Signature]
Name: Lisa M. Stephens
Title: Manager

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, Owner and the Offeree have executed this Agreement as of the date first above written.

OFFEREE:

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: [Signature]
Name: Lisa M. Stephens
Title: Manager

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, Owner and the Offeree have executed this Agreement as of the date first above written.

OWNER:

CANOVA PALMS, LLC,
a Texas limited liability company

By: Saigebrook Canova, LLC,
a Texas limited liability company
Its: Managing Member

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: _______________________
Name: Lisa M. Stephens
Title: Manager

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
IN WITNESS WHEREOF, Owner and the Offeree have executed this Agreement as of the date first above written.

INVESTOR MEMBER:

HCP-ILP, LLC,
a Nevada limited liability company

By: Hunt Capital Partners, LLC,
a Delaware limited liability company

Its: Manager

By: [Signature]

Name: Jeffrey A. Weiss
Title: President
EXHIBIT A

LEGAL DESCRIPTION

Tract 1: (Fee Simple)

Being Lot 1, in Block A, of J D I, LLC, ADDITION, an Addition to the City of Irving, Dallas County, Texas, according to the Map thereof recorded under cc# 20080220250, Real Property Records, Dallas County, Texas.

Tract 2: (Easement Estate)

Non-Exclusive Access Easement as shown and created on plat across a portion of Lot 2, Block A, of J D I, LLC, ADDITION, an Addition to the City of Irving, Dallas County, Texas, according to the Map thereof recorded under cc# 20080220250, Real Property Records, Dallas County, Texas.
EXHIBIT P

PLANS AND SPECIFICATIONS

[To be attached at the full funding of the First Installment.]
EXHIBIT Q

TITLE AND SURVEY REQUIREMENTS
SURVEY RESPONSIBILITIES AND SPECIFICATIONS

1. ____ Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by existing monuments or witnesses.

2. ____ Address(es) if disclosed in Record Documents, or observed while conducting the survey.

3. ____ Flood zone classification (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent) depicted by scaled map location and graphic plotting only.

4. ____ Gross land area (and other areas if specified by the client).

5. ____ Reserved.

6. ____ Current zoning classification, as provided by the insurer.

7. ____ Exterior dimensions of all buildings at ground level.

8. ____ Substantial features observed in the process of conducting the survey (in addition to the improvements and features required above such as parking lots, billboards, signs, swimming pools, landscaped areas, etc.

9. ____ Striping, number and type (e.g. handicapped, motorcycle, regular, etc.) of parking spaces in parking areas, lots and structures.

10. ____ Determination of the relationship and location of certain division or party walls designated by the client with respect to adjoining properties (client to obtain necessary permissions). **AS APPLICABLE.**

11. ____ Location of utilities (representative examples of which are listed below) existing on or serving the surveyed property as determined by:

   (a) Observed evidence.

   (b) Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources (with reference as to the source of information).

   • Railroad tracks, spurs and sidings;

   • Manholes, catch basins, valve vaults and other surface indications of subterranean uses;

   • Wires and cables (including their function, if readily identifiable) crossing the surveyed property, and all poles on or within ten feet of the surveyed property. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the dimensions of all encroaching utility pole cross...
members or overhangs; and

utility company installations on the surveyed property.

12. ____ Governmental Agency survey-related requirements as specified by the Company, such as for HUD surveys, and surveys for leases on Bureau of Land Management managed lands.

13. ____ Names of adjoining owners of platted lands according to current public records.

14. ____ Distance to the nearest intersecting street.

15. ____ Observed evidence of current earth moving work, building construction or building additions.

16. ____ Proposed changes in street right of way lines, if information is available from the controlling jurisdiction. Observed evidence of recent street or sidewalk construction or repairs.

17. ____ Observed evidence of site use as a solid waste dump, sump or sanitary landfill.

18. ____ Location of wetland areas as delineated by appropriate authorities.

19. ____ (a) Locate improvements within any offsite easements or servitudes benefitting the surveyed property that are disclosed in the Record Documents provided to the surveyor and that are observed in the process of conducting the survey. AS APPLICABLE.

20. ____ Professional Liability Insurance policy obtained by the surveyor in the minimum amount of $1MM per occurrence / $2MM aggregate to be in effect throughout the contract term. Certificate of Insurance to be furnished upon request.

21. ____ Surveyor’s Certificate in the form attached.
SURVEYOR’S CERTIFICATE

To:

HCP-ILP LLC, a Nevada limited liability company, its successors and/or assigns and Hunt Capital Partners, LLC, a Delaware limited liability company its successors and/or assigns, Company, Title Company, Etc.:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1-4, 6(a),(b), 7(a),(b)(1),(c), 8-10, 11, 13, 14, 16-19 and 20 of Table A thereof. The field work was completed on ___________.

Date of Plat or Map: _____

(Surveyor’s signature, printed name and seal with Registration-License Number)
TITLE POLICY REQUIREMENTS

The title policy for the property must be acceptable to the Investor Members and must be in compliance with the following requirements:

1. The Owner’s Title Policy should be an extended coverage ALTA 2006 Owner’s Policy of Title Insurance with all requirements, general exceptions and standard exceptions deleted. The face amount of the policy should be in the amount of the full development budget for the Project (to be provided at a later date). The policy must name the Company as the insured and insure the fee interest in the Property is vested in the name of the Company free and clear of all preexisting liens and encumbrances except those approved by the Company.

2. The title policy must be written on the current standard ALTA owner’s policy form or a similar form approved by the Investor Members. If the property is located in a state in which ALTA forms of coverage are not used or are unacceptable, the title policy shall provide similar coverage.

3. The title policy shall be issued as an extended coverage policy that insures against and/or deletes any pre-printed or standard exceptions.

4. The amount of the title policy must equal the amount of the full development budget as set forth in Exhibit B.

5. The effective date of the title policy shall be no earlier than the Closing Date. Upon the resyndication of the Investor Member’s Interest, the effective date shall be brought down to the date of admission of the substitute Investor Member.

6. Schedule A of the title policy must (a) name as the “Insured” the Company as constituted as of the issuance date of the title policy and as may be reconstituted from time to time, (b) insure that the property is owned solely by the Company, and (c) insure that the Company’s interest in the property is fee simple absolute or a leasehold, as applicable.

7. The legal description of the property described in the title policy must match that shown on the survey of the property and must include any appurtenant easements.

8. If Schedule B of the title policy indicates the presence of any easements that are not found on the survey and identified by recording information, the title policy must provide affirmative insurance against any loss that conflicts with the use or diminishes the value of the improvements resulting from the exercise by the holder of such easement or its right to use or maintain that easement.

9. If the title policy includes any exception for taxes, assessments or other items which may become a lien on the property, it must insure that such taxes, assessments or items are “not yet due and payable.”

10. Any tenant’s rights exception should contain a qualification that such rights are “to leaseholds of parties in possession, as tenants only, under unrecorded leases.”
11. The Owner’s Policy shall include such other endorsements whenever available as follows: (1) ALTA 9 (comprehensive endorsement), (2) Land Same as Survey, (3) Contiguity (if applicable), (4) Access, (5) Tax Lot, (6) Subdivision Map Act, (7) Zoning, (8) Future Improvements/Blanket Easement (similar to CLTA 103.1-06, (9) Mechanic’s Lien, (10) Environmental, (11) Non-imputation (similar to the ALTA 15.1-06 and adding HCP-ILP LLC, a Nevada limited liability company and Hunt Capital Partners, LLC, a Delaware limited liability company to the parties identified as incoming entities), (12) Special Valuation (tax credit benefit or maximum actual loss), (13) Utility facility (14) Fairway (if ALTA 2006 form not used), (15) Street address (if possible), (16) Mineral (if applicable), (17) Arbitration, (18) Sample Datedown (the form of this endorsement, when issued, must bring down the date of the final Policy) and (19) Gap (if applicable).

12. The Policy should reflect that the title is vested as fee simple in Canova Palms, LLC.

13. Prior to the issuance of the title policy, the Investor Members and their legal counsel shall each be provided with recorded copies of all exceptions to title coverage. Upon the issuance of the title policy, each shall be provided with a true, correct and complete copy.
EXHIBIT R
FORM OF PAYMENT CERTIFICATE
PAYMENT CERTIFICATE

SAIGEBROOK CANOVA, LLC, a Texas limited liability company, as the co-managing member of CANOVA PALMS, LLC, a Texas limited liability company, and SAIGEBROOK CANOVA, LLC, a Texas limited liability company (“Co-Managing Member”), O-SDA CANOVA, LLC, a Texas limited liability company (“Administrative Member”), SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company (“Saigebrook Development”), O-SDA INDUSTRIES, LLC, a Texas limited liability company (“O-SDA Developer”), Lisa M. Stephens, individually and Megan D. Lasch, individually, as guarantors, hereby certify to HCP-ILP, LLC, a Nevada limited liability company (the “Investor Member”), with respect to the Investor Member’s _______________ Installment (as that and all other capitalized terms used herein are defined in the First Amended and Restated Operating Agreement of the Company dated as of February 1, 2019 (the “Agreement”)), as follows:

[revise conditions as applicable]

1. The Installment Funding Conditions have been achieved and/or satisfied.

2. The Company is not in default in any of its obligations under the Project Documents to which it is a party, no event has occurred which, with the giving of notice or the passage of time, or both, could constitute a default by the Company under the Project Documents to which it is a party and no Bankruptcy of the Company has occurred.

3. All of the representations and warranties of the Managing Member set forth in the Agreement are true and correct in all respects as of the date hereof as if made thereon.

4. The covenants, duties, and obligations of the Managing Member set forth in the Agreement that are required to have been satisfied on or before the date hereof have been satisfied, and the Managing Member has made all payments for all costs incurred by the Company and there are no unpaid costs or invoices outstanding [except [__________]].[List all unpaid costs/invoices, if none, delete bracketed language.]

5. The Managing Member and Company are still in good standing, are still authorized to engage in the activities as set forth in the Agreement, and except as provided to the Investor Member there have been no changes or amendments to the articles, by-laws, certificates or other organizational documents of the Managing Member or the Company.

6. There has been no material adverse change in the financial condition of any Managing Member or Guarantor.

7. No Managing Member is in default in any of its obligations under the Agreement or any of the Project Documents to which it is a party, no event has occurred which, with the giving of notice or the passage of time, or both, could constitute a default by any Managing Member under the Agreement or any of the Project Documents to which it is a party and no Bankruptcy of any Managing Member has occurred.

8. No Guarantor is in default in any of its obligations under the Agreement or any of the Project Documents to which it is a party, no event has occurred which, with the giving of
notice or the passage of time, or both, could constitute a default by any Guarantor under the Agreement or any of the Project Documents to which it is a party and no Bankruptcy of any Guarantor has occurred.

9. None of the Lenders has refused to fund all or any disbursement of its Loan.

10. The Installments of the Investor Member’s Capital Contribution previously contributed to the Company by the Investor Member, and the proceeds of the loans previously funded to the Company by the Lenders have been applied by the Company in accordance with the Development Budget for the Apartment Complex approved by the Investor Member.

11. The undersigned is not aware of the existence of any fact or circumstance which makes untrue or misleading in any material respect any of the statements or information provided to the Investor Member in support of the Funding Conditions for the Installment to which this Certificate relates.

12. There have been no changes or modifications of any kind to the Plans and Specifications, except as disclosed to the Investor Member in writing.

13. All conditions to the effectiveness of the Carryover Allocation imposed by the Code, the Agency or otherwise, which are required to be satisfied prior to the funding of the Installment to which this Certificate relates, have been satisfied, except for the following:

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

14. The Managing Member has fully complied with furnishing the Investor Member any reports or other information required to be provided by the Managing Member pursuant to Article 18 of the Agreement.

(SIGNATURE APPEARS ON THE FOLLOWING PAGE)
This certificate is made on the date hereof to induce the Investor Member to contribute the __________ Installment as set forth in the Agreement.

Dated: ____________________

SAIGEBROOK CANOVA, LLC, a Texas limited liability company

By: Saigebrook Development, LLC, a Florida limited liability company, its managing member

By: _________________________
Name: Lisa M. Stephens
Its: Manager

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: _________________________
Name: Lisa M. Stephens
Its: Manager

______________________________
Lisa M. Stephens, an individual
O-SDA CANOVA, LLC, a Texas limited liability company

By: O-SDA Industries, LLC, a Texas limited liability company, its sole member

By: _________________________________
Name: Megan D. Lasch
Its: Managing Member

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: _________________________________
Name: Megan D. Lasch
Its: Managing Member

_________________________________
Megan D. Lasch, an individual
EXHIBIT S

FORM OF LIHTC CERTIFICATE
LIHTC CERTIFICATE

THIS CERTIFICATE is made to HCP-ILP, LLC, a Nevada limited liability company, and its successors and assigns (the “Investor Member”) as of February 1, 2019, by Saigebrook Canova, LLC, a Texas limited liability company and O-SDA Canova, LLC, a Texas limited liability company (referred to herein, even if only one, as the “Managing Members”), the managing members of Canova Palms, LLC, a Texas limited liability company (the “Company”), with reference to the following facts:

WHEREAS:

A. The Company is the owner of the Canova Palms apartment complex located at 1717 Irving Blvd., Irving, Dallas County, Texas (the “Apartment Complex”);

B. The Investor Member, organized for the purpose, inter alia, of acquiring limited liability company interests in limited liability companies owning housing projects that qualify for low income housing tax credits (the “Housing Tax Credits”) under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”), desires to acquire a limited liability company interest (the “Interest”) in the Company; and

C. Counsel to the Investor Member has been requested to render a tax opinion as to the availability of Housing Tax Credits with respect to the Apartment Complex; and

D. All terms not defined herein shall have the meaning set forth in the First Amended and Restated Operating Agreement of the Company dated as of February 1, 2019.

NOW, THEREFORE, to induce the Investor Member to acquire its Interest and to induce counsel to the Investor Member to render a tax opinion as to the availability of Housing Tax Credits with respect to the Apartment Complex, the Managing Member hereby certifies that the following are true, correct and complete on the date hereof and will remain true, correct and complete throughout the Compliance Period and that the Managing Member shall take no action which would make any of the following untrue:

- The Apartment Complex, consisting of one residential building, is comprised of 58 residential rental units (whether or not occupied). The aggregate square footage of the portions of the Apartment Complex is as follows:

<table>
<thead>
<tr>
<th>Type:</th>
<th>Housing Tax Credit Units</th>
<th>Market Rate Apartment Units</th>
<th>Commercial Space</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of units:</td>
<td>50</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Aggregate square feet:</td>
<td>36,792</td>
<td>6,552</td>
<td>0</td>
</tr>
</tbody>
</table>

- Each of the Housing Tax Credit Units will be occupied by tenants whose income is 60% or less of area median gross income, i.e., a family or individuals whose total income, determined in a manner consistent with the determination of lower income families or individuals under Section 42 of the Code and Section 8 of the United States Housing Act of 1937.
("Section 8"), does not exceed the amount of income levels set forth in the table below, as may be adjusted in accordance with area median income figures provided by U.S. Department of Housing and Urban Development for future years:

[INSERT INCOME LIMIT TABLE]

Furthermore, five (5) of the Housing Tax Credit Units will be occupied by persons whose incomes are at or below 30% of the established area median gross income, twenty (20) of the Housing Tax Credit Units will be occupied by persons whose incomes are at or below 50% of the established area median gross income and twenty-five (25) of the Housing Tax Credit Units will be occupied by persons whose incomes are at or below 60% of the established area median gross income, in accordance with the requirements of the Project Documents.

There are no tenants as of the Closing because the Apartment Complex has not yet been built.

- There are eight (8) units in the Apartment Complex which are not Housing Tax Credit Units. The units in the Apartment Complex which are not Housing Tax Credit Units are not above the average quality standard of the Housing Tax Credit Units.

- On August 15, 2018, the Apartment Complex was granted a Credit Reservation of Housing Tax Credits for the year 2018 in the amount of $890,850 by the Texas Department of Housing and Community Affairs (the “Agency”), the appropriate “housing credit agency” (as defined in Section 42(h)(7)(A) of the Code) of the State of Texas which is the State having jurisdiction over the Apartment Complex. Effective on December 20, 2018, the Apartment Complex received a Carryover Allocation of Housing Tax Credits for the year 2018 in the amount of $890,850 from the Agency. Such Credit Reservation and Carryover Allocation were made based on the application for Housing Tax Credits dated January 23, 2018 and submitted to the Agency for the Apartment Complex, and are in full force and effect.

- The Eligible Basis, as defined in Section 42 of the Code, for the Apartment Complex is projected as follows:
  - Structure and buildings: $____________
  - Personal Property: $____________
  - Site Work: $____________

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)
This Certificate is intended to take effect as a sealed instrument, shall inure to the benefit of the Investor Member and its successors and assigns and shall be binding upon each of the undersigned and each of its successors and assigns. This Certificate may be executed in any number of counterparts which together shall constitute one instrument. This instrument, and all rights and remedies of the parties, shall be determined as to their validity, construction, effect and enforcement, and in all other respects of the same or different nature, by the internal laws of the State of Texas. The undersigned acknowledge that tax counsel to the Investor Member will rely upon the foregoing certifications for purposes of its preparation and delivery of a tax opinion in connection with this transaction and hereby consent to such reliance.

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: [Signature]
Name: Lisa M. Stephens
Title: Manager

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: [Signature]
Name: Megan D. Lasch
Title: Managing Member
This Certificate is intended to take effect as a sealed instrument, shall inure to the benefit of the Investor Member and its successors and assigns and shall be binding upon each of the undersigned and each of its successors and assigns. This Certificate may be executed in any number of counterparts which together shall constitute one instrument. This instrument, and all rights and remedies of the parties, shall be determined as to their validity, construction, effect and enforcement, and in all other respects of the same or different nature, by the internal laws of the State of Texas. The undersigned acknowledge that tax counsel to the Investor Member will rely upon the foregoing certifications for purposes of its preparation and delivery of a tax opinion in connection with this transaction and hereby consent to such reliance.

SAIGEBROOK CANOVA, LLC,
a Texas limited liability company

By: Saigebrook Development, LLC,
a Florida limited liability company
Its: Managing Member

By: ___________________________
Name: Lisa M. Stephens
Title: Manager

O-SDA CANOVA, LLC,
a Texas limited liability company

By: O-SDA Industries, LLC,
a Texas limited liability company
Its: Sole Member

By: ___________________________
Name: Megan D. Lasch
Title: Managing Member
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name Canova Palms

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Letter to Hunt Capital requesting to add 811 units

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 28, 2019

Mr. William Teschke
Director
Hunt Capital Partners
15910 Ventura Blvd., Ste. 1100
Encino, CA 91436

Re: 811 Units – Canova Palms

Dear Billy:

Per the 2019 TDHCA Qualified Allocation Plan, we are hereby submitting a request for your consideration to add up to an additional ten 811 program units at Canova Palms, in Irving, Texas.

Under the First Amended and Restated Operating Agreement for Canova Palms, the Managing Member’s Authority is restricted under section 5.3 without consent of the Investor Member to modify any agreement with the Agency, to enter into any new Project Document or amend any Project Document. As such, Investor Member consent would be required to add 811 units other than those already committed to by Canova Palms in its Participation Agreement with the Department.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 352-213-8700.

Sincerely,

Lisa M. Stephens
President
Existing Development Name: Canova Palms

iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from Hunt denying the request to add 811 units.

ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.
MEMORANDUM

March 1, 2019

Texas Department of Community Affairs (TDHCA)
Attn: Spencer Duran, Section 811 PRAC Program Manager
221 E. 11th Street
Austin, TX 78701

RE: #18361 Canova Palms – additional 811 units

Mr. Duran:

As the investor member in Canova Palms, LLC, we have reviewed your request to increase the number of Section 811 units at the Canova Palms project in Irving. Canova Palms was underwritten with 10 Section 811 units (out of 58 total units) at the time HCP entered Canova Palms, LLC. The addition of more Section 811 units would put a heavier burden on property management to review tenant referrals and coordinate case management. In our experience, higher turnover is often associated with these units. The addition of more Section 811 units would therefore have a detrimental impact on the underwriting of the expected lease-up and operations of the property that HCP approved internally and represented to its investors. As such, HCP cannot approve the addition of more Section 811 units for this property at this time.

Should you need any further assistance, please feel free to contact me with any questions at (818) 380-6112 or via email at william.teschke@huntcompanies.com.

Sincerely,

[Signature]

William Teschke
Director, Project Management
Hunt Capital Partners
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

Introduction

The purpose of this Packet is to formalize the process by which an Applicant establishes its lack of legal authority to commit Section 811 PRA Program Units in a Development as described pursuant to 10 TAC §11.9(c)(6)(A) of the Qualified Allocation Plan (“QAP”).

This Packet is required only if all of the following conditions are true:

1) An Applicant is selecting points under Tenant Populations with Special Housing Needs pursuant to 10 TAC §11.9(c)(6) AND

2) An Applicant is seeking to establish its lack of legal authority where an Applicant or Affiliate Owns or Controls an Existing Development that otherwise meets the criteria established by 10 TAC §11.9(c)(6)(B) of the QAP.

One Packet must be submitted for each Existing Development for which the Applicant or Affiliate is seeking a determination that the needed legal authority is lacking and that the Development can be excluded from consideration.

Instructions: Complete the Questionnaire on page 2 of this packet, then complete the fields on each of the subsequent form cover pages, and attach the denoted documentation for each item behind each included cover pages. Submit each Packet, including Attachments in PDF format and include bookmarks for each item. The Packet must be saved and uploaded as one standalone file to the Serv-U folder associated with each 2019 Multifamily Application.

This Packet and all supporting documentation must be uploaded to the Department’s Serv-U system at the same time as, but as a separate document from, the Application. Refer to the Multifamily Programs Procedures Manual posted at http://www.tdhca.state.tx.us/multifamily/applyforfunds.htm for an explanation of the process to set-up a Serv-U Account if needed.

Questions about this Packet may be submitted to Spencer Duran: spencer.duran@tdhca.state.tx.us
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

Questionnaire

2019 Uniform Multifamily Application #19276, 19295 & 19288

1) Selecting Points under 10 TAC §11.9(c)(6)?
   ☐ No – STOP. PACKET SUBMISSION NOT NEEDED
   ☑ Yes – CONTINUE TO QUESTION 2

2) To obtain Points under 10 TAC §11.9(c)(6), Applicants must first attempt to meet the requirements in §11.9(c)(6)(B).

   Does the Applicant Own or Control an Existing Development that appears on the List of Qualified Existing Developments?
   ☐ No – STOP. PACKET SUBMISSION NOT NEEDED
   ☑ Yes – CONTINUE TO QUESTION 3

3) Is the Applicant seeking to establish its lack of legal authority where an Applicant Owns or Controls an Existing Development that appears on the List of Qualified Existing Developments?
   ☐ No - STOP. PACKET SUBMISSION NOT NEEDED
   ☑ Yes – CONTINUE TO QUESTION 4

4) Can the Applicant provide all three of the following items listed under §11.9(c)(6)(A)(i)-(iii)?
   ☐ No - STOP. PACKET SUBMISSION NOT NEEDED
   ☑ Yes – CONTINUE TO COVER PAGES

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement);

(ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program); AND

(iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party identified in (ii) that they are denying an Existing Development from participation).
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet

Legal Right to Withhold Cover Page §11.9(c)(6)(A)(i)

2019 Uniform Multifamily Application #19276, 19295 & 19288

Existing Development Name Kaia Pointe

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: Second Amended & Restated Operating Agreement

Provide the name of the Third Party: Boston Capital Corporation

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: Section 6.2 - Restrictions on Authority - para a(x) and a(xiii); Section 6.5 Duties and Obligations - para p

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: 46-47, 53 and definitions on page 3, 19, 20, 21 & 22

ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.
KAIA POINTE, LLC

SECOND AMENDED AND RESTATE OPERATING AGREEMENT

Dated as of October 1, 2017
TABLE OF CONTENTS

ARTICLE I DEFINED TERMS......................................................................................................1

ARTICLE II NAME AND BUSINESS.........................................................................................26
  2.1 Name; Continuation.............................................................................................................26
  2.2 Office and Registered Agent.............................................................................................26
  2.3 Purpose...............................................................................................................................26
  2.4 Term and Dissolution........................................................................................................26
  2.5 Nature of Company Interests .........................................................................................27

ARTICLE III MORTGAGE, REFINANCING AND DISPOSITION OF PROPERTY ..............28
  3.1 Personal Liability...............................................................................................................28
  3.2 Refinancings; Permanent Loan Documents........................................................................28
  3.3 Sale of Assets....................................................................................................................28
  3.4 Real Estate Commissions...................................................................................................28
  3.5 Sale of the Apartment Complex .......................................................................................29
  3.6 Investor Provisions...........................................................................................................30

ARTICLE IV MEMBERS; CAPITAL..........................................................................................32
  4.1 Capital and Capital Accounts............................................................................................32
  4.2 Managing Members and Class B Special Member..............................................................33
  4.3 Non-Managing Members...................................................................................................33
  4.4 Liability of the Non-Managing Members ..........................................................................34
  4.5 Special Rights of the Special Member ..............................................................................34
  4.6 Meetings............................................................................................................................35

ARTICLE V CAPITAL CONTRIBUTIONS OF THE INVESTMENT MEMBER AND THE SPECIAL MEMBER ................................................................................................36
  5.1 Payments............................................................................................................................36
  5.2 Return of Capital Contributions........................................................................................41

ARTICLE VI RIGHTS, POWERS AND DUTIES OF MANAGING MEMBER .......................45
  6.1 Authorized Acts ................................................................................................................45
  6.2 Restrictions on Authority..................................................................................................46
  6.3 Personal Services; Other Business Ventures ..................................................................49
  6.4 Business Management and Control .................................................................................49
  6.5 Duties and Obligations .....................................................................................................50
  6.6 Representations and Warranties .......................................................................................54
  6.7 Liability on Mortgages ......................................................................................................58
  6.8 Indemnification of the Managing Member .......................................................................58
  6.9 Indemnification of the Company and the Non-Managing Members ...............................59
  6.10 Operating Deficits ...........................................................................................................60
  6.11 Obligation to Complete the Construction of the Apartment Complex .........................61
  6.12 Certain Payments to the Managing Member and Others ................................................61
  6.13 Delegation of Managing Member Authority ..................................................................63
  6.14 Assignment to Company ................................................................................................63
12.8 Expenses of the Company..................................................................................................94
12.9 Review of Compliance......................................................................................................94
12.10 Inspections ....................................................................................................................94
ARTICLE XIII GENERAL PROVISIONS...............................................................................95
13.1 Restrictions by Reason of Section 708 of the Code.......................................................95
13.2 Amendments to Articles ................................................................................................95
13.3 Notices ............................................................................................................................95
13.4 Word Meanings ...............................................................................................................96
13.5 Binding Effect ................................................................................................................96
13.6 Applicable Law ..............................................................................................................96
13.7 Counterparts ..................................................................................................................96
13.8 Financing Regulations ...................................................................................................96
13.9 Separability of Provisions ..............................................................................................97
13.10 Paragraph Titles ............................................................................................................97
13.11 Amendment Procedure .................................................................................................97
13.12 Extraordinary Non-Managing Member Expenses .......................................................97
13.13 Time of Admission ......................................................................................................98
13.14 Tax Shelter Provisions ................................................................................................98
KAIA POINTE, LLC
SECOND AMENDED AND RESTATED
OPERATING AGREEMENT

This SECOND AMENDED AND RESTATED OPERATING AGREEMENT dated as of
October 1, 2017, is by and among O-SDA KAIA, LLC, a Texas limited liability company (“O-
SDA” or the “Co-Managing Member”), SAIGEBROOK KAIA, LLC, a Florida limited liability
company (the “Administrative Member”), RDEVKAIA, LLC, a California limited liability
company (the “Class B Special Member”), BOSTON CAPITAL CORPORATE TAX CREDIT
FUND XLIV, A LIMITED PARTNERSHIP, a Massachusetts limited partnership (“BCCTCF”
or the “Investment Member”), BCCC, INC., a Massachusetts corporation (“BCCC” or the
“Special Member” and together with BCCTCF, the “Non-Managing Members”), and BOSTON
CAPITAL DIRECT PLACEMENT, A LIMITED PARTNERSHIP, a Massachusetts limited
partnership (the “Original Investment Member”).

Preliminary Statement

KAIA POINTE, LLC (the “Company”) was formed as a limited liability company under
the Act pursuant to an Operating Agreement dated August 25, 2016 (the “Original Agreement”) by and between O-SDA and MEGAN D. LASCH, an individual resident of the State (“Lasch”), and Articles of Organization filed in the Filing Office on August 16, 2016 (the “Articles”).

The Original Agreement was amended and restated pursuant to that certain First Amended and Restated Operating Agreement dated as of August 23, 2017, pursuant to which Lasch withdrew from the Company and the Original Investment Member was admitted as an investment member of the Company (the “Existing Operating Agreement”).

The purposes of this amendment to and restatement of the Existing Operating Agreement are to (i) provide for the withdrawal of the Original Investment Member as a Member, (ii) admit the Investment Member as a Member, (iii) admit the Special Member, the Class B Special Member, and the Administrative Member as Members, (iv) designate O-SDA as the Co-Managing Member, and (v) set out more fully the rights, obligations and duties of the Members.

NOW, THEREFORE, it is agreed and certified, and the Existing Operating Agreement is hereby amended and restated in its entirety, as follows:

ARTICLE I
Defined Terms

The defined terms used in the Agreement shall have the meanings specified below:

“Act” means the Revised Uniform Limited Liability Company Act as in effect in the State.

“Actual Credit” means, with respect to a particular Fiscal Year, the total amount of Tax Credit properly allocable by the Company to the Investment Member for such Fiscal Year. The Actual Credit shall be retroactively revised if the amount of Tax Credit properly allocable to the Investment Member is revised as the result of an audit or is recaptured.
“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provisions of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), respectively; and


The foregoing definition of Adjusted Capital Account Deficit and the application of such term in the manner provided in Section 10.4(b)(x) is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

“Administrative Member” means Saigebrook Kaia, LLC, a Florida limited liability company.

“Admission Date” means the first date on which all parties hereto shall have executed this Agreement.

“Adverse Consequences” means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses and fees, including court costs and reasonable attorneys’ fees and expenses.

“Affiliate” means as to a specified Person, (i) such Person; (ii) each member of the Immediate Family of such Person; (iii) each legal representative, successor or assignee of any Person referred to in the preceding clauses (i) or (ii); (iv) each trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) or (ii); or (v) any other Person (a) who directly or indirectly controls, is controlled by, or is under common control with such Person, (b) who is an officer of, director of, partner in or trustee of, or serves in a similar capacity with respect to, such Person or of which such Person is an officer, director, partner or trustee, or with respect to which such Person serves in a similar capacity, (c) who, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of such Person or of which such Person is directly or indirectly the owner of ten percent (10%) or more of any class of equity securities, (d) who is an officer, director, general partner, trustee or holder of ten percent (10%) or more of the voting securities or beneficial interests of any Person referred to in the foregoing clauses (v) (b) or (v) (c), or (e) who, whatever such Person’s title, performs functions for such Person or any Affiliate of such Person similar to a Chairman or member of the Board of Directors, or executive officer such as the President, Executive Vice President or Senior Vice President, Corporate Secretary, or Treasurer, or any Person holding a five percent (5%) or more equity interest in such Person, or any Person having the power to direct or cause the direction of such Person whether through the ownership of voting securities, by contract or otherwise. An
Affiliate of any Investment Member or of any Investment General Partner does not include an employee of a Person or a Person who is a partner in a partnership or joint venture with any Investment Member or any other Affiliate of any Investment Member if such Person is not otherwise an Affiliate of any Investment Member or any Investment General Partner. For purposes of this definition, the term Affiliate shall not be deemed to include any law firm (or member or associate or employee thereof) providing legal services to any Investment Member, any Investment General Partner, the Managing Member, the Class B Special Member or any Affiliate of any of them.

“AFR” means the long-term “applicable federal rate” as defined and determined in the manner set forth in Section 1274 of the Code.

“After-Tax Basis” means with respect to any payment to be received by a Person (or, in the case of a pass-through entity, the partners or members of such Person), the amount of such payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all Taxes (net of any current credits, deductions or other tax benefits arising from the payment by such Person (or its partners or members) of any amount, including Taxes, for which the payment to be received is made) imposed currently on such Person by the Internal Revenue Service or any other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment received. For the purposes of this definition, and for purposes of any payment to be made to a Person (or its partners or members) on an After-Tax Basis, it shall be assumed that federal, state and local taxes are payable at the highest combined marginal federal and state statutory income tax rate (taking into account the deductibility of state income taxes for federal income tax purposes) applicable to corporations from time to time.

“Agency” means the Credit Agency or any other Governmental Authority with jurisdiction over the Apartment Complex, or the business and operations of the Company.

“Agreed-Upon Set-Aside” means the set aside tests agreed upon by the Company whereby (i) eight (8) of the units in the Apartment Complex must be occupied by individuals with incomes equal to 30% or less of area median income, as adjusted for family size, (ii) thirty-two (32) of the units in the Apartment Complex must be occupied by individuals with incomes equal to 50% or less of area median income, as adjusted for family size, (iii) forty (40) of the units in the Apartment Complex must be occupied by individuals with incomes equal to 60% or less of area median income, as adjusted for family size, (iv) if requested by TDHCA, up to ten (10) of the units in the Apartment Complex will be Section 811 Units, or (v) such other set aside test agreed upon by the Company with the approval of the Special Member, the Lender and the Agency.

“Agreement” means this Second Amended and Restated Operating Agreement of the Company, including Schedule A, as amended from time to time.

“Allocation Regulations” means the Treasury Regulations issued under Sections 704(b) and 752 of the Code, as the same may be modified or amended from time to time. In the event that the Allocation Regulations are revised or amended subsequent to the date of this Agreement, references herein to sections or paragraphs of the Allocation Regulations shall be deemed to be
references to the applicable sections or paragraphs of the Allocation Regulations as then in effect.

“Apartment Complex” means the real property located in Georgetown, Williamson County, Texas, as more fully described in Exhibit A attached hereto, together with (i) all buildings and other improvements constructed or to be constructed thereon, including the Low Income Units and the Market Rate Units, and (ii) all furnishings, equipment and personal property located thereon or otherwise covered by the Mortgages.

“Applicable Percentage” has the meaning set forth in Section 42(b) of the Code.

“Applied Amounts” shall have the meaning set forth in Section 6.10.

“Articles” shall have the meaning set forth in the Preliminary Statement.

“Asset Management Fee” means the fee payable to BCCTCF or an Affiliate thereof pursuant to the provisions of Section 6.12(b).

“Assignee” shall have the meaning set forth in Section 4.1(c).

“Auditors” means Novogradac & Company, or such other firm of independent certified public accountants, which accountants must be registered with the Public Company Accounting Oversight Board, as may be engaged by the Managing Member with the Consent of the Special Member for the purposes of preparing the Company’s income tax returns, auditing the books and records of the Company and certifying financial reports of the Company.

“BCCC” means BCCC, Inc., a Massachusetts corporation, and its successors and assigns.

“BCCTCF” means Boston Capital Corporate Tax Credit Fund XLIV, A Limited Partnership, a Massachusetts limited partnership, and its successors and assigns.

“Best Knowledge” shall mean and include, in the case of a specified Person, (i) actual knowledge and (ii) that knowledge which a prudent businessperson (including, in the case of an Entity, the general or managing partners, officers, directors and key employees of such Entity) should have obtained in the management of his or her business affairs after making due inquiry and exercising due diligence with respect thereto. In connection therewith, the knowledge (both actual and constructive) of any general or managing partner, director, officer or key employee of an Entity shall be deemed to be the knowledge of the Entity.


“Capital Account” has the meaning set forth in Section 4.1(b).

“Capital Contribution” means the total value of cash or property contributed and agreed to be contributed to the Company by each Member, as set forth in Schedule A. Any reference in this Agreement to the Capital Contribution of a then Member shall include a Capital Contribution previously made by any prior Member for the Interest of such then Member.
“Capital Proceeds” means the proceeds of a Capital Transaction less (a) all reasonable costs and expenses incurred by the Company in connection with the applicable Capital Transaction giving rise to such proceeds, (b) all principal and interest payments and other sums paid on or with respect to any indebtedness of the Company, required to be paid in connection with such Capital Transaction (but not including any Subordinated Loans, Voluntary Loans, unpaid Development Fee or amounts under a Deferred Development Fee Note and other fees payable to the Members), and (c) any Operating Expenses then due and payable and for which there are insufficient Cash Receipts to pay. Capital Proceeds shall include all principal and interest payments with respect to any note or other obligation received by the Company in connection with the applicable Capital Transaction.

“Capital Transaction” means a refinancing of any Company indebtedness or a sale, exchange, eminent domain taking, damage or destruction (whether insured or uninsured), insured title defect or other disposition of all or any portion of the Apartment Complex (other than an event generating proceeds of any business or rental interruption insurance), but excluding the payment of Capital Contributions.

“Carryover Allocation” means a valid and enforceable carryover allocation for 2016 Tax Credits issued by the Credit Agency to the Company in the annual amount of not less than $1,373,400 in the aggregate of Tax Credits.

“Carryover Certification” means the issuance, in a form and in substance satisfactory to the Investment Member, of the certification of the Auditors and all supporting documentation that, with respect to the carryover allocation of 2016 Tax Credits, as of a date no later than the last to occur of December 31, 2017 or twelve (12) months after the date of such carryover allocation, the Company had incurred capitalizable costs with respect to the Apartment Complex of at least ten percent (10%) of the Company’s reasonably expected basis in the Apartment Complex as of December 31, 2017, so that each building in the Apartment Complex constitutes a “qualified building” for the purposes of Section 42(h)(1)(E)(ii) of the Code.

“Cash Available for Debt Service Requirements” for any period, means the excess of (i) all cash actually received by the Company on a cash basis from normal operations during such period, including but not limited to rental revenues and, to the extent applicable, government subsidy payments (although those portions of a subsidy payment(s) that are in excess of Section 42 maximum allowable rents or achievable rents as verified in writing by the Investment Limited Partner shall not be included), but specifically excluding the proceeds of insurance (other than business or rental interruption insurance), loans, Capital Transactions or Capital Contributions over (ii) the greater of (x) all cash requirements of the Company properly allocable to such period of time on an accrual basis (not including distributions to Members out of Cash Flow of the Company or fees payable from Cash Flow) and, on an annualized basis, all projected expenditures, including those of a seasonal nature, which might reasonably be expected to be incurred on an unequal basis during a full annual period of operation as determined by the Auditors but specifically excluding Debt Service Requirements or (y) the Investment Member’s underwriting expenses, as shown on Schedule B attached hereto and increased by 3% per annum (or any portion thereof) from and after the Admission Date. For purposes of this definition, (A) cash requirements of the Company shall include to the extent not otherwise covered above, full funding of reserves (including, without limitation, funding of the Replacement Reserve),
insurance, utilities, fees not payable pursuant to Section 10.2 hereof, normal repairs, real estate
taxes at fully assessed levels assuming a fully improved property and necessary capital
improvements and (B) if free rent or other rental concessions shall have been granted to tenants,
the calculation of rental revenues under clause (i) of the preceding sentence shall be adjusted so
that the effect of such concessions is amortized equally over the term of all leases (excluding
renewal periods) to which it applies.

“Cash Expenditures” means all disbursements of cash during a specified Fiscal Year
(other than distributions to Members), including, without limitation, payment of operating
expenses, payment of principal and interest on any Company indebtedness (other than payments
of principal and interest on any Subordinated Loans, Voluntary Loans or any Mortgage Loans
made to the Company the debt service on which is payable solely from Cash Flow), the cost of
repairs to the Apartment Complex, amounts allocated to reserves by the Managing Member and
the payment of any fees other than the Asset Management Fee, the Company Management Fee,
the Incentive Management Fee and the Development Fee. In addition, except for a net increase
resulting from interest earnings, the net increase during such Fiscal Year in any escrow account
or reserve maintained by or for the Company shall be considered a Cash Expenditure during such
Fiscal Year. The term Cash Expenditures shall not include Development Costs. Cash
Expenditures payable to Members or Affiliates of Members shall be paid after Cash
Expenditures payable to third parties.

“Cash Flow” means the excess of Cash Receipts over Cash Expenditures. Cash Flow
shall be determined separately for each Fiscal Year or portion thereof.

“Cash Receipts” means all cash receipts of the Company from whatever source derived
other than from a Capital Transaction, including, without limitation, rental revenues and
government subsidy payments. In addition, the net reduction in any Fiscal Year in the amounts
of any escrow account or reserve maintained by or for the Company (including, without
limitation, the Operating Reserve and the Replacement Reserve) shall be considered a cash
receipt of the Company for such Fiscal Year. Notwithstanding the foregoing, at the election of
the Managing Member, Cash Receipts received near the end of a Fiscal Year and intended for
use in meeting the Company’s obligations (including the cost of acquiring assets or paying debts
or expenses) in the subsequent Fiscal Year shall not be deemed to be received until such
following Fiscal Year.

“City” means the City of Georgetown, Texas.

“Class B Special Member” means RDevKaia, LLC, a California limited liability
company.

“Class Contribution” means the aggregate Capital Contributions of all members of a
particular class of Members (i.e., the Managing Member, the Class B Special Member, the
Administrative Member, the Investment Member, the Special Member or any Substituted Non-
Managing Member).
“Code” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations (permanent and temporary) issued thereunder. References herein to any Code section shall include any successor provisions.

“Commencement Date” means the first day of the month in which the Admission Date occurs.

“Company” means the limited liability company continued pursuant to this Agreement.

“Company Management Fee” shall have the meaning set forth in Section 6.12(c).

“Competitive Real Estate Commission” means that real estate or brokerage commission paid for the purchase or sale of the Apartment Complex or other Company property which is reasonable, customary and competitive in light of the size, type and location of the Apartment Complex or other property.

“Completion Date” means the later of: (i) the date the Investment Member shall have received copies of all requisite certificates or permits permitting occupancy of 100% of the apartments units in the Apartment Complex as issued by each Agency having jurisdiction; provided, however, that if such certificates or permits are of a temporary nature, the Completion Date shall not be deemed to have occurred unless the Managing Member certifies to the Investment Member that any work remaining to be completed is for so-called “punch list items” and the Managing Member knows of no reason why permanent certificates of occupancy will not be issued upon completion of such “punch list items”; and (ii) the date the Investment Member shall have received the Substantial Completion Certificate, Estoppel Letters and a Contractor Pay-Off letter and lien waivers in form acceptable to the Special Member. Any representation by the Managing Member under this Agreement that the Completion Date has occurred shall be subject to confirmation by the Special Member pursuant to a physical inspection of the Apartment Complex; provided, however, that in the event that the Special Member does not make such physical inspection of the Apartment Complex within ten (10) business days after having received a written representation of the Managing Member that the Completion Date has occurred, then the Special Member will be deemed to have waived the physical inspection requirement.

“Compliance Period” means the fifteen (15)-year period commencing with the first year of the Credit Period.

“Consent of the Investment Member” means the prior written consent or approval of the Investment Member which, unless otherwise specifically provided herein, may be given or withheld in its sole discretion. The Consent of the Investment Member shall be exercised by and through the Investment General Partner, acting in the name and on behalf of the Investment Member.

“Consent of the Special Member” means the prior written consent or approval of the Special Member which, unless otherwise specifically provided herein, may be given or withheld in its sole discretion.
“Construction Contract” means the construction contract dated as of August 18, 2017, by and between the Contractor and the Company, as amended.

“Construction Lender” means Citibank, N.A., a national banking association.

“Construction Loan” means the construction loan, in the aggregate amount of $11,200,000 to be provided by the Construction Lender to the Company pursuant to the terms of the Construction Loan Documents.

“Construction Loan Agreement” means the Loan Agreement to be entered into by and between the Construction Lender and the Company, as amended.

“Construction Loan Documents” means the Construction Note, the Construction Mortgage, the Construction Loan Agreement and all other documents executed and/or delivered in connection with the Construction Loan.

“Construction Mortgage” means the Mortgage securing the Company’s obligations under the Construction Note.

“Construction Note” means the promissory note executed by the Company to evidence its obligations with respect to the Construction Loan, which note is or shall be secured by the Construction Mortgage.

“Construction Permitting Date” means the first date upon which the Company shall have received the Requisite Approvals for the commencement of the construction and operation of the Apartment Complex in accordance with the Plans and Specifications therefor.

“Consumer Price Index” means the Consumer Price Index for All Urban Consumers, All Cities, for All Items (base 1982-84 = 100) published by the United States Bureau of Labor Statistics. In the event such index is not in existence when any determination relying on such index under this Agreement is to be made, the most comparable governmental index published in lieu thereof shall be substituted therefor.

“Contractor” means Maker Bros., LLC, a Texas limited liability company, and its successors.

“Contractor Pay-Off Letter” means a letter in form and substance reasonably satisfactory to the Special Member delivered by the Contractor to the Company which certifies that (i) all amounts due to the Contractor from the Company have been paid, (ii) the Company is not in default under the Construction Contract and (iii) the Contractor has paid in full each materialman and subcontractor who performed work on the Apartment Complex.

“Controlling Managing Member” shall have the meaning set forth in Section 6.4(a).

“Cost Certification” means the date upon which each Non-Managing Member shall have received the written certification of the Auditors, in a form and in substance satisfactory to the Special Member, as to the itemized amounts of the construction and development costs of the
Apartment Complex and the Actual Credit pertaining to each building in the Apartment Complex.

“Credit Agency” means the Texas Department of Housing and Community Affairs, and its successors.

“Credit Period” has the meaning set forth in Section 42(f)(1) of the Code and shall also include the first year after the end of the period described in Section 42(f)(1) of the Code with respect to Tax Credits that are available in such year pursuant to Section 42(f)(2)(B) of the Code.

“Debt Service Coverage Ratio” means, for any period with each month considered individually, a fraction, the numerator of which is the Cash Available for Debt Service Requirements with respect to such period and the denominator of which is the Debt Service Requirements for such period. The achievement by the Company of a specified Debt Service Coverage Ratio shall be confirmed by the Auditors and shall be subject to the approval of the Special Member, which shall not be unreasonably withheld, provided, however, that no objection by the Special Member to the determination of the Auditors shall be valid unless the Managing Member is notified of such objection, and the specific reasons therefor, within seven (7) business days following the receipt by the Special Member of the Auditor’s determination letter and in the event that the Special Member does not so notify the Managing Member within such seven (7) business day period, the Special Member will be deemed to have waived its right to object to such determination; provided, however, such deemed waiver shall not be presumed unless the Managing Member shall have first sent a second notice to the Special Member or otherwise confirmed that the first notice was timely received by the Special Member.

“Debt Service Requirements” means for any period, all debt service, reserve, mortgage insurance premium, tax and insurance escrows and/or other cash requirements imposed with respect to the Mortgage or any other indebtedness (except for the Subordinated Loans, any Mortgage Loans made to the Company the debt service on which is payable solely from Cash Flow and Voluntary Loans) properly allocable to such period of time on an annualized accrual basis as determined by the Auditors. To the extent the relevant period includes any period prior to Permanent Mortgage Commencement, Debt Service Requirements for such period shall be computed by adding to the foregoing amounts the amount (if any) by which the debt service on such Permanent Loan for such period beginning after principal amortization has commenced exceeds the actual debt service on such Permanent Loan (and any previous Mortgage Loan which may have then been in place) for the relevant period.

“Deferred Development Fee Note” shall have the meaning set forth in the Development Agreement.

“Deficit Restoration Obligation” shall have the meaning set forth in Section 10.3(c).

“Defined Mortgagee” shall have the meaning set forth in Section 3.6.

“Designated Net Worth Requirements” means as of the date of determination, such standards or criteria (relating to net worth or other characteristics) as may be approved by the Special Member, provided, however, that the conditions of this definition shall be deemed to be
fully satisfied if the Managing Member and the Guarantor maintains at all times an aggregate net worth of not less than $5,000,000 and unrestricted liquid assets of not less than $1,000,000.

“Developer” means, together, O-SDA Industries, LLC, a Texas limited liability company, and Saigebrook Development, LLC, a Florida limited liability company.

“Development Agreement” means the Amended and Restated Development Agreement, dated as of October 1, 2007, by and between the Developer and the Company.

“Development Costs” means any and all costs and expenses necessary to (i) cause the construction of the Apartment Complex to be completed, in a good and workmanlike manner, free and clear of all mechanics’, materialmen’s or similar liens, in accordance with the Plans and Specifications, (ii) equip the Apartment Complex with all necessary and appropriate fixtures, equipment and articles of personal property (including, without limitation, refrigerators and ranges), (iii) obtain all required certificates of occupancy for the apartment units and other space in the Apartment Complex, (iv) pay the Development Fee (other than the portion thereof evidenced by the Deferred Development Fee Note, if any), (v) finance the construction of the Apartment Complex and achieve Rental Achievement in accordance with the provisions of the Project Documents, (vi) discharge all Company liabilities and obligations arising out of any casualty generating insurance proceeds for the Company prior to Rental Achievement, (vii) fund any Company reserves required hereunder or under any of the Project Documents, (viii) repay and discharge the Construction Loan (or pay such loan down to the permitted amount of the Permanent Loan), and (ix) pay any other costs or expenses necessary to achieve the Completion Date and Rental Achievement.

“Development Fee” means the fees and overhead payable by the Company to the Developer pursuant to the terms of the Development Agreement for its services in connection with the development and construction of the Apartment Complex.

“Disposition” (including the forms Dispose and Disposing) means, as to a specified Member, the assignment, sale, transfer, exchange or other disposition of all or any part of its Interest.

“Due Diligence Recommendations” means those developmental recommendations set forth on Exhibit C hereto.

“Economic Risk of Loss” has the meaning set forth in Treasury Regulation Section 1.752-2.

“Eligible Basis” has the meaning set forth in Section 42(d) of the Code.

“Entity” means any Person, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

“Environmental Law” means and includes any federal, state and local laws, statutes, rules, regulations and ordinances pertaining to the protection of the environment or otherwise pertaining to public health or employee health and safety, including but not limited to, CERCLA, the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act, the Safe Drinking
Water Act, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Emergency Planning and Community Right to Know Act and the Occupational Safety and Health Act of 1970.

“Estoppel Letter” means an estoppel letter in form and substance reasonably satisfactory to the Special Member delivered to the Company from each Lender which certifies as to each Mortgage Loan (i) that there is no default ongoing pursuant to the Mortgage Loan Documents, (ii) the amounts of interest and principal paid on such Mortgage Loan to date and (iii) the outstanding principal balance of such Mortgage Loan.

“Event of Bankruptcy” means with respect to any Person,

(i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(ii) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by him to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his property, or the making by him of any assignment for the benefit of creditors, or the taking of corporate action by the Person in furtherance of any of the foregoing;

(iii) the commencement against such Person of an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, which has not been vacated, discharged or bonded within sixty (60) consecutive days;

(iv) the admission of such Person of his or its inability to pay his or its debts as they become due; or

(v) such Person becoming “insolvent” by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to the federal bankruptcy laws (as now or hereafter constituted) or any other applicable federal or state bankruptcy, insolvency or similar law.

“Extended Use Agreement” means the extended use housing commitment to be executed by the Company in accordance with the requirements of the Credit Agency and the provisions of Section 42(h)(6)(A) of the Code.

“50% Completion Date” means the date that fifty percent (50%) of the projected hard construction costs for the completion of the Apartment Complex have been incurred by the Company.
“Filing Office” means the Office of the Secretary of State of the State of Formation.

“Fiscal Year” means the twelve (12)-month period which begins on the first day of January and ends on the thirty-first day of December of each calendar year (or ends on the date of final dissolution for the year in which the Company is wound up or dissolved).

“Former Code” means Subchapter C of Chapter 63 of the Code as in effect immediately prior to the enactment of the Bipartisan Budget Act on November 2, 2015. Pursuant to Section 6241 of the Code (as revised by the Bipartisan Budget Act), the amendments to the Former Code apply to returns filed for partnership taxable years beginning after December 31, 2017. References to the Former Code contained herein are applicable to the extent that the Former Code provisions remain in effect for taxable years beginning before December 31, 2017.

“Governmental Authority” means the City, the Credit Agency or any other federal, state or local governmental authority having jurisdiction over the particular matter to which reference is being made.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managing Member, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Allocation Regulations; provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company and the Consent of the Investment Member to such adjustments shall have been received;

(iii) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Allocation Regulations and Section 4.1 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (iv) to the extent that the Managing Member determines (with the Consent of the Investment Member) that an adjustment pursuant to clause (ii) hereof is necessary or appropriate in
connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section (i), (ii) or (iv) hereof, such Gross Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Profits or Losses.

“GSE” means Fannie Mae and/or Federal Home Loan Mortgage Corporation, and their successors.

“Guarantors” means, collectively, Lisa M. Stephens, Mark S. Ragsdale, and each of their successors.

“Guaranty” means the Guaranty, dated as of October 1, 2017, of the Guarantors of certain of the obligations of the Managing Member hereunder and of the Developer as set forth in the Development Agreement, as amended.

“Hazardous Material” has the collective meanings given to the terms “hazardous material”, “hazardous substances”, “hazardous wastes”, “toxic substances”, “toxic waste” and analogous terms, in (i) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended, (ii) the Hazardous Materials Transportation Act, as amended, 39 U.S.C. Section 1801 et seq., (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., (iv) any similar applicable state or local law, or (v) any regulation adopted or publication promulgated pursuant to any such law, and to the term “radioactive materials” in the context of the Atomic Energy Act, 28 U.S.C. Sec. 2344, and also includes any meanings given to such terms in any similar state or local statutes, ordinances, regulations or by-laws. The term Hazardous Material also includes oil and any other substance known to be hazardous.

“HUD” means the Department of Housing and Urban Development of the United States of America and its successors.

“Immediate Family” means with respect to any Person, such Person’s spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children, children-in-law, grandchildren and grandchildren-in-law.

“In Balance” means, during the construction period, the then undisbursed portion of the Capital Contributions to be disbursed in accordance with this Agreement during the construction period plus the undisbursed proceeds of the Construction Loan or other construction period financing and Cash Flow, equals or exceeds the amount necessary to pay all work done and not theretofore paid for or to be done in connection with the completion of the construction of the Apartment Complex in accordance with the Construction Contract or otherwise to be incurred in connection with completion of the Apartment Complex. After the Completion Date, “In Balance” means, the then undisbursed portion of the permanent sources contained in the financial forecasts prepared by the Investment Member as of the Admission Date equals or exceeds the remaining costs of the Apartment Complex, including repayment of any construction-period financing.
“Incentive Management Agreement” means the agreement by and between the Company, the Class B Special Member, and the Managing Member which provides for the payment of the Incentive Management Fee.

“Incentive Management Fee” means the fee payable under the Incentive Management Agreement to the Managing Member for supplemental services provided with respect to the Apartment Complex.

“Initial Adjustment Date” shall have the meaning set forth in Section 5.1(e).

“Initial Compliance Audit” shall have the meaning set forth in Section 12.7(n).

“Initial Full Occupancy Date” means the first date on which the Investment Member shall have received documentation evidencing that (i) not less than 100% of the Low Income Units in the Apartment Complex shall have been leased to and shall have been initially occupied by tenants on such date meeting the terms of the Minimum Set-Aside Test under executed leases at rentals meeting the requirements of the Rent Restriction Test such that all such units qualify for the Tax Credit and (ii) not less than 93% of the apartment units in the Apartment Complex are then physically occupied by tenants.

“Initial Reserve Amount” shall have the meaning set forth in Section 6.5(e)(ii).

“Inspecting Consultant” means the consultant retained by any Lender (including, without limitation, the Construction Lender) or the Company with the Consent of the Special Member to monitor the progress of the construction of the Apartment Complex and to certify as to the completion of such construction.

“Installment” means an installment of the Investment Member’s Capital Contribution paid or payable to the Company pursuant to Section 5.1.

“Insurance Requirements” means the insurance which the Managing Member is required to cause the Company to maintain during the term of the Company as set forth on Exhibit D hereto.

“Interest” means the entire interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled hereunder and the obligation of such Member to comply with the terms of this Agreement.

“Invested Amount” means (i) as to the Investment Member, an amount equal to the Capital Contribution divided by 0.85 and (ii) as to any other Member, an amount equal to its paid-in Capital Contribution.

“Investment General Partner” means BCCTC Associates XLIV, LLC, a Massachusetts limited liability company, in its capacity as the general partner of the Investment Member, and any other Person who may become a successor or additional general partner of the Investment Member.

“Investment Increased Basis Amount” has the meaning set forth in Section 5.1(g).
“Investment Member” means BCCTCF and any Person or Persons who replace it as Substituted Non-Managing Member.

“Investment Partnership Agreement” means the Agreement of Limited Partnership of the Investment Member, as amended from time to time.

“Lender” means any Person (other than the Managing Member or its Affiliates) who makes a loan to the Company, whether or not such loan is secured by a Mortgage, or the successors and assigns of such Person in such capacity.

“Liquidating Event” shall have the meaning set forth in Section 2.4.

“Low Income Unit” means any of the (eighty) 80 dwelling units in the Apartment Complex which are to be held for occupancy by the Company in such manner as to qualify such units as qualified low-income housing units under Section 42(i)(3) of the Code.

“Management Agent” means Accolade Property Management, Inc., a Texas corporation, in its capacity as the initial management and rental agent for the Apartment Complex, and any successor management and rental agent designated or appointed at any time.

“Management Agreement” means the agreement between the Company and the Management Agent providing for the management of the Apartment Complex.

“Management Fee” means the Management Fee to which reference is made in Section 11.1.

“Managing Member” means the Co-Managing Member, the Administrative Member, and any Person who becomes a Managing Member as provided herein, in its capacity as a managing member of the Company. At any and all times where there is more than one Managing Member, the term Managing Member shall mean such Managing Members.

“Market Rate Units” means any or all of the twenty-two (22) dwelling units in the Apartment Complex that are intended for rental at market rates and are not subject to affordability restrictions under the Regulatory Agreements.

“Material Agreement” means any agreement to which the Company is a party or to which the Apartment Complex is subject, the termination of which would have a material adverse impact on the Apartment Complex or the business and operations of the Company.

“Material Event” means the occurrence of any of the following events:

(i) a material breach by a Managing Member or Guarantor (or any of their Affiliates) in the performance of any of its obligations under this Agreement, or any of the Material Agreements;

(ii) a Terminating Event as to any Managing Member or an Event of Bankruptcy as to the Company or any Guarantor, or prior to the Completion Date, the Developer;
(iii) a material violation by any Managing Member of its fiduciary duties as a Managing Member of the Company;

(iv) a violation by any Managing Member of any law, regulation or order applicable to the Managing Member or the Company which has or may have a material adverse effect on the Company or the Apartment Complex;

(v) a material breach by the Company or any Managing Member (or any of their respective Affiliates) under any Project Document or other material agreement or document affecting the Company or the Apartment Complex;

(vi) the failure to achieve the Completion Date by March 1, 2019;

(vii) the failure to begin the Credit Period for all buildings in the Apartment Complex not later than calendar year 2018 unless the Investment Member permits the election under Section 42(f)(1)(B) of the Code to defer the commencement of the Credit Period for any building in the Apartment Complex;

(viii) the commencement of foreclosure proceedings with respect to any Mortgage, which have not been withdrawn or dismissed within thirty (30) days after the date of such commencement;

(ix) the failure of the Managing Member to make any payment required to be made to the Investment Member pursuant to the provisions of Section 5.1(e) or (f); or

(x) the fraud, bad faith, gross negligence, or willful misconduct by a Managing Member.

Notwithstanding anything to the contrary contained herein, a Material Event shall not be deemed to have occurred pursuant to clauses (i), (iv) or (v) of this definition unless the Managing Members are first provided with notice and not less than thirty (30) days’ opportunity to cure such event, provided however that, if such events cannot be cured within such thirty (30) day period but the Managing Members are diligently pursuing such cure and the event is of the type that can reasonably be cured with the granting of additional time, the Investment Member shall grant additional time for the Managing Members to cure such event, provided, however, that in no event will such additional time exceed an additional ninety (90) days. In addition, a Material Event shall not be deemed to have occurred pursuant to clause (ix) of this definition unless the Managing Members are first provided with notice and ten (10) days to cure such event.

“Member” means any Managing Member, Non-Managing Member, or Class B Special Member.

“Minimum Set-Aside Test” means the set aside test selected by the Company pursuant to Section 42(g) of the Code whereby at least 40% of the units in the Apartment Complex must be occupied by individuals with incomes equal to 60% or less of area median income, as adjusted for family size.
“Mortgage” means any mortgage indebtedness of the Company evidenced by any Note and secured by any mortgage on the Apartment Complex from the Company to any Lender; and, where the context admits, the term “Mortgage” shall mean and include any of the mortgages securing said indebtedness and any other documents pertaining to said indebtedness which were required by the Lender as a condition to making such Mortgage Loan. In case any Mortgage is replaced by any subsequent mortgage or mortgages, such term shall refer to any such subsequent mortgage or mortgages. The term “mortgage” means any mortgage, mortgage deed, deed of trust, deed to secure debt or any similar security instrument, and “foreclose” and words of like import include the exercise of a power of sale under a mortgage or comparable remedies.

“Mortgage Loan” means a loan to the Company made by any Lender and secured by a Mortgage.

“Mortgage Loan Documents” means the Construction Loan Documents and/or the Permanent Loan Documents, as the context may require.

“New Allocation” shall have the meaning set forth in Section 10.5(b).

“Non-Managing Members” means the Investment Member, the Special Member and any Substituted Non-Managing Member.

“Nonrecourse Debt” or “Nonrecourse Liability” means any indebtedness for which none of the Members has any Economic Risk of Loss other than through his or its interest in the Company property securing such indebtedness, as defined in Section 1.752-1(a)(2) of the Allocation Regulations.

“Nonrecourse Deductions” has the meaning set forth in Section 1.704-2(b)(1) of the Allocation Regulations.

“Note” means and includes any Note from the Company to a Lender evidencing a Mortgage Loan, and shall also mean and include any Note supplemental to said original Note issued to a Lender or any Note issued to a Lender in substitution for any such original Note.

“Operating Deficit” means, for any specified period of time, the amount by which the Cash Receipts of the Company are less than the amount necessary to pay all Cash Expenditures of the Company.

“Operating Profits or Losses” means, with respect to any Fiscal Year, the Profits or Losses of the Company for such Fiscal Year other than Profits or Losses from a Capital Transaction.

“Operating Reserve” shall have the meaning set forth in Section 6.5(e)(ii).

“Original Agreement” has the meaning set forth in the Preliminary Statement.

“Original Investment Member” has the meaning set forth in the Preliminary Statement.
“Partner Nonrecourse Debt” has the meaning set forth in Section 1.704-2(b)(4) of the Allocation Regulations.

“Partner Nonrecourse Debt Minimum Gain” has the meaning set forth in Sections 1.704-2(i)(2) and (3) of the Allocation Regulations.

“Partner Nonrecourse Deductions” has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Allocation Regulations.

“Partnership Minimum Gain” has the meaning set forth in Section 1.704-2(d) of the Allocation Regulations.

“Payment Certificate” shall have the meaning set forth in Section 5.1(b).

“Percentage Interests” means the interests of the Members in Profits and Losses, tax-exempt income, non-deductible, non-capitalizable expenditures and Tax Credits, as set forth in Schedule A.

“Permanent Lender” means Citibank, N.A., a national banking association, or any other Lender providing permanent financing for the Apartment Complex who has been approved by the Special Member and the Managing Member, except as otherwise provided in Section 3.2.

“Permanent Loan” means the permanent-phase financing provided by Citibank, N.A. in accordance with the Permanent Loan Conditions or any other permanent loan provided by the Permanent Lender to the Company pursuant to the terms of the Permanent Loan Documents and approved by the Special Member.

“Permanent Loan Conditions” means, with respect to a proposed Permanent Loan, that (a) such Permanent Loan (i) has a term of not less than 15 years, (ii) has an amortization schedule not longer than thirty-five (35) years, (iii) is in a principal amount of not more than $6,000,000 and (b) when such Permanent Loan is in place, the Debt Service Coverage Ratio of the Company is projected to be not less than 1.15 to 1.00, assuming annual operating expenses of the greater of (x) actual expenses or (y) the Investment Member’s underwriting expenses, as shown on Schedule B attached hereto (adjusted for actual expenses for real estate taxes and insurance), per year; except that, for purposes of determining if the Debt Service Coverage Ratio requirement has been satisfied in accordance with the preceding clause, the amount of the Company’s income pursuant to clause (i) of the first sentence in the definition of Cash Available for Debt Service Requirements shall not exceed the amount of income that could be achieved with the greater of actual vacancy or a 7% vacancy rate. Satisfaction of the Permanent Loan Conditions shall be determined by the Special Member, in its sole discretion.

“Permanent Loan Documents” means the Permanent Note, the Permanent Mortgage and all other documents executed and/or delivered in connection with the Permanent Loan.

“Permanent Mortgage” means the Mortgage securing the Company’s obligations under the Permanent Note.
“Permanent Mortgage Commencement” means the payment and discharge of the Construction Loan (or the conversion of such loan to its permanent phase on the Permanent Loan Conditions, including the payment of any principal reduction amount required in connection therewith), the full disbursement of and commencement of the amortization of each Permanent Loan and the execution and delivery of the Permanent Loan Documents.

“Permanent Note” means the Note to be executed by the Company to evidence its obligations with respect to the Permanent Loan, which Note shall be secured by the Permanent Mortgage.

“Person” means any individual or Entity.

“Plans and Specifications” means the plans and specifications for the construction of the Apartment Complex, including, without limitation, specifications for materials, and all properly approved amendments and modifications thereof.

“Post-TEFRA Period” means each federal income tax period of the Company beginning after December 31, 2017 (or such other later effective date of Section 1101 of the Bipartisan Budget Act if the implementation of such provisions is delayed by legislation or regulation), and such earlier periods, if any, with respect to which the Company has made an election pursuant to Section 1101(g)(4) of the Bipartisan Budget Act with the Consent of the Investment Member.

“Predevelopment Loan” means that certain predevelopment loan made by the Original Investment Member of the Company in the original principal amount of $600,000.

“Prime Rate” means the rate of interest announced from time to time by The Wall Street Journal as its base rate.

“Profits or Losses” shall have the meaning set forth in Section 10.4(b)(v).

“Project Documents” means and includes the Mortgage Loan Documents, this Agreement, the Development Agreement, any Deferred Development Fee Note, the Extended Use Agreement, the Guaranty, the Incentive Management Agreement, the Management Agreement, the Purchase Option, the Section 811 Participation Agreement (and, if applicable, the Section 811 RAC and the Section 811 Use Agreement), the Regulatory Agreement, all other instruments delivered to (or required by) any Lender and all other documents relating to the Apartment Complex and by which the Company is bound, as amended or supplemented from time to time.

“Projected Credit” means with respect to a particular Fiscal Year, the total amount of Tax Credit projected to be allocable by the Company to the Investment Member for such Fiscal Year, and shall be as follows: $364,244 for 2018, $1,373,263 per annum for each of the Fiscal Years 2019 through 2027 (inclusive) and $1,009,019 for 2028, provided, however, that the Projected Credit for 2028 shall be reduced by the amount, if any, by which the Actual Credit for 2018 exceeds $364,244, and provided further that upon the occurrence of any of the events described in Section 5.1(e), the Projected Credit shall thereafter be the Revised Projected Credit.
“Projected Rents” means the rents described in Exhibit B attached hereto and made a part hereof.

“Purchase Option” means that certain Purchase Option Agreement dated as of October 1, 2017, by and among the Managing Members, the Class B Special Member, the Company, and the Non-Managing Members, as amended.

“Qualified Basis” has the meaning set forth in Section 42(c) of the Code.

“Qualified Income Offset Item” means (1) an allocation of loss or deduction that, as of the end of each year, reasonably is expected to be made (a) pursuant to Section 704(e)(2) of the Code to a donee of an interest in the Company, (b) pursuant to Section 706(d) of the Code as the result of a change in any Member’s Interest, or (c) pursuant to Treasury Regulation Section 1.751-1(b)(2)(ii) as the result of a distribution by the Company of unrealized receivables or inventory items and (2) a distribution that, as of the end of such year, reasonably is expected to be made to a Member to the extent it exceeds offsetting increases to such Member’s Capital Account which reasonably are expected to occur during or prior to the Company taxable year in which such distribution reasonably is expected to occur.

“Recapture Amount” shall have the meaning set forth in Section 10.6.

“Recapture Event” shall have the meaning set forth in Section 10.6(a).

“RECD” means the Rural Economic Community and Development office of the United States Department of Agriculture.

“Recourse Obligations” shall have the meaning set forth in Section 10.4(b)(i).

“Reduction Amount” shall have the meaning set forth in Section 5.1(f).

“Reduction Year” shall have the meaning set forth in Section 5.1(f).

“Regulations” means the rules and regulations applicable to the Apartment Complex or the Company of the Credit Agency, and any Governmental Authority having jurisdiction over the Company and/or the Apartment Complex.

“Regulatory Agreements” means any regulatory agreements, affordability restrictions, restrictive covenants or other similar documents entered into between or by the Company and/or for the benefit of any Mortgage Lender or Governmental Agency with respect to the Apartment Complex, including, without limitation, the Extended Use Agreement and, if applicable, the Section 811 Use Agreement.

“Related Person” means a Person related to a Member within the meaning of Treasury Regulation Section 1.752-4(b).

“Remaining Interest” shall have the meaning set forth in Section 7.4(d).
“Rent Restriction Test” means the test pursuant to Section 42 of the Code whereby the gross rent charged to tenants of the low-income units in the Apartment Complex may not exceed thirty percent (30%) of the qualifying income levels.

“Rental Achievement” means the first time following three (3) consecutive full calendar months of operations after Permanent Mortgage Commencement (with each month considered individually) that the Apartment Complex generates a 1.15 to 1.00 Debt Service Coverage Ratio; except that, for purposes of computing the Debt Service Coverage Ratio to determine if Rental Achievement has occurred, the Company’s income shall be determined using the greater of actual vacancy or a 7% vacancy rate and assuming that principal amortization has commenced on the Permanent Loan.

“Replacement Reserve” shall have the meaning set forth in Section 6.5(e).

“Repurchase Amount” shall have the meaning set forth in Section 5.2(a).

“Repurchase Event” shall have the meaning set forth in Section 5.2(a).

“Required Sale Notice” has the meaning set forth in Section 3.5(b).

“Requisite Approvals” means any required approvals of each Lender and Agency to an action proposed to be taken by the Company.

“Revised Projected Credit” has the meaning set forth in Section 5.1(e).

“Schedule A” means Schedule A to this Agreement, as amended from time to time.

“Section 811 Participation Agreement” means the Section 811 Project Rental Assistance Demonstration Program Owner Participation Agreement dated September 14, 2016 by and between the Company and TDHCA pursuant to which the Company has agreed that, if requested by TDHCA at any time during the term of the Section 811 Participation Agreement, the Company will enter into the Section 811 RAC and accept eligible referrals to the Section 811 Units (e.g., extremely low-income persons with disabilities linked with long-term services) pursuant to TDHCA’s “Section 811 Project Rental Assistance” program.

“Section 811 RAC” means the Rental Assistance Agreement that may be entered into by the Company and TDHCA, if requested by TDHCA, pursuant to which TDHCA will agree to provide project-based rental assistance to the Company under Section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, with respect to ten (10) units at the Apartment Complex for a term of twenty (20) years, and which rents are subject to the Consent of the Investment Member.
“Section 811 Units” means any one or more of the 10 dwelling units in the Apartment Complex eligible to receive project-based rental assistance under TDHCA’s “Section 811 Project Rental Assistance” program and which will be reserved for occupancy in accordance with the terms of the Section 811 Participation Agreement and, if applicable, the Section 811 RAC and the Section 811 Use Agreement.

“Section 811 Use Agreement” means the Use Agreement that may be entered into by the Company, if requested by TDHCA, pursuant to which the Company will agree to accept the Section 811 RAC and eligible referrals to the Section 811 Units for a term of 30 years (subject to Congressional appropriations).

“Service” means the Internal Revenue Service.

“Share of Partner Nonrecourse Debt Minimum Gain” means, for each Member an amount equal to his or its “share of partner nonrecourse debt minimum gain” as determined in accordance with Section 1.704-2(i)(5) of the Allocation Regulations.

“Share of Partnership Minimum Gain” means for each Member, an amount equal to his or its “share of partnership minimum gain” as determined in accordance with Section 1.704-2(g) of the Allocation Regulations.

“Site” has the meaning given to it in the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended, and shall also include any meaning given to it in any similar state or local statutes, ordinances, regulations or by-laws.

“Special Member” means BCCC, and any Person who becomes a Special Member as provided herein, in its capacity as a special member of the Company.

“Specified Proceeds” means (i) the proceeds of all Mortgage Loans, (ii) the net rental income, if any, generated by the Apartment Complex prior to Rental Achievement which is permitted by the Lenders to be applied to the payment of Development Costs, (iii) the Capital Contributions of the Non-Managing Members, (iv) the Capital Contributions of the Managing Members and the Class B Special Member in the amounts set forth in Schedule A as of the date hereof, (v) any insurance proceeds arising out of casualties occurring prior to Rental Achievement, and (vi) all other sources of funds including net rental income available to the Company prior to Rental Achievement, not specifically earmarked for other purposes.

“State” means the State of Texas.

“State Designation” means the date on which the Company receives an allocation for the Apartment Complex in proper form pursuant to Section 42 of the Code from the Credit Agency of 2016 Tax Credits, as evidenced by the execution by or on behalf of the Credit Agency of one or more Form(s) 8609.

“State of Formation” means the State of Florida.
“Subordinated Loan” means any loan made by the Managing Member to the Company pursuant to Section 6.5(e)(i), Section 6.10 or any other provision of this Agreement which specifies advances to be made as a Subordinated Loan.

“Subordinated Loan Cap” shall have the meaning set forth in Section 6.10.

“Subordinated Loan Period” shall have the meaning set forth in Section 6.10.

“Substantial Completion Certificate” means the certificate to be issued by the project architect on or after the Completion Date in the form attached hereto as Exhibit E.

“Substituted Non-Managing Member” means any Person who is admitted to the Company as Non-Managing Member under Section 8.2 or acquires the Interest of a Non-Managing Member pursuant to Section 5.2.

“Syndication Expenses” means all expenditures classified as syndication expenses pursuant to Treasury Regulation Section 1.709-2(b). Syndication Expenses shall be taken into account under this Agreement at the time they would be taken into account under the Company’s method of accounting if they were deductible expenses.

“Tax” or “Taxes” means any and all liabilities, losses, expenses and costs that are, or are in the nature of, taxes, fees or other governmental charges, including interest, penalties, fines and additions to tax imposed by the Internal Revenue Service or any other taxing authority.

“Tax Accountants” means CohnReznick LLP of Bethesda, Maryland or such other firms of independent certified public accountants as may be engaged by the Special Member to review the Company income tax returns.

“Tax Credit” means the low-income housing tax credit described in Section 42 of the Code.

“Tax Credit Set-Aside” means the date on which the Company receives the Carryover Allocation.

“Tax Matters Partner” means the Managing Member or such other partner as determined under Section 6231(a)(7) of the Former Code.

“TDHCA” means the Texas Department of Housing and Community Affairs, in its capacity as the agency designated by the State to allocate Tax Credits.

“Terminating Event” means the death or permanent disability of, or a final determination by a court of competent jurisdiction of insanity or incompetence as to, an individual Managing Member (unless the Consent of the Special Member to a substitute Managing Member is received, and such substitute Managing Member is admitted to the Company by the first to occur of (i) the sixtieth (60th) day following such event or (ii) such earlier date as is necessary to prevent a dissolution of the Company under the Act), an Event of Bankruptcy or dissolution of a Managing Member, the transfer of all or any portion of its Company Interest by a Managing Member, or the voluntary or involuntary Withdrawal of the Managing Member from the
Company. For purposes of the foregoing, an individual Managing Member shall be deemed to be permanently disabled if he or she becomes disabled during the term of this Agreement through any illness, injury, accident or condition of either a physical or psychological nature and, as a result, is unable to perform substantially all of his or her duties and responsibilities hereunder for one hundred twenty (120) days during any period of three hundred sixty-five (365) consecutive calendar days. Involuntary withdrawal shall occur whenever a Managing Member may no longer continue as a Managing Member by law or pursuant to any terms of this Agreement. In the case of a Managing Member which is an Entity, a transfer of a majority of the voting stock (or other beneficial interest) of the Managing Member to a Person who is not an Affiliate of the Managing Member or any Entity constituting the Managing Member shall be deemed to be a Terminating Event.

“Title Policy” means the owner’s title insurance policy, or at the option of the Special Member an endorsement thereto, with an effective date on or after the date hereof, in the amount of not less than $19,777,448, issued by First American Title Insurance Company to the Company, evidencing the Company’s ownership of the Apartment Complex subject only to such exclusions, exceptions, conditions and stipulations as may be approved by the Special Member in its sole discretion and endorsed at a minimum with a non-imputation endorsement, an access endorsement for Bettie May Way (to be obtained after the Completion Date), and a comprehensive endorsement.

“Treasury Regulations” means the Income Tax Regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Upward Timing Amount” has the meaning set forth in Section 5.1(g).

“Vessel” has the meaning given to it in the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended, and shall also include any meaning given to it in any similar state or local statutes, ordinances, regulations or by-laws.

“Voluntary Loans” shall have the meaning set forth in Article IX.

“Withdrawal” (including the forms Withdraw, Withdrawing and Withdrawn) means, as to a Managing Member, the occurrence of death, adjudication of insanity or incompetence, Event of Bankruptcy, dissolution, liquidation, or voluntary or involuntary withdrawal or retirement from the Company for any reason, including whenever a Managing Member may no longer continue as a Managing Member by law or pursuant to any terms of this Agreement. Withdrawal also shall mean the sale, assignment, transfer or encumbrance by a Managing Member of its interest as a Managing Member other than a pledge or assignment by a Managing Member of its Interest required pursuant to the terms of the Construction Loan Documents and as approved in writing by the Special Member. A Managing Member which is a corporation, limited liability company or partnership shall be deemed to have sold, assigned, transferred or encumbered its interest as a Managing Member in the event (as a result of one or more transactions) of any sale, assignment or other transfer (but specifically excluding any transfer occurring pursuant to the laws of descent and distribution) or encumbrance of a controlling interest in a corporate or limited
liability company Managing Member or of a general partner or member interest in a Managing Member which is a partnership or limited liability company to a Person who is not an Affiliate of the Managing Member. For purposes of this definition of Withdrawal, the term “controlling interest” shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.
ARTICLE II
Name and Business

2.1 Name; Continuation

The name of the Company is “Kaia Pointe, LLC.” The Members agree to continue the Company which was formed pursuant to the provisions of the Act.

2.2 Office and Registered Agent

(a) The principal office of the Company is c/o 200 South Biscayne Boulevard, Suite 4100 (GJC), Miami, Florida, at which office there shall be maintained those records required by the Act to be kept by the Company. The Company may have such other or additional offices as the Managing Member shall deem desirable. The Managing Member may at any time change the location of the principal office and shall give due notice thereof to the Non-Managing Members, provided that doing so shall not adversely affect the Investment Member for tax purposes.

(b) The registered agent for the Company in the State of Formation for service of process is as follows:

Corporation Company for Miami
200 South Biscayne Boulevard
Suite 4100 (GJC)
Miami, Florida 33131

2.3 Purpose

The purpose of the Company is to acquire, hold, invest in, secure financing for, construct, rehabilitate, develop, improve, maintain, operate, lease and otherwise deal with the Apartment Complex. The Company shall operate the Apartment Complex in accordance with any applicable Regulations. The Company shall not engage in any other business or activity.

2.4 Term and Dissolution

(a) The Company shall continue in full force and effect in perpetuity, except that the Company shall be dissolved and its assets liquidated prior to such date upon the first to occur of the following events (“Liquidating Events”):

(i) The sale or other disposition of all or substantially all of the assets of the Company;

(ii) The Withdrawal of a Managing Member, unless the Company is continued as provided in Section 7.2;

(iii) The election to dissolve the Company made in writing by the Managing Member with the Consent of the Investment Member and any Requisite Approvals;
(iv) The entry of a final decree of dissolution of the Company by a court of competent jurisdiction; or

(v) Any other event which causes the dissolution of the Company under the Act if the Company is not reconstituted pursuant to the provisions of Section 7.2 or Section 7.3.

(b) Upon the dissolution of the Company, the Managing Member (or for purposes of this paragraph, its trustees, receivers or successors) shall cause the cancellation of the Articles and shall liquidate the Company assets and apply and distribute the proceeds thereof in accordance with the provisions of Section 10.3, unless the Investment Member elects to reconstitute the Company and continue its business as provided in Section 7.2 or 7.3, in which case the Company assets shall be transferred to the new Company as provided in such Section. Notwithstanding the foregoing, if, during liquidation, the Managing Member shall determine that an immediate sale of part or all of the Company’s assets would be impermissible, impractical or cause undue loss to the Members, the Managing Member may defer liquidation of, and withhold from distribution for a reasonable time, any assets of the Company except those necessary to satisfy Company debts and obligations (other than Subordinated Loans).

2.5 Nature of Company Interests

No Company Interest hereunder shall be represented by any certificate or be considered a “security” or “investment property” for purposes of Article 8 and Article 9 of the Uniform Commercial Code of any jurisdiction.
ARTICLE III
Mortgage, Refinancing and Disposition of Property

3.1 Personal Liability

Subject to compliance with the Permanent Loan Conditions, the Company shall be authorized to obtain the Construction Loan to finance the acquisition, development and construction of the Apartment Complex and shall secure the Construction Loan by the Construction Mortgage. The Managing Member and its Affiliates, jointly and severally, are hereby authorized to incur personal liability for the repayment of funds advanced by the Construction Lender (and interest thereon) pursuant to the Construction Loan Documents. However, from and after the date of Permanent Mortgage Commencement, neither the Managing Member nor any Related Person shall at any time bear, nor shall the Managing Member permit any other Member or any Related Person to bear, the Economic Risk of Loss for the payment of any portion of any Mortgage Loan unless, prior to the effectiveness of the transaction in which such Economic Risk of Loss is created or assumed, the Managing Member shall have obtained, at the expense of the Company, an opinion from reputable tax counsel, in form and substance reasonably satisfactory to the Special Member, to the effect that such Economic Risk of Loss will not result in the reallocation of Tax Credits or Losses from any Non-Managing Member to the Managing Member. The Managing Member shall cause the Company to elect promptly, to the extent permitted and in the manner prescribed by any Agency or Lender having jurisdiction, that all debt service payments made by the Company to the holder of the Permanent Mortgage shall be applied first to interest determined at the stated rate set forth in the Permanent Note, and then to principal due with respect to the Permanent Note.

3.2 Refinancings; Permanent Loan Documents

The Company may decrease, increase or refinance any Mortgage Loan and may make any required transfer or conveyance of Company assets for security or mortgage purposes, provided, however, any such decrease, increase or refinancing of any Mortgage Loan may be made by the Managing Member only with the Consent of the Special Member. To the extent not executed as of the date hereof, the form and content of the Permanent Loan Documents shall be subject to the reasonable Consent of the Special Member.

3.3 Sale of Assets

Except pursuant to Section 3.5 or the Purchase Option, the Company may sell, lease, exchange or otherwise transfer or convey all or substantially all the assets of the Company only with the Consent of the Special Member. Notwithstanding the foregoing and except as set forth in Section 6.2(a)(vi), no Consent of the Special Member shall be required for the execution and delivery of the Construction Loan Documents, the leasing of apartments to tenants in the normal course of operations or the leasing of all or substantially all the apartments to a public housing authority at rents satisfactory to any Agency or Lender as expressed in writing, provided (subject to the Rent Restriction Test) that such rents are not less than the Projected Rents.

3.4 Real Estate Commissions
The total compensation to all Persons for the sale of the Apartment Complex shall be limited to a Competitive Real Estate Commission, which in no event shall exceed three percent (3%) of the contract price for the sale of the Apartment Complex.

3.5 Sale of the Apartment Complex

(a) [Intentionally Deleted].

(b) Notwithstanding any provision of this Agreement to the contrary subject to any Requisite Approvals, at any time after the later of: (i) the end of the Compliance Period, or (ii) the termination of the term of the Purchase Option, the Special Member shall have the right to require, by notice to the Managing Member (the “Required Sale Notice”), that the Managing Member promptly use commercially reasonable efforts to obtain a buyer for the Apartment Complex on the most favorable terms then available. The Managing Member shall submit the terms of any proposed sale to the Special Member and the Investment Member for their approval. If the Managing Member shall fail to so obtain a buyer for the Apartment Complex within twelve (12) months of the Required Sale Notice or if the Special Member and/or the Investment Member in its/their sole discretion shall withhold its/their consent to any proposed sale to such buyer, then the Special Member shall have the right at any time thereafter to obtain a buyer for the Apartment Complex on terms most favorable then available and otherwise acceptable to the Special Member. In the event that such sale is not consummated because of actions taken or not taken by the Managing Member, the Managing Member shall upon receipt of notice from the Investment Member promptly purchase the Interests of the Non-Managing Members for a price equal to the amount each such Member would have received (giving effect to reasonable estimates of closing costs which would have been incurred) in liquidation of the Company had such sale been consummated. In the event that the Special Member so obtains a buyer, it shall notify the Managing Member and the Investment Member in writing with respect to the terms and conditions of the proposed sale and, provided the Investment Member approves, in its sole discretion, the terms of such sale, the Managing Member shall cause the Company promptly to sell the Apartment Complex to such buyer or purchase the Interests of the Non-Managing Members for a price equal to the amount the Non-Managing Members would have received in liquidation of the Company.

(c) The Managing Member is hereby required, within five (5) days after its receipt of any offer to purchase the Apartment Complex or all of the Interests in the Company, to send a copy of such offer (or a written description of any such oral offer) to each of the Non-Managing Members. In connection with any proposed sale of the Apartment Complex, the Special Member (or its designee) shall have the right to (i) receive and review copies of all documents relating to the proposed sale, (ii) participate in the negotiations of the terms and conditions of the proposed sale, (iii) meet with the proposed purchaser, (iv) solicit proposals for alternative offers for the Apartment Complex, and (v) provide such other services in connection with the proposed sale as it deems to be appropriate.

(d) In any instance in which the fair market value of the Apartment Complex is required to be determined by appraisal, the following provisions shall apply. Any such appraisal shall be conducted by one or more Independent Appraisers (as defined below), to be selected as follows: As soon as practicable and in any event within thirty (30) days following the Managing
Member’s determination that the Investment Member has failed to approve a sale proposed by the Managing Member for a purchase price of equal to or greater than the fair market value of the Apartment Complex, the Managing Member and the Non-Managing Members shall select an Independent Appraiser. In the event the parties are unable to agree upon an Independent Appraiser within such thirty (30) day period, the Managing Member on the one hand and the Non-Managing Members on the other shall each select an Independent Appraiser. If the difference between the two appraisals is within ten percent (10%) of the lower of the two appraisals, the fair market value shall be the average of the two (2) appraisals. If the difference between the two (2) appraisals is greater than ten percent (10%) of the lower of the two (2) appraisals, then the two appraisers shall jointly select a third appraiser whose determination of fair market value shall be deemed to be binding on all parties. If the two (2) appraisers are unable jointly to select a third appraiser, either the Managing Member or the Non-Managing Members may, upon written notice to the other, apply to the presiding judge of a court of competent jurisdiction in Williamson County, Texas for the selection of the third appraiser who shall then participate in such appraisal proceeding, and who shall be selected from a list of names of Independent Appraisers submitted by the Managing Member and the Non-Managing Members. Each list of names of Independent Appraisers shall be submitted within ten (10) written days after the date on which the appraisal proceeding is invoked, or will be disregarded and the appraiser shall be selected from the list provided. The appraisals shall take into account the Extended Use Agreement and any other restriction recorded as of record against the Apartment Complex. Each of the Managing Member and the Non-Managing Members shall pay the cost of any appraiser(s) selected by it pursuant to this Section 3.5(d). If the parties agree on the selection of a single Independent Appraiser then the costs of such appraiser shall be paid by the Managing Member; if the parties are required to use a third appraiser, then the costs of such third appraiser shall be split between Managing Member and Non-Managing Members. For purposes of this Section 3.5(d), the term “Independent Appraiser” means a firm that is generally qualified to render opinions as to the fair market value of assets such as the Apartment Complex, which satisfies the following criteria: (i) such firm is not a Member or an Affiliate of the Company or any Member; (ii) such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years; (iii) such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such firm; (iv) one or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group that establishes and maintains professional standards for its members; and (v) such firm renders an appraisal only after entering into a contract that specifies the compensation payable for such appraisal.

3.6 Investor Provisions

(a) Subject to provisions of this Agreement with respect to related party loans, any GSE that is a limited partner or member in any entity that is a Non-Managing Member (a “Defined Mortgagee”) at any time may make, guarantee, own, acquire, or otherwise credit enhance, in whole or in part, a Mortgage Loan. Under no circumstances will such a Defined Mortgagee be considered to be acting on behalf or as an agent or the alter ego of the Non-Managing Member of which it is a limited partner or member. A Defined Mortgagee may take
any actions that such Defined Mortgagee, in its discretion, determines to be advisable in connection with the applicable Mortgage Loan (including in connection with the enforcement of such Mortgage Loan). By acquiring an interest in the Company, each Member acknowledges that no Defined Mortgagee owes the Company or any Member any fiduciary duty or other duty or obligation whatsoever by virtue of such Defined Mortgagee being a limited partner or member in a Non-Managing Member. Neither the Company nor any Member will make any claim against a Defined Mortgagee, or against the Non-Managing Member in which the Defined Mortgagee is a limited partner or member, relating to a Mortgage Loan and alleging any breach of any fiduciary duty, duty of care, or other duty whatsoever to the Company or to any Member based in any way upon the Defined Mortgagee’s status as a limited partner or member of a Non-Managing Member.
ARTICLE IV
Members; Capital

4.1 Capital and Capital Accounts

(a) The capital of the Company shall be the aggregate amount of the cash and the Gross Asset Value of property contributed by the Managing Member and by the Non-Managing Members as set forth in Schedule A. No interest shall be paid by the Company on any Capital Contribution to the Company. Schedule A shall be amended from time to time to reflect the withdrawal or admission of Members, any changes in the Company Interests held by a Member arising from the transfer of an Interest to or by such Member and any change in the amounts to be contributed or agreed to be contributed by any Member. No Member shall have the right to withdraw or receive a return of any of its Capital Contributions except as set forth in this Agreement.

(b) An individual Capital Account shall be established and maintained for each Member, including any additional or substituted Member who shall hereafter receive an interest in the Company. The Capital Account of each Member shall be maintained in accordance with the following provisions:

(i) To each Member’s Capital Account there shall be credited such Member’s Capital Contributions, such Member’s distributive share of Profits, and any items in the nature of income or gain that are specially allocated pursuant to Section 10.4 hereof, and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company Property distributed to such Member;

(ii) To each Member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company Property distributed to such Member pursuant to any provision of this Agreement, such Member’s distributive share of Losses, and any items in the nature of expenses or losses that are specially allocated pursuant to Section 10.4 hereof, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

In the event that the Gross Asset Values of Company assets are adjusted pursuant to this Agreement, the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment.

(c) The original Capital Account established for any Assignee (as hereinafter defined) shall be in the same amount as, and shall replace, the adjusted Capital Account of the Member which such Assignee succeeds, and, for the purpose of the Agreement, such Assignee shall be deemed to have made the Capital Contribution, to the extent actually paid in, of the Member which such Assignee succeeds. The term “Assignee,” as used in this paragraph, shall mean a Person who shall become entitled to receive a share of the Profits, Losses, Tax Credits and distributions of the Company by reason of such Person succeeding to the Interest of a Member by assignment of all or any part of an Interest. To the extent an Assignee receives less than
100% of the Interest of a Member, such Assignee’s Capital Account and Capital Contribution shall be in proportion to the Company Interest such Assignee receives, and the Capital Account and Capital Contribution of the Member who retains a partial interest in the Company shall continue, and not be replaced, in proportion to the Company Interest such Member retains.

(d) The foregoing provisions and other provisions of this Agreement relating to the maintenance of the Capital Accounts are intended to comply with the Allocation Regulations, and shall be interpreted and applied in a manner consistent with such Allocation Regulations.

4.2 Managing Members and Class B Special Member

(a) O-SDA is hereby designated as the Co-Managing Member and the name, address and Capital Contribution of the Co-Managing Member is as set forth on Schedule A. The Administrative Member is hereby admitted to the Company and the name, address and Capital Contribution of the Administrative Member is as set forth on Schedule A. The Class B Special Member is hereby admitted to the Company and the name, address and Capital Contribution of the Class B Special Member is as set forth on Schedule A.

(b) The Co-Managing Member has contributed or will contribute contemporaneously with the execution hereof $100 to the capital of the Company. The Administrative Member has contributed or will contribute contemporaneously with the execution hereof $100 to the capital of the Company. The Class B Special Member has contributed or will contribute contemporaneously with the execution hereof $100 to the capital of the Company.

(c) Notwithstanding anything contained herein to the contrary, in the event that the Developer is an Affiliate of any Managing Member, at the election of the Special Member in its sole and absolute discretion, upon the removal of such Managing Member in accordance with the terms hereof, to the extent all or any portion of the Development Fee or the Deferred Development Fee Note, if any, remains unpaid as of the effective date of such removal of such Managing Member, such Managing Member shall immediately prior to such removal make a capital contribution to the Company in an amount sufficient to pay any unpaid balance of the Development Fee and the Deferred Development Fee Note, if any, and all accrued but unpaid interest thereon, and the Company shall thereafter promptly pay to the Developer such remaining balance of the Development Fee and the Deferred Development Fee Note, if any, and all accrued but unpaid interest thereon.

4.3 Non-Managing Members

(a) The Original Investment Member hereby withdraws as a member of the Company and acknowledges that it no longer has any Interest in, or rights or claims against, the Company as a Member as of the Admission Date.

(b) Each of the Special Member and the Investment Member is hereby admitted to the Company as a Non-Managing Member as of the Admission Date in accordance with the terms and conditions of this Agreement. The name and address of the Investment Member and the Special Member are as set forth on Schedule A.
(c) Except as otherwise specifically set forth in Sections 4.5 or 7.4, the Managing Member shall have no authority to admit additional Non-Managing Members without the Consent of the Investment Member.

4.4 Liability of the Non-Managing Members

No Non-Managing Member or any Person who becomes a Substituted Non-Managing Member shall be liable for any debts, liabilities, contracts or obligations of the Company; such Persons shall be liable only to pay their respective Capital Contributions as and when the same are due hereunder and under the Act. After its Capital Contribution shall be fully paid, no Non-Managing Member shall, except as otherwise required by the Act, be required to make any further capital contributions or payments or lend any funds to the Company.

4.5 Special Rights of the Special Member

(a) Notwithstanding any other provisions herein (other than Section 13.8), to the extent the law of the State is not inconsistent, the Special Member shall have the right, subject to any Requisite Approvals, to:

(i) [Intentionally Deleted];

(ii) dissolve the Company, provided, however, that such dissolution shall not be caused by the Special Member unless the Managing Member has violated a material provision of any Project Document, which violation has not been cured within any applicable cure period specified;

(iii) remove any Managing Member and elect a new Managing Member (A) on the basis of the performance and discharge of such Managing Member’s obligations constituting fraud, bad faith, gross negligence, willful misconduct or breach of fiduciary duty, or (B) upon the occurrence of a Material Event.

(iv) continue the business of the Company with a substitute Managing Member, provided that the Managing Member has been removed pursuant to Section 4.5(a)(iii) above; and

(v) approve or disapprove the sale of all or substantially all of the assets of the Company.

(b) Upon the removal of a Managing Member for cause pursuant to Section 4.5(a)(iii),

(i) without any further action by any Member, the Special Member shall cause an Affiliate automatically to become a Managing Member (the “Substitute Managing Member”) and acquire in consideration of a cash payment of $100 such portion of the Interest of the removed Managing Member as counsel to the Special Member shall determine is the minimum appropriate interest in order to assure the continued status of the Company as a partnership under the Code and under the Act;
(ii) the remaining portion of the economic Interest of the removed Managing Member shall automatically be transferred to the Company, not as a penalty but as liquidated damages to compensate the Company for the action or omission of such Managing Member leading to its removal, or for the fact of its violation of the terms of this Agreement and to allow the Company to adequately compensate any replacement Managing Member; and

(iii) the Substitute Managing Member shall automatically be irrevocably delegated all of the powers and duties of the Managing Members pursuant to Section 6.13. A Managing Member so removed will not be liable as a managing member for any obligations of the Company incurred after the effective date of its removal, except to the extent that such obligations arise due to the action or inaction of the Managing Member prior to its removal. Each Managing Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to execute and deliver any and all documents and instruments on behalf of such Managing Member and the Company as the Special Member may deem to be necessary or appropriate in order to effect the provisions of this Section 4.5 and to enable the new Managing Member to manage the business of the Company.

4.6 Meetings

The Managing Member or Non-Managing Members holding more than ten percent (10%) of the then outstanding Non-Managing Member Interests may call meetings of the Company for any matters for which the Non-Managing Members may vote as set forth in this Agreement. A list of the names and addresses of all Non-Managing Members shall be maintained as part of the books and records of the Company and shall be made available upon request to any Non-Managing Member or his representative at his cost. Upon receipt of a written request either in person or by certified mail stating the purpose(s) of the meeting, the Managing Member shall provide all Non-Managing Members within ten (10) days after receipt of said request, written notice of a meeting and the purpose of such meeting to be held on a date not less than fifteen (15) nor more than sixty (60) days after receipt of said request, at a time and place convenient to the Non-Managing Members.
ARTICLE V
Capital Contributions of the Investment Member
and the Special Member

5.1 Payments

(a) The Special Member’s Capital Contribution of $10 shall be paid in full in cash on the Admission Date. The Investment Member’s Capital Contribution in the aggregate amount of $12,771,343 shall be paid in cash installments (the “Installments”), as follows:

(i) $1,915,701 (the “First Installment”) on the latest of (A) the Admission Date and (B) the closing of the Construction Loan; for administrative purposes the Investment Member will withhold from the proceeds of the First Installment, and apply such amounts to the payment of, the amount needed to pay in full the outstanding principal balance of the Predevelopment Loan and all accrued interest thereon;

Concurrent with payment of the First Installment, the Company will also pay an amount equal to $50,000 to the Investment Member, which represents the due diligence costs and professional, third-party fees incurred by the Investment Member in connection with the Investment Member’s investment in the Company. Such expense reimbursement may be netted from the First Installment but the entire amount of the First Installment shall be deemed for all purposes to have been paid first, by the Investment Member to the Company as payment of the First Installment and, then, by the Company to the Investment Member as reimbursement for such costs and expenses.

(ii) $3,959,116 (the “Second Installment”) on the latest of (A) the 50% Completion Date, (B) receipt of a final Title Policy with all endorsements in form and substance satisfactory to the Investment Member, (C) receipt of an updated title report in form and substance satisfactory to the Special Member, (D) receipt by the Investment Member of an Estoppel Letter from each Lender and evidence of satisfaction of the Insurance Requirements, and (E) April 1, 2018;

(iii) $3,065,122 (the “Third Installment”), on the latest of (A) the Completion Date, (B) receipt of an updated title report in form and substance satisfactory to the Special Member, and an access endorsement to the Title Policy, (C) receipt by the Investment Member of evidence of satisfaction of the Insurance Requirements and the Due Diligence Recommendations, (D) delivery of an “As Built” survey by a professional engineer licensed in the State reflecting all improvements to the property, (E) receipt by the Investment Member of the Substantial Completion Certificate and (F) October 1, 2018;

(iv) $2,873,552 (the “Fourth Installment”) on the latest of (A) the Initial Full Occupancy Date, (B) Permanent Mortgage Commencement (which may occur contemporaneously with the payment of this Fourth Installment), (C) Cost Certification, (D) the Initial Compliance Audit which shows no material noncompliance (as set forth in Section 12.7(n)), (E) receipt by the Investment Member of a copy of the Extended Use Agreement and (F) July 1, 2019; and
provided, however, that (x) the Managing Member shall give the Investment Member not less than fourteen (14) days’ written notice prior to the due date of each Installment subsequent to the First Installment, (y) no Installment shall be due unless and until all conditions to the payment of all prior Installments have been satisfied, and (z) the full amount of the First Installment, the Second Installment, the Third Installment and the Fourth Installment of the Investment Member’s Capital Contribution (less all amounts approved as reimbursement for Development Costs on the Admission Date) shall be deposited into an escrow account in the name of the Company with the Construction Lender (the “Equity Installment Escrow”). Funds may be withdrawn from such Equity Installment Escrow to pay Development Costs in monthly draws only (1) after the delivery to the Investment Member by the Managing Member of a monthly draw request and all supporting back-up invoices and documentation therefor, including without limitation, the applicable construction inspection report of the Inspecting Consultant, (2) the countersignature of the Special Member of such draw request and (3) the subsequent submission to and approval by the Construction Lender of such draw request, if such approval is required by the Construction Loan Documents. All interest earned on the funds deposited in the Equity Installment Escrow shall be calculated and reported monthly by the Managing Member to the Investment Member and all such accrued interest shall be disbursed by the Managing Member to the Investment Member upon the payment of the Investment Member’s Fourth Installment.

Prior to conversion of the Construction Loan to the Permanent Loan, pursuant to that certain Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement between the Company and the Construction Lender dated as of the date of the Investment Closing, the Managing Member hereby irrevocably authorizes and directs the Investment Member to pay each installment of its Capital Contribution when due pursuant to the terms hereof by making a payment of such amount on behalf of the Company directly to the Construction Lender in accordance with the Construction Loan Documents.

(b) The obligation of the Investment Member to pay each Installment is conditioned upon delivery by the Managing Member to the Investment Member of a written certificate (the “Payment Certificate”) stating that as of the date of such certificate (i) all the conditions to the payment of such Installment and each prior Installment have been satisfied, (ii) all representations and warranties of the Managing Member contained in this Agreement are true and correct and the Managing Member is not in default of any of its duties and obligations set forth in this Agreement, (iii) the Apartment Complex is In Balance, (iii) no event has occurred which suspends or terminates the obligations of the Investment Member to pay Installments under this Agreement which has not been cured as herein provided, and (iv) no event has occurred which, with the giving of notice, would oblige the Managing Member to repurchase the Interests of the Investment Member pursuant to Section 5.2(a). Except as provided in the final sentence of this Section 5.1(b), acceptance by the Company of any Installment shall constitute a confirmation that, as of the date of payment, all such conditions are satisfied and all such representations and warranties are true and correct. The obligation of the Investment Member to pay the First Installment is also conditioned upon delivery by the Managing Member to the Investment Member of (x) a legal opinion of independent counsel to the Company, the Managing
Member, the Developer and the Guarantors, which opinion(s) must be satisfactory to the Investment Member as to form, content and identity of counsel and (y) a photocopy of a binding commitment, in form and substance satisfactory to the Special Member, to issue the Title Policy and any endorsements thereto in form and substance reasonably satisfactory to the Special Member. In no event shall any Installment become due until all of the conditions for all of the Installments listed prior to the Installment in question in Section 5.1(a) shall have been satisfied and all of such prior Installments shall have become due. Notwithstanding the foregoing, however, if at any time prior to the date when an Installment becomes due and payable, the Company has an Operating Deficit which the Managing Member would be required to fund pursuant to Section 6.10 as a result of which the Payment Certificate cannot be delivered, then, provided that all other conditions to the Installment in question are met, the Investment Member may, at its option, waive the requirement of the delivery of the Payment Certificate or any other condition with respect to part or all of such Installment and pay such part or all of such Installment, provided that the proceeds of the amount so paid are used by the Company to fully fund such Operating Deficit; provided, however, that if the proceeds of such amount so paid are designated in Section 6.12 to be used to pay fee(s), then such proceeds shall be utilized to pay such fee(s) and the recipient(s) thereof shall be required to, and hereby agree to, utilize the proceeds of such fee(s) to fund such Operating Deficit, in which case the Investment Member is hereby authorized to directly fund such Operating Deficit, with the funds so applied being deemed to have been paid as aforesaid.

(c) The Payment Certificate for each Installment shall be dated and delivered not less than ten (10) nor more than thirty (30) days prior to the due date for such Installment.

(d) If, as of the date when an Installment would otherwise be due, any statement required to be made in the Payment Certificate for such Installment cannot be truthfully made, the Managing Member shall notify the Investment Member of the reason why such statement would be untrue if made, and the Investment Member shall not be required to pay such Installment; provided, however, that if (i) any such statement can subsequently be truthfully made and (ii) the Investment Member shall not have irrevocably lost, in the good faith judgment of the Investment General Partner, any material tax or other benefits hereunder (other than tax benefits for which the Investment Member has been fully compensated pursuant to the provisions of paragraphs (e) and (f) of this Section 5.1), then the Investment Member shall pay such Installment to the Company thirty (30) days after delivery by the Managing Member to the Investment Member of the Payment Certificate together with an explanation of the manner in which each such statement had become true.

(e) In the event that as of or any time prior to State Designation (the “Initial Adjustment Date”) or as a result of a subsequent audit, the Investment Member shall receive a written certification of the Auditors indicating that the aggregate Actual Credit during the Credit Period will be less than the aggregate Projected Credit during the Credit Period, then (i) the next succeeding Installments of the Capital Contributions of the Investment Member shall be reduced by an amount equal to the product of (X) the difference between (1) the aggregate Projected Credit during the Credit Period and (2) the aggregate Actual Credit during the Credit Period and (Y) $0.93 as to each dollar of Tax Credit, and (ii) the Projected Credit for each Fiscal Year shall thereafter be redefined to mean the Actual Credit, as so determined (the “Revised Projected Credit”). Any such reduction pursuant to this Section 5.1(e) shall be made first to the
Installment, if any, next due to be paid by the Investment Member, and any balance of such amount payable by the Managing Member in excess of the amount of such Installment shall be applied to succeeding Installments, if any, provided that if the amount of any such reductions exceeds the sum of the remaining Installments, if any, then an amount equal to the amount of such excess shall be paid by the Managing Member to the Company as a Capital Contribution and immediately distributed to the Investment Member promptly after demand is made therefor (or, to the extent such Managing Member Capital Contribution would in the opinion of counsel to the Investment Member cause tax benefits intended for the Investment Member to be lost or reallocated to another Member, then payments due from the Managing Member shall be made, on an After-Tax Basis, directly to the Investment Member, as a payment of damages for breach of warranty), regardless of the reason for the occurrence of such event (unless such reduction was caused by an act or omission of the Investment Member or its Affiliates, in which event no such reduction or payment shall be required). No reduction of any Installment pursuant to this Section 5.1(e) shall be deemed to be a Capital Contribution by the Managing Member to the Company. No adjustment pursuant to this Section 5.1(e) shall be due if solely attributable to the inability of the Investment Member or its constituent partners to be capable of utilizing the full amount of the Actual Credit.

(f) If for any reason, including without limitation, a Recapture Event, with respect to any Fiscal Year (except to the extent already accounted for in Section 5.1(e) above) all or a portion of which occurs before or during the Compliance Period, the Actual Credit is or was less than the Projected Credit (or the Revised Projected Credit, if applicable) for such Fiscal Year (a “Reduction Year”), then the Managing Member shall pay to the Investment Member the Reduction Amount. The Reduction Amount shall be equal to the sum of (A) the excess of the Projected Credit (or the Revised Projected Credit, if applicable) for such Fiscal Year over the Actual Credit for such Fiscal Year multiplied by $0.93 (provided that in the event a Reduction Amount is due for 2018 and any of the Projected Credit for such year will be allocable to the Investment Member in 2028, then for such Reduction Year only 0.60 shall be substituted for 0.93 and $85,000 shall be substituted for the Projected Credit) as to each dollar of Tax Credit, plus (B) the Recapture Amount as determined pursuant to Section 10.6 and, to the extent not already accounted for, any interest or penalties payable by the limited partners of the Investment Member as a result of such shortfall or Recapture Event, assuming that each limited partner of the Investment Member used all of the Tax Credits allocated to it in the Fiscal Year of allocation. The Auditors shall make their determination of the amount of the Actual Credit with respect to each Reduction Year within thirty (30) days following the end of such Fiscal Year, provided that, if it is known at the time of an event or circumstance causing a Reduction Year that any or all of the remaining years in the Credit Period also will be Reduction Years as a result of such event or circumstance, then any Reduction Amount calculable for such future year(s) shall be paid at the time of the first such Reduction Year. The Investment Member shall be eligible to be paid a Reduction Amount as hereinabove described with respect to each Reduction Year. Any Reduction Amount shall first be applied to the Installment next due to be paid by the Investment Member, with any portion of such Reduction Amount in excess of the amount of such Installment then being applied to succeeding Installments, provided that if no further Installments remain to be paid or if the Reduction Amount shall exceed the sum of the amounts of the remaining Installments, then the entire Reduction Amount or the balance of the Reduction Amount, as the case may be, shall be paid by the Managing Member to the Company as a Capital Contribution and immediately distributed to the Investment Member promptly after demand is
made therefor (or, to the extent such Managing Member Capital Contribution would in the opinion of counsel to the Investment Member cause tax benefits intended for the Investment Member to be lost or reallocated to another Member, then payments due from the Managing Member shall be made, on an After-Tax Basis, directly to the Investment Member, as a payment of damages for breach of warranty), regardless of the reason for the occurrence of such event (unless such reduction was caused by an act or omission of the Investment Member or its Affiliates, in which event no Reduction Amount shall be payable). No reduction of any Installment pursuant to this Section 5.1(f) shall be deemed to be a Capital Contribution to the Company. No adjustment pursuant to this Section 5.1(f) shall be due if solely attributable to the inability of the Investment Member or its constituent partners to be capable of utilizing the full amount of the Actual Credit.

(g) In the event that the Investment Member shall receive a written certification of the Auditors indicating that the aggregate Actual Credit during the Credit Period will be greater than the aggregate Projected Credit during the Credit Period (an “Upward Basis Adjuster”), then the final Installment of the Capital Contributions of the Investment Member shall be increased by an amount (up to a maximum amount of $1,277,134 inclusive of any Upward Timing Amount) (the “Investment Increased Basis Amount”) equal to the product of (X) the difference between (1) the aggregate Actual Credit during the Credit Period as certified by the Auditors and (2) the aggregate Projected Credit during the Credit Period and (Y) equal to the then prevailing market price for Tax Credits determined by the Investment Member in its sole and absolute discretion, and the Projected Credit for each Fiscal Year shall thereafter be redefined to mean the Revised Projected Credit, provided, however, that the provisions of this Section 5.1(g) shall not apply in the event that the Investment Member does not have sufficient funds to make the additional Capital Contribution and, after a diligent good faith effort, the Investment Member cannot cause any of its Affiliates to make such additional Capital Contribution. Additional Capital Contributions made pursuant to this Section 5.1(g) shall be applied first to the payment of the Development Fee if so required by the Special Member in its reasonable discretion. If the Investment Member elects not to increase the amount of its Capital Contribution by the full amount of the Investment Increased Basis Amount, in such event, the Managing Member’s share of the Profits and Loss (and, correspondingly, depreciation and Tax Credits) will be increased, and the Investment Member’s share decreased, such that the Investment Member will be entitled to receive allocations of Tax Credits equal to the Projected Tax Credits plus the Tax Credits used in the calculation of the actual Investment Increased Basis Amount. The Members agree to amend this Agreement to reflect any increase in the Investment Member’s Capital Contribution or increase in the Managing Member’s share of Profits and Losses (and, correspondingly, depreciation and Tax Credits), as the case may be.

(h) In the event that, as a result of accelerated lease-up, the Actual Credit for 2018 is greater than $364,244 (an “Upward Timing Adjuster”), provided that as a result of such Upward Timing Adjuster, no Tax Credits are caused to be allocated to the Investment Member over the 15-year Compliance Period instead of the 10-year Credit Period, then the Capital Contribution of the Investment Member shall be increased by an amount (the “Upward Timing Amount”) equal to the product of (A) the Actual Credit for 2018 as certified by the Auditors and (B) 0.25, payable on the later of (i) the due date of the Investment Member’s Fifth Installment and (ii) receipt by the Investment Member of the Company’s filed federal tax return for 2018, provided, however, that in no event will the Investment Member be obligated to pay greater than $50,000
for the Upward Timing Amount. Notwithstanding the foregoing, the Investment Member may in its sole discretion contribute an Upward Timing Amount in excess of $50,000 in the event that the Investment Member or its partners have sufficient funds to make the additional Capital Contribution. Additional Capital Contributions made pursuant to this Section 5.1(h) shall be applied first to the payment of the Development Fee if so required by the Special Member in its reasonable discretion.

5.2 Return of Capital Contributions

(a) Failure to Achieve Development and/or Tax Credit Benchmarks and Standards. Upon the occurrence of any of the events (a “Repurchase Event”) listed below in this Section 5.2(a), within five (5) days of the occurrence thereof, the Managing Member shall send to the Investment Member notice of such event and of the Managing Member’s obligation to repurchase the Interests of the Investment Member by paying to the Investment Member an amount in cash (the “Repurchase Amount”) equal to each such Member’s Invested Amount minus (i) the portion, if any, of such Member’s Capital Contribution which shall not yet have been paid (or deemed to have been paid) to the Company and (ii) an amount equal to the amount of Tax Credits previously received by the Investment Member and not subject to recapture (provided, however, that, unless the Investment Member receives a written notice from the IRS prior to the date the Repurchase Amount is due as to whether any of the Tax Credits are to be recaptured, then the determination of whether such previously received Tax Credits are subject to recapture shall be made in the reasonable discretion of the Investment Member based on its assessment of whether there is a reasonable likelihood that the Apartment Complex will be continued as affordable housing for the remainder of the Compliance Period), plus the outstanding principal and accrued interest in respect of any loans made by the Non-Managing Members to the Company and the amount of any third-party costs, including, without limitation, attorney’s fees incurred by or on behalf of such Member in implementing this Section 5.2(a) in the event the Investment Member requires such a repurchase plus interest thereon at the AFR, annually compounding, commencing on the fifth (5th) day after delivery of the notice referred to in the next sentence. If the Investment Member elects to require a repurchase of its Interest and the payment to it of an amount equal to its Repurchase Amount, it shall send notice thereof to the Company within thirty (30) days after the mailing date of the Managing Member’s notice, or at any time after the occurrence of any of the foregoing if the Managing Member shall not have sent a notice thereof, and the Managing Member shall within ten (10) days after the Company receives any such notice from a Member requesting the purchase of its Interest repurchase the Interest of such Member by paying to such Member an amount equal to its Repurchase Amount. If funds are insufficient, the Interest of the Investment Member shall be purchased first, then the Special Member Interest shall be purchased. Upon the payment of the Repurchase Amount to the Investment Member and the Special Member such Member shall withdraw as members of the Company. If, following receipt of the Managing Member’s notice, any Member fails to send notice to the Managing Member by the end of such thirty (30)-day period requesting the Managing Member to purchase its Interest, such Member, as the case may be, shall be deemed to have waived its right to cause the Managing Member to purchase its Interest as a result of the event described in the Managing Member’s notice; provided, however, such deemed waiver shall not be presumed unless the Managing Member shall have first sent a second notice to such Member or otherwise confirmed that the first notice was timely received by such Member. No such waiver, however, shall affect the right of the Investment Member to cause the Managing
Member to purchase its Interest upon the occurrence of any other event described in this Section 5.2(a), or upon any subsequent occurrence of the event described in the Managing Member’s notice. The Repurchase Events are as follows:

(i) each of the buildings in the Apartment Complex shall not have been placed in service by December 31, 2018 (for purposes of satisfying the requirements of Section 42(h)(1)(E)(i) of the Code); or

(ii) by March 1, 2019, the Completion Date shall not have occurred; or

(iii) construction of the Apartment Complex or, prior to Rental Achievement, operation thereof shall have been enjoined by a final order (from which no further appeals are possible) of a court having jurisdiction and such injunction shall continue for a period of ninety (90) days; or

(iv) Permanent Mortgage Commencement shall not have been achieved prior to the date that causes a default under the Construction Loan Documents; or

(v) if at any time it shall be determined by the Service or by the Tax Accountants that a Carryover Certification could not be issued or was issued in error; or

(vi) State Designation shall not have occurred by September 30, 2019 (or any later date fixed by the Managing Member with the Consent of the Investment Member) and by said date the Managing Member shall not have made any payment as described in the second sentence of Section 5.1(e) or, if the Investment Member shall have elected to have all or a portion of any payment under Section 5.1(e) applied toward future Installment obligations of the Investment Member, amendments to this Agreement shall not have been adopted and filed in the Filing Office, if required, reflecting such event; or

(vii) if by the date which is twelve (12) months following the Completion Date, Rental Achievement shall not have been achieved; or

(viii) the Company shall fail to meet the Minimum Set-Aside Test or the Rent Restriction Test by the close of the first year of the Credit Period and/or fails to continue to meet either of such tests or any other tenant set-asides required by the Credit Agency at any time during the sixty (60)-month period commencing on such date; or

(ix) (A) foreclosure proceedings shall have commenced under any Mortgage and such proceedings shall not have been dismissed within thirty (30) days, provided however that, after Rental Achievement, this clause (A) shall continue to be effective only if the Managing Member is in default of its obligations under Section 5.1(e), 5.1(f) or 6.10, (B) any of the commitments of a Lender to provide a Mortgage Loan and/or any subsidy financing shall be terminated or withdrawn and not reinstated or replaced within sixty (60) days with terms at least as favorable to the Company or terms for which the Consent of the Investment Member and any Requisite Approvals shall have been obtained, or (C) the Construction Lender, acting in good faith and in accordance with the provisions of the Construction Loan Documents, shall have irrevocably refused to make
any further advances under the Construction Loan Documents and such decision shall not have been reversed or the Construction Lender replaced within thirty (30) days; or

(x) at any time the Managing Member fails to advance Subordinated Loans and such failure continues for ten (10) days; or

(xi) prior to Rental Achievement, any action is commenced to foreclose any mechanics, or any other lien (other than the lien of a Mortgage) against the Apartment Complex and such action has not within thirty (30) days been either bonded against in such a manner as to preclude the holder of such lien from having any recourse to the Apartment Complex or to the Company for payment of any debt secured thereby, or affirmatively insured against by the title insurance policy or an endorsement thereto issued to the Company by a reputable title insurance company (which insurance company will not have indemnity from or recourse against Company assets by reason of any loss it may suffer by reason of such insurance) in an amount satisfactory to the Investment Member; or

(xii) a casualty occurs resulting in substantial destruction of all or a portion of the Apartment Complex, and the insurance proceeds (if any) are insufficient to restore the Apartment Complex or the Apartment Complex is not so restored within twenty-four (24) months following such casualty; or

(xiii) at any time prior to Rental Achievement, an action is commenced to abandon or permanently enjoin the construction of the Apartment Complex; or

(xiv) a final determination by the Tax Accountants that the Investment Member shall be allocated less than 70% of the Projected Credit during the Credit Period; provided however that, after Rental Achievement, this subsection (xiv) shall continue to be effective only if the Managing Member is in default of its obligations under Section 5.1 or 6.10.

(b) **Lender/Agency Disapproval.** If any Agency or Lender shall disapprove, or fail to give any required approval of, the Investment Member and/or the Special Member as a Non-Managing Member hereunder within one hundred eighty (180) days of the Admission Date, then the Member being disapproved or not approved shall, effective as of such time or such later time as may be elected by the Member being disapproved or not approved as may be specified by such Agency or Lender in its disapproval, at the option of the Member being disapproved or not approved (if not directed by such Agency or Lender to withdraw), cease to be a Non-Managing Member. The Managing Member shall, within ten (10) days of the effective date of such cessation, pay to the Member being disapproved or not approved an amount equal to its paid-in Capital Contributions and the outstanding balance of any loans made by the Non-Managing Members to the Company plus the amount of any third party costs, including, but not limited to attorney’s fees, incurred by or on behalf of such Member in implementing this Section 5.2(b).

(c) **Substitution and Indemnification.** Upon the receipt by the Investment Member and/or the Special Member of the amount due to it pursuant to either Section 5.2(a) or Section 5.2(b), the Interest of such Member shall terminate, and the Managing Member shall indemnify
and hold harmless such Member from and against any Adverse Consequences to which such Member (as a result of its participation hereunder) may be subject, provided that such Adverse Consequences do not result from such Member’s acts or omissions.

(d) Waiver of Repurchase Right. Each of the Investment Member and the Special Member shall have the right to irrevocably waive its right to have its Interest repurchased pursuant to any clause or clauses of Section 5.2(a), or any portion thereof, at any time during which any of such rights shall be in effect. Such a waiver shall be exercised by delivery to the Managing Member of a written notice stating that the rights being waived pursuant to any specified clause or clauses of Section 5.2(a), or any specified portion thereof, are thereby waived for a specified period of time.

(e) Additional Managing Member. If the Managing Member shall fail to make on the due date therefor any payment required under Section 5.2(a) or Section 5.2(b), time being of the essence, at any time thereafter the Special Member shall have the option, exercisable in its sole discretion, to cause itself or its designee to be admitted as an additional Managing Member, receiving from the existing Managing Member, in consideration of the payment of ten dollars ($10.00), an interest in the Profits, Losses, Tax Credits and distributions of the Company sufficient in the opinion of counsel to the Special Member to cause the Special Member to become a Managing Member of the Company, with the Special Member retaining its status as such and its economic interest in the Company as the Special Member (or its designee as an additional Managing Member). If the Special Member exercises the option described in this Section 5.2(e), each of the other Managing Members hereby agrees that all of its rights and powers hereunder as a Managing Member shall automatically be irrevocably delegated to the Special Member pursuant to Section 6.13 without the necessity of any further action by any Member. Each Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to take any action and to execute, deliver and file or record any and all documents and instruments on behalf of such Member and the Company as the Special Member may deem necessary or appropriate in order to effectuate the provisions of this Section 5.2(e) and to allow the additional Managing Member to manage the business of the Company. The admission of the Special Member or its designee as an additional Managing Member shall not relieve any other Managing Member of any of its economic obligations hereunder, and each other Managing Member shall fully indemnify and hold harmless the additional Managing Member on an After-Tax Basis from and against any and all Adverse Consequences sustained by such additional Managing Member in connection with its status as a Managing Member (other than Adverse Consequences arising solely from the gross negligence or willful misconduct of such additional Managing Member) for so long as such additional Managing Member remains a Managing Member of the Company. Any such additional Managing Member shall withdraw (notwithstanding the provisions of Article VII), as such and remain only as the Special Member upon the payment of all amounts due under Sections 5.2(a) and 5.2(b).
ARTICLE VI
Rights, Powers and Duties of Managing Member

6.1 Authorized Acts

Subject to the provisions of Section 6.2, Section 6.3, Section 6.15 and all other provisions of this Agreement, the Managing Member for, in the name and on behalf of the Company, is hereby authorized, in furtherance of the purposes of the Company:

(i) to acquire by purchase, lease, exchange or otherwise any real or personal property;

(ii) to construct, rehabilitate, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage or lease any real estate and any personal property;

(iii) to borrow money and issue evidences of indebtedness and to secure the same by mortgage, pledge or other lien on the Apartment Complex or any other assets of the Company;

(iv) to execute the Mortgage Loan Documents and the other Project Documents and all such other documents as the Managing Member deems to be necessary or appropriate in connection with the acquisition, development, construction and financing of the Apartment Complex;

(v) subject to Section 3.2, to prepay in whole or in part, refinance or modify any Mortgage Loan or other financing affecting the Apartment Complex;

(vi) to employ the Management Agent (which may be an Affiliate of the Managing Member) and, subject to the provisions of Article XI, to pay reasonable compensation for its services;

(vii) to employ its Affiliates to perform services for, or sell goods to, the Company provided that (except with respect to any contract specifically authorized by this Agreement) the terms of any such transaction with an Affiliate shall not be less favorable to the Company than would be arrived at by unaffiliated parties dealing at arms’ length;

(viii) to execute contracts with any Agency, the State or any subdivision or agency thereof or any other Governmental Authority to make apartments or tenants in the Apartment Complex eligible for any public-subsidy program;

(ix) to execute leases of some or all of the apartment units of the Apartment Complex to individuals and/or to a public housing authority and/or to a non-profit corporation, cooperative or other non-profit Entity;

(x) to employ or engage such engineers, architects, technicians, accountants, attorneys and other Persons, as may be necessary, convenient or incidental to the accomplishment of the purposes of the Company;
(xi) to become qualified as a foreign limited liability company duly registered and authorized to transact business in the State; and

(xii) to enter into any kind of activity and to perform and carry out contracts of any kind which may be lawfully carried on or performed by a limited liability company and to file all certificates and documents which may be required under the laws of the State.

6.2 Restrictions on Authority

(a) Notwithstanding any other Section of this Agreement, the Managing Member shall have no authority to perform any act in violation of the Act, any other applicable law, Agency or other government regulations, the requirements of any Lender, or the Project Documents. In the event of any conflict between the terms of this Article VI and any applicable Regulations or requirements of any Lender, the terms of such Regulations or the requirements of such Lender, as the case may be, shall govern. Subject to the provisions of Section 6.2(b), the Managing Member, acting in its capacity as Managing Member, either on its own behalf or on behalf of the Company, shall not have the authority, without the Consent of the Special Member (which consent shall not be unreasonably withheld or delayed as to clauses (viii), (x), and (xiii)):

(i) to have unsecured borrowings in excess of ten thousand dollars ($10,000.00) in the aggregate at any one time outstanding, except borrowings constituting Subordinated Loans;

(ii) to borrow from the Company or commingle Company funds with the funds of any other Person;

(iii) following the Completion Date, to construct any new or replacement capital improvements on the Apartment Complex which substantially alter the character or use of the Apartment Complex or which cost in excess of ten thousand dollars ($10,000.00) in a single Fiscal Year, except (x) replacements and remodeling in the ordinary course of business or under emergency conditions or (y) construction paid for from insurance proceeds;

(iv) to acquire any real property in addition to the Apartment Complex;

(v) to borrow the Permanent Loan on terms other than the Permanent Loan Conditions or to increase, decrease or modify the terms of or refinance any Mortgage Loan;

(vi) to rent apartments in the Apartment Complex such that the Apartment Complex would not meet the requirements of the Minimum Set-Aside Test or the Rent Restriction Test;

(vii) to sell, exchange or otherwise convey or transfer the Apartment Complex or substantially all the assets of the Company;

(viii) to terminate any Material Agreement;
(ix) to permit an Event of Bankruptcy with respect to the Company;

(x) to execute contracts with any Agency, the State or any subdivision or agency thereof or any other Governmental Authority to make apartments or tenants in the Apartment Complex eligible for any public-subsidy program (other than with respect to the 811 Units);

(xi) to amend any construction or rehabilitation contract except as expressly provided in subsection (xiv) below;

(xii) to pledge or assign any of the Capital Contributions of the Investment Member or the proceeds thereof (except to the extent required by the terms of the Construction Loan Documents and agreed to in writing by the Special Member);

(xiii) to amend or terminate any Project Document;

(xiv) to approve any material changes to the Plans and Specifications for the Apartment Complex or make any changes which would result, either individually or in the aggregate, in an overall development cost increase or decrease in excess of $100,000;

(xv) to permit the merger, consolidation, acquisition, termination or dissolution of the Company;

(xvi) to do any act required to be approved or ratified by all Non-Managing Members under the Act;

(xvii) to admit any additional Member to the Company;

(xviii) to make any discretionary capital calls;

(xix) to confess any judgment on behalf of the Company;

(xx) to cause the Company to institute, settle, compromise, mediate or otherwise relinquish any claim (actual or prospective), or to release, waive or diminish any material Company rights in any litigation or arbitration matter involving a claim in excess of $15,000;

(xxi) to change the nature of the Company’s business;

(xxii) to grant any approval or consent on behalf of the Company under the Project Documents that would have a material adverse effect on the Company or the Non-Managing Members;

(xxiii) to make any decision not to repair or rebuild in the case of material damage to or condemnation of the Apartment Complex;

(xxiv) to do any act which is in contravention or inconsistent with this Agreement, the Extended Use Agreement or the Project Documents;
(xxv) to make, amend or revoke any tax election required of or permitted to be made by the Company under the Code, including, without limitation, any election under Section 42 or Section 754 of the Code. In this regard, the Managing Member shall make any elections required or permitted under Section 42 of the Code requested in writing by the Investment Member;

(xxvi) to change any accounting method or practice of the Company or terminate or replace the Auditors;

(xxvii) to take any action (or fail to take any action) which would cause or result in a breach of any of the representations, warranties or covenants of the Managing Member set forth in this Agreement, including, without limitation, those set forth in Section 6.6;

(xxviii) to deposit any Company funds in any bank, savings and loan or other financial institution whose accounts are not fully insured by the Federal Deposit Insurance Corporation;

(xxix) to make any single expenditure of more than $10,000 or any total annual expenditures greater than $25,000 which are not consistent with operating budget provided to the Special Member pursuant to Article XII of this Agreement, or make any material modification to such development budget or any operating budget;

(XXX) to hire any employees for any purpose;

(XXXI) to receive or allow any rebate or give-up or participate in any reciprocal business arrangements which would circumvent the provisions hereof; or

(XXXII) execute any Deferred Development Fee Note.

(b) In the event that any Managing Member violates any provision of Section 6.2(a), the Special Member in its sole discretion and without prejudice to its rights under Sections 4.5(b) and 7.6(a), may cause itself or its designee to be admitted as an additional Managing Member without any further action by any other Member. Upon any such admission of an additional Managing Member, each existing Managing Member shall be deemed to have assigned proportionally to the additional Managing Member, automatically and without further action, such portion of its Company Interest so that the additional Managing Member shall receive an interest in the Profits, Losses, Tax Credits and distributions of the Company sufficient in the opinion of counsel to the Special Member to cause such additional Managing Member to be a Member of the Company, in consideration of one dollar ($1.00) and any other consideration which may be agreed upon. An additional Managing Member so admitted shall automatically become the Controlling Managing Member and shall be irrevocably delegated all of the power and authority of all of the Managing Member pursuant to Section 6.13. Any such additional Managing Member shall have the right to withdraw as a Managing Member at any time, leaving the prior Managing Member once again as the only Managing Member, the provisions of Article VII notwithstanding. Each Member hereby grants to the Special Member a special power of attorney, irrevocable to the extent permitted by law and coupled with an interest, to amend this Agreement and to do anything else which, in view of the Special Member, may be necessary or
appropriate to accomplish the purposes of this Section 6.2(b) or to enable any additional Managing Member admitted pursuant to this Section 6.2(b) to manage the business of the Company. The admission of an additional Managing Member shall not relieve any other Managing Member of any of its economic obligations hereunder, and each other Managing Member on an After-Tax Basis shall fully indemnify and hold harmless the additional Managing Member from and against any and all Adverse Consequences sustained by the additional Managing Member in connection with its status as a Managing Member (other than Adverse Consequences arising solely from the gross negligence or willful misconduct of such additional Managing Member).

6.3 Personal Services; Other Business Ventures

No Managing Member or Affiliate thereof shall receive any salary or other direct or indirect compensation for any services or goods provided in connection with the Company or the Apartment Complex, except as may be specifically provided in Section 6.12, Section 6.15 and Article XI or as to which the Consent of the Special Member shall have been obtained to the precise terms thereof prior to the commencement of such services or the provision of such goods. Any Member may engage independently or with others in other business ventures of every nature and description, including the ownership, operation, management, syndication and development of real estate; neither the Company nor any other Member shall have any rights in and to such independent ventures or the income or profits derived therefrom.

6.4 Business Management and Control

(a) Subject to the provisions of this Agreement, the Managing Member shall have the exclusive right to control the business of the Company. If at any time there is more than one Managing Member, the powers and duties of the Managing Members hereunder shall be exercised in the first instance by a Managing Member who, subject to the terms and provisions of this Agreement, shall manage the business and affairs of the Company (the “Controlling Managing Member”). The initial Controlling Managing Member shall be Saigebrook Kaia, LLC; if it is unwilling or unable to serve in such capacity or shall cease to be a Managing Member, the remaining Managing Members may from time to time designate a new Controlling Managing Member. The Controlling Managing Member may bind the Company by executing and delivering, in the name and on behalf of the Company, any documents which this Agreement authorizes the Managing Members to execute hereunder without the requirement that any other Managing Member execute such documents. If for any reason no designation is in effect, the powers of the Managing Member shall be exercised by a majority in interest of the Managing Members. Any action required or permitted to be taken by a corporate Managing Member hereunder may be taken by such of its proper officers or agents as it shall validly designate for such purpose.

(b) Subject to Section 6.2 and the other provisions of this Agreement, the Managing Member shall have control over the business of the Company and shall have all rights, powers and authority conferred by law as necessary, advisable or consistent in connection therewith. Without limiting the generality of the foregoing, the Managing Member shall have the right, power and authority to execute any documents relating to the acquisition, financing, construction, operation and sale of all or any portion of the Apartment Complex with the prior
approval of the other Managing Members, if any. The Managing Member shall be responsible for administering any construction loan draw requests for the development of the Apartment Complex.

(c) Neither the Investment Member nor the Special Member shall have any right to take part in the management or control of the business of the Company or to transact any business in the name of the Company. No provision of this Agreement which makes the Consent of the Investment Member or the Consent of the Special Member a condition for the effectiveness of an action taken by the Managing Member is intended, and no such provisions shall be construed, to give the Investment Member or the Special Member, as the case may be, any participation in the control of the Company business. Each of the Special Member and the Investment Member hereby consents to the exercise by the Managing Member of the powers conferred on it by law and this Agreement, and the Managing Member agrees to exercise control of the business of the Company only in accordance with the provisions of this Agreement. Notwithstanding the foregoing, in no event may the provisions of this Section 6.4 be invoked by any Managing Member or by any other Person as a defense against or as an impediment to the ability of either the Investment Member or the Special Member to take any action hereunder.

6.5 Duties and Obligations

(a) The Managing Member shall manage the affairs of the Company to the best of its ability, shall use its best efforts to carry out the purpose of the Company, and shall devote to the Company such time as may be necessary for the proper performance of its duties and the business of the Company. The Managing Member shall promptly take all action which may be necessary or appropriate for the proper development, construction, maintenance and operation of the Apartment Complex in accordance with the provisions of this Agreement, the Project Documents and any applicable laws and Regulations. The Managing Member is responsible for the management and operation of the Company, including the oversight of the rent-up and operational stages of the Apartment Complex.

(b) Subject to the provisions of Section 6.5(g), the Managing Member shall use its diligent good faith efforts to cause the Company to generate Cash Flow for distribution to the Members at the maximum realizable level in view of (i) any applicable Regulations, (ii) the Minimum Set-Aside Test, (iii) the Rent Restriction Test and (iv) the Projected Rents, and, if necessary, the Managing Member also shall use its best efforts to obtain approvals and implementation of appropriate adjustments in the rental schedule of the Apartment Complex.

(c) The Managing Member shall cause the Company to obtain and keep in force, during the term of the Company, insurance policies in accordance with the Insurance Requirements set forth on Exhibit D hereto. Throughout the term of the Company, the Managing Member shall provide copies of all such policies (or binders) to the Investment Member within thirty (30) days after their receipt thereof. The Managing Member shall cause the applicable insurer to name the Investment Member as an “additional insured” on each Company insurance policy. Each Company insurance policy shall include a provision requiring the insurance company to notify the Investment Member in writing no less than thirty (30) days prior to any cancellation, non-renewal or material change in the terms and conditions of coverage. The Managing Member shall review regularly all of the Company and Apartment
Complex insurance coverage to insure that it is adequate and continuing. In particular, the Managing Member shall review at least annually the insurance coverage required by this Section 6.5(c) to insure that it is in an amount at least equal to the then current full replacement value of the Apartment Complex.

Without limitation of the foregoing, the Managing Member shall deliver to the Investment Member on or before the Admission Date one or more certificates or memoranda of insurance, in form reasonably acceptable to the Investment Member, evidencing, (i) the existence of the insurance policies and coverages specified on Exhibit D, (ii) that the Company and its Members (including the Investment Member) are named insured on such policies, and (iii) that such insurance policies will not be cancelled by the insurers except within thirty (30) days’ written notice to the Investment Member. From time to time following the Admission Date, the Managing Member shall deliver to the Investment Member such further certificates or memoranda of insurance as the Investment Member may reasonably require to confirm that such insurance and notice provisions with respect to insurance under this Agreement have been complied with.

(d) If at any time there is more than one Managing Member, the obligations of the Managing Members hereunder shall be the joint and several obligations of each Managing Member. Except as otherwise provided in Sections 4.5(b) and 7.1, such obligations shall survive any Withdrawal of a Managing Member from the Company.

(e) (i) The Managing Member shall on the Completion Date establish and thereafter maintain reasonable reserves (the “Replacement Reserve”) to provide for working capital needs, improvements, replacements and any other contingencies of the Company. At a minimum, the Managing Member shall cause the Company to annually deposit $25,500 from Cash Flow into the Replacement Reserve (which requirement shall be offset against and not be in addition to any similar capital replacement reserve requirement of any Lender); to the extent that Cash Flow (as determined before deduction of such reserve deposit) for any Fiscal Year shall be insufficient to make such deposit in full, the Managing Member shall fund such shortfall from its own funds as a Subordinated Loan. The Managing Member’s obligation to make Subordinated Loans pursuant to this Section 6.5(e)(i) shall be ongoing and shall not be restricted to the Subordinated Loan Period and the Subordinated Loan Cap.

(ii) In addition to the requirements of Section 6.5(e)(i), in order to fund Operating Deficits, the Managing Member (or its designee), shall upon the satisfaction of the conditions to the payment of the Fifth Installment (or earlier upon the satisfaction of the conditions to the payment of the Fifth Installment if funds are available) deposit $308,751 (the “Initial Reserve Amount”) (or such larger amount as required by a Lender) into a segregated reserve account for the benefit of the Company (the “Operating Reserve”) to secure the Managing Member’s obligation to fund Operating Deficits. Funds held in the Operating Reserve may be released to pay operating expenses only after Rental Achievement, subject to Section 6.10, and with the reasonable approval of the Special Member and, if required, any Lender. The Operating Reserve may be terminated by the Managing Member only after the end of the Compliance Period, and upon such termination, the funds remaining in the Operating Reserve shall be released and distributed as Cash Flow in the order and priority set forth in Section 10.2(a). Any funds utilized from the Operating Reserve to pay Company operating expenses
shall not constitute Subordinated Loans. Upon the utilization of any amount of such funds from the Operating Reserve, the Managing Member shall deposit Cash Flow into the Operating Reserve in the order and priority set forth in Section 10.2(a) in an amount sufficient to restore the balance of the Operating Reserve to the Initial Reserve Amount.

(f) Each Managing Member shall be bound by the provisions of the Project Documents, and no additional Managing Member shall be admitted if he, she or it has not first agreed to be bound by this Agreement (and assume the obligations of a Managing Member hereunder) and by the Project Documents to the same extent and under the same terms as each of the other Managing Members.

(g) The Managing Member shall take all actions appropriate to ensure that the Investment Member receives the full amount of the Projected Credit, including, without limitation, the rental of apartments to appropriate tenants and the filing of annual certifications as may be required. In this regard, the Managing Member shall, inter alia, cause (i) the Company to satisfy the Minimum Set-Aside Test, the Rent Restriction Test and all other requirements imposed from time to time under the Code, the Carryover Allocation or otherwise by the Credit Agency with respect to rental levels and occupancy by qualified tenants by the close of the first year of the Credit Period and throughout the Compliance Period so as to permit the Company to be entitled to the maximum available Tax Credit (ii) the Company to comply with all Tax Credit monitoring procedures of the State, (iii) all dwelling units in the Apartment Complex to be leased for initial periods of not less than six months to individuals, as to the Low Income Units, satisfying the Rent Restriction Test, (iv) the Company to make all appropriate Tax Credit elections in a timely fashion, and (v) all rental units in the Apartment Complex to be of equal quality with comparable amenities available to low-income tenants on a comparable basis without separate fees.

(h) On or before the Admission Date, the Managing Member shall provide to the Special Member either (i) an appraisal of the Apartment Complex prepared by a competent independent appraiser or (ii) completed RECD Forms 1924-13 (estimate and certificate of actual cost) and 1930-7 (statement of budget, income and expense) or HUD project cost and budget analysis on Form 2264, or any successor RECD or HUD form, any comparable form of a state or other Governmental Authority, including any applicable Credit Agency, setting forth estimates with respect to construction, rehabilitation and mortgage financing costs and initial rental income and operating expense figures for the Apartment Complex.

(i) The Managing Member shall (i) not store or dispose of (except in compliance with all laws, ordinances, and regulations pertaining thereto) any Hazardous Material at the Apartment Complex; (ii) neither directly nor indirectly transport or arrange for the transport of any Hazardous Material to, at or from the Apartment Complex (except in compliance with all laws, ordinances, and regulations pertaining thereto); (iii) provide the Investment Member with written notice (x) upon any Managing Member’s obtaining knowledge of any potential or known release, or threat of release, of any Hazardous Material at or from the Apartment Complex; (y) upon any Managing Member’s receipt of any notice to such effect from any federal, state, or other Governmental Authority; and (z) upon any Managing Member’s obtaining knowledge of any incurrence of any expense or loss by any such government authority in connection with the assessment, containment, or removal of any Hazardous Material for which expense or loss any
Managing Member may be liable or for which expense or loss a lien may be imposed on the Apartment Complex.

(j) The Managing Member shall promptly request in writing of the Permanent Lender that the Permanent Lender cause the Special Member to be named as an “interested party” in the Permanent Loan Documents, so that the Permanent Lender will notify the Special Member of any default under the Permanent Mortgage or the Managing Member shall itself notify the Special Member of any such default.

(k) The Managing Member shall provide the Special Member with a true and accurate copy of each Construction Loan requisition and any supporting documents and information which has been submitted for approval by the Construction Lender (whether submitted before or after the Admission Date).

(l) The Managing Member shall have a fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in its immediate possession or control. The Managing Member shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the Company. No Managing Member shall contract away the fiduciary duty owed at common law to the Non-Managing Members.

(m) The Managing Member shall cause the Company to comply with all of the duties and obligations of the Apartment Complex owner under the Mortgage Loan Documents and shall provide any funds required in excess of available Cash Receipts or Specified Proceeds necessary to comply with such duties and obligations.

(n) The Managing Member shall cause the Company to provide all social services which the Company is obligated to provide in connection with the Apartment Complex, including, without limitation, any such social services described in the Company’s Tax Credit application. In addition to the foregoing, the Managing Member shall take all action necessary to cause the Company to pay all amounts incurred by the Company in connection with the provisions of any such social services.

(o) The Managing Member will cause the payment for the construction of the Apartment Complex to be made in conformity with the requirement of any so-called “Davis-Bacon” or other prevailing wage statutes, if required by any Lender of a Mortgage Loan or any Project Document.

(p) The Managing Member will cause the Company to rent all units so as to maintain at all times the Agreed-Upon Set-Aside and the Minimum Set-Aside.

(q) [Intentionally Deleted].

(r) Unless the Special Member consents in writing otherwise, the Managing Member shall cause the Company to depreciate the residential portion of the Apartment Complex over 27.5 years, other site improvements over 15 years and all personal property of the Company over 5 years.
(s) The Managing Member shall cause the Company to comply with all requirements under the Section 811 Participation Agreement to ensure that the Section 811 Units, if any, will be available and suitable for occupancy by eligible referrals following the Completion Date.

(t) The Managing Member shall cause the Company to maintain the Section 811 RAC, if entered into by the Company and TDHCA, throughout the Compliance Period.

(u) The Managing Member shall cause the Company to comply with the Regulatory Agreements.

6.6 Representations and Warranties

The Managing Member jointly and generally represents and warrants to the Investment Member and the Special Member as follows:

(a) The Company is a duly organized limited liability company validly existing and in good standing under the laws of the State and has complied with all filing requirements necessary for its existence and to preserve the limited liability of the Investment Member and the Special Member and is duly qualified as a foreign limited liability company to do business in the State.

(b) No event or proceeding has occurred or is pending or, is to the Best Knowledge of the Managing Member, threatened which would (i) materially adversely affect the Company or its properties, or (ii) materially adversely affect the ability of the Managing Member or any of its Affiliates to perform their respective obligations hereunder or under any other agreement with respect to the Apartment Complex, other than legal proceedings which have been bonded against without recourse to Company assets in such manner as to stay the effect of the proceedings or otherwise have been adequately provided for. This subparagraph shall be deemed to include, without limitation, the following: (w) the occurrence and continuation of a Material Event; (x) legal actions or proceedings before any court, commission, administrative body or other Governmental Authority having jurisdiction over the zoning applicable to the Apartment Complex; (y) labor disputes; and (z) acts of any Governmental Authority.

(c) No default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under this Agreement or under any material provision of the Project Documents, and the Project Documents are in full force and effect.

(d) Except as specifically permitted under Section 3.1, no Member or Related Person bears (or will bear) the Economic Risk of Loss with respect to the Permanent Mortgage Loan. No Managing Member has, either on its own behalf or on behalf of the Company, incurred any financial obligation with respect to the Company prior to the Admission Date, other than as disclosed in writing to the Special Member prior to the Admission Date.

(e) The Apartment Complex will be, is being, or has been constructed in a timely manner in conformity with the Project Documents. There is no violation by the Company or the Managing Member of any zoning, environmental or similar regulation applicable to the Apartment Complex which could have a material adverse effect thereon, and the Company has
complied and will comply with all applicable municipal and other laws, ordinances and regulations relating to such construction and use of the Apartment Complex. All appropriate public utilities, including, but not limited to, water, electricity, gas (if called for in the Plans and Specifications), and sanitary and storm sewers, are or will be available and operating properly for each unit in the Apartment Complex at the time of the initial occupancy of such unit.

(f) The Company owns good and marketable fee simple title to the Apartment Complex and will at all times be considered to be the owner of the Apartment Complex for federal income tax purposes, subject to no material liens, charges or encumbrances other than those which (i) are both permitted by the Project Documents and are noted or excepted in the Title Policy, (ii) do not materially interfere with use of the Apartment Complex (or any part thereof) for its intended purpose or, other than the permitted Mortgages, have a material adverse effect on the value of the Apartment Complex, or (iii) have been bonded or insured against in such a manner as to preclude the holder of such lien or such surety or insurer from having any recourse to the Apartment Complex or the Company for payment of any debt secured thereby, which bond(s) or insurance have been approved by the Lenders.

(g) The Managing Member has provided the Non-Managing Members with true, complete and correct copies of all material correspondence and contracts with, applications to, and allocation certifications, if any, from the Mortgage Lenders concerning the Mortgage Loans. The Mortgage Loan Documents are binding and in full force and effect in accordance with their respective terms.

(h) The Managing Member has provided the Non-Managing Members with true, complete and correct copies of all material correspondence and contracts with, applications to, and allocation certifications, if any, from any Credit Agency concerning the Tax Credits allocated or otherwise available to the Apartment Complex. The Carryover Allocation is binding and in full force and effect in accordance with its terms.

(i) The execution and delivery of all instruments and the performance of all acts heretofore or hereafter made or taken pertaining to the Company or the Apartment Complex by each Affiliate of a Managing Member which is a corporation or limited liability company have been or will be duly authorized by all necessary corporate or other actions, and the consummation of any such transactions with or on behalf of the Company will not constitute a breach or violation of, or a default under, the charter or by-laws of such Affiliate or any agreement by which such Affiliate or any of its properties is bound, nor constitute a violation of any law, administrative regulation or court decree.

(j) Any Managing Member (or partner or member of a Managing Member) which is a corporation or limited liability company (a “Corporation/LLC”) has been duly organized, is validly existing and in good standing under the laws of its state of organization and has all requisite corporate and other power to be a Managing Member and to perform its duties and obligations as contemplated by this Agreement and the Project Documents. Neither the execution and delivery by any Corporation/LLC of this Agreement nor the performance of any of the actions of any Corporation/LLC contemplated hereby has constituted or will constitute a violation of (a) the articles of incorporation, operating agreement, by-laws and any other organizational documents of such Corporation/LLC, (b) any agreement by which such
Corporation/LLC is bound or to which any of its property or assets is subject, or (c) any law, administrative regulation or court decree.

(k) No Event of Bankruptcy has occurred with respect to the Company, any Managing Member, the Developer or any Guarantor.

(l) All accounts of the Company required to be maintained under the terms of the Project Documents, including, but not necessarily limited to, any account for replacement reserves, are currently funded to the levels required by any Agency or Lender.

(m) The Managing Member and Guarantors have and shall at all times maintain a combined net worth which satisfies the Designated Net Worth Requirements.

(n) All anticipated payments and expenses required to be made or incurred in order to complete the construction of the Apartment Complex in conformity with the Project Documents, to fund any reserves hereunder or under any other Project Document required to be funded at or prior to the later of the Admission Date or Rental Achievement, to satisfy all requirements under the Project Documents and to pay the Development Fee and all other fees, have been or will be paid or provided for utilizing only (i) the funds available from the Construction Loan, (ii) the Capital Contributions of the Investment Member, (iii) the Capital Contributions of the Managing Member in the amounts set forth on Schedule A as of the Admission Date, (iv) the available net rental income, if any, earned by the Company prior to Rental Achievement (to the extent that it is permitted to be used for such purposes by any Agency or Lender), (v) any Cash Flow generated subsequent to Rental Achievement (to the extent provided in Section 10.2(a)), (vi) any insurance proceeds and (vii) any funds furnished by the Managing Member pursuant to Sections 6.5(e) and 6.11(a).

(o) The aggregate amount of Tax Credit which is expected to be allocated by the Company to the Investment Member is as set forth in the definition of Projected Credit, provided, however, that the Managing Member shall have no liability to the Investment Member or the Special Member for any breach of the representation contained in this paragraph (m) if (but only to the extent that) the adjuster provisions set forth in Sections 5.1(e), (f) and (g) have become operative and all required payments or adjustments have been made thereunder in accordance with the terms thereof.

(p) The Apartment Complex will be, is being or has been constructed and operated in a manner which satisfies Section 42 of the Code and shall continue to satisfy all existing and anticipated restrictions applicable to projects generating Tax Credits.

(q) No Managing Member, Affiliate of a Managing Member or Person for whose conduct any Managing Member is or was responsible has ever: (i) stored or disposed of (except in compliance with all laws, ordinances and regulations pertaining thereto) any Hazardous Material at the Apartment Complex; (ii) directly or indirectly transported, or arranged for the transport of any Hazardous Material to, at or from the Apartment Complex (except in compliance with all laws, ordinances, and regulations pertaining thereto); (iii) caused or was legally responsible for any release or threat of release of any Hazardous Material at the Apartment Complex; (iv) received notification from any federal, state or other Governmental
Authority of (x) any potential, known, or threat of release of any Hazardous Material from the Apartment Complex; or (y) the incurrence of any expense or loss by any such Governmental Authority or by any other Person in connection with the assessment, containment, or removal of any release or threat of release of any Hazardous Material from the Apartment Complex.

(r) To the Best Knowledge of the Managing Member, no Hazardous Material was ever or is now stored on, transported, or disposed of on the land comprising the Apartment Complex, except to the extent any such storage, transport or disposition was at all times in compliance with all laws, ordinances, and regulations pertaining thereto. The Managing Member has provided to the Investment Member a complete copy of a “Phase I” hazardous waste site assessment report for the Apartment Complex, prepared in accordance with ASTM standards.

(s) The Managing Member has fulfilled and will continue to fulfill all of its duties and obligations under Section 6.5.

(t) The Managing Member has completed or will complete on a timely basis all of the Due Diligence Recommendations.

(u) The Company’s basis in the Apartment Complex as of December 31, 2017 (or such later date as allowed by the Credit Agency and Section 42) will be greater than 10% of the Company’s reasonably expected basis in the Apartment Complex as of December 31, 2017 and all conditions set forth in Section 42 of the Code, the Treasury Regulations, Service notices, rulings or releases and any other authorities to the validity of the allocation of tax credit have been or will be satisfied in a timely manner.

(v) To the Managing Member’s Best Knowledge, all consents or approvals of any governmental authority, or any other Person, necessary in connection with the transactions contemplated by this Agreement or necessary to admit the Investment Member to the Company as a Non-Managing Member have been obtained by the Managing Member and as of the Admission Date, the Investment Member is duly admitted as a Non-Managing Member of the Company owning a 99.99% membership interest in the Company free and clear of any and all claims, liens, charges and encumbrances.

(w) The Managing Member and the Company are under no obligation under any federal or state law, rule, or regulation to register the Interests or to take any action in order to comply with any exemption available for the sale of Interests without registration.

(x) None of the loans evidenced by the Mortgages constitutes a “federal grant” within the meaning of Section 42(d)(5)(A) of the Code.

(y) Neither the Apartment Complex nor its operation has been or will be financed at any time during the Compliance Period with an obligation the interest on which is exempt from tax under Section 103 of the Code.

(z) The Company and the Credit Agency have entered or, prior to the end of the first year of the Credit Period, will enter, into the “extended low-income housing commitment” within the meaning of Section 42(h)(6)(B) of the Code and such commitment shall remain in full
force and effect throughout the entire extended use period as defined in Section 42(h)(6)(D) of the Code.

(aa) No portion of the Apartment Complex is or will be treated as “tax exempt use property” as defined in Section 168(h) of the Code.

(bb) The Managing Member shall not act in any manner which will cause (i) the Company to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Company to fail to qualify as a limited liability company under the Act, or (iii) the Non-Managing Member to be liable for Company obligations, including, without limitation, the obligations set forth in the Mortgage documents.

(cc) The Managing Member shall not employ any person as an employee of the Company.

(dd) The Managing Member is not presently under any commitment to any real estate broker, rental agent, finder, syndicator or other intermediary with respect to the Apartment Complex or any portion thereof, except for the Management Agreement and other arrangements described in the Project Documents.

(ee) No fact necessary to make the information and statements contained in this Section 6.6 not misleading has been omitted therefrom, and to the Best Knowledge of the Managing Member, no material fact concerning the Apartment Complex, the Tax Credits, the Managing Member, the Company, the Guarantor, or the Developer has been withheld from the Non-Managing Members and no material document has not been delivered to the Non-Managing Members.

(ff) The Managing Member shall cause the 50% Completion Date to occur by July 1, 2018.

6.7 Liability on Mortgages

Neither any Managing Member nor any Related Person shall at any time bear the Economic Risk of Loss for the payment of any portion of any Mortgage Loan, and the Managing Member shall not permit any other Member or any Related Person to bear the Economic Risk of Loss for the payment of any portion of any Mortgage Loan, except as may be expressly permitted pursuant to the provisions of Article III or with the Consent of the Special Member.

6.8 Indemnification of the Managing Member

(a) Except as provided by Article V, no Managing Member or any Affiliate thereof shall have liability to the Company or to any Non-Managing Member for any loss suffered by the Company which arises out of any action or inaction of any Managing Member or Affiliate thereof if such Managing Member or Affiliate thereof in good faith determined that such course of conduct was in the best interest of the Company and such course of conduct did not constitute gross negligence or willful misconduct of such Managing Member or Affiliate thereof.
(b) A Managing Member or any Affiliate thereof shall be indemnified by the Company from and against any Adverse Consequences sustained in connection with the business and operations of the Company, provided that all of the following conditions are met: (i) such Managing Member has determined, in good faith, that the course of conduct which caused the loss, judgment, liability, expense or amount paid in settlement was in the best interests of the Company; and (ii) such Adverse Consequences were not the result of gross negligence or willful misconduct on the part of such Managing Member or Affiliate thereof; and (iii) such indemnification or agreement to hold harmless is recoverable only out of the assets of the Company, and not from the Non-Managing Members.

(c) Notwithstanding the above, no Member or any Affiliate thereof performing services for the Company or any broker-dealer shall be indemnified for any Adverse Consequences arising from or out of an alleged violation of federal or state securities laws unless there has been a successful adjudication on the merits of each count involving securities laws violations as to the particular indemnitee and the court finds that indemnification of the settlement and related costs should be made. In any claim for indemnification for federal or state securities law violations, the party seeking indemnification shall, prior to seeking court approval for such indemnification, place before the court the positions of the Securities and Exchange Commission, the Massachusetts Securities Division and any other applicable state securities administrator with respect to the issue of indemnification for securities law violations.

(d) The Company shall not incur the cost of the portion of any insurance, other than public liability insurance or course of construction insurance, which insures any party against any liability as to which such party is herein prohibited from being indemnified.

(e) The Company may indemnify Affiliates of a Managing Member under this Section 6.8 only if the loss involves an activity in which such Affiliates acted in the capacity of a Managing Member or Developer.

(f) For purposes of this Section 6.8 only, the term “Affiliate” shall mean (i) any Person performing services on behalf of the Company who (x) directly or indirectly controls, is controlled by or is under common control with a Managing Member; (y) owns or controls ten percent (10%) or more of the outstanding voting securities of a Managing Member or (z) is an officer, director, partner, member, manager or trustee of a Managing Member; and (ii) any Person for whom the Managing Member acts as an officer, director, partner or trustee. For purposes of this Section 6.8 only, the term “controls” and any form of such term shall mean the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise.

6.9 Indemnification of the Company and the Non-Managing Members

(a) The Managing Member jointly and severally will indemnify and hold the Company and the Non-Managing Members harmless from and against any and all Adverse Consequences which the Company or any Non-Managing Member may incur by reason of the past, present or future actions or omissions of the Managing Member or any of its Affiliates constituting gross negligence or willful misconduct; provided, however, that the foregoing indemnification shall not be construed to (x) affect the non-recourse nature of any Mortgage or
(y) limit the Company’s primary liability for contractual obligations incurred pursuant to the requirements of any Agency or Lender in connection with the operation of the Apartment Complex in the ordinary course of business.

(b) Notwithstanding the foregoing, no Managing Member shall be liable to a Non-Managing Member or the Company for any act or omission for which the Company is required to indemnify such Managing Member under Section 6.8, except as provided by Article V.

(c) The Managing Member shall jointly and severally indemnify, defend, and hold the Non-Managing Members harmless on an After-Tax Basis from and against any Adverse Consequences related to or arising directly or indirectly out of the presence on, under or about the Apartment Complex of any Hazardous Material at the Apartment Complex, the use, generation, manufacture, migration, storage or disposal of any Hazardous Material on, under or about the Apartment Complex, or the violation of any Environmental Laws by the Managing Member or its representatives (other than any Adverse Consequences resulting from the acts or omissions of the Non-Managing Members). Any claim or loss described in the immediately preceding sentence may be defended, compromised, settled, or pursued by the Non-Managing Members with counsel of the Non-Managing Members’ selection, but at the expense of the Managing Member. Notwithstanding anything else set forth herein, this indemnification shall survive the withdrawal of any Managing Member and/or the termination of this Agreement.

6.10 Operating Deficits

Subject to any Requisite Approvals, the Managing Member jointly and severally shall be obligated during the period from Rental Achievement until the later of (A) the fifth (5th) anniversary of Rental Achievement and (B) the achievement of an average Debt Service Coverage Ratio of 1.15 to 1.00 for the six consecutive months occurring immediately prior to such date (the “Subordinated Loan Period”), to promptly advance funds to eliminate any Operating Deficit, provided however, that the Managing Member shall not be obligated to have Subordinated Loans outstanding at any one time in excess of $685,000 (the “Subordinated Loan Cap”). Notwithstanding anything to the contrary contained herein, if at the end of the Subordinated Loan Period there are insufficient funds in the Operating Reserve to meet the Initial Reserve Amount, the Subordinated Loan Period will be extended until such time the Operating Reserve is restored to the Initial Reserve Amount. In any case in which the Managing Member otherwise would be required to advance funds under this Section 6.10, any amounts then held in the Operating Reserve may be released and disbursed for the purpose of eliminating the Operating Deficit before the Managing Member shall be required to advance their own funds. In the event that the Managing Member shall fail to make any such advance as aforesaid, (a) the Company shall utilize amounts (the “Applied Amounts”) otherwise payable to the Managing Member or its Affiliates under Section 6.12 and/or Article X to meet the obligations of the Managing Member pursuant to this Section 6.10, with such utilization of Applied Amounts constituting payment and satisfaction of the corresponding amounts payable to the Managing Member or its Affiliates under Section 6.12 and/or Article X, with the proceeds thereof being applied to such obligations, and with the obligation of the Company to make such payments to the Managing Member or its Affiliates pursuant to Section 6.12 and/or Article X being deemed to have been satisfied to the extent thereof and (b) the Special Member shall have the option, exercisable in its sole discretion, to cause it or one or more of its designees to be admitted to the
Company as additional Managing Member(s). An additional Managing Member so admitted shall automatically, without the need for any further action by any Member, become the Managing Member and shall be delegated all of the powers and authority of all of the Managing Members pursuant to Section 6.13. Each Member hereby grants to any such additional Managing Member a power of attorney, coupled with an interest and irrevocable to the extent permitted by law, to execute and deliver any and all instruments and documents which it believes to be necessary or appropriate in order to accomplish the purposes of this Section 6.10 and to manage the business of the Company. The admission of an additional Managing Member shall not relieve any other Managing Member of any of its economic obligations hereunder, and each other Managing Member shall indemnify and hold harmless the additional Managing Member from and against any and all Adverse Consequences sustained in connection with the additional Managing Member’s status as a Managing Member (other than Adverse Consequences arising solely out of the negligence or misconduct of such additional Managing Member). Any additional Managing Member admitted under this paragraph shall withdraw (notwithstanding the provisions of Article VII) as such and remain only as the Special Member upon payment by the Managing Member of all amounts due under this paragraph. For the purpose of this Section 6.10, all expenses shall be paid on a thirty (30)-day current basis. Moreover, the Managing Member may in its sole discretion at any time advance funds to the Company to pay operating expenses and/or debt service of the Company in order to facilitate the Company’s compliance with the Rent Restriction Test. All advances pursuant to Section 6.5(e) and this Section 6.10 (including any Applied Amounts), except advances from the Operating Reserve, shall constitute non-interest-bearing Subordinated Loans. Subordinated Loans shall be repaid in accordance with the provisions of Article X. The form and provisions of all Subordinated Loans shall conform to any applicable Regulations.

6.11 Obligation to Complete the Construction of the Apartment Complex

(a) To the extent the Developer fails to do so under the Development Agreement, the Managing Member shall be obligated to complete the construction of the Apartment Complex and pay all costs necessary to achieve Rental Achievement in the manner set forth in this Agreement and the Development Agreement.

(b) The Managing Member shall be obligated to pay all costs necessary to achieve Permanent Mortgage Commencement and Rental Achievement in the manner set forth in this Agreement, and may be reimbursed for such payments only out of Specified Proceeds.

(c) The completion of the Apartment Complex shall be secured by a completion bond in an amount at least equal to the full amount of the Construction Contract for the Apartment Complex and by the Guaranty.

6.12 Certain Payments to the Managing Member and Others

(a) As reimbursement for certain advances and as compensation for the Developer’s services in connection with the development and construction of the Apartment Complex, the Company shall pay to the Developer a development fee (the “Development Fee”) in the amount and at the times set forth in the Development Agreement. If Specified Proceeds are insufficient to pay the Development Fee, such unpaid amounts shall be evidenced by a Deferred
Development Fee Note as set forth in the Development Agreement, provided however that the maximum amount of the Deferred Development Fee Note shall be $651,729 (or such larger amount as in the opinion of tax counsel to the Investment Member would not cause tax benefits to be projected to be reallocated from the Investment Member to another Member during the Compliance Period). Any unpaid portion of the Development Fee not evidenced by the Deferred Development Fee Note must be paid as a Development Cost as set forth in Section 6.11. The Managing Member, with the Consent of the Special Member, shall cause the Deferred Development Fee Note, if any, to be executed by the Company at the time set forth in and in accordance with the terms of the Development Agreement. If the Development Fee, including without limitation, any portion evidenced by a Deferred Development Fee Note and all accrued but unpaid interest thereon, has not been fully paid by the thirteenth (13th) anniversary of the Completion Date, the Managing Member shall make a Capital Contribution to the Company in an amount sufficient to enable the Company to pay any unpaid portion of the Development Fee, including without limitation, any portion evidenced by a Deferred Development Fee Note and all accrued but unpaid interest thereon.

(b) The Company shall pay to the Special Member or an Affiliate thereof a fee (the “Asset Management Fee”) commencing in 2019 for its services in connection with the Company’s accounting matters relating to the Investment Member and assisting with the preparation of tax returns and the reports required by Section 12.7 in the annual amount of $7,600, increased each year by a factor equal to the percentage increase in the Consumer Price Index for such year. The Asset Management Fee shall be payable from Cash Flow in the manner and priority set forth in Section 10.2(a); provided however, that if in any Fiscal Year, Cash Flow is insufficient to pay the full amount of the Asset Management Fee, the Managing Member shall advance the amount of such deficiency to the Company as a Subordinated Loan, provided further that the Managing Member’s obligation to make Subordinated Loans under this Section 6.12(b) shall be ongoing and shall not terminate upon the expiration of the Subordinated Loan Period or be subject to the Subordinated Loan Cap. If for any reason the Asset Management Fee is not paid in any Fiscal Year, the unpaid portion thereof shall accrue and be payable on a cumulative basis in the first Fiscal Year in which there is sufficient Cash Flow or Capital Proceeds as provided in Article X.

(c) In consideration of the services of the Managing Member in managing the day-to-day business and affairs of the Company, the Company shall pay to the Managing Member an annual fee (the “Company Management Fee”) commencing in 2019 in the amount of $10,000, payable from Cash Flow in the manner set forth in Section 10.2(a). The Company Management Fee shall be noncumulative so that if there is not sufficient Cash Flow in any Fiscal Year to pay the amount of the Company Management Fee specified for such use in Section 10.2(a), the Company shall have no obligation to pay such shortfall in any future Fiscal Year.

(d) The Company also shall pay to the Managing Member the Incentive Management Fee as set forth in the Incentive Management Agreement.
6.13 **Delegation of Managing Member Authority**

(a) If there shall be more than one Managing Member serving hereunder, each Managing Member may from time to time, by an instrument in writing, delegate all or any of his powers or duties hereunder to another Managing Member or Managing Members.

(b) Each contract, deed, mortgage, lease and other instrument executed by any Managing Member shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that at the time of the delivery thereof (i) the Company was in existence, (ii) this Agreement had not been amended in any manner so as to restrict the delegation of authority among Managing Members (except as shown in certificates or other instruments duly filed in the Filing Office) and (iii) the execution and delivery of such instrument was duly authorized by the Managing Members. Any Person may always rely on a certificate addressed to him and signed by any Managing Member hereunder:

1. as to who are the Managing Members or Non-Managing Members hereunder;

2. as to the existence or nonexistence of any fact which constitutes a condition precedent to acts by the Managing Members or in any other manner germane to the affairs of the Company;

3. as to who is authorized to execute and deliver any instrument or document of the Company;

4. as to the authenticity of any copy of this Agreement and any amendments thereto; or

5. as to any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

6.14 **Assignment to Company**

The Developer and the Managing Member hereby transfer and assign to the Company all of their right, title and interest in and to the Apartment Complex and in and to all of the Project Documents, including, but not limited to, the following: (i) all contracts with architects, supervising architects, engineers and contractors with respect to the development of the Apartment Complex; (ii) all plans, specifications and working drawings heretofore prepared or obtained in connection with the Apartment Complex; (iii) all governmental commitments and approvals obtained, and applications therefore, including, but not limited to those relating to planning, zoning, building permits and Tax Credits; (iv) any and all commitments with respect to any Mortgages; and (v) any and all contracts or rights with respect to any agreements with any Agency or Lender.

6.15 **Contracts with Affiliates**

(a) The Managing Member or any Affiliate thereof may act as Management Agent upon the terms and conditions set forth in Article XI.
(b) The Managing Member or any Affiliates thereof shall have the right to contract or otherwise deal with the Company for the sale of goods or services to the Company in addition to those set forth herein, if (i) compensation paid or promised for such goods or services is reasonable (i.e., at fair market value) and is paid only for goods or services actually furnished to the Company, (ii) the goods or services to be furnished shall be reasonable for and necessary to the Company, (iii) the fees, terms and conditions of such transaction are at least as favorable to the Company as would be obtainable in an arm’s-length transaction, (iv) the Consent of the Special Member is obtained for any such contract where the compensation to be paid by the Company to the Managing Member or its Affiliates is $50,000 or more, and (v) no agent, attorney, accountant or other independent consultant or contractor who also is employed on a full-time basis by the Managing Member or any Affiliate shall be compensated by the Company for his services. Any contract covering such transactions shall be in writing and shall be terminable without penalty on sixty (60) days written notice. Any payment made to the Managing Member or any Affiliate for such goods or services shall be fully disclosed to all Non-Managing Members in the reports required under Article XII. Neither the Managing Member nor any Affiliate shall, by the making of lump-sum payments to any other Person for disbursement by such other Person, circumvent the provisions of this Section 6.15(b).

6.16 Tax Matters Partner

(a) The Controlling Managing Member hereby is designated as Tax Matters Partner of the Company, and shall engage in such undertakings as are required of the Tax Matters Partner of the Company as provided in treasury regulations pursuant to Section 6231 of the Code. Each Member, by the execution of this Agreement, consents to such designation of the Tax Matters Partner and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent.

(b) With the Consent of the Investment Member, the Tax Matters Partner hereby is authorized, but not required:

(i) to enter into any settlement agreement with the Service with respect to any tax audit or judicial review, in which agreement the Tax Matters Partner may expressly state that such agreement shall bind the other Members, except that such settlement agreement shall not bind any Member who (within the time prescribed pursuant to the Code and treasury regulations thereunder) files a statement with the Service providing that the Tax Matters Partner shall not have the authority to enter into a settlement agreement on the behalf of such Member;

(ii) in the event that a notice of final administrative adjustment at the Company level of any item required to be taken into account by a Member for tax purposes (a “Final Adjustment”) is mailed to the Tax Matters Partner, to seek judicial review of such Final Adjustment, including the filing of a petition for readjustment with the Tax Court, the District Court of the United States for the district in which the Company’s principal place of business is located, or the United States Claims Court;
(iii) to intervene in any action brought by any other Member for judicial review of a Final Adjustment;

(iv) to file a request for an administrative adjustment with the Service at any time and, if any part of such request is not allowed by the Service, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

(v) to enter into an agreement with the Service to extend the period for assessing any tax which is attributable to any item required to be taken into account by a Member for tax purposes, or an item affected by such item; and

(vi) to take any other action on behalf of the Members or the Company in connection with any administrative or judicial tax proceeding to the extent permitted by applicable law or Regulations.

(c) The Company shall indemnify and reimburse the Tax Matters Partner for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Members. The payment of all such expenses shall be made before any distributions are made from Cash Flow or any discretionary reserves are set aside by the Managing Member. The Managing Member shall have the obligation to provide Company funds for such purpose, but only to the extent of available Company resources. The taking of any action and the incurring of any expense by the Tax Matters Partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Tax Matters Partner and the provisions on limitations of liability of the Managing Member and indemnification set forth in Section 6.8 of this Agreement shall be fully applicable to the Tax Matters Partner in its capacity as such.

(d) Following the beginning of the Post-TEFRA Period:

(i) (1) the Managing Member shall constitute the “partnership representative” under Section 6223 of Chapter 63 of the Code (as in effect pursuant to the Bipartisan Budget Act), (2) the Managing Member shall take any and all action required under the Code or Treasury Regulations, as in effect from time to time, to designate itself the “partnership representative,” and (3) the Tax Matters Partner (in its capacity as such) shall have no authority under this Agreement. The designation of someone other than the Managing Member as the partnership representative will require the Consent of the Investment Member. To the extent permitted by the Code and Treasury Regulations, the Managing Member, in its capacity as “partnership representative” shall be bound by the obligations and restrictions imposed on the Tax Matters Partner pursuant to this Section 6.16. Upon the promulgation of Treasury Regulations implementing subchapter C of Chapter 63 of the Code (as revised by the Bipartisan Budget Act), the Managing Member will evaluate and consider options available with respect to preserving the allocation of responsibility and authority described in this Section 6.16, while conforming with the applicable provisions of the revised partnership audit procedures. Any action taken by the Managing Member pursuant to this Section 6.16(d), including any election permitted under the Bipartisan Budget Act, shall be made only with the Consent of the Investment
Member. The Managing Member and the Members agree to work together in good faith to amend this Agreement if either party determines that an amendment is required to maintain the intent of the parties with respect to the obligations and limitations of the Tax Matters Partner.

(ii) If the Company receives a notice of final partnership adjustment from the IRS, the “partnership representative” shall promptly forward a copy of such notice to the Investment Member and its legal counsel. The “partnership representative” shall, unless otherwise directed in writing by the Investment Member, timely file an election described in Section 6226(a) of the Code with respect to any notice of final partnership adjustment received by the Company with respect to any Post-TEFRA Period and take such other actions as are required so that Section 6225 of the Code shall not apply with respect to any imputed underpayment with respect to any adjustment of an item of the Company or any Member’s distributive share thereof. Each Member shall take any and all actions necessary to effect such election, including but not limited to making any payments required under Section 6226(b) of the Code. In the event that an election described in Section 6226(a) of the Code is not made with respect to any notice of final partnership adjustment, each Member shall be obligated to make a Capital Contribution in an amount equal to such Member’s share of the imputed underpayment (and any associated interest and penalties) owed by the Company under Section 6225 of the Code. For purposes of the preceding sentence, each Member’s share of such imputed underpayment (and associated interest and penalties) shall be determined by taking into account (i) such Member’s share of the Profits, Losses and Credits to which such adjustment and imputed underpayment relate, as determined by the Accountants; (ii) such Member’s obligation (if any) to indemnify, defend, or hold harmless the Company or any other Member for such imputed underpayment (and any associated interest and penalties) under this Agreement; (iii) such Member’s obligations and liabilities arising from or related to such Member’s representations, warranties and covenants in this Agreement; and (iv) the obligations of the Managing Member under Section 5.1. For example, if an imputed underpayment were to relate to an adjustment or disallowance of Tax Credits previously allocated to the Investment Member and such adjustment or disallowance would give rise to an obligation of the Managing Member to make a Capital Contribution under Section 5.1, then such Managing Member, rather than the Investment Member, would be required to make the Capital Contribution described in this Section 6.16(d).

(iii) If for any Post-TEFRA Period the Company meets the requirements of Section 6221(b) of the Code to elect not to have Section 6221(a) of the Code apply with respect to any adjustment to Company tax items, the “partnership representative” may, with the written consent of the Investment Member (which consent may be withheld in the Investment Member’s sole discretion), make such election described in Section 6221(b) of the Code for each tax year, as applicable.

(iv) Notwithstanding anything to the contrary in this Section 6.16(d), none of the Company, the Managing Member or the “partnership representative” shall, without the prior written consent of the Investment Member (which consent may be withheld in the Investment Member’s sole discretion), take any action or make any election (or omit to take any action or make any election) under the Partnership Tax Audit Rules which
would or could reasonably be expected to have a materially adverse effect on the Investment Member (or its direct or indirect owners). The rights of the Investment Member under this Section 6.16(d) shall survive any sale, exchange, liquidation, retirement or other disposition of the Investment Member’s Interest.

6.17 Single Purpose Entity

(a) The Managing Member shall not engage, has not engaged and does not engage, in any business other than the business of making housing available to persons of low and moderate income.

(b) The Managing Member shall not enter into and has not entered into any contract or agreement with any Affiliate of the Managing Member, any constituent party of the Managing Member, or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s length basis with third parties other than any such party.

(c) The Managing Member has and shall continue to pay its debts and liabilities from its own assets as the same shall become due. No Affiliate has paid any debts or liabilities on behalf of the Managing Member.

(d) The Managing Member has and shall continue to maintain books, financial records and bank accounts that are separate and distinct from the books, financial records and bank accounts of any other Person including any Affiliate.

(e) The Managing Member has and shall continue to maintain separate annual financial statements prepared in accordance with generally accepted accounting principles, consistently applied, showing its assets and liabilities separate and distinct from those of any other entity; in the event the financial statements of the Managing Member are consolidated with the financial statements of any other entity, the Managing Member has and shall continue to cause to be included in such consolidated financial statements: (i) a narrative description of the separate assets, liabilities, business functions, operations and existence of the Managing Member to ensure that such separate assets, liabilities, business functions, operations and existence are readily distinguishable by any entity receiving or relying upon a copy of such consolidated financial statements; and (ii) a statement that the Managing Member’s assets and credit are not available to satisfy the debts of such other entity or any other person.

(f) The Managing Member has and shall continue to file its own tax returns and pay its own taxes required to be paid under applicable law.

(g) The Managing Member has and shall continue to (i) hold itself out as an entity separate and distinct from any other Person; (ii) not identify itself or any of its affiliates as a division or part of the other; (iii) correct any known misunderstanding regarding its separate status; and (iv) use separate stationery, invoices, checks, and the like bearing its own name.

(h) The Managing Member has and shall continue to conduct its business in its own name so as to avoid or correct any misunderstanding on the part of any creditor concerning the fact that any invoices and other statements of account from creditors of the Managing Member
are to be addressed and mailed directly to the Managing Member, though this provision shall not prohibit such mail to be delivered to the Managing Member c/o any other entity.

(i) The Managing Member has and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(j) The Managing Member has not and shall not commingle any of its assets, funds or liabilities with the assets, funds or liabilities of any other Person or Affiliate.

(k) The Managing Member has and shall continue to maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any party.

(l) The Managing Member has not and shall not (i) assume or guaranty the debts of any other Person in a manner that includes a pledge, encumbrance, transfer or hypothecation (whether by operation of law or otherwise) of any assets or interests of the Company or, (ii) hold itself out to be responsible for the debts of another Person in a manner that includes the pledge, encumbrance, transfer or hypothecation of any assets or interests of the Company (whether by operation of law or otherwise), or (iii) otherwise pledge, encumber, transfer or hypothecate the assets of the Company for the benefit of another Person or permit the same to occur, or (iv) hold the Company’s credit as being available to satisfy the obligations of any other Person.

(m) All transactions carried out by the Managing Member have been and will be, in all instances, made in good faith and without intent to hinder, delay or defraud creditors of the Managing Member.
ARTICLE VII
Withdrawal of a Managing Member: New Managing Members

7.1 Voluntary Withdrawal

No Managing Member shall have the right to Withdraw voluntarily from the Company or to sell, assign or encumber its Interest without the Consent of the Investment Member and each of the other Managing Members (if any) and, if required, any Requisite Approvals.

7.2 Reconstitution

In the event of the Withdrawal of a Managing Member, the Company shall not be dissolved or required to be wound up if (i) at the time of such Withdrawal there is at least one remaining Managing Member and that Managing Member carries on the business of the Company (any such remaining Managing Member being hereby authorized to carry on the business of the Company), or (ii) within ninety (90) days after such Withdrawal all remaining Members agree in writing to continue the business of the Company and to the appointment, effective as of the date of such Withdrawal, of one or more additional Managing Members. Within ten (10) days after the occurrence of such Withdrawal, the remaining Managing Members, if any, shall notify the Investment Member thereof:

(i) The reconstituted limited liability company shall continue until the occurrence of a Liquidating Event as provided in Section 2.4;

(ii) If the successor Managing Member is not a former Managing Member, then the provisions of Section 7.4(d) shall apply; and

(iii) If required by the Investment Member, all necessary steps shall be taken to cancel this Agreement and the Articles and to enter into a new operating agreement and articles of organization, and the successor Managing Member shall be obligated to take such steps.

7.3 Successor Managing Member

(a) Upon the occurrence of any Withdrawal, the remaining Managing Members may designate a Person to become a successor Managing Member to the Withdrawing Managing Member. Any Person so designated, subject to any Requisite Approvals, the Consent of the Investment Member and, if required by the Act or any other applicable law, the consent of any other Member so required, shall become a successor Managing Member upon his written agreement to be bound by the Project Documents and by the provisions of this Agreement.

(b) If any Withdrawal shall occur at a time when there is no remaining Managing Member and the Members do not unanimously elect to continue the business of the Company in accordance with the provisions of clause (ii) of Section 7.2(a) above, then the Investment Member shall have the right, subject to any Requisite Approvals, to designate a Person to become a successor Managing Member upon his written agreement to be bound by the Project Documents and by the provisions of this Agreement.
If the Investment Member elects to reconstitute the Company and admit a successor Managing Member pursuant to this Section 7.3, the relationship of the Members in the reconstituted Company shall be governed by this Agreement.

7.4 Interest of Predecessor Managing Member

(a) No assignee or transferee of all or any part of the Interest as a Managing Member of a Managing Member shall have any automatic right to become a Managing Member. Until the acquisition of the Interest of a Withdrawing Managing Member pursuant to Section 7.4(d) or 7.6, such Interest shall be deemed to be that of an assignee and the holder thereof shall be entitled only to such rights as an assignee may have as such under the laws of the State.

(b) Anything herein contained to the contrary notwithstanding, any Managing Member who Withdraws voluntarily in violation of Section 7.1 shall remain liable for all of its obligations under this Agreement, for all its other obligations and liabilities hereunder incurred or accrued prior to the date of its Withdrawal and for any loss or damage which the Company or any of its Members may incur as a result of such Withdrawal (except as provided in Section 6.8(a)).

(c) The estate (which term, for purposes of this Section 7.4(c), shall include the heirs, distributees, estate, executors, administrators, guardian, committee, trustee or other personal representative) of a Withdrawn Managing Member shall be liable for all his liabilities and obligations hereunder, except as provided in this Section 7.4(c). In the event of the death, insanity or incompetency of a Managing Member, his estate shall remain liable for all of his obligations and liabilities hereunder incurred or accrued prior to the date of such event, and for any damages arising out of any breach of this Agreement by him, but his estate shall not have any obligation or liability on account of the business of the Company or the activities of the other Managing Members after his death, insanity or incompetency unless it becomes a Managing Member pursuant to Section 7.3(a).

(d) The Disposition of the Managing Member Interest of a Managing Member who or which Withdraws voluntarily in compliance with this Agreement shall be accomplished in such manner as shall be acceptable to the remaining Managing Members and shall be approved by Consent of the Investment Member. Except as provided in the preceding sentence, upon the Withdrawal of a Managing Member (other than a Managing Member who or which is removed as such pursuant to Section 4.5), such Withdrawn Managing Member shall be deemed to have automatically transferred to the remaining Managing Members, in proportion to their respective Managing Member Interests, or, if there shall be no remaining Managing Member, then to the Company for the benefit of the remaining Members, all or such portion of the Managing Member Interest of such Withdrawn Managing Member which, when aggregated with the existing Managing Member Interests of all such remaining Managing Members, will be sufficient in the opinion of the Tax Accountants to assure such remaining Managing Members a sufficient interest in all Profits, Losses, Tax Credits and distributions of the Company under Article X so as to be deemed to be a Member of the Company for federal income tax purposes. No documentation shall be necessary to effectuate such transfer, which shall be automatic, and no consideration shall be payable therefor. For the purposes of Article X, the effective date of the transfer pursuant to the provisions of this Section 7.4(d) of the Managing Member Interest of a
Withdrawn Managing Member shall be deemed to be the date on which such withdrawal occurs. That portion of the Managing Member Interest (the “Remaining Interest”) of the withdrawing Managing Member which shall not have been transferred pursuant to this Section 7.4(d) (except in respect of a removed Managing Member), shall be retained by such withdrawing Managing Member (or pass to legal representatives thereof) who or which shall have the status of a special member (an Article VII Special Member), but with the right to receive only that share of the Profits, Losses, Tax Credits and distributions of the Company to which the withdrawing Managing Member, as such, would have been entitled had he or it remained, reduced to the extent of the Managing Member Interest transferred hereunder, but such withdrawing Member (or his or its legal representatives, as the case may be) shall not be considered to be a Special Member for the purpose of exercising any rights reserved to the Special Member under this Agreement or sharing the benefits allocated to the Special Member under Article X hereof and shall not participate in the votes or consents of the Non-Managing Members hereunder; provided, however, that in the case of a Managing Member who or which withdraws involuntarily without violation of this Agreement, the Company shall have the option (but not the obligation), exercisable by notice to the holder of such Interest within six (6) months following the date of such withdrawal, to acquire the Remaining Interest of such withdrawing Managing Member (or the Article VII Special Member Interest deriving therefrom) in accordance with the valuation and payment provisions of Section 7.6.

7.5 Amendment of Articles; Approval of Certain Events

(a) Upon the admission of a new Managing Member pursuant to the preceding provisions of this Article VII, Schedule A shall be amended to reflect such admission and an amendment to the Articles, also reflecting such admission, shall be filed as required by the Act.

(b) Each Member hereby consents to and authorizes any admission or substitution of a Managing Member or any other transaction, including, without limitation, the continuation of the Company business, which has been authorized under the provisions of this Agreement, and hereby ratifies and confirms each amendment of this Agreement necessary or appropriate to give effect to any such transaction.

7.6 Valuation and Sale of Interest of Former Managing Member

(a) Subject to the provisions of Section 7.4(d), if the business of the Company is continued after the withdrawal of a Managing Member, or if, following such event, the Company is reconstituted and continued, in each case as contemplated by this Agreement, the Company shall purchase such Managing Member’s Interest if such removal is without cause or if such withdrawal is not in violation of this Agreement (which term, and words of like import, as used in this Section 7.6 shall refer only to the “Remaining Interest” of such withdrawing Managing Member as defined in Section 7.4(d) in all cases where applicable) each for a price equal to the fair market value thereof. Such fair market value shall be determined by two independent appraisers, one selected by the former Managing Member or its representative and one by the Company. If such appraisers are unable to agree on the value of the former Managing Member’s Interest, they shall jointly appoint a third independent appraiser whose determination shall be final and binding. The appraisers may act with or without a hearing, and the cost of the appraisal will be shared equally between such former Managing Member and the Company. If a
Managing Member is removed by the Investment Member for cause, or if a Managing Member has voluntarily withdrawn from the Company in contravention of the terms of this Agreement, the Managing Member shall forfeit its Interest to the Company, not as a penalty but as liquidated damages to compensate the Company for the action of such Managing Member leading to its removal, or for the fact of its violation of the terms of this Agreement.

(b) Promptly after the determination of the purchase price of a former Managing Member’s Interest pursuant to Section 7.6(a), the Company shall deliver to such former Managing Member a promissory note of the Company for such purchase price, payable in five equal consecutive annual installments commencing on the first anniversary of the date of such note. Such promissory note shall bear simple interest at the rate per annum which is at all times the AFR, annually compounding, payable on the last day of each calendar quarter during which such note is outstanding. Within one hundred twenty (120) days after the determination of the purchase price of the former Managing Member’s Interest, the Company may, with the consent of all remaining Managing Members and the Consent of the Investment Member, sell such Interests to one or more Persons, who may be Affiliates of the remaining Managing Member or Managing Members, and admit such Person or Persons to the Company as substitute Managing Members; provided, however, that the purchase price to be paid to the Company for the Interest of the former Managing Member shall not be less than its purchase price as determined by the appraisal and, if applicable, arbitration described above. Such substitute Managing Members may pay said purchase price in installments in the manner set forth above in this Section 7.6(b).

7.7 Designation of New Managing Members

The Managing Member may, with the written consent of all Non-Managing Members, at any time designate new Managing Members, each with such Interest as a Managing Member in the Company as the Managing Member may specify, subject to any Requisite Approvals.

Any new Managing Member shall, as a condition of receiving any interest in the Company property, agree to be bound by the Project Documents and any other documents required in connection therewith and by the provisions of this Agreement, to the same extent and on the same terms as any other Managing Member.
ARTICLE VIII
Transferability of a Non-Managing Member’s Company Interests

8.1 Assignments

(a) Each of the Non-Managing Members may each assign all or any part of its Company Interest without the consent of any other Member.

(b) An assignee of a Non-Managing Member who does not become a Substituted Non-Managing Member shall have, and shall only have, the right to receive the share of allocations and distributions of the Company to which the assigning Non-Managing Member would have been entitled with respect to the Company Interest (or portion thereof) so assigned if no such assignment had been made by such Non-Managing Member. Any assigning Non-Managing Member whose assignee becomes a Substituted Non-Managing Member shall thereupon cease to be a Non-Managing Member and shall no longer have any of the rights or privileges of a Non-Managing Member. Where the assignee does not become a Substituted Non-Managing Member, the Company shall recognize such assignment not later than the last day of the calendar month following receipt of notice of assignment and all documentation required in connection therewith. The Managing Member shall cooperate with the Non-Managing Members in facilitating such assignment by promptly furnishing complete and accurate financial and other relevant data regarding the Company, the Apartment Complex, the Managing Member and Affiliates of the Managing Member and any other matters reasonably necessary in the judgment of the Special Member to facilitate such Assignment, but only to the extent such information is readily available to the Managing Member either (a) at no or at nominal cost, or (b) the Non-Managing Members shall reimburse the Managing Member for the reasonable cost thereof.

(c) Every assignee of a Non-Managing Member’s Company Interest (or any portion thereof) who desires to make a further assignment of its Company Interest shall be subject to all the provisions of this Article VIII.

8.2 Substituted Non-Managing Member

Each Non-Managing Member shall have the right to substitute an assignee as Non-Managing Member in its place without the consent of any other Member; provided that any Substituted Non-Managing Member shall execute such instrument or instruments as shall be reasonably required by the Managing Members to signify the agreement of such Substituted Non-Managing Member to be bound by all the provisions of this Agreement.

8.3 Restrictions

(a) No Disposition of a Non-Managing Member Interest may be made if such Disposition would violate the provisions of Sections 8.1, 8.2 or 13.1.

(b) In no event shall all or any part of a Non-Managing Member Interest be Disposed of to a minor (other than to a descendant by reason of death) or to an incompetent.

(c) The Managing Member may, in addition to any other requirement it may impose, require as a condition of any Disposition of a Non-Managing Member Interest that the transferor
or transferee (i) assume all costs incurred by the Company or the Non-Managing Member in connection therewith and (ii) furnish the Company and the other Members with an opinion of counsel satisfactory to counsel to the Company that such Disposition complies with applicable federal and state securities laws.

(d) Any sale, exchange, transfer or other Disposition of a Non-Managing Member Interest in contravention of any of the provisions of this Section 8.3 shall be void and ineffectual and shall not bind or be recognized by the Company.
ARTICLE IX
Borrowings

All Company borrowings shall be subject to the terms of this Agreement and the Project Documents and may be made from any source, including Members and their Affiliates. Any Company borrowings from any Member, other than the Subordinated Loans shall be subject to any Requisite Approvals and the Consent of the Special Member. If any Member shall lend any monies to the Company, the amount of any such loan shall not increase such Member’s Capital Contribution. If any Member shall so lend monies, each such loan (a “Voluntary Loan”) shall be an obligation of the Company and (except for Subordinated Loans) shall be repayable to such Member on the same basis and with the same rate of interest as would be applicable to a comparable loan to the Company from a third party. Funds advanced by the Managing Member to the Company as Subordinated Loans shall not constitute borrowings for the purposes of this Article IX or for any other purposes.
ARTICLE X
Profits, Losses, Tax Credits, Distributions and Capital Accounts

10.1 Profits, Losses and Tax Credits

(a) Subject to the provisions of Section 10.1(b) and Section 10.4, for each Company Fiscal Year or portion thereof, all Operating Profits and Losses, tax-exempt income, losses, non-deductible non-capitalizable expenditures and Tax Credits incurred or accrued on or after the Commencement Date shall be allocated 99.99% to the Investment Member, 0.001% to the Class B Special Member, 0.0041% to the Administrative Member and 0.0049% to the Co-Managing Member.

(b) Except as otherwise specifically provided in this Article, all Profits and Losses arising from a Capital Transaction shall be allocated to the Members as follows:

As to Profits:

First, that portion of Profits (including any Profits treated as ordinary income for federal income tax purposes) shall be allocated to the Members who have negative Capital Account balances in proportion to the amounts of such balances, provided that no Profits shall be allocated to a Member under this Clause First to increase any such Member’s Capital Account above zero; and

Second, Profits in excess of the amounts allocated under Clause First above shall be allocated to and among the Members in the same percentages as cash is distributed under Clause Fifth of Section 10.2(b);

As to Losses:

First, an amount of Losses shall be allocated to the Members to the extent and in such proportions as shall be necessary such that, after giving effect thereto, the respective balances in all Members’ Capital Accounts shall be in the ratio of 99.99% for the Investment Member, 0.001% for the Class B Special Member, 0.0041% for the Administrative Member, and 0.0049% for the Co-Managing Member;

Second, an amount of Losses shall be allocated to the Members until the balance in each Member Capital Account equals the amount of such Member’s Capital Contribution (after the allocation under Clause First above);

Third, an amount of Losses shall be allocated to the Members to the extent of and in proportion to such Members’ Capital Account balances (after the allocations under Clauses First and Second above); and

Fourth, any remaining amount of Losses after the allocation under Clauses First, Second and Third above shall be allocated to the Members in accordance with the manner in which they bear the Economic Risk of Loss associated with such Loss; provided, however, that in the event that no Member bears an Economic Risk of Loss then any remaining Losses shall be allocated 99.99% to the Investment Member, 0.001% to the
Class B Special Member, 0.0041% to the Administrative Member and 0.0049% to the Co-Managing Member.

10.2 Cash Distributions Prior to Dissolution

(a) Cash Flow

Subject to any Requisite Approvals, Cash Flow for each Fiscal Year or portion thereof shall be applied as follows:

First, to the payment to the Investment Member of the full amount (including interest) of any amounts due and owing to the Investment Member, including without limitation, adjusters under Section 5.1, any Recapture Amount pursuant to Section 10.6, guaranty payments and/or indemnity payments which the Investment Member is entitled to receive pursuant to this Agreement, the Guaranty or the Development Agreement and to repay any Voluntary Loan made by the Investment Member pursuant to Article IX;

Second, to the payment of the Asset Management Fee for such Fiscal Year and for any previous Fiscal Year(s) as to which the Asset Management Fee shall not yet have been paid in full;

Third, to the payment of any unpaid portion of the Development Fee, including without limitation, any amounts evidenced by a Deferred Development Fee Note and all accrued but unpaid interest thereon;

Fourth, to the replenishment of the Operating Reserve until the balance in the Operating Reserve is equal to the Initial Reserve Amount;

Fifth, to the repayment of any Subordinated Loans;

Sixth, to the payment of the Company Management Fee for such Fiscal Year; and

Seventh, the balance thereof, if any, shall be distributed annually, seventy-five (75) days after the end of the Fiscal Year, 10% to the Investment Member and 90% to the Managing Member (of such 90%, 30% to the Co-Managing Member, 45% to the Administrative Member, and 25% to the Class B Special Member), first as payment of the Incentive Management Fee and then as a distribution.

(b) Distributions of Capital Proceeds

Prior to dissolution, if Capital Proceeds are available for distribution from a Capital Transaction, such Capital Proceeds shall be applied or distributed as follows:

First, to the payment to the Investment Member of the full amount (including interest) of any amounts due and owing to the Investment Member, including without limitation, adjusters under Section 5.1, any Recapture Amount pursuant to Section 10.6, guaranty payments and/or indemnity payments which the Investment Member is entitled
to receive pursuant to this Agreement, the Guaranty or the Development Agreement and to repay any Voluntary Loan made by the Investment Member pursuant to Article IX;

Second, to the payment of any accrued and unpaid Asset Management Fees;

Third, to the repayment of any remaining unpaid debts and liabilities owed to Members or Affiliates thereof by the Company for Company obligations (exclusive of Subordinated Loans) to any of them, including, but not limited to, accrued and unpaid amounts due in respect of any and all fees (including but not limited to the Development Fee and any Deferred Development Fee Note) due and payable to the Managing Member or its Affiliates as set forth in Section 6.12; provided, however, that any debts or obligations to be repaid to any Non-Managing Member or Affiliate thereof pursuant to this Clause Third shall be repaid prior to the repayment of any such debts or obligations to any Managing Member or Affiliate thereof;

Fourth, to the repayment of any Subordinated Loans;

Fifth, subject to the provisions of Section 10.3(a), any balance 9.999% to the Investment Member, 0.001% to the Special Member, 22.5% to the Class B Special Member, 27% to the Co-Managing Member, and 40.5% to the Administrative Member.

10.3 Distributions Upon Dissolution

(a) Upon dissolution and termination, after payment of, or adequate provision for, the debts and obligations of the Company, the remaining assets of the Company shall be distributed to the Members in accordance with the positive balances in their Capital Accounts after taking into account all Capital Account adjustments for the Company Fiscal Year, including adjustments to Capital Accounts pursuant to Sections 10.1(b) and 10.3(b). In the event that a Managing Member has a negative balance in its Capital Account following the liquidation of the Company or such Member’s Interest, after taking into account all Capital Account adjustments for the Company Fiscal Year in which such liquidation occurs, such Member may pay to the Company in cash an amount equal to the negative balance in such Member’s Capital Account. Such payment shall be made by the end of such Fiscal Year (or, if later, within ninety (90) days after the date of such liquidation) and shall, upon liquidation of the Company, be paid to recourse creditors of the Company or distributed to other Members in accordance with the positive balances in their Capital Accounts.

(b) With respect to assets distributed in kind to the Members in liquidation or otherwise, (i) any unrealized appreciation or unrealized depreciation in the values of such assets shall be deemed to be Profits and Losses realized by the Company immediately prior to the liquidation or other distribution event; and (ii) such Profits and Losses shall be allocated to the Members in accordance with the provisions of Section 10.1(b), and any property so distributed shall be treated as a distribution of an amount in cash equal to the excess of such fair market value over the outstanding principal balance of and accrued interest on any debt by which the property is encumbered. For the purposes of this Section 10.3(b), the terms “unrealized appreciation” or “unrealized depreciation” shall mean the difference between the fair market value of such assets, taking into account the fair market value of the associated financing (but
subject to the provisions of Section 7701(g) of the Code), and the Company’s adjusted basis for such assets as determined under the applicable provisions of the Allocation Regulations. This Section 10.3(b) is merely intended to provide a rule for allocating unrealized gains and losses upon liquidation or other distribution event, and nothing contained in this Section 10.3(b) or elsewhere herein is intended to treat or cause such distributions to be treated as sales for value. The fair market value of such assets shall be determined by an appraiser to be selected by the Managing Member with the Consent of the Special Member.

(c) The Investment Member may, prior to the time prescribed by law for filing of the Company’s federal income tax return for any Fiscal Year (not including extensions), elect to be unconditionally obligated to restore all or a portion of any deficit in the Investment Member’s Capital Account upon liquidation of its Interest in the Company. Any such election shall be evidenced by written notice to the Managing Member, delivered prior to such time, specifying the amount of any deficit for which the Investment Member elects a deficit restoration obligation. Any amount owing pursuant to a deficit restoration obligation shall be payable upon the later of (a) the end of the Fiscal Year in which Investment Member’s Interest is liquidated or (b) ninety (90) days after the date of such liquidation. The amount of any such election shall automatically be reduced to the extent the deficit in the Investment Member’s Capital Account (after reduction for the items described in (4), (5) and (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d)) is subsequently reduced or eliminated as of the end of the Company’s taxable year without affecting the validity of prior allocations. If an allocation or distribution thereafter increases the deficit in the Investment Member’s Capital Account, unless the Investment Member elects otherwise under (i) below, the Investment Member will be obligated to restore the deficit only to the extent of the lesser of (i) the deficit amount the Investment Member has previously elected to restore or (ii) the smallest deficit balance in the Investment Member’s Capital Account (after reduction for the items described in (4), (5) and (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d)) as of the end of the Company’s taxable year subsequent to the taxable year for which the election above was made. For purposes of determining the amount referred to in (ii), the income, gain, losses and deductions of the Company shall be allocated under an interim closing of the books method.

10.4 Special Provisions

(a) Except as otherwise provided in this Agreement, all Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures, Tax Credits and cash distributions shared by a class of Members shall be shared by each Member in such class in the ratio of such Member’s paid-in Capital Contribution to the paid-in Class Contribution of the class of Members of which such Member is a member.

(b) Notwithstanding the foregoing provisions of this Article X:

(i) If (a) the Company incurs recourse obligations or Partner Nonrecourse Debt (including, without limitation, Voluntary Loans or Subordinated Loans) or (b) the Company incurs Losses from extraordinary events which are not recovered from insurance or otherwise (collectively “Recourse Obligations”) in respect of any Company Fiscal Year, then the calculation and allocation of Profits and Losses shall be adjusted as follows: first, an amount of deductions attributable to the Recourse Obligations shall be
allocated to the Member who bears the Economic Risk of Loss therefor; and second, the balance of such deductions shall be allocated as provided in Section 10.1(a).

(ii) If any Profits arise from the sale or other disposition of any Company asset which shall be treated as ordinary income under the depreciation recapture provisions of the Code, then the full amount of such ordinary income shall be allocated among the Members in the proportions that the Company deductions from the depreciation giving rise to such recapture were actually allocated. In the event that subsequently-enacted provisions of the Code result in other recapture income, no allocation of such recapture income shall be made to any Member who has not received the benefit of those items giving rise to such other recapture income.

(iii) If the Company shall receive any purchase money indebtedness in partial payment of the purchase price of the Apartment Complex and such indebtedness is distributed to the Members pursuant to the provisions of Section 10.2(b) or Section 10.3, the distributions of the cash portion of such purchase price and the principal amount of such purchase money indebtedness hereunder shall be allocated among the Members in the following manner: On the basis of the sum of the principal amount of the purchase money indebtedness and cash payments received on the sale (net of amounts required to pay Company obligations and fund reasonable reserves), there shall be calculated the percentage of the total net proceeds distributable to each class of Members based on Section 10.2(b) or Section 10.3, as applicable, treating cash payments and purchase money indebtedness principal interchangeably for this purpose, and the respective classes shall receive such respective percentages of the net cash purchase price and purchase money principal. Payments on such purchase money indebtedness retained by the Company shall be distributed in accordance with the respective portions of principal allocated to the respective classes of Members in accordance with the preceding sentence, and if any such purchase money indebtedness shall be sold, the sale proceeds shall be allocated in the same proportion.

(iv) Income, gain, loss and deduction with respect to any asset which has a variation between its basis computed in accordance with the applicable provisions of the Allocation Regulations and its basis computed for federal income tax purposes shall be shared among the Members so as to take account of such variation in a manner consistent with the principles of Section 704(c) of the Code and Section 1.704-1(b)(2)(iv)(g) of the Allocation Regulations.

(v) The terms “Profits” and “Losses” used in this Agreement shall mean income and losses, and each item of income, gain, loss, deduction or credit entering into the computation thereof, as determined in accordance with the accounting methods followed by the Company and computed in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). Profits and Losses for federal income tax purposes shall be allocated in the same manner as set forth in this Article X, except as provided in Section 10.4(b)(iv).
(vi) Nonrecourse Deductions shall be allocated 99.99% to the Investment Member, 0.001% to the Class B Special Member, 0.0041% to the Administrative Member and 0.0049% to the Co-Managing Member.

(vii) Partner Nonrecourse Deductions shall be allocated to and among the Members in the manner provided in the Allocation Regulations.

(viii) Subject to the provisions of Section 10.4(b)(xix), if there is a net decrease in Partnership Minimum Gain for a Company Fiscal Year, the Members shall be allocated items of Company income and gain in accordance with the provisions of Section 1.704-(2)(f) of the Allocation Regulations.

(ix) Subject to the provisions of Section 10.4(b)(xix), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain for a Company Fiscal Year then any Member with a Share of such Partner Nonrecourse Debt Minimum Gain shall be allocated items of Company income and gain in accordance with the provisions of Section 1.704-2(i)(4) of the Allocation Regulations.

(x) Subject to the provisions of 10.4(b)(vi) through 10.4(b)(ix) above, in the event that any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Allocation Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Allocation Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible. This Section 10.4(b)(x) is intended to constitute a “qualified income offset” provision within the meaning of the Allocation Regulations and shall be interpreted consistently therewith. For purposes of this Section 10.4(b)(x), a Member’s Capital Account shall be treated as reduced by Qualified Income Offset Items.

(xi) Subject to the provisions of Sections 10.4(b)(vi) through 10.4(b)(x) above, in no event shall any Non-Managing Member be allocated Losses that would cause it to have an Adjusted Capital Account Deficit as of the end of any Company Fiscal Year. Any Losses that are not allocated to a Non-Managing Member by reason of the application of the provisions of this Section 10.4(b)(xi) shall be allocated to the Managing Member.

(xii) Subject to the provisions of Sections 10.4(b)(vi) through 10.4(b)(xi) above, in the event that any Member has an Adjusted Capital Account Deficit at the end of any Company Fiscal Year, items of Company income and gain shall be specially allocated to each such Member in the amount of such Adjusted Capital Account Deficit as quickly as possible.

(xiii) Syndication Expenses for any Fiscal Year or other period shall be specially allocated to the Investment Member.

(xiv) For purposes of determining the Profits, Losses, Tax Credits or any other items allocable to any period, Profits, Losses, Tax Credits and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Managing
Member using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

(xv) To the extent that interest on loans (or other advances which are deemed to be loans) made by a Managing Member to the Company is determined to be deductible by the Company in excess of the amount of interest actually paid by the Company, such additional interest deduction(s) shall be allocated solely to such Managing Member.

(xvi) To the extent the Company earns interest income on the deposit or investment of Mortgage Loan proceeds, an equal amount of gross income shall be specially allocated to the Managing Member if required by the Investment Member. Any taxable income of the Company resulting from its receipt of donations, contributions, grants or subsidies (whether in the form of property, cash, or forgivable debt) shall be specially allocated to the Managing Member.

(xvii) For purposes of determining each Member’s proportionate share of the excess Nonrecourse Liabilities of the Company pursuant to Section 1.752-3(a)(3) of the Allocation Regulations, the Members’ interests in Profits shall be determined by reference to the Members’ allocable share of Capital Proceeds from a Capital Transaction under Clause Fifth of Section 10.2(b); provided, however, that the Members agree that, upon giving written notice to the Administrative Member, the Investment Member shall have the right at any time to cause the Company to select an alternative method for allocating excess Nonrecourse Liabilities of the Company pursuant to Section 1.752-3(a)(3) of the Allocation Regulations if the Investment Member reasonably determines that such alternative method would (or could reasonably be expected to) avoid or mitigate any tax or economic detriment to the Investment Member or its affiliates (as a result of an actual or pending change in law, change in circumstance, or otherwise). Without limiting the foregoing, the Administrative Member shall provide written notice to the Investment Member no later than 45 days following the close of any Fiscal Year in which the Investment Member’s adjusted basis in its Company Interest is or is reasonably likely to be zero.

(xviii) Any recapture of any Tax Credit shall be allocated to and among the Members in the same manner as such Tax Credit was allocated to the Members.

(xix) If for any Fiscal Year the application of the minimum gain chargeback provisions of Section 10.4(b)(viii) or Section 10.4(b)(ix) of this Agreement would cause distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Managing Member may request a waiver from the Commissioner of the Service of the application in whole or in part of Section 10.4(b)(viii) or Section 10.4(b)(ix) in accordance with Section 1.704-2(f)(4) of the Allocation Regulations. Furthermore, if additional exceptions to the minimum gain chargeback requirements of the Allocation Regulations have been provided through private letter rulings issued to the Company or published revenue rulings or other binding administrative authority, the Managing Member is authorized to cause the Company to take advantage of such exceptions if to do so would be in the best interest of a majority in interest of the Members.
(xx) In the event that any fee payable to any for profit Managing Member or any for profit Affiliate thereof shall instead be determined to be a non-deductible, non-capitalizable distribution from the Company to a Member for federal income tax purposes, then there shall be allocated to such Managing Member an amount of gross income equal to the amount of such distribution.

(xxi) In applying the provisions of Article X with respect to distributions and allocations, the following ordering of priorities shall apply:

1. Capital Accounts shall be deemed to be reduced by Qualified Income Offset Items.
2. Capital Accounts shall be reduced by distributions of Cash Flow under Clause Seventh of Section 10.2(a).
3. Capital Accounts shall be reduced by distributions of Capital Proceeds under Clause Fifth of Section 10.2(b).
4. Capital Accounts shall be increased by any minimum gain chargeback under Section 10.4(b)(viii) or Section 10.4(b)(ix).
5. Capital Accounts shall be increased by any qualified income offset required under Section 10.4(b)(x).
6. Capital Accounts shall be increased by allocations of Operating Profits under Section 10.1(a).
7. Capital Accounts shall be reduced by allocations of Operating Losses under Section 10.1(a).
8. Capital Accounts shall be reduced by allocations of Losses under Section 10.1(b).
9. Capital Accounts shall be increased by allocations of Profits under Section 10.1(b).
10. All remaining allocations shall be made in the order in which they appear in Section 10.4(b).

(xxii) To the maximum extent permitted under the Code, allocations of Profits and Losses shall be modified so that the Members’ Capital Accounts reflect the amount they would have reflected if adjustments required by Sections 10.4(b)(x), 10.4(b)(xi) and 10.4(b)(xii) had not occurred.

(xxiii) In the event the Investment Member shall give notice to the Managing Member that, in the reasonable judgment of the Investment Member, its Capital Account as of the close of the tax year in which such notice is given either will have a zero balance or there will be an increase in Partner Nonrecourse Debt Minimum Gain for such
year that is attributable to the Deferred Development Fee Note, the Managing Member shall take all such action as may be necessary to assure that any outstanding balance of any Deferred Development Fee Note shall constitute a “partnership nonrecourse liability” of the Company, as such term is defined in Treasury Regulation Section 1.752-1(a)(2) or any successor regulation. One such action shall be the assignment of any Deferred Development Fee Note to an Entity that is not a “related person,” as defined in Section 42(d)(2)(D)(iii) of the Code, to the Company.

10.5 Authority of the Managing Member to Vary Allocations to Preserve and Protect the Members’ Intent

(a) It is the intent of the Members that each Member’s distributive share of Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures and Tax Credits (and items thereof) shall be determined and allocated in accordance with this Agreement to the fullest extent permitted by Section 704(b) of the Code and the Allocation Regulations. In order to preserve and protect the determinations and allocations provided for in this Agreement, the Managing Member is hereby authorized and directed to allocate Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures and credits (and items thereof) arising in any Fiscal Year differently than otherwise provided for in this Agreement to the extent that allocating Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures or credits (or any item thereof) in the manner provided for herein would cause the determinations and allocations of each Member’s distributive share of Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures and credits (or any item thereof) not to be permitted by Section 704(b) of the Code. Any allocation made pursuant to this Section 10.5 shall be deemed to be a complete substitute for any allocation otherwise provided for in this Agreement and shall only be made with the Consent of the Investment Member.

(b) In making any allocation (the “New Allocation”) under Section 10.5(a), the Managing Member is authorized to act only with the Consent of the Investment Member after having been advised in writing by the Tax Accountants that, under Section 704(b) of the Code and/or the Allocation Regulations, (i) the New Allocation is necessary, and (ii) the New Allocation is the minimum modification of the allocations otherwise provided for in this Agreement necessary in order to assure that, either in the then-current Fiscal Year or in any preceding Fiscal Year, each Member’s distributive share of Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures and Tax Credits (or any item thereof) is determined and allocated in accordance with this Agreement to the fullest extent permitted by Section 704(b) of the Code and the Allocation Regulations.

(c) New Allocations made by the Managing Member under Section 10.5 shall be deemed to be made pursuant to the fiduciary obligation of the Managing Member to the Company and the Non-Managing Members, and no such allocation shall give rise to any claim or cause of action by any Non-Managing Member.

10.6 Recapture Amount

(a) If at any time during the “compliance period” (as defined in Section 42(i)(1) of the Code), the Apartment Complex ceases to be a “qualified low income housing project” (as
defined in Section 42(g)(1) of the Code, any Low-Income Unit in the Apartment Complex ceases to be a “low income unit” (as defined in Section 42(i)(3) of the Code), or for any other reason all or any portion of credits allowed to the Company and its Members under Section 42 of the Code are subject to recapture pursuant to Section 42(j) of the Code (such an occurrence being referred to herein as a “Recapture Event”), the Investment Member shall become entitled to receive funds equal to the “Recapture Amount”. The Recapture Amount shall be in the form of an offset against future Installments, a cash distribution or payment to the Investment Member, in each case as set forth in Sections 5.1(e) and/or (f).

(b) The Recapture Amount is an amount equal the sum of (i) the “credit recapture amount” allocable to the Investment Member as defined in Section 42(j) of the Code plus (ii) all income taxes payable by the Investment Member (or its partners or members) as computed under Section 10.6(d).

(c) Any Recapture Amount distributable to the Investment Member pursuant to the foregoing provisions shall be distributed as funds become available for such distributions, but such distributions shall not be made prior to (i) in the case of the “credit recapture amount”, the year of the Recapture Event and (ii) in the case of any credits disallowed with respect to any year subsequent to the Recapture Event, in each such subsequent year.

(d) Determination of the Recapture Amount shall be made on the assumption that receipt or accrual by each partner of the Investment Member of any amounts distributable to such partner under Subsection (c) above will currently be subject to United States federal and State income tax at the highest marginal rate applicable to corporations for the year(s) in question (and assuming the non-applicability of the alternative minimum tax).

(e) All computations required under this Section 10.6 shall be made reasonably by the Investment Member, and the results of such computations, together with a statement describing in reasonable detail the manner in which such computations were made, shall be delivered to the Managing Member in writing. Within fifteen (15) days following receipt of such computation, the Managing Member may request that the Auditors determine whether such computations are reasonable and are not erroneous. If the Auditors determine that such computations are unreasonable or contain errors, then the Auditors shall determine what they believe to be the appropriate computations. If the Investment Member does not agree with the determination of the Auditors, then another accounting firm other than the Auditors to be selected jointly by the Investment Member and the Managing Member or, if they cannot agree, by the American Arbitration Association, from among the ten largest national accounting firms, shall make such computations. The computations of the Investment Member, the Auditors, or the other accounting firm so selected, whichever is applicable, shall be final, binding and conclusive upon the parties. All fees and expenses payable to an accounting firm other than the Auditors under this paragraph shall be borne solely by the Managing Member. All fees and expenses payable to the American Arbitration Association shall be borne equally by the Managing Member and the Investment Member.
ARTICLE XI
Management Agent

11.1 General

The Managing Member shall engage the Management Agent to manage the Apartment Complex pursuant to the Management Agreement. The Management Agent shall receive a Management Fee of those amounts payable from time to time by the Company to the Management Agent for management services in accordance with a management contract approved by any Agency or Lender with the right to approve the same, or, when any such management contract is not subject to the approval of any Agency or Lender, in accordance with a reasonable and competitive fee arrangement. The initial Management Agent shall be Accolade Property Management, Inc. From and after the Admission Date, the Company shall not enter into any Management Agreement or modify or extend any Management Agreement unless (i) the Managing Member shall have obtained the prior Consent of the Special Member to the identity of the Management Agent and the terms of the Management Agreement or the modification or extension thereof and (ii) such new Management Agreement or modified or extended Management Agreement provides that it is terminable by the Company on thirty (30) days’ notice by the Company in the event of any change in the identity of the Managing Member. The Management Agent shall maintain insurance in accordance with the applicable Insurance Requirements set forth in Exhibit D. Copies of such policies (or binders) shall be provided to the Company and the Investment Member within thirty (30) days after the effective date of the Management Agreement and annually thereafter.

11.2 Fees

Notwithstanding the provisions of Section 11.1, however, should the Investment General Partner or an Affiliate thereof perform property management services for the Company, property management, rent-up or leasing fees shall be paid to the Investment General Partner or such Affiliate only for services actually rendered and shall be in an amount equal to the lesser of (i) fees competitive in price and terms with those of non-affiliated Persons rendering comparable services in the locality where the Apartment Complex is located and which could reasonably be available to the Company, or (ii) five percent (5%) of the gross revenues of the Apartment Complex. No duplicate property manager fees shall be paid to any Person.

11.3 Removal and Replacement

If (i) the Apartment Complex shall be subject to a substantial building code violation which shall not have been cured within six (6) months after notice from a Governmental Authority or (ii) the Company shall not have achieved a 1.15 to 1.00 Debt Service Coverage Ratio during any Fiscal Year commencing on January 1, 2019, or (iii) an Event of Bankruptcy shall occur with respect to the Management Agent, or (iv) the Management Agent shall commit willful misconduct or gross negligence in its conduct of its duties and obligations under the Management Agreement or (v) there is any change in the Persons acting as Managing Members (to which the Special Member has not consented), or (vi) the Management Agent is cited by the Credit Agency or any other Tax Credit monitoring or compliance agency of the State or any other Governmental Authority for a violation or alleged violation of any applicable rules,
regulations or requirements, including, without limitation, non-compliance with the Agreed-Upon Set-Aside Test, the Rent Restriction Test or any other Tax Credit-related provision, or (vii) the Management Agent fails to promptly and competently perform (after any applicable notice and cure period) all duties of the Management Agent under the Management Agreement, or (viii) the Apartment Complex fails to generate at least 90% of the Revised Projected Tax Credits in any calendar year, or (ix) the Management Agent fails to materially comply with the record keeping, tenant qualification and rental requirements of the Extended Use Agreement, and Code Section 42 and the Regulations, rulings and policies related thereto, or (x) the Apartment Complex is materially mismanaged, or (xi) the Managing Member is removed, then, upon request by the Special Member and subject to Agency and Lender approval, if required, the Managing Member shall cause the Company to promptly terminate the Management Agreement with the Management Agent and appoint a new Management Agent selected by the Special Member, which new Management Agent shall not be an Affiliate of a Managing Member. Each Managing Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to take any action and to execute and deliver any and all documents and instruments on behalf of such Managing Member and the Company as the Special Member may deem to be necessary or appropriate in order to effectuate the provisions of this Article XI. Subject to any Requisite Approvals, the Company shall not enter into any future management arrangement or renew or extend any existing management arrangement unless such arrangement is terminable without penalty upon the occurrence of the events described in this Article XI.

11.4 Lack of Management Agent

The Managing Member shall have the duty to manage the Apartment Complex during any period when there is no Management Agent.
ARTICLE XII
Books and Records, Accounting, Tax Elections, Etc.

12.1 Books and Records

The Company shall maintain all books and records which are required under the Act or by any Governmental Authority and may maintain such other books and records as the Managing Member in its discretion deems advisable or as reasonably requested by the Special Member. Each Non-Managing Member, or its duly authorized representatives, shall have access to the records of the Company at the principal office of the Company at any and all reasonable times, and may inspect and copy any of such records. A list of the name and addresses of all of the Non-Managing Members shall be maintained as part of the books and records of the Company and shall be mailed to any Non-Managing Member upon request. The Company may require reimbursement for any out of pocket expenses which it incurs as a result of the exercise by any Non-Managing Member of its rights under this Section 12.1, including, without limitation, photocopying expenses. The Managing Member shall cause the Company to maintain at all times all informational and qualification files of each tenant of the Apartment Complex in fire proof storage facilities (whether paper files or micro fiche or film) and in a secure location controlled by the Company, for the later of six (6) years after completion of the Compliance Period or as long as is required under applicable law.

12.2 Bank Accounts

The bank accounts of the Company shall be maintained in the Company’s name with such financial institutions as the Managing Member shall determine. Withdrawals shall be made only in the regular course of Company business on such signature or signatures as the Managing Member may determine. All deposits (including security deposits and other funds required to be escrowed by any Lender or Agency) and other funds not needed in the operation of the business shall be deposited, if required by applicable law and to the extent permitted by applicable Agency or Lender requirements, in interest bearing accounts or invested in United States Government obligations maturing within one year.

12.3 Auditors

(a) The Auditors shall prepare, for execution by the Managing Member, all tax returns of the Company. Prior to the filing of the Company tax returns, and in no event later than February 15 of each Fiscal Year, the Auditors shall deliver the tax returns for the prior Fiscal Year to the Tax Accountants for their review and comment. If a dispute arises between the Auditors and the Tax Accountants over the proper preparation of the tax returns and such dispute cannot be resolved by the Auditors and the Tax Accountants by March 1 of such Fiscal Year, then the Tax Accountants shall make the final decision with respect to whether any changes are necessary. The Company shall reimburse the Investment Member and its Affiliates for all costs and expenses paid to the Tax Accountants for the aforementioned services.

(b) The Auditors shall certify all annual financial reports to the Members in accordance with generally accepted auditing standards.
(c) If the Company fails to fulfill any of its obligations under Section 12.7(a)(i) and/or Section 12.7(a)(ii) within the time periods set forth therein, at any time thereafter upon written notice from the Special Member, the Managing Member shall appoint replacement Auditors. If no such notice from the Special Member is delivered, the Consent of the Special Member must be received to the appointment of replacement Auditors. If the Managing Member fails to appoint replacement Auditors within thirty (30) days of the notice from the Special Member to replace the Auditors, then the Special Member shall appoint replacement Auditors of its own choosing, the cost of which shall be borne by the Company as a Company expense. All of the Members hereby grant to the Special Member a special power of attorney, irrevocable to the extent permitted by law, coupled with an interest, to so appoint replacement Auditors and to anything else which in the judgment of the Special Member may be necessary or appropriate to accomplish the purposes of this Section 12.3(c).

(d) On or prior to the date which is thirty (30) days after the Admission Date, the Managing Member shall cause the Company (i) in writing, to engage the Auditors to perform the services required herein and (ii) to deliver to the Investment Member copies of all such engagement letters and agreements.

12.4 Cost Recovery and Elections

(a) Unless the Special Member shall specify a different permissible treatment in writing, and except to the extent otherwise required by Section 168(g)(1)(B) of the Code, the Company shall depreciate substantially all of its residential rental property, site improvements and personal property costs, respectively, over 27.5 years, 15 years and 5 years for federal income tax purposes. Notwithstanding the foregoing, the Company will elect to depreciate 40% of its site improvements and personal property costs in the year in which such assets are placed in service in accordance with Section 168(k) of the Code (the “Bonus Depreciation”) provided that 40% shall be reduced to 30% if such site improvements and personal property costs are placed in service in 2019. Except at the written request of the Special Member, the Managing Member will not cause the Company to make an election under Section 168(k)(7) of the Code to elect-out of such Bonus Depreciation.

(b) Subject to the provisions of Section 12.5, all other elections required or permitted to be made by the Company under the Code shall be made by the Managing Member with the Consent of the Investment Member, in such manner as will, in the opinion of the Auditors, be most advantageous to the Investment Member and the limited partners thereof.

12.5 Special Basis Adjustments

In the event of a transfer of all or any part of the Interest of the Investment Member or a transfer of all or any part of an interest of a partner of the Investment Member, the Company shall elect, upon the request of the Investment Member, pursuant to Section 754 of the Code, to adjust the basis of the Company property. Any adjustments made pursuant to said Section 754 shall affect only the successor in interest to the transferring Member or partner thereof. Each Member will furnish the Company all information necessary to give effect to any such election.
12.6 **Fiscal Year**

Unless otherwise required by law, the Fiscal Year and tax year of the Company shall be the calendar year. The books of the Company shall be maintained on an accrual basis.

12.7 **Information to Members**

(a) The Managing Member shall cause to be prepared and distributed to all Persons who were Members at any time during a Fiscal Year of the Company:

(i) Within sixty (60) days after the end of each Fiscal Year of the Company, (A) a balance sheet as of the end of such Fiscal Year, a statement of income, a statement of members’ equity, and a statement of cash flows, each for the Fiscal Year then ended, all of which, except the statement of cash flows, shall be prepared in accordance with generally accepted accounting principles and accompanied by a report of the Auditors containing an opinion of the Auditors, and (B) a report of the activities of the Company during the period covered by the report. With respect to any distribution to the Investment Member, the report called for shall separately identify distributions from (1) Cash Flow from operations during the period, (2) Cash Flow from operations during a prior period which had been held as reserves, (3) proceeds from disposition of property and investments, (4) lease payments on net leases with builders and sellers, (5) reserves from the gross proceeds of the Capital Contributions of the Investment Member, (6) borrowed monies, and (7) transactions outside of the ordinary course of business with a description thereof.

(ii) Within forty-five (45) days after the end of each Fiscal Year of the Company, all information relating to the Company and/or the Apartment Complex which is necessary, in the view of the Tax Accountants, for the preparation of the Non-Managing Members’ federal income tax returns for the prior Fiscal Year.

(iii) Within thirty (30) days after the end of each quarter of a Fiscal Year of the Company, a report containing:

(A) a balance sheet, which may be unaudited;

(B) a statement of income for the quarter then ended, which may be unaudited;

(C) a statement of cash flows for the quarter then ended, which may be unaudited;

(D) a certification of the Managing Member that the Apartment Complex and its tenants are in compliance with all applicable federal, state and local requirements and regulations;

(E) a Tax Credit monitoring form, a copy of the rent roll for the Apartment Complex for each month during such quarter, a statement of income and expenses, an operating statement and an
Occupancy/Rental Report, all in a form specified by the Special Member;

(F) a certification of the Managing Member that it has received no notice of a building, health or fire code violation or similar violation of a governing law, ordinance or regulation against the Apartment Complex, or, if there is any such violation, a detailed description thereof;

(G) the number of Section 811 Units required by the Credit Agency pursuant to any Section 811 RAC; and

(H) all other information which would be pertinent to a reasonable investor regarding the Company and its activities during the quarter covered by the report.

(b) Within sixty (60) days after the end of each Fiscal Year of the Company a copy of the annual report to be filed with the United States Treasury concerning the status of the Apartment Complex as low-income housing and, if required, a certificate to the appropriate state agency concerning the same.

(c) Upon the written request of the Investment Member for further information with respect to any matter covered in item (a) or item (b) above, the Managing Member shall furnish such information within thirty (30) days of receipt of such request.

(d) Prior to October 15 of each Fiscal Year, the Company shall send to the Investment Member an estimate of the Investment Member’s share of the Tax Credits, Profits and Losses of the Company for federal income tax purposes for the current Fiscal Year. Such estimate shall be prepared by the Managing Member and the Auditors and shall be in the form specified by the Special Member.

(e) The Managing Member shall send the Investment Member a detailed report within fifteen (15) days after the end of any calendar quarter during which any of the following events occur:

(i) there is a material default by the Company under any Project Document or in the payment of any mortgage, taxes, interest or other obligation on secured or unsecured debt,

(ii) any reserve has been reduced or terminated by application of funds therein for purposes materially different from those for which such reserve was established,

(iii) any Managing Member has received any notice of a material fact which may substantially affect further distributions or Tax Credit allocations to any Non-Managing Member,

(iv) any Member has pledged or collateralized its Interest in the Company, or
(v) TDHCA has proposed changes to the “rent schedule” under the Section 811 RAC (to the extent each such agreement is in effect).

(f) After the Admission Date, the Company shall send to the Investment Member copies of all applicable periodic reports covering the status of project operations and any matters relating to the Tax Credit as are required by any Lender or Agency. The Managing Member shall deliver to the Investment Member copies of all construction draw requests (and all supporting documentation) submitted to the Lender prior to the Admission Date, if any, and shall deliver to the Investment Member simultaneously with their submission to the Lender copies of all construction draw requests (and all supporting documentation) submitted to the Lender on or after the Admission Date.

(g) On or before May 1 of each Fiscal Year, the Company shall send to the Investment Member a report on operations, in the form supplied by the Special Member.

(h) The Managing Member hereby consents to each Lender or Agency providing the Investment Member with copies of all material communications between any such Lender or Agency and the Managing Member and/or the Company, including, but not limited to, any notices of default.

(i) [Intentionally Deleted]

(j) Within sixty (60) days following the Completion Date, the Managing Member shall prepare, or cause the Auditors to prepare, and deliver to each Non-Managing Member a Tax Credit basis worksheet for each building in the Apartment Complex, all in a form specified by the Special Member.

(k) Promptly after Permanent Mortgage Commencement, the Managing Member shall send to the Special Member a closing binder containing photocopies of the fully executed versions of all documents signed in connection with the Permanent Loan(s). From and after any date upon which the Managing Member receives notice from the Special Member that the Special Member would like copies of the monthly rent rolls for the Apartment Complex to be sent to the Special Member, the Managing Member shall send copies of the rent rolls to the Special Member no later than ten (10) days after the expiration of each month.

(l) If the Managing Member does not cause the Company to fulfill its obligations under Section 12.7(a)(i) and/or Section 12.7(a)(ii) within the time periods set forth therein, the Managing Member shall pay as damages the sum of $250 per day (plus interest at a rate equal to the Prime Rate plus three percent (3%)) to the Investment Member until such obligations shall have been fulfilled. Such damages shall be paid forthwith by the Managing Member, and the failure to pay any such damages shall constitute a material default by the Managing Member hereunder. In addition, if the Managing Member shall fail to pay any such damages, the Managing Member and its Affiliates shall forthwith cease to be entitled to the distribution of any Cash Flow or Capital Proceeds to which they may otherwise be entitled hereunder. Such distributions of Cash Flow and Capital Proceeds shall be restored only upon the payment of such damages in full, and any amount of such damages not so paid shall be deducted against
distributions of Cash Flow and Capital Proceeds otherwise due to the Managing Member or its Affiliates.

(m) On or before November 1 of each Fiscal Year, the Managing Member shall cause the Company to send to the Investment Member an operating budget of the Apartment Complex for the upcoming Fiscal Year. The Special Member shall have the right to review and comment on the budget, and the Managing Member shall incorporate the Special Member’s recommendations, subject to the approval of the Agency. If the Managing Member and the Special Member are unable to agree on a budget for a particular Fiscal Year, the budget for such year shall be the budget for the preceding year increased by 5%. The Managing Member shall keep the Special Member informed concerning the general state of the business and financial condition of the Company and shall, upon the reasonable request of the Special Member, furnish to the Special Member full information, accounts and documentation concerning the state of the business and financial condition of the Company. Such budget shall include, but not be limited to:

(i) an overall assessment of the market in the general vicinity of the Apartment Complex,

(ii) an assessment of repairs and capital improvements needed and the priority of such items; and

(iii) a proposed repairs and capital improvements budget for the year affected.

(n) Notwithstanding anything to the contrary contained herein, the Managing Member shall cause to be conducted and delivered to the Non-Managing Members pursuant to Section 5.1(a) an audit on one hundred (100%) percent of the initial leases or occupancy agreements executed in connection with the Apartment Complex in order to ensure compliance with the applicable Rent Restriction Test, Minimum Set Aside Test, or any other applicable tenant restriction test (“Initial Compliance Audit”). The Special Member shall select at its option, any combination of occupancy agreements which shall comprise the Initial Compliance Audit (the “Selected Occupancy Agreements”). The Initial Compliance Audit shall consist of a review of the complete tenant files in connection with the Selected Occupancy Agreements, including but not limited to any tenant financial information. Further, the Initial Compliance Audit shall be conducted with the cooperation of, and at the sole cost and expense of the Managing Member if the Initial Compliance Audit reveals an instance of material noncompliance. An instance of material noncompliance shall be deemed to exist if at least five (5) occupancy agreements reveal noncompliance or violations of any applicable tenant restriction test. If the Initial Compliance Audit does not reveal any instance of material noncompliance the Company shall bear the cost of such audit.

(o) The Managing Member shall deliver to the Investment Member audited annual financial statements of each of the Managing Member and the Guarantors within one hundred eighty (180) days of the end of each fiscal year of the Company, unless waived by the Special Member, in writing.
12.8 Expenses of the Company.

All expenses of the Company shall be billed directly to and paid by the Company.

12.9 Review of Compliance.

The Managing Member shall, within seventy-five (75) days after the end of each Fiscal Year of the Company, certify to each Non-Managing Member in the same scope and manner that it is required to certify, if requested, to the Agency, that the Company is in compliance with all regulations and procedures relating to the operation of the Apartment Complex as a qualified Tax Credit project within the meaning of Section 42(g) of the Code. The Special Member may, at its own expense, conduct or cause to be conducted an audit or review of the Company’s compliance with all regulations and procedures relating to the operation of the Apartment Complex as a qualified Tax Credit project within the meaning of Section 42(h) of the Code. Such audit or review shall be conducted upon not less than thirty (30) nor more than ninety (90) days prior written request. The Managing Member shall cooperate with any such audit by making appropriate personnel of the Managing Member and Property Manager and all books and records of the Apartment Complex and Company available to the Investment Members or their representatives at the offices of the Company during regular business hours.

12.10 Inspections.

The Special Member, at its sole cost and expense, shall have the right to conduct physical inspections of the Apartment Complex on an annual basis and the Managing Member shall take all reasonable steps necessary to cooperate therewith.
ARTICLE XIII
General Provisions

13.1 Restrictions by Reason of Section 708 of the Code

No Disposition of an Interest may be made if the Interest sought to be Disposed of, when added to the total of all other Interests Disposed of within the period of twelve (12) consecutive months prior to the proposed date of the Disposition, would, in the opinion of the Tax Accountants or tax counsel to the Company, result in the termination of the Company under Section 708 of the Code, unless the transferring Member agrees to indemnify the other Members for any federal income tax liability resulting from such Disposition. This Section 13.1 shall have no application to any required repurchase of the Investment Member’s Interest. Any Disposition in contravention of any of the provisions of this Section 13.1 shall be void ab initio and ineffectual and shall not bind or be recognized by the Company. Notwithstanding the foregoing provisions of this Section 13.1, however, the Investment Member may waive the provisions of this Section 13.1 at any time as to a Disposition or series of Dispositions, and in the event of such a waiver, this Section 13.1 shall have no force or effect upon such Disposition or series of Dispositions.

13.2 Amendments to Articles

Within one hundred twenty (120) days after the end of the Company Fiscal Year in which the Investment Member shall have received any distributions under Article X, the Managing Member shall file an amendment to the Articles reducing the amount of its allocable share of such distribution the amount of Capital Contribution of the Investment Member as stated in the last previous amendment to the Articles. However, Schedule A shall not be amended on account of any such distribution.

The Company shall amend the Articles at least once each calendar quarter to effect the substitution of Substitute Non-Managing Members, although the Managing Member may elect to do so more frequently. In the case of assignments, where the assignee does not become a Substitute Non-Managing Member, the Company shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and all documentation required in connection therewith hereunder.

Notwithstanding the foregoing provisions of this Section 13.2, no such amendments to the Articles need be filed by the Managing Member if the Act does not require it and the Articles do not identify the Non-Managing Members or their Capital Contributions in such capacity.

13.3 Notices

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given when the same are (i) deposited in the United States mail and sent by certified or registered mail, postage prepaid, three business days after mailing, (ii) sent by nationally recognized overnight delivery service, one business day after deposit with such nationally recognized overnight delivery service, provided all delivery charges have been prepaid, (iii) sent by telecopier or other facsimile transmission, answerback requested with a copy by regular mail, on the date such
answerback is received, or (iv) delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the Company:

(a) If to the Company, at the office of the Company set forth in Section 2.2.

(b) If to a Member, at its address set forth in the Schedule, with copies to Douglas W. Clapp, Esq., Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116 and Gary Cohen, Esq., Shutts & Bowen LLP, 200 South Biscayne Boulevard, Suite 4100, Miami, FL 33131.

13.4 Word Meanings

The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural, and vice versa, and each gender (masculine, feminine and neuter) shall include the other genders, unless the context requires otherwise. Each reference to a “Section” or an “Article” refers to the corresponding Section or Article of this Agreement, unless specified otherwise. References to Treasury Regulations (permanent or temporary) or Revenue Procedures shall include any successor provisions.

13.5 Binding Effect

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

13.6 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the State.

13.7 Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

13.8 Financing Regulations

(a) So long as any of the Project Documents are in effect, (i) each of the provisions of this Agreement shall be subject to, and the Managing Member covenants to act in accordance with, the Project Documents; (ii) the Project Documents shall govern the rights and obligations of the Members, their heirs, executors, administrators, successors and assigns to the extent expressly provided therein; (iii) upon any dissolution of the Company or any transfer of the Apartment Complex, no title or right to the possession and control of the Apartment Complex and no right to collect the rent therefrom shall pass to any Person who is not, or does not become, bound by the Project Documents in a manner satisfactory to the Lenders and any Agency (to the extent that its approval is required); (iv) no amendment to any provision of the Project Documents shall become effective without the prior written consent of any Lender and/or
Agency (to the extent that its approval is required); and (v) the affairs of the Company shall be subject to the Regulations, and no action shall be taken which would require the consent or approval of any Lender and/or Agency unless the prior consent or approval of such Lender and/or Agency, as the case may be, shall have been obtained. No new Member shall be admitted to the Company, and no Member shall withdraw from the Company or be substituted for without the consent of any Lender and/or Agency (if such consent is then required). No amendment to this Agreement relating to matters governed by the Regulations or requirements shall become effective until any Requisite Approvals to such amendment shall have been obtained.

(b) Any conveyance or transfer of title to all or any portion of the Apartment Complex required or permitted under this Agreement shall in all respects be subject to all conditions, approvals and other requirements of any Regulations applicable thereto.

13.9 Separability of Provisions

Each provision of this Agreement shall be considered separable and (a) if for any reason any provision is determined to be invalid, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, and (b) if for any reason any provision would cause the Investment Member or the Special Member (in its capacity as a Non-Managing Member) to be bound by the obligations of the Company (other than the Regulations and the other requirements of any Agency or Lender), such provision or provisions shall be deemed void and of no effect.

13.10 Paragraph Titles

All article and section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any article or section.

13.11 Amendment Procedure

This Agreement may be amended by the Managing Member only with the Consent of the Investment Member and the Consent of the Special Member.

13.12 Extraordinary Non-Managing Member Expenses

(a) Any and all costs and expenses incurred by the Investment Member and/or the Special Member in connection with exercising rights and remedies against the Managing Member with respect to this Agreement, including, without limitation, reasonable attorneys’ fees, shall be paid by the Managing Member on demand. All amounts due to the Investment Member and/or the Special Member pursuant to this provision shall bear interest from demand at a rate of seven percent (7%) per annum.

(b) If any Managing Member breaches any provision of this Agreement, the Investment Member and/or the Special Member may employ an attorney or attorneys to protect its rights hereunder, and the Managing Member shall pay on demand the reasonable attorneys’ fees and expenses incurred by the Investment Member and/or the Special Member, whether or not a legal action is actually commenced against any Managing Member by reason of such
breach. All amounts due to the Investment Member and/or the Special Member pursuant to this provision shall bear interest from demand at a rate equal to nine percent (9%) per annum.

13.13 Time of Admission

The Investment Member shall be deemed to have been admitted to the Company as of the Commencement Date for all purposes of this Agreement, including Article X, provided, however, that if treasury regulations are issued under the Code or an amendment to the Code is adopted which would require, in the opinion of the Auditors, that the Investment Member be deemed admitted on a date other than as of the Commencement Date, then the Managing Member shall select a permitted admission date which is most favorable to the Investment Member.


The Company and its Members shall be permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure (as defined in Treasury Regulation Section 1.6011-4(c) or its successor) of the transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) relating to such tax treatment and tax structure. The Managing Members will notify the Members of any “reportable transaction” under Treasury Regulation Section 1.6011-4 (or its successor) in which the Company shall engage.
WITNESS the execution hereof under seal as of the date first written above.

CO-MANAGING MEMBER: O-SDA KAIA, LLC, a Texas limited liability company, by its sole member, O-SDA Industries, LLC, a Texas limited liability company

By: [Signature]
Megan Lasch, Sole Member

ADMINISTRATIVE MEMBER: SAIGEBROOK KAIA, LLC, a Florida limited liability company, by its sole member, Saigebrook Development, LLC, a Florida limited liability company

By: [Signature]
Lisa Stephens, Sole Member

CLASS B SPECIAL MEMBER: RDEVKAIA, LLC, a California limited liability company

By: [Signature]
Mark Ragsdale, Sole Member
WITNESS the execution hereof under seal as of the date first written above.

**CO-MANAGING MEMBER:**

O-SDA KAIA, LLC, a Texas limited liability company, by its sole member, O-SDA Industries, LLC, a Texas limited liability company

By: ____________________________

Megan Lasch, Sole Member

**ADMINISTRATIVE MEMBER:**

SAIGEBROOK KAIA, LLC, a Florida limited liability company, by its sole member, Saigebrook Development, LLC, a Florida limited liability company

By: ____________________________

Lisa Stephens, Sole Member

**CLASS B SPECIAL MEMBER:**

RDEVKAIA, LLC, a California limited liability company

By: ____________________________

Mark Ragsdale, Sole Member
WITNESS the execution hereof under seal as of the date first written above.

CO-MANAGING MEMBER:  O-SDA KAIA, LLC, a Texas limited liability company, by its sole member, O-SDA Industries, LLC, a Texas limited liability company

By:  ____________________________
     Megan Lasch, Sole Member

ADMINISTRATIVE MEMBER:  SAIGEBROOK KAIA, LLC, a Florida limited liability company, by its sole member, Saigebrook Development, LLC, a Florida limited liability company

By:  ____________________________
     Lisa Stephens, Sole Member

CLASS B SPECIAL MEMBER:  RDEVKAIA, LLC, a California limited liability company

By:  ____________________________
     [Signature]
     Mark Ragsdale, Sole Member

Signature Page 1 of 3 to Second Amended and Restated Operating Agreement
Kaia Pointe, LLC
SPECIAL MEMBER:

BCCC, INC., a Massachusetts corporation

By: [Signature]
Jeffrey H. Goldstein
Executive Vice President

INVESTMENT MEMBER:

BOSTON CAPITAL CORPORATE TAX CREDIT FUND XLIV, A LIMITED PARTNERSHIP, a Massachusetts limited partnership, by its general partner, BCCTC Associates XLIV, LLC, a Massachusetts limited liability company, by its manager, BCCTC Associates, Inc., a Massachusetts corporation

By: [Signature]
Jeffrey H. Goldstein
Executive Vice President

ORIGINAL INVESTMENT MEMBER:

BOSTON CAPITAL DIRECT PLACEMENT, A LIMITED PARTNERSHIP, a Massachusetts limited partnership, by its general partner, Corporate Investment Holdings, Inc., a Massachusetts corporation

By: [Signature]
Jeffrey H. Goldstein
Executive Vice President
CONSENT AND AGREEMENT

The undersigned hereby executes this Agreement for the sole purpose of agreeing to the provisions of Article XI of the foregoing Second Amended and Restated Operating Agreement of the Company notwithstanding any provision of the Management Agreement to the contrary.

ACCOLADE PROPERTY MANAGEMENT, INC.,
a Texas corporation

By: [signature]
Name: STEPHANIE BURKE
Title: PRESIDENT
KAIA POINTE, LLC  
SCHEDULE A  
As of October 1, 2017

<table>
<thead>
<tr>
<th>Co-Managing Member</th>
<th>Capital Contribution</th>
<th>Percentage Interests of Operating Profits and Losses</th>
<th>Percentage Interests of Tax Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>O-SDA Kaia, LLC</td>
<td>$100</td>
<td>0.0049%</td>
<td>0.0049%</td>
</tr>
<tr>
<td></td>
<td>c/o Saigebrook Development, LLC</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>421 West 3rd Street, Suite 1504</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Austin, TX  78701</td>
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<table>
<thead>
<tr>
<th>Administrative Member</th>
<th>Capital Contribution</th>
<th>Percentage Interests of Operating Profits and Losses</th>
<th>Percentage Interests of Tax Credits</th>
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<td>Saigebrook Kaia, LLC</td>
<td>$100</td>
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<td>c/o Saigebrook Development, LLC</td>
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<tr>
<td>421 West 3rd Street, Suite 1504</td>
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<table>
<thead>
<tr>
<th>Class B Special Member</th>
<th>Capital Contribution</th>
<th>Percentage Interests of Operating Profits and Losses</th>
<th>Percentage Interests of Tax Credits</th>
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<tr>
<td>RDevKaia, LLC</td>
<td>$100</td>
<td>0.001%</td>
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<tr>
<td>330 Glendale Road</td>
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<tr>
<td>Hillsborough, CA 94010</td>
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<table>
<thead>
<tr>
<th>Special Member</th>
<th>Capital Contribution</th>
<th>Percentage Interests of Operating Profits and Losses</th>
<th>Percentage Interests of Tax Credits</th>
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<tbody>
<tr>
<td>BCCC, Inc.</td>
<td>$10</td>
<td>0%</td>
<td>0%</td>
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<tr>
<td>c/o Boston Capital Partners, Inc.</td>
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<td></td>
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</tr>
<tr>
<td>One Boston Place, 21st Floor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boston, MA  02108</td>
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<table>
<thead>
<tr>
<th>Investment Member</th>
<th>Total Agreed-to Capital Contribution</th>
<th>Paid-In Capital Contribution*</th>
<th>Percentage Interests of Operating Profits and Losses</th>
<th>Percentage Interests of Tax Credits</th>
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</thead>
<tbody>
<tr>
<td>Boston Capital Corporate Tax Credit Fund XLIV, A Limited Partnership</td>
<td>$12,771,343</td>
<td>$1,915,701</td>
<td>99.99%</td>
<td>99.99%</td>
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<tr>
<td>c/o Boston Capital Partners, Inc.</td>
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<tr>
<td>One Boston Place, 21st Floor</td>
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<tr>
<td>Boston, MA  02108</td>
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</table>

*Paid-in Capital Contribution as of the date of this Schedule A. Future Installments of Capital Contribution are subject to adjustment and are due at the times and subject to the conditions set forth in the Agreement to which this Schedule is attached.
# SCHEDULE B

## INVESTMENT MEMBER UNDERWRITTEN OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Operating Expenses</th>
<th>BCC Underwriting 102 units</th>
<th>Total</th>
<th>Per Unit</th>
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<tr>
<td><strong>Administrative Expenses</strong></td>
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<tr>
<td>Advertising</td>
<td>15,600</td>
<td>153</td>
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<tr>
<td>Screening/Credit</td>
<td>2,460</td>
<td>24</td>
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<td>Office Salaries</td>
<td>75,650</td>
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<tr>
<td>Mgr/Super Free Unit</td>
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<tr>
<td>Office Supplies</td>
<td>3,000</td>
<td>29</td>
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<tr>
<td>Tax Credit Compliance &amp; Monitoring Fees</td>
<td>3,200</td>
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<tr>
<td>Audit/Accounting/Legal</td>
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<td>Telephone</td>
<td>5,100</td>
<td>50</td>
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<tr>
<td>Security - Vehicle Cost</td>
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<tr>
<td>Miscellaneous/Unallocated</td>
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<tr>
<td>Management Fee</td>
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<td><strong>Total Administrative Expenses</strong></td>
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<td><strong>$1,680</strong></td>
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<td><strong>Utility Expenses</strong></td>
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<tr>
<td>Electricity</td>
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<td><strong>Adjustment - Common Area Only&gt;&gt; 1</strong></td>
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<tr>
<td>Water &amp; Sewer</td>
<td>36,108</td>
<td>354</td>
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<td><strong>Adj. - Tenant Pays&gt;&gt;&gt; 100%</strong></td>
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<tr>
<td>Fuel</td>
<td>0</td>
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<tr>
<td><strong>Adjustment - Tenant Pays&gt;&gt;&gt;</strong></td>
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<tr>
<td>Miscellaneous/Unallocated</td>
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<tr>
<td><strong>Total Utility Expenses</strong></td>
<td><strong>$52,428</strong></td>
<td><strong>$514</strong></td>
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<td><strong>Maintenance Expenses</strong></td>
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<tr>
<td>Materials &amp; Supplies</td>
<td>18,000</td>
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<tr>
<td>Maintenance Contracts</td>
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<td>Payroll</td>
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<td>Elevator</td>
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<td>Pool</td>
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<td>Grounds Supplies/Contracts</td>
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<td>Exterminating</td>
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<td>Trash Removal</td>
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<td>Decorating/Turnover</td>
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<tr>
<td>Miscellaneous/Unallocated</td>
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<tr>
<td><strong>Total Maintenance Expenses</strong></td>
<td><strong>$136,382</strong></td>
<td><strong>$1,337</strong></td>
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<tr>
<td><strong>Taxes &amp; Insurance Expenses</strong></td>
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<tr>
<td>Real Estate Taxes</td>
<td>126,832</td>
<td>1,243</td>
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<td><strong>Adjustment for Real Estate Taxes</strong></td>
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<td>Payroll Taxes/Benefits</td>
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<td>239</td>
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<td>Health Insurance Benefits</td>
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<tr>
<td>Property Insurance</td>
<td>37,500</td>
<td>368</td>
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<tr>
<td>Other Expenses</td>
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<tr>
<td>Miscellaneous/Unallocated</td>
<td>0</td>
<td>0</td>
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<tr>
<td><strong>Total Taxes &amp; Insurance Expenses</strong></td>
<td><strong>$201,356</strong></td>
<td><strong>$1,974</strong></td>
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<tr>
<td><strong>Other Expenses</strong></td>
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<tr>
<td>Supportive Services</td>
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<td>25</td>
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<tr>
<td><strong>Total Other Expenses</strong></td>
<td><strong>$2,500</strong></td>
<td><strong>$25</strong></td>
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<tr>
<td><strong>Total Operating Expenses</strong></td>
<td><strong>$564,047</strong></td>
<td><strong>$5,530</strong></td>
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<tr>
<td>Replacement Reserves</td>
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<td>250</td>
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<tr>
<td><strong>Total Operating Expenses &amp; Reserves</strong></td>
<td><strong>$589,547</strong></td>
<td><strong>$5,780</strong></td>
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</tbody>
</table>
EXHIBIT A

LEGAL DESCRIPTION

BEING 5.001 ACRES OF LAND SITUATED WITHIN THE CITY OF GEORGETOWN, IN THE ISAAC JONES SURVEY, ABSTRACT NUMBER 361, WILLIAMSON COUNTY, TEXAS, AND BEING A PORTION OF THAT PARCEL OF LAND AS DESCRIBED IN THE DEED TO GEORGETOWN'S GATLIN CREEK LTD RECORDED UNDER INSTRUMENT NUMBER 2014074963 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (HEREAFTER REFERRED TO AS THE GEORGETOWN'S GATLIN CREEK PARCEL). SAID 5.001 ACRES OF LAND SURVEYED ON THE GROUND IN THE MONTH OF JUNE 2016, UNDER THE DIRECTION AND SUPERVISION OF ROBERT A. HANSEN, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6439 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING" FOUND AT THE SOUTHWEST CORNER OF A CALLED 0.106 ACRE PARCEL AS DESCRIBED IN THE JUDGEMENT OF COURT IN ABSENCE OF OBJECTION TO THE STATE OF TEXAS RECORDED UNDER INSTRUMENT NUMBER 2007068136 OF SAID OFFICIAL PUBLIC RECORDS AND BEING THE BEGINNING OF A NON- TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 2930.73 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 55 DEGREES 03 MINUTES 47 SECONDS EAST, 175.36 FEET;

THENCE SOUTHEASTERLY WITH THE SOUTHWEST CURVING RIGHT OF WAY LINE OF WILLIAMS DRIVE, A VARIABLE WIDTH RIGHT OF WAY, AS DESCRIBED IN THE JUDGEMENT OF COURT IN ABSENCE OF

OBJECTION RECORDED UNDER INSTRUMENT NUMBER 2008034153 OF SAID OFFICIAL PUBLIC RECORDS, AN ARC LENGTH OF 175.39 FEET TO A ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING" FOUND AT THE BEGINNING OF A TANGENT LINE TO THE AFOREMENTIONED CURVE;

THENCE SOUTH 56 DEGREES 46 MINUTES 39 SECONDS EAST, 125.48 FEET WITH THE SOUTHWEST RIGHT OF WAY LINE OF SAID WILLIAMS DRIVE TO A ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING" FOUND;

THENCE THROUGH THE INTERIOR OF SAID GEORGETOWN'S GATLIN CREEK PARCEL THE FOLLOWING SIX (6) CALLS:

1. SOUTH 32 DEGREES 57 MINUTES 52 SECONDS WEST, 149.03 FEET TO A ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING" FOUND AT THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 200.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 26 DEGREES 24 MINUTES 09 SECONDS WEST, 45.71 FEET;

2. SOUTHWESTERLY AN ARC LENGTH OF 45.81 FEET TO A ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING" FOUND AT THE POINT OF REVERSE CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 175.00 FEET AND CHORD BEARING AND DISTANCE OF SOUTH 36 DEGREES 33 MINUTES 26 SECONDS WEST, 100.67 FEET;

3. SOUTHWESTERLY AN ARC LENGTH OF 102.12 FEET TO A ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING" FOUND AT THE POINT OF REVERSE CURVE, CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 365.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 43 DEGREES 07 MINUTES 09 SECONDS WEST, 128.70 FEET;

4. SOUTHWESTERLY AN ARC LENGTH OF 129.38 FEET TO A ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING" FOUND AT THE BEGINNING OF A TANGENT LINE TO THE AFOREMENTIONED CURVE;
5. SOUTH 32 DEGREES 57 MINUTES 52 SECONDS WEST, 73.29 FEET TO A FOUND ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING";

6. NORTH 50 DEGREES 22 MINUTES 40 SECONDS WEST, 611.08 FEET TO A POINT ON THE SOUTH LINE BLOCK 3, AS SHOWN ON THE PLAT TITLED "CASA LOMA" RECORDED IN CABINET D, SLIDE 9 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS FROM WHICH A ½ INCH CAPPED REBAR STAMPED "DIAMOND SURVEYING" BEARS SOUTH 71 DEGREES WEST, 0.4 FEET AND A FOUND COTTON SPINDLE NEAR A 12 INCH DEAD CEDAR ELM TREE BEARS SOUTH 71 DEGREES 27 MINUTES 45 SECONDS WEST, 49.92 FEET;

THENCE NORTH 71 DEGREES 22 MINUTES 33 SECONDS EAST, 89.59 FEET WITH THE SOUTH LINE OF SAID BLOCK 3 TO A 1/2 INCH REBAR FOUND AT AN ANGLE POINT IN THE SOUTH LINE OF SAID BLOCK 3;

THENCE NORTH 71 DEGREES 05 MINUTES 03 SECONDS EAST, 297.91 FEET WITH THE SOUTH LINE OF SAID BLOCK 3 TO THE CENTER OF A 16 INCH LIVE OAK FOUND AT A SALIENT CORNER OF SAID BLOCK 3 (A 6D NAIL AND WASHER STAMPED "RPLS 5043" WAS FOUND ON SAID 16 INCH LIVE OAK'S SOUTHERLY SIDE);

THENCE NORTH 68 DEGREES 36 MINUTES 58 SECONDS EAST, 155.15 FEET WITH THE SOUTH LINE OF SAID BLOCK 3 TO THE POINT OF BEGINNING, CONTAINING 5.001 ACRES. THE BASIS OF Bearings FOR THIS DESCRIPTION IS GRID NORTH, TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE.
EXHIBIT B

PROJECTED RENTS

(attached behind)
### Maximum Eligible & Projected Rents

<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Bath-Rooms</th>
<th>Number of Units</th>
<th>Floor Area</th>
<th>Set Aside</th>
<th>% of Effective Median</th>
<th>Maximum Gross Rent</th>
<th>Utility Allowance</th>
<th>Maximum Eligible Rent Net</th>
<th>Revised G.P. Rent</th>
<th>Revised B.C. Rents</th>
<th>Estimated Market Rents</th>
<th>Revised B.C. Rent Maximum Eligible Rent Net</th>
<th>Total Annual B.C. Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Bedroom 1 Bath</td>
<td>2</td>
<td>705</td>
<td>30%</td>
<td>22.5%</td>
<td>458</td>
<td>64</td>
<td>394</td>
<td>394</td>
<td>394</td>
<td>1,000</td>
<td>100%</td>
<td>9,453</td>
<td>788</td>
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<td>1 Bedroom 1 Bath</td>
<td>3</td>
<td>705</td>
<td>50%</td>
<td>37.5%</td>
<td>763</td>
<td>64</td>
<td>699</td>
<td>699</td>
<td>699</td>
<td>1,000</td>
<td>100%</td>
<td>102,210</td>
<td>5,993</td>
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<td>705</td>
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<td>0</td>
<td>852</td>
<td>852</td>
<td>1,000</td>
<td>100%</td>
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<td>6,816</td>
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<td>5</td>
<td>948</td>
<td>30%</td>
<td>37.5%</td>
<td>916</td>
<td>79</td>
<td>837</td>
<td>837</td>
<td>1,185</td>
<td>100%</td>
<td>180,738</td>
<td>23,458</td>
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<td>6</td>
<td>948</td>
<td>Market</td>
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<td>0</td>
<td>964</td>
<td>964</td>
<td>1,310</td>
<td>100%</td>
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<td>5,785</td>
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<tr>
<td>3 Bedroom 2 Bath</td>
<td>7</td>
<td>948</td>
<td>30%</td>
<td>31.2%</td>
<td>94</td>
<td>94</td>
<td>1,176</td>
<td>1,176</td>
<td>1,176</td>
<td>1,310</td>
<td>100%</td>
<td>98,771</td>
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<tr>
<td>3 Bedroom 2 Bath</td>
<td>8</td>
<td>1,139</td>
<td>Market</td>
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<td>0</td>
<td>1,176</td>
<td>1,176</td>
<td>1,176</td>
<td>1,310</td>
<td>100%</td>
<td>98,771</td>
<td>8,321</td>
<td>None</td>
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</table>

**Total** 102 includes managers’ units

**2017 Total Rental** 102 4-person Very Low Income: $340,700

**Total LIHTC 80 78.43%**

<table>
<thead>
<tr>
<th>Set Aside</th>
<th>% of Effective Median</th>
<th>Maximum Gross Rent</th>
<th>% of Effective Median</th>
<th>Maximum Gross Rent</th>
<th>% of Effective Median</th>
<th>Maximum Gross Rent</th>
<th>% of Effective Median</th>
<th>Maximum Gross Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Bedroom</td>
<td>21.0%</td>
<td>427</td>
<td>28.0%</td>
<td>570</td>
<td>36.0%</td>
<td>712</td>
<td>42.0%</td>
<td>855</td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>22.5%</td>
<td>458</td>
<td>30.0%</td>
<td>611</td>
<td>37.5%</td>
<td>763</td>
<td>45.0%</td>
<td>916</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>27.0%</td>
<td>549</td>
<td>36.0%</td>
<td>733</td>
<td>45.0%</td>
<td>916</td>
<td>54.0%</td>
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<tr>
<td>3 Bedroom</td>
<td>31.2%</td>
<td>635</td>
<td>41.6%</td>
<td>847</td>
<td>52.0%</td>
<td>1,058</td>
<td>62.4%</td>
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<tr>
<td>4 Bedroom</td>
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<td>708</td>
<td>46.4%</td>
<td>944</td>
<td>56.0%</td>
<td>1,180</td>
<td>69.6%</td>
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<tr>
<td>5 Bedroom</td>
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<td>51.2%</td>
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<td>64.0%</td>
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<td>76.8%</td>
<td>1563</td>
</tr>
</tbody>
</table>

**AMI Trending Analysis**

<table>
<thead>
<tr>
<th>Year</th>
<th>4-person LI Change</th>
<th>Historic Averages</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$40,700</td>
<td>4.63%</td>
</tr>
<tr>
<td>2016</td>
<td>$38,900</td>
<td>1.30%</td>
</tr>
<tr>
<td>2015</td>
<td>$36,400</td>
<td>1.86%</td>
</tr>
<tr>
<td>2014</td>
<td>$33,900</td>
<td>2.51%</td>
</tr>
<tr>
<td>2013</td>
<td>$36,600</td>
<td>-3.56%</td>
</tr>
<tr>
<td>2012</td>
<td>$37,950</td>
<td>0.34%</td>
</tr>
<tr>
<td>2011</td>
<td>$37,450</td>
<td>0.49%</td>
</tr>
<tr>
<td>2010</td>
<td>$39,400</td>
<td>0.63%</td>
</tr>
<tr>
<td>2009</td>
<td>$36,600</td>
<td>0.39%</td>
</tr>
<tr>
<td>2008</td>
<td>$35,550</td>
<td>0.00%</td>
</tr>
<tr>
<td>2007</td>
<td>$35,550</td>
<td>0.00%</td>
</tr>
<tr>
<td>2006</td>
<td>$35,550</td>
<td>0.00%</td>
</tr>
<tr>
<td>2005</td>
<td>$35,550</td>
<td>0.00%</td>
</tr>
<tr>
<td>2004</td>
<td>$35,550</td>
<td>0.00%</td>
</tr>
<tr>
<td>2003</td>
<td>$35,550</td>
<td>0.00%</td>
</tr>
<tr>
<td>2002</td>
<td>$35,550</td>
<td>0.00%</td>
</tr>
</tbody>
</table>

**Model Section 8 Overhang?** Yes

**Other Income**

<table>
<thead>
<tr>
<th>Per Unit Per Month</th>
<th>All Units Per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laundry Machine Collections</td>
<td>$15</td>
</tr>
<tr>
<td>Late Fees</td>
<td>$0</td>
</tr>
<tr>
<td>Application Fees</td>
<td>$0</td>
</tr>
<tr>
<td>Security Deposit Forfeitures</td>
<td>$0</td>
</tr>
<tr>
<td>Vending</td>
<td>$0</td>
</tr>
</tbody>
</table>

**Gross Potential Income** 1,122,920

**Vacancy** 18,360

**Commercial Income per year** 78,604

**Net Income** 1,044,316

**4-person Very Low Income: $40,700**
EXHIBIT C
DUE DILIGENCE RECOMMENDATIONS

1. Receipt by the Investment Member of a copy of the recorded plat with respect to access via Bettie May Way

2. Satisfaction of the items listed on Exhibit C-1
EXHIBIT C-1
August 31, 2017
File No. 172822.26

Mr. David M. Core
Boston Capital
One Boston Place
Boston, Massachusetts 02108

Re: Review of Environmental Documents
Kaia Pointe
Georgetown, Texas

Dear Mr. Core:

At your request, and in accordance with our master agreement with Boston Capital (GZA File No. 14070), GZA GeoEnvironmental, Inc. (GZA) has reviewed the following documents:

<table>
<thead>
<tr>
<th>ENVIRONMENTAL REPORT</th>
<th>COMPANY</th>
<th>REPORT DATE</th>
<th>GZA REVIEW</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Phase I Environmental Site Assessment, Kaia Pointe, LLC, Williams Drive, Georgetown, Williamson County, Texas” (ESA-1)</td>
<td>Terracon Consultants, Inc. (Terracon)</td>
<td>February 16, 2016</td>
<td>August 23, 2017</td>
</tr>
<tr>
<td>“Noise Assessment, Kaia Pointe, LLC, Williams Drive, Georgetown, Williamson County, Texas”</td>
<td>Terracon</td>
<td>March 22, 2016</td>
<td>August 23, 2017</td>
</tr>
<tr>
<td>“Phase I Environmental Site Assessment, Kaia Pointe, LLC, Williams Drive, Georgetown, Williamson County, Texas” (ESA-2)</td>
<td>Terracon</td>
<td>June 5, 2017</td>
<td>August 23, 2017</td>
</tr>
<tr>
<td>“Water Pollution Abatement Plan (WPAP) &amp; Organized Sewer Collection System Plan (SCS) for Gatlin Creek Section 2, 4900 Williams Drive, Georgetown, Texas”</td>
<td>Waelts &amp; Prete, Inc.</td>
<td>November 2016</td>
<td>August 31, 2017</td>
</tr>
<tr>
<td>Environmental Responses</td>
<td></td>
<td>August 31, 2017</td>
<td>August 31, 2017</td>
</tr>
</tbody>
</table>

Based on our review of the above-referenced document, it is GZA’s opinion that the ESAs are generally consistent with the referenced ASTM Standard (E 1527-13) for Phase I Environmental Site Assessments. The ESAs did not identify the presence of Recognized Environmental Conditions (RECs); however, GZA offers the following comments:

1. Issue: The ESAs note that the Site overlies the Edwards Aquifer Recharge Zone, a sensitive environmental area. Terracon states that future development is subject to Texas Commission on Environmental Quality (TCEQ) regulations regarding the aquifer recharge zone; in
particular, a Water Pollution Abatement Plan (WPAP) including a Geologic Assessment must be prepared prior to the placement of stormwater management structures.

**Recommendation:** A copy of the WPAP, as well as any other relevant correspondence with TCEQ, should be provided to Boston Capital as available.

**Response:** “Received Approval Letter from Texas Commission on Environmental Quality dated 3/8/17. And Water Pollution Abatement Plan (WPAP) & Organized Sewage Collection System Plan (SCS) for Gatlin Creek Section 2 4900 Williams Drive Georgetown, Texas”

**Status:** No immediate response required, based on the submission of the WPAP/SCS Plan prepared by Waeltz & Prete, Inc., and the Deed Recordation Affidavit, which includes a copy of the TCEQ’s approval letter. Copies of the completion and ongoing testing documentation referenced in TCEQ’s approval letter should be provided to Boston Capital as available.

2. **Issue:** Terracon observed minor trash and debris at the Site, including household debris, wooden pallets, a pile of pea gravel, and metal fencing. Terracon did not observe evidence of the presence of oil or hazardous material associated with the trash and debris.

**Recommendation:** Terracon recommended that the trash and debris be removed from the Site and disposed of in accordance with applicable regulations. GZA concurs with this recommendation. The disposal contractor should be prepared to properly manage any oil or hazardous material that may be encountered in association with the trash and debris. Documentation of the removal and proper disposal of the trash and debris should be provided to Boston Capital as available.

**Response:** “Kaia Pointe, LLC will remove all debris per the ESA prepared by Kaia Pointe dated June 5th, 2017”

**Status:** No immediate response required, based on the above response and the submission of the letter from O-SDA Industries/Kaia Pointe, LLC, dated June 5, 2017. Documentation of the removal and proper disposal of the trash and debris should be provided to Boston Capital when available.

3. **Issue:** The ESAs identified potential sources of noise including Williams Drive and the Georgetown Municipal Airport, and recommended a noise study. The noise study concluded that the projected outdoor day-night average sound level (DNL) at the noise assessment location is 68.6 decibels (dB), and that “the predicted DNL for the proposed site buildings would be classified under the HUD criteria as being “Normally Unacceptable.”

**Recommendation:** The noise study states, “Based on this information, Terracon recommends noise mitigation (i.e. construct natural or man-made noise barriers or increase mitigation in the building walls/windows/doors) or reconfigure the site plan to increase the distance between the noise source (Williams Drive) and noise-sensitive uses.” GZA concurs with this recommendation. Documentation that appropriate noise mitigation measures are being undertaken should be provided to Boston Capital when available.

**Response:** “Architect’s response from Miller Slayton Architects, Paul Slayton, dated 6/16/17”

**Status:** CLOSED by Boston Capital’s acceptance of the above response.
If you have any questions regarding the above, please contact Sara Hanna at shanna@gza.com or Frank Vetere at (781) 278-4807.

Very truly yours,

GZA GEOENVIRONMENTAL, INC.

Sara R. Hanna  
Senior Hydrogeologist

Frank S. Vetere  
Principal
PART I - SITE INFORMATION

1. Boston Capital project designation

   Project Name: Kaia Pointe
   Location: Georgetown, Texas
   Acquisitions Assoc. / V.P.: 

2. GZA project designation

   File No.: 172822.26
   Principal in Charge: Hanna Reviewer: Daubenspeck

3. Current land use

   a. residential
   b. commercial
   c. vacant, wooded, pasture ☒
   d. active agricultural
   e. under development

4. Age of ESA at time of GZA review 2.5 months

PART II - ADEQUACY OF SITE ASSESSMENT - GENERAL

1. Adequate description of site visit/observations? Yes ☒ No ☐
2. Adequate description of site history? Yes ☒ No ☐
3. Adequate review of regulatory information/environmental databases

   a. for study site? Yes ☒ No ☐
   b. for surrounding properties? Yes ☒ No ☐

4. If there are surrounding properties that have the potential to impact the study site, have they been adequately addressed in the ESA? Yes ☒ No ☐ N/A ☐

5. If the current or recent past use of the study site is active agricultural, has the ESA addressed the potential impact of
residual levels of agricultural chemicals in the soil on the future residential use of the site? Yes ☐ No ☐ N/A ☒

6. Does the ESA provide an opinion with respect to radon levels in current or future site structures? Yes ☒ No ☐
   a. Does existing structure have basement? Yes ☐ No ☐ Unk./N/A ☒
   b. Will future structure have basement? Yes ☐ No ☐ Unknown ☒

Comments: The ESAs report that the Site is in U.S. EPA Radon Zone 3 (average indoor radon levels less than 2 pCi/L).

7. Is asbestos adequately addressed? Yes ☒ No ☐
   a. no buildings on site ☒
   b. all buildings on site post-1978 ☐
   c. buildings undergoing extensive renovation ☐
   d. asbestos suspected: friable ☐ non-friable ☐
   e. asbestos confirmed by inspection/testing: friable ☐ non-friable ☐
   f. management plan recommended ☐
   g. no asbestos present ☐

8. Is lead paint adequately addressed? Yes ☒ No ☐
   a. no buildings on site ☒
   b. all buildings on site post-1978 ☐
   c. buildings undergoing extensive renovation ☐
   d. lead paint suspected ☐
   e. lead paint confirmed by testing ☐
   f. management plan recommended ☐
   g. no lead paint present ☐

9. Are wetland issues adequately addressed? Yes ☒ No ☐
   a. wetland issues of concern ☒
   b. wetland on-site ☒
PART III - ISSUES RAISED BY REPORT

1. On-site source of contamination?  
   - Yes ☐  No ☒
   - Past ☐  Present ☒

2. Off-site source of contamination?  
   - Yes ☐  No ☒
   - Past ☐  Present ☒

3. Agricultural chemical residue?  
   - Yes ☐  No ☒
   - In soil ☐  In on-site supply well ☒

4. Elevated radon levels likely?  
   - Yes ☐  No ☒

5. Asbestos?  
   - Yes ☐  No ☒

6. Lead paint?  
   - Yes ☐  No ☒

7. High-tension lines?  
   - Yes ☐  No ☒

8. PCB-containing electrical equipment?  
   - Yes ☐  No ☒

9. Elevators/hydraulic lifts?  
   - Yes ☐  No ☒

10. Wetlands?  
    - Yes ☐  No ☒

If any of the Part III items are checked yes, provide a brief explanation:
**Kaia Pointe Apartments**  
Georgetown, Texas

**Date:** 9/19/17  **UPDATED:** 9/22

**BC A&E Consultant:** JHME Real Estate Advisors  
**Developer:** Kaia Pointe, LLC  
**General Contractor:** Maker Bros., LLC  
**Architect:** Miller Slayton Architects, Inc.

**Developer Responses:** In Red

**Description:** Kaia Pointe Apartments is a proposed new construction development located in Georgetown, Texas. The project will consist of 102 units in five, three story apartment buildings. The unit mix will consist of 28 – one bedroom/ one bathroom units, 56 – two bedroom/ 2 bath units, and 18 – three bedroom / 2 bath units. All units on the ground floor will be ADA adaptable. There are 6 UFAS Mobility Accessible Units, and 2 HVI units. Kaia Pointe is a 9% tax credit deal with a Placed in Service Deadline of 12/31/2018. The exterior of the building will consist of hardi siding, cultured stone, and painted fascia soffit and trim. Windows are Low E Energy Star double-glazed with 0.35 U factor, and s0.25 single hung with vinyl frames. The roofing will be finished with 30-year Type I Class A 235 lbs. per square composition shingles over Ice and Water Shield Underlayment over sloped trusses and sheathing, with metal standing seam roof in low slope areas. Units are heated and cooled with split system heat pumps ranging from 1.5 – 2.5 ton compressors with interior AHU with coils. Kitchens will have black appliances including refrigerators, electric range, microwaves, and dishwashers. All appliances will be Energy Star rated. Other amenities include a community center with kitchenette, exercise room, computer room, management office, and pool facilities. Units are accessed through two breezeway stairways. No elevators are provided. There is one primary point of vehicular access into the development from Williams Drive via Bettie Mae Way. Bettie Mae Way will be extended in the future and connect with the commercial loop form the south and it will also connect to residential connector streets via the same loop. The project will provide a total of 158 parking spaces, fifteen of which will be handicap accessible.

**RECOMMENDATIONS**

1. A draft Owner/Contractor Agreement in AIA A101 - 2007 format indicating a stipulated sum of $10,850,000 was provided. The agreement dated August 2017, is between the Owner, Kaia Pointe, LLC, a Florida limited liability company, and Contractor, Maker Bros, LLC a Texas limited liability company. The contract time for substantial completion is 435 days. The contract references Exhibit A - General Conditions of the Contract for Construction Exhibit B - Construction Schedule, Exhibit C - Form of Final Payment Affidavit, Exhibit D - Schedule of values, Exhibit E-1 - Index of Drawings, Exhibit E-2 - Index of Specifications, Exhibit F - Form of conditional Waiver and Release of Lien (for Progress Payment), Exhibit G - Form of Unconditional Waiver and Release of Lien (for progress Payment), and Exhibit H - Form of Conditional Waiver and Release of Lien (for Final Payment), Exhibit I - Contractor's Certificate of Insurance, Exhibit J - Subcontractor Insurance Requirements, Exhibit K - TDHCA Required Items, Exhibit L - Contractor's Clarifications, Allowances and Alternates.
   - Final executed contract with all attachments should be provided.
   **Response:** To be provided this week.
   **Status:** OPEN – Not yet received. Will close when BC receives. UPDATE 9/22: Received. CLOSED.

2. Please confirm trade costs are based on bids from subcontractors. Were multiple bids obtained for all trades? Additionally, please indicate what percentage of the construction hard costs have been bid to support the contract sum and demonstrate readiness to begin.
   **Response:** 100% of the contract has been bid out. Multiple bids were received.
   **Status:** CLOSED
3. Please provide further detail on Geotech potential issues. Do you expect to need to import fill, and if so, at what cost? If not, are you crushing rock at the site?
   
   **Response:** Fill will be a combination of imported soils and processed rock from the site.
   
   **Status:** CLOSED

4. Does this affect any utilities or proposed utilities at the site?
   
   **Response:** No
   
   **Status:** CLOSED

5. Confirm foundation design and pavement design are consistent with Geotech Report recommendations from Terracon Consultants Report dated 7/15/16.
   
   **Response:** Confirmed, design was per the geotech report.
   
   **Status:** CLOSED

6. Have tests been done to characterize soil for disposal?
   
   **Response:** Environmental raised no concerns with soils.
   
   **Status:** CLOSED

7. Please confirm that the architect will be engaged for all standard construction administration services and that the signed proposal from Miller Slayton will serve as the final Owner/Architect agreement, or will a standard AIA Contract be provided?
   
   **Response:** Confirmed, the architect will perform standard CA services. Proposal is final agreement. No AIA architect agreement to be provided.
   
   **Status:** Accept - CLOSED

8. Status of plan review should be provided. Have any comments to plans been received from the Building Department that would cause changes in scope and cost? What is the anticipated date for permit issuance?
   
   **Response:** Permit review is complete and permits may be issued upon payment of fees.
   
   **Status:** CLOSED – Copy of permits should be provided when available.

9. Please confirm the number of handicapped/HVI units (6 mobility, hearing & visual, and 3 HVI). The number of accessible parking and van spaces should also be confirmed as 15. How many of these spaces will be van spaces?
   
   **Response:** There are 15 accessible spaces. None are designated van accessible.
   
   **Status:** OPEN – 2010 ADA standards require 1 van accessible space for every 6 accessible spaces. The plans note to provide one van accessible space per 8 spaces (prior ADA standard). There should be at least 3 van spaces provided. When going through the plans, it appears on the site drawings that there are multiple spaces with the proper width of the space itself, but I do not see the required 8 foot (96”) access aisles. Please confirm that there are 3 spaces that meet these requirements. UPDATE 9/22: Please see the engineer’s response below and attached that while not designated on the plan as van spaces, in fact 6 of the HC spaces are van accessible and meet the requirements. UPDATE 9/22: Received confirmation that requirements will be met. CLOSED.

10. The Construction contract lists a project construction duration of 436 Calendar days. The schedule is very general and does not include trade-level detail. A more detailed construction schedule should be provided when available.

    **Response:** A more detailed schedule will be provided prior to closing.
    
    **Status:** CLOSED

11. The resume of the Site Superintendent should be provided.

    **Response:** Attached
    
    **Status:** CLOSED
MISSING DOCUMENTS

1. Site Work & Building permits. Received 9/21. CLOSED.
2. Architect’s Certification. RECEIVED. CLOSED

PLAN REVIEW COMMENTS

POST CLOSING FOLLOW-UP
EXHIBIT D

INSURANCE REQUIREMENTS

The following are construction and permanent insurance requirements. This outline describes the minimum types and amounts of insurance that are satisfactory to Boston Capital Partners, Inc. (“Boston Capital”), its affiliates, and/or its assigns. Special Member reserves the right to modify the insurance requirements as conditions warrant.

Carrier Requirement

- All carriers must be A- or better rated according to A.M. Best Company, with a Financial Size Category rating by A.M. Best of VII or higher.

Policy Requirements

- Reference the name of the insured property (“Property”), including address, in the “description section” of the insurance certificate.

- Policies shall provide Boston Capital entities a 30-day prior written notice of cancellation, termination, or reduction of coverage except for non-payment of premium where ten (10) days notice shall be given.

- Insurance binders, certificates, and policies must name the identified Boston Capital entity shown below as Loss Payee and Additional Insured.

- Copies of policies, binders and certificates shall be provided to Boston Capital no later than the effective date of the policy.

Additional Insured / Loss Payee or Certificate Holder, as applicable:

- For all policies, the following entities should be named:
  - Investment Member – its successors and/or its assigns (“IM”)
  - Special Member – its successors and/or its assigns (“SM”)

Construction Period Coverage

Prior to the commencement of any construction activities, the Managing Member shall obtain (or cause to be obtained by the general contractor or the architect, as applicable) the following coverages, which shall remain in force until receipt of the certificates of occupancy for all buildings:

| Company |

Builder’s All Risk (Property)- if rehab, insurance must be in place to cover both construction phase and existing structures.
<table>
<thead>
<tr>
<th>Named Insured:</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss Payee:</td>
<td>IM and SM</td>
</tr>
<tr>
<td>Form:</td>
<td>ISO Special Form (please supply Evidence of Property Insurance, ACORD form 28 “Special” or “All Risk” form); Copies of Policies to follow within 90 day of acceptance Completed Value (Non-Reporting Form)</td>
</tr>
<tr>
<td>Perils:</td>
<td>Special form “All Risk” policy, including wind/hail, subject to the policy terms, conditions and exclusions Flood and Earthquake exclusion acceptable (unless specifically required by the Special Member as outlined in the Additional Insurance section on Page 2 of this form)</td>
</tr>
<tr>
<td>Valuation:</td>
<td>Replacement Cost including the existing structure(s), if applicable</td>
</tr>
<tr>
<td>Deductible:</td>
<td>Not to exceed $10,000 for 1-100 units/$25,000 for 101 or more units per occurrence If located in Tier One Wind County, wind/hail deductible not to exceed 5%. All other locations, wind/hail deductible not to exceed $10,000 for 1-100 units/$25,000 for 101 or more units</td>
</tr>
<tr>
<td>Endorsements/Extensions:</td>
<td>Permission to Occupy Endorsement Renovations Coverage Endorsement Loss of Rents (12 Months)/Delay in Start Up Soft Costs Ordinance and Law Coverage, if zoned legal non-conforming Waiver of Co-insurance or Agreed Value Endorsement Transit Must Obtain Property Insurance on a Building by Building Basis once the Certificate of Occupancy is received for that building</td>
</tr>
</tbody>
</table>

**Commercial General Liability**

<table>
<thead>
<tr>
<th>Named Insured:</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Insured:</td>
<td>IM and SM</td>
</tr>
<tr>
<td>Form:</td>
<td>ISO, Occurrence Form (please supply Certificate of Insurance on an ACORD form 25)</td>
</tr>
<tr>
<td>Minimum Limits:</td>
<td>Aggregate Limit $2,000,000 Products / completed operations aggregate $1,000,000 Personal &amp; Advertising Injury $1,000,000 Each Occurrence $1,000,000 Fire Damage $50,000 Medical Expense (if applicable) $5,000 Note: aggregate limits must be written on a “per location” basis</td>
</tr>
<tr>
<td>Deductible</td>
<td>No greater than $10,000</td>
</tr>
</tbody>
</table>
Primary and Non Contributory

**Umbrella or Excess Liability**

<table>
<thead>
<tr>
<th>Named Insured:</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Insured:</td>
<td>IM and SM</td>
</tr>
<tr>
<td>Minimum Limits:</td>
<td></td>
</tr>
<tr>
<td>1-10 stories</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>11-20 stories</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>21 or more</td>
<td>$25,000,000</td>
</tr>
<tr>
<td>Note: umbrella or excess liability to be written on a following form</td>
<td></td>
</tr>
<tr>
<td>Deductible/SIR:</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

**Boiler and Machinery (if property has centralized equipment, boilers or elevators)**

<table>
<thead>
<tr>
<th>Named Insured:</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss Payee/Additional Interest:</td>
<td>IM and SM</td>
</tr>
<tr>
<td>Form:</td>
<td>Comprehensive Form</td>
</tr>
<tr>
<td>Limit:</td>
<td>Limit equal to the replacement value of the covered equipment</td>
</tr>
<tr>
<td>Valuation:</td>
<td>Replacement Cost</td>
</tr>
<tr>
<td>Extensions:</td>
<td>Loss of Rents with Mechanical Breakdown Endorsement</td>
</tr>
</tbody>
</table>

**Additional Coverages, if applicable**

**Flood:**
- Required if buildings are located within a 100-year flood plain (FEMA Flood Zone “A” or “V” – or any sub-designation of Zone “A” or “V”).
- Policies must be obtained through the National Flood Insurance Plan (NFIP) in the amount equal to the lesser of the full insurable value or $250,000 ($500,000 if 5 or more units) per building with a deductible not to exceed $5,000 per building.
- An excess Flood or Difference in Conditions (DIC) policy should provide for the difference, if any, between the maximum limit provided by NFIP policies and the full insurable value.
- Flood policies must be in full effect for both the construction and permanent phases.

**Earthquake:**
- If located in Seismic Zones 3 or 4, a Seismic Report must be completed to determine Scenario Expected Loss (SEL)
- If the SEL is shown to have an expected seismic damage ratio of less than 20%, earthquake coverage is not required.
- If earthquake coverage is required, it must be in full effect for both construction and permanent phases in the amount not less than full insurance value, with deductible less than 10% of Total Insurable Value, and Business Income/Rent Loss at minimum, of 12 month rents.

**Wind:**
- Must be included peril. If excluded, a separate wind/hail policy must be provided at the same limits as the property or builders risk with 12 months rents. If located in a Tier 1 county, Named Storm coverage must be provided.

**Ordinance and Law:**
- Must be obtained when the Property represents a non-conforming use under current building, zoning or land use laws or ordinances. The amount is to cover any losses to the undamaged portion of the building at replacement cost, 10% of the demolition cost and the increased cost of construction.

**Terrorism:**
- Terrorism coverage is not required unless deemed by the Special Member to be in a high risk area. To be determined during the underwriting process.

### Worker’s Compensation and Employer’s Liability*

If the Company has employee(s), provide evidence of Workers Compensation as applicable by law.

<table>
<thead>
<tr>
<th>Certificate Holder:</th>
<th>IM and/or SM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker’s Compensation:</td>
<td>State Statutory Requirement applies</td>
</tr>
</tbody>
</table>

### Automobile-Hired and Non-Owned (Owned if Company owns any vehicles) NOT REQUIRED ON NEW CONSTRUCTION AND UNOCCUPIED REHAB

| Liability: | Per accident Combined Single Limit (CSL) | $1,000,000 |

### General Contractor

### Commercial General Liability

<table>
<thead>
<tr>
<th>Additional Insured:</th>
<th>IM, SM and Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form:</td>
<td>ISO, Occurrence Form (please supply Certificate of Insurance on an ACORD form 25)</td>
</tr>
<tr>
<td>Minimum Limits:</td>
<td>Aggregate Limit $2,000,000</td>
</tr>
<tr>
<td></td>
<td>Products / completed operations aggregate $1,000,000</td>
</tr>
</tbody>
</table>
Personal & Advertising Injury $1,000,000
Each Occurrence $1,000,000
Fire Damage $50,000
Medical Expense (if available) $5,000
Note: aggregate limits must be written on a “per project” basis

Deductible No greater than $10,000

**Umbrella or Excess Liability**

<table>
<thead>
<tr>
<th>Additional Insured:</th>
<th>IM, SM and Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Limits:</td>
<td>1-10 stories $5,000,000</td>
</tr>
<tr>
<td></td>
<td>11-20 stories $10,000,000</td>
</tr>
<tr>
<td></td>
<td>21 or more $25,000,000</td>
</tr>
<tr>
<td>Note: umbrella or excess liability to be written on a following form</td>
<td></td>
</tr>
<tr>
<td>Deductible/SIR:</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

**Worker’s Compensation, Employer’s Liability, and Automobile Liability**

<table>
<thead>
<tr>
<th>Certificate Holder:</th>
<th>IM and/or SM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker’s Compensation:</td>
<td>State Statutory Requirement applies</td>
</tr>
<tr>
<td>Automobile Liability:</td>
<td>Per accident Combined Single Limit (CSL) $1,000,000</td>
</tr>
</tbody>
</table>

**Architect**

**Professional (Errors & Omissions) Liability**

<table>
<thead>
<tr>
<th>Certificate Holder:</th>
<th>IM and/or SM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Limit:</td>
<td>10% of construction cost with a maximum requirement of $1,000,000 (please supply Certificate of Insurance on an ACORD Form 25)</td>
</tr>
</tbody>
</table>

**Property Management Company**

Note: Coverage required for both construction (if occupied rehab) and permanent phases. If new construction or unoccupied rehab, certificates will be required for review purposes to ensure proper coverage at the time the management is on site.
Worker’s Compensation, Employer’s Liability, Automobile Liability and Crime or Fidelity Bond

<table>
<thead>
<tr>
<th>Certificate Holder:</th>
<th>IM and/or SM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker’s Compensation:</td>
<td>State Statutory Requirement applies</td>
</tr>
<tr>
<td>Crime or Fidelity Bond</td>
<td>3 months of projects gross rental receipts; Crime or Fidelity Bond coverage must be in full effect at time of occupancy. Coverage to be held by the Managing Member or the Management Agent</td>
</tr>
<tr>
<td>Automobile Liability:</td>
<td>Per accident Combined Single Limit (CSL) $1,000,000</td>
</tr>
</tbody>
</table>

Permanent Phase Coverage

Company

Property Insurance

<table>
<thead>
<tr>
<th>Named Insured:</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss Payee:</td>
<td>IM and SM</td>
</tr>
<tr>
<td>Form:</td>
<td>ISO Special Form (please supply Evidence of Property Insurance, ACORD form 28 “Special” or “All Risk” form); Copies of Policies to follow within 90 day of acceptance</td>
</tr>
<tr>
<td>Limits: Building (Real Property):</td>
<td>100% of Insurable Value (Replacement Cost)</td>
</tr>
<tr>
<td>Contents (Personal Property):</td>
<td>Replacement Cost Coverage</td>
</tr>
<tr>
<td>Business Interruption:</td>
<td>12 months gross rental income with extra expense. This is to include tenant’s gross rents as well as any subsidies</td>
</tr>
<tr>
<td>Valuation:</td>
<td>Replacement Cost</td>
</tr>
<tr>
<td>Deductible:</td>
<td>$10,000 for 1-100 units/$25,000 for 101 or more units per occurrence</td>
</tr>
<tr>
<td>If located in Tier 1 Wind County - wind deductible not to exceed 5%. All other locations, wind/hail deductible not to exceed $10,000 for 1-100 units/$25,000 for 101 or more units.</td>
<td></td>
</tr>
<tr>
<td>Extensions:</td>
<td>Vacancy/Un-occupancy up to 60 days</td>
</tr>
<tr>
<td>Ordinance and Law if legal non-conforming</td>
<td></td>
</tr>
<tr>
<td>Waiver of Coinsurance/Agreed Amount Endorsement</td>
<td></td>
</tr>
</tbody>
</table>

Commercial General Liability
## Commercial General Liability

<table>
<thead>
<tr>
<th>Named Insured:</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Insured:</td>
<td>IM and SM</td>
</tr>
<tr>
<td>Form:</td>
<td>ISO, Occurrence Form (please supply Certificate of Insurance on an ACORD form 25)</td>
</tr>
<tr>
<td>Minimum Limits:</td>
<td>Aggregate Limit $2,000,000</td>
</tr>
<tr>
<td></td>
<td>Products / completed operations aggregate $1,000,000</td>
</tr>
<tr>
<td></td>
<td>Personal &amp; Advertising Injury $1,000,000</td>
</tr>
<tr>
<td></td>
<td>Each Occurrence $1,000,000</td>
</tr>
<tr>
<td></td>
<td>Fire Damage $50,000</td>
</tr>
<tr>
<td></td>
<td>Medical Expense (if available) $5,000</td>
</tr>
<tr>
<td>Note: aggregate limits must be written on a “per location” basis. “per policy” if a stand alone policy.</td>
<td></td>
</tr>
<tr>
<td>Deductible:</td>
<td>No greater than $10,000</td>
</tr>
</tbody>
</table>

## Worker’s Compensation and Employer’s Liability*

If the Company has employee(s), provide evidence of Workers Compensation as applicable by law.

| Certificate Holder: | IM and/or SM |
| Worker’s Compensation: | State Statutory Requirement applies |

## Automobile-Hired and Non-Owned (Owned if Company owns any vehicles)

| Liability: | Per accident Combined Single Limit (CSL) $1,000,000 |

## Umbrella or Excess Liability

<table>
<thead>
<tr>
<th>Named Insured:</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Insured:</td>
<td>IM and SM</td>
</tr>
<tr>
<td>Minimum Limits:</td>
<td>1-10 stories $5,000,000</td>
</tr>
<tr>
<td></td>
<td>11-20 stories $10,000,000</td>
</tr>
<tr>
<td></td>
<td>21 or more $25,000,000</td>
</tr>
<tr>
<td>Note: umbrella or excess liability to be written on a following form</td>
<td></td>
</tr>
</tbody>
</table>

## Boiler and Machinery (if property has centralized equipment, boilers or elevators)

| Named Insured: | Company |

---

#53379006_v8
<table>
<thead>
<tr>
<th>Loss Payee/Additional Interest:</th>
<th>IM and SM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form:</td>
<td>Comprehensive Form</td>
</tr>
<tr>
<td>Limit:</td>
<td>Limit equal to the replacement value of the covered equipment</td>
</tr>
<tr>
<td>Valuation:</td>
<td>Repair and/or Replacement</td>
</tr>
<tr>
<td>Extensions:</td>
<td>Loss of Rents with Mechanical Breakdown Endorsement</td>
</tr>
</tbody>
</table>

### Additional Coverages, if applicable

| Flood: | • Required if buildings are located within a 100-year flood plain (FEMA Flood Zone “A” or “V” – or any sub-designation of Zone “A” or “V”).  
• Policies must be obtained through the National Flood Insurance Plan (NFIP) in the amount equal to the lesser of the full insurable value or $250,000 ($500,000 if 5 or more units) per building with a deductible not to exceed $5,000 per building.  
• An excess Flood or Difference in Conditions (DIC) policy should provide for the difference, if any, between the maximum limit provided by NFIP policies and the full insurable value.  
• Flood policies must be in full effect for both the construction and permanent phases. |
| Earthquake: | • If located in Seismic Zones 3 or 4, a Seismic Report must be completed to determine Scenario Expected Loss (SEL)  
• If the SEL is shown to have an expected seismic damage ratio of less than 20%, earthquake coverage is not required.  
• If earthquake coverage is required, it must be in full effect for both construction and permanent phases in the amount not less than full insurance value, with deductible less than 10% Total Insurable Value, and Business Income/Rent Loss at minimum, of 12 month rents. |
<p>| Wind: | • Must be included peril. If excluded, a separate wind/hail policy must be provided at the same limits as the property or builders risk with 12 months rents. If located in a Tier 1 county, Named Storm coverage must be provided |
| Ordinance and Law: | • Must be obtained when the Property represents a non-conforming use under current building, zoning or land use laws or ordinances. The amount is to cover any losses to the undamaged portion of the building at replacement cost, 10% of replacement cost for the demolition cost and the increased cost of construction. |</p>
<table>
<thead>
<tr>
<th>Additional Coverages, if applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Terrorism:</strong></td>
</tr>
<tr>
<td>Terrorism coverage is not required unless deemed by the Special Member to be in a high risk area. To be determined during the underwriting process.</td>
</tr>
<tr>
<td><strong>Worker’s Compensation:</strong></td>
</tr>
<tr>
<td>Only required if partnership has employees. State Statutory requirements apply</td>
</tr>
<tr>
<td><strong>Pollution Liability</strong></td>
</tr>
<tr>
<td>Required if the property is deemed to have environmental issues prior to closing or at any time during the compliance period.</td>
</tr>
</tbody>
</table>
EXHIBIT E

SUBSTANTIAL COMPLETION CERTIFICATE

The undersigned, an architect duly licensed and registered in the State of Texas has reviewed final working plans, detailed specifications (including, without limitation, for heating, ventilation and cooling systems, roof and structural details, and mechanical and electrical systems), and soil tests for Kaia Pointe, LLC (the “Company”), dated and identified as set forth in Schedule 1 attached hereto. This certification is provided in connection with that certain Second Amended and Restated Operating Agreement (the “Operating Agreement”) among O-SDA Kaia, LLC, Saigebrook Kaia, LLC, RDevKaia, LLC, Boston Capital Corporate Tax Credit Fund XLIV, A Limited Partnership, and BCCC, Inc. in connection with the construction of improvements on certain real property located in Georgetown, Texas, such improvement or project being known as Kaia Pointe Apartments (the “Improvements”).

The undersigned hereby represents and warrants that (i) it has approved the aforesaid plans and specifications, (ii) to the best of its knowledge, information and belief, with due inquiry, based upon periodic inspection of the Improvements during construction, and a final inspection after completion of the Improvements, the Improvements have been completed in material conformance with the aforesaid plans and specifications, (iii) a temporary certificate of occupancy and all other permits required for the continued use and occupancy of the Improvements have been issued with respect thereto by the governmental agencies having jurisdiction thereof, (iv) in its professional opinion, the Improvements have been designed in compliance with all laws, regulations, codes, requirements and restrictions of all governmental authorities having jurisdiction in effect as of the date on the plans and specifications, including, without limitation, all applicable zoning, building, environmental, fire, health ordinances, rules and regulations, including any accessibility requirements found in the Americans with Disabilities Act (42 U.S.C. § 12101 et seq., as amended), the Rehabilitation Act of 1973 (20 U.S.C. § 794 et seq., as amended) and the Fair Housing Act (42 U.S.C. § 3601 et seq., as amended), and (v) it has signed the final draw request (AIA Form __________) for the improvements and amounts in dispute are listed on Schedule 2 attached hereto.

[NAME OF ARCHITECT]

By: ____________________________________
Name: ____________________________________
Title: ____________________________________
Date: ____________________________________
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application #19276, 19295 & 19288

Existing Development Name Kaia Pointe

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Letter to Boston Capital on Feb. 12 requesting to add 811 units to Kaia Pointe.

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 12, 2019

Mr. Scott Arrighi  
Vice President  
Boston Capital Corporation  
One Boston Place  
Boston, MA 02108-4406

Re: 811 Units – Kaia Pointe

Dear Scott:

Per the 2019 TDHCA Qualified Allocation Plan, we are hereby submitting a request for your consideration to add an additional ten 811 program units at Kaia Pointe, in Georgetown, Texas.

Under the Second Amended and Restated Operating Agreement for Kaia Pointe, the Borrower’s Authority is restricted without consent of the Special Member to add 811 units other than those underwritten at the time of closing. Kaia Pointe already has ten 811 units as was contemplated during underwriting and closing of the transaction. An additional ten units would result in 20% of the property being 811 tenants.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 352-213-8700.

Sincerely,

Lisa M. Stephens  
President  
Saigebrook Development, LLC
Existing Development Name: Kaia Pointe

iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from Boston Capital denying the request to add 811 units beyond the original 10 units that were previously committed.

**ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.**
February 19, 2019

Ms. Lisa Stephens  
Salgbebrook Development, LLC  
220 Adams Dr. Site 180, #138  
Weatherford, TX 76086

RE: Kaia Pointe, Georgetown, TX

Dear Lisa:

It is my understanding that you were notified by the Texas Department of Housing and Community Affairs (TDHCA), of certain requirements of TDHCA with regard to Section 811 units that could impact the set-asides and property encumbrances at Kaia Pointe, in Georgetown, TX that Boston Capital syndicated in 2018.

Boston Capital performed and completed the underwriting and market analysis on the property based upon the information and due diligence provided to us at the time of our investment. These findings have been provided to our investors. The addition of Section 811 units at the property would alter our analysis, require additional feasibility underwriting, and would require consent from our investors. As such, it is our preference not to change the resident profile at the property at this time and we must deny your request.

Please do not hesitate to contact me with any questions at the number or email address below.

Sincerely,

[Signature]

Scott M. Arrighi  
VP, Assistant Director Acquisitions  
Boston Capital Corporation  
617-624-8867  
sarrighi@bostoncapital.com
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet

Legal Right to Withhold Cover Page §11.9(c)(6)(A)(i)

2019 Uniform Multifamily Application #19276, 19295 & 19288

Existing Development Name Kaia Pointe

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: Amended & Restated Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing

Provide the name of the Third Party: Citibank N.A.

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: Section 2 - Uniform Commerical Code Security Agreement; Section 16 Liens; Encumbrances

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: 11 & 24 and definitions on page 9

ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.
WHEN RECORDED MAIL TO:

Citibank, N.A.
Transaction Management Group/Post Closing
388 Greenwich Street, 8th Floor
New York, New York 10013
Attention: Tanya Jimenez
Re: Kaia Pointe Apartments Deal ID No. 24855

AMENDED AND RESTATED MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING (TEXAS)
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. DEFINITIONS</td>
<td>2</td>
</tr>
<tr>
<td>2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT</td>
<td>11</td>
</tr>
<tr>
<td>3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION</td>
<td>12</td>
</tr>
<tr>
<td>4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY</td>
<td>14</td>
</tr>
<tr>
<td>5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM</td>
<td>17</td>
</tr>
<tr>
<td>6. EXCULPATION</td>
<td>17</td>
</tr>
<tr>
<td>7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES</td>
<td>17</td>
</tr>
<tr>
<td>8. COLLATERAL AGREEMENTS</td>
<td>18</td>
</tr>
<tr>
<td>9. APPLICATION OF PAYMENTS</td>
<td>18</td>
</tr>
<tr>
<td>10. COMPLIANCE WITH LAWS</td>
<td>19</td>
</tr>
<tr>
<td>11. USE OF PROPERTY</td>
<td>19</td>
</tr>
<tr>
<td>12. PROTECTION OF LENDER’S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES</td>
<td>19</td>
</tr>
<tr>
<td>13. INSPECTION</td>
<td>20</td>
</tr>
<tr>
<td>14. BOOKS AND RECORDS; FINANCIAL REPORTING</td>
<td>21</td>
</tr>
<tr>
<td>15. TAXES; OPERATING EXPENSES</td>
<td>23</td>
</tr>
<tr>
<td>16. LIENS; ENCUMBRANCES</td>
<td>24</td>
</tr>
<tr>
<td>17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY</td>
<td>24</td>
</tr>
<tr>
<td>18. ENVIRONMENTAL HAZARDS</td>
<td>25</td>
</tr>
<tr>
<td>19. PROPERTY AND LIABILITY INSURANCE</td>
<td>33</td>
</tr>
<tr>
<td>20. CONDEMNATION</td>
<td>37</td>
</tr>
<tr>
<td>21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER</td>
<td>38</td>
</tr>
<tr>
<td>22. EVENTS OF DEFAULT</td>
<td>44</td>
</tr>
<tr>
<td>23. REMEDIES CUMULATIVE</td>
<td>46</td>
</tr>
<tr>
<td>24. FORBEARANCE</td>
<td>46</td>
</tr>
<tr>
<td>25. WAIVER OF STATUTE OF LIMITATIONS</td>
<td>47</td>
</tr>
<tr>
<td>26. WAIVER OF MARSHALLING</td>
<td>47</td>
</tr>
<tr>
<td>27. FURTHER ASSURANCES</td>
<td>47</td>
</tr>
</tbody>
</table>
EXHIBITS

EXHIBIT A  Description of the Land
EXHIBIT B  Modifications to Instrument
EXHIBIT C  Financing Statement Information
AMENDED AND RESTATED MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (TEXAS)

This AMENDED AND RESTATED MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “Instrument”) is dated for reference purposes only as of the 1st day of October, and will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by KAIA POINTE, LLC, a Florida limited liability company, whose address is 421 West 3rd Street, Suite 1504, Austin, Texas 78701, as grantor (“Borrower”), to FIRST AMERICAN TITLE INSURANCE COMPANY, having an address at 1 First American Way, Santa Ana, California 92707, as trustee (“Trustee”) for the benefit of the CITIBANK, N.A., a national banking association, whose address is 388 Greenwich Street, 8th Floor, New York, NY, 10013, as beneficiary, and its successors and assigns (“Lender”). Borrower’s organizational identification number is L16000152738.

On or about August 23, 2017, Borrower, BCCC, Inc. and Boston Capital Direct Placement, A Limited Partnership (“Boston Capital”) executed that certain Deed of Trust (“Original Deed of Trust”) in the principal sum of $600,000. On October 6, 2017 Boston Capital assigned the Original Deed of Trust to Lender pursuant to that certain Assignment of Deed of Trust. Borrower, Trustee and Lender hereby agree to amend and restate the terms of the Original Deed of Trust in its entirety on the terms set forth herein.

The Loan (as hereinafter defined) is made and the Indebtedness (as hereinafter defined) is evidenced by the Note (as hereinafter defined) in the maximum principal amount of ELEVEN MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS $(11,200,000.00), maturing on April 1, 2035 (the “Maturity Date”) (subject to the Borrower’s satisfaction of the Conditions to Conversion in accordance with the Loan Agreement) and secured by this Instrument.

NOW THEREFORE:

Granting Clause. Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in the City of Georgetown, Williamson County, Texas, and described in Exhibit A attached to this Instrument, to have and to hold the Mortgaged Property unto Trustee, Trustee’s successor in trust and Trustee’s assigns forever.

TO SECURE TO LENDER and its successors and assigns the repayment of the Indebtedness evidenced by the Note executed by Borrower and maturing on the Maturity Date, and all renewals, extensions and modifications of the Indebtedness, including, without limitation, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 12 and the performance of the covenants and agreements of Borrower contained in the Loan Documents. Borrower mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in Williamson County, State of Texas and described in Exhibit A attached to this Instrument.
Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except for the Permitted Encumbrances. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any Permitted Encumbrances.

This Instrument is also a financing statement and a fixture filing under the Uniform Commercial Code of the Property Jurisdiction and the information set forth on Exhibit C is included for that purpose.

Covenants. Borrower and Lender covenant and agree as follows:

1. DEFINITIONS. The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

   (a) “Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

   (b) “Agreement of Environmental Indemnification” means that certain Agreement of Environmental Indemnification, dated as of the date hereof, by Borrower and Guarantor for the benefit of Beneficiary Parties.

   (c) “Bankruptcy Event” means any one or more of the following:

      (i) (A) the commencement of a voluntary case under one or more of the Insolvency Laws by the Borrower; (B) the acknowledgment in writing by the Borrower 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 the Borrower; (D) the commencement of an involuntary case under one or more Insolvency Laws against the Borrower; or (E) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over the Borrower or any substantial part of the assets of the Borrower provided that any proceeding or case under (D) or (E) above is not dismissed within 90 days after filing;

      (ii) Any Guarantor or any Affiliate of a Guarantor files an involuntary petition against Borrower under one or more of the Insolvency Laws; or

      (iii) Both (A) an involuntary petition under one or more of the Insolvency Laws is filed against Borrower or Borrower directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (B) Borrower or any Affiliate of
Borrower has acted in concert or conspired with such creditors of Borrower (other than Lender) to cause the filing thereof with the intent to interfere with enforcement rights of Lender after the occurrence of an Event of Default.

(d) “Beneficiary Parties” means Lender, any Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Note.

(e) “Borrower” means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

(f) “Borrower’s Organizational Documents” means, collectively: (i) the articles of organization of Borrower filed with the Department of State of Florida on August 16, 2016, as the same may be amended and/or restated from time to time; and (ii) the Second Amended and Restated Operating Agreement of Borrower, dated as of October 1, 2017, as the same may be amended and/or restated from time to time.

(g) “Business Day” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(h) “Closing Date” has the meaning ascribed thereto in the Loan Agreement.

(i) “Collateral Agreement” means any separate agreement between Borrower and Lender or Servicer for the purpose of establishing tax, repair or replacement reserve or escrow accounts for the Mortgaged Property or granting Lender a security interest in any such accounts (including, without limitation, the Replacement Reserve Agreement), or any other agreement or agreements between Borrower, Lender or Servicer which provide for the establishment of any other fund, reserve or account.

(j) “Collateral Assignments” means, collectively, (i) the Assignment of Construction Contract, dated as of the date hereof, by Borrower to Lender and any consents relating thereto, (ii) the Assignment of Architect’s Agreement and Plans and Specifications, dated as of the date hereof, by Borrower to Lender and any consents relating thereto, (iii) the Assignment of Project Documents, dated as of the date hereof, by Borrower to Lender, (iv) the Assignment of Management Agreement, dated as of the date hereof, by Borrower and the Manager (as defined therein) to Lender, (v) the Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement, dated as of the date hereof, by Borrower to Lender, (vi) the Assignment of Equity Interests, Pledge and Security Agreement, dated as of the date hereof, by the Managing Member of the Borrower to Lender, and (vii) the Assignment and Subordination of Developer Fees, Pledge and Security Agreement, dated as of the date hereof, by the Assignor (as defined therein) and Borrower to Lender.
(k) “Conditions to Conversion” has the meaning ascribed thereto in the Loan Agreement.

(l) “Construction Note” means that certain Amended and Restated Multifamily Construction Note dated as of the Closing Date, executed and delivered by the Borrower, payable to Lender in an amount not to exceed the original maximum principal amount of the Loan set forth in the recitals to this Instrument, including all schedules, riders, allongs and addenda, as the same may be amended, modified, or supplemented from time to time.

(m) “Control” means, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, through the ownership of voting securities, by contract or otherwise, including the power to elect a majority of the directors of a corporation, to select the managing partner of a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity.

(n) “Conversion Date” has the meaning ascribed thereto in the Loan Agreement.

(o) “Credit Enhancer” means a government sponsored enterprise that at any time, directly or indirectly, purchases the Loan or provides credit enhancement with respect to the Loan.

(p) “Credit Enhancer Insurance Standards” means the insurance standards and requirements set forth in the multifamily underwriting guidelines generated by the Credit Enhancer, as in effect from time to time.

(q) “Environmental Permit” means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(r) “Event of Default” means the occurrence of any event listed in Section 22.

(s) “Fixtures” means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers
and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(t) “Governmental Authority” means any 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 the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(u) “Guarantor” means, individually and collectively, jointly and severally (i) Lisa Stephens and Mark Ragsdale prior to the Conversion Date, and (ii) Lisa Stephens and Megan Lasch on and after the Conversion Date, and/or any other person or entity which may hereafter become a guarantor of any of Borrower’s obligations under the Loan.

(v) “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; radon; Mold; toxic or mycotoxin spores; 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 (whether or not naturally occurring) now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “solid waste”, “pesticide”, “contaminant,” or “pollutant”, or otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

(w) “Hazardous Materials Laws” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rule of common law (including, without limitation, nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to Borrower or to the Mortgaged Property, including, without limitation, those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. 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., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid
Waste Disposal Act, the Clean Air Act, the Occupational Safety and Health Act, and their state analogs.

(x) “**Impositions**” and “**Imposition Deposits**” shall have the meanings ascribed thereto in Section 7(a).

(y) “**Improvements**” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(z) “**Indebtedness**” means collectively, the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument, and any fees or expenses paid by Lender on behalf of Borrower to Lender, or any other party for the Loan or other amounts relating to the Loan Documents which are paid by Lender;

(aa) “**Initial Owners**” means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note, directly or indirectly, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(bb) “**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding, as amended from time to time, to the extent applicable to the Borrower.

(cc) “**Land**” means the land described in Exhibit A.

(dd) “**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

(ee) “**Lender**” means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Note.

(ff) “**Loan**” means the loan made by Lender to Borrower in an amount not to exceed the original principal amount of the Note, which loan is evidenced by the Note and secured by, among other things, this Instrument.

(gg) “**Loan Agreement**” means that certain Construction Loan Agreement, dated as of the date hereof, by and between Borrower and Lender relating to the Loan, as the same may be amended, modified or supplemented from time to time.
(hh) **Loan Documents** means collectively, the Loan Agreement, the Note, this Instrument, the Agreement of Environmental Indemnification, all guaranties, all indemnity agreements, all Collateral Agreements, all Collateral Assignments, all O&M Programs, the MMP, and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the Loan, as such documents may be amended from time to time.

(ii) **Material Property Agreements** means any agreement which, in Lender’s sole discretion, acting in good faith, materially affects the Mortgaged Property, the use thereof or otherwise materially affects the rights of Borrower or Beneficiary Parties in, to, and with respect to the Mortgaged Property or the proceeds therefrom, including, without limitation, each of the following: (i) any agreement regarding the payment in lieu of taxes (“PILOT”), (ii) all covenants, conditions and restrictions, including, without limitation, any declaration subjecting the Mortgaged Property to an association of owners or other community governance, (iii) any agreement regarding the abatement or exemption of real estate taxes, (iv) any easement pursuant to which the Mortgaged Property is granted access to a public right of way, (v) any material lease of all or any portion of the Mortgaged Property, (vi) any operating agreements relating to the Land or the Improvements and (vii) any regulatory agreements, declarations, land use restriction agreements or similar instruments affecting the Mortgaged Property including the operation or use thereof.

(jj) **Maturity Date** has the meaning ascribed thereto in the recitals to this Instrument.

(kk) **MMP** means an operations and maintenance plan, moisture management program and/or microbial operations and maintenance program approved by Lender to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. If required by Lender, the MMP shall contain a provision for (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation and (v) routine, scheduled inspections of common space and unit interiors.

(ll) **Mold** means mold, fungus, microbial contamination or pathogenic organisms.

(mm) **Mortgaged Property** means all of Borrower’s present and future right, title and interest in and to all of the following:

(i) the Land;

(ii) the Improvements;

(iii) the Fixtures;

(iv) the Personality;
(v) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirements;

(vii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(ix) all Rents and Leases;

(x) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, whether the foregoing are now due, past due, or to become due, all undisbursed proceeds of the loan secured by this Instrument, deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(xi) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);

(xii) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits;
(xiii) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

(xiv) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter created; and

(xv) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds, and all other cash and non-cash proceeds and products of any of the foregoing.

(nn) “Note” means the Construction Note, provided that effective as of the Conversion Date, provided the Conditions to Conversion have been satisfied, “Note” shall mean the Permanent Note.

(oo) “O&M Program” has the meaning ascribed thereto in Section 18(d).

(pp) “Permanent Note” means the Multifamily Permanent Note in the form attached to the Loan Agreement, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time, to be executed by the Borrower and delivered to the Lender on or prior to the Conversion Date as one of the conditions precedent to the satisfaction of the Conditions to Conversion, to be effective as of the Conversion Date provided the Conditions to Conversion have been satisfied.

(qq) “Permitted Encumbrances” means any easements, encumbrances or restrictions listed on the schedule of exceptions in the title insurance policy issued to Lender as of the date of recordation of this Instrument insuring Lender’s interest in the Mortgaged Property.

(rr) “Permitted Transfer” has the meaning ascribed thereto in Section 21(b).

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

(tt) “Personalty” means all:

(i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;

(ii) Imposition Deposits;

(iii) equipment, goods, supplies and inventory owned by Borrower that are used now or in the future in connection with the ownership,
management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than Fixtures), including furniture, furnishings, machinery, building materials, tools, books, records (whether in written or electronic form), computer equipment (hardware and software);

(iv) other tangible personal property owned by Borrower which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements (other than Fixtures), including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances;

(v) any operating agreements relating to the Land or the Improvements;

(vi) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;

(vii) documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, other intangible property, general intangibles, 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 and including subsidy or similar payments received from any sources, including a governmental authority; and

(viii) any rights of Borrower in or under letters of credit.

(uu) “Project” means that 102-unit multifamily project known as Kaia Pointe Apartments and located in the City of Georgetown, Williamson County, State of Texas.

(vv) “Property Jurisdiction” means the State of Texas.

(ww) “Rents” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract or similar agreements), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(xx) “Replacement Reserve Agreement” means that certain Replacement Reserve Agreement, dated as of the date hereof, by and between Borrower and Lender.
(yy) “Replacement Reserve Fund” has the meaning ascribed thereto by the Replacement Reserve Agreement.

(zz) “Servicer” means the servicing party that is designated by Lender to service the Loan, together with its successors in such capacity.

(aaa) “Taxes” means, collectively, all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(bbb) “Transfer” means (i) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (ii) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of a direct or indirect ownership interest; or (iv) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

(ccc) “Uniform Commercial Code” shall mean the Texas Uniform Commercial Code.


2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, “UCC Collateral”), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file any and all financing statements, continuation statements and financing statement amendments, in such form as Lender may require to perfect or continue the perfection of this security interest without execution by Borrower. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral except for the Permitted Encumbrances. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender’s other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.
(b) Unless Borrower gives at least thirty (30) days’ prior written notice to Lender and subject to Section 21 hereof, Borrower shall not: (i) change its name, identity, or structure of organization; (ii) change its state of organization through dissolution, merger, transfer of assets or otherwise; (iii) change its principal place of business (or chief executive office if more than one place of business); or (iv) add to or change any location at which any of the Mortgaged Property is stored, held or located. Such notice shall be accompanied by new financing statements and/or financing statement amendments in the same form as the financing statements delivered to Lender on the date hereof. Without limiting the foregoing, Borrower hereby authorizes and irrevocably appoints Lender and each of its officers attorneys-in-fact for Borrower to execute, deliver, and file, as applicable, such financing statements, continuation statements or amendments deemed necessary by Lender in its sole discretion for and on behalf of Borrower, without execution by Borrower. Borrower shall also execute and deliver to Lender modifications or supplements of this Instrument as Lender may require in connection with any change described in this Section.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments of Rents as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Mortgaged Property. Notwithstanding anything to the contrary contained herein, the Lender is entitled to all the rights and remedies of an assignee set forth in Chapter 64 of the Texas Property Code, the Texas Assignment of Rents Act ("TARA"). This Instrument shall constitute and serve as a security instrument under TARA. The Lender shall have the ability to exercise its rights related to the Leases and payments, in the Lender’s sole discretion and without prejudice to any other remedy available, as provided in this Instrument or as otherwise allowed by applicable law, including, without limitation, TARA. Notwithstanding anything to the contrary contained in this Instrument or the other Loan Documents, to the extent this Instrument or any of the other Loan Documents contain any notice or cure period, the date the enforcement of rights under TARA begins shall not be affected, extended or otherwise modified by reason of such periods.

(b) Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for
the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender’s rights with respect to Rents under this Instrument. Upon the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower’s license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid (such license shall be reinstated upon Borrower’s cure of the Event of Default to the satisfaction of Lender). Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the occurrence of an Event of Default, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the right of Lender to collect Rents, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender’s collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the Loan), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month’s rent). Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month’s rent).

(d) If an Event of Default has occurred and is continuing, Lender may, but shall in no event be required to, regardless of the adequacy of Lender’s security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of
Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender’s security, without regard to Borrower’s solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver _ex parte_ if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender’s entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, except for the gross negligence or willful misconduct of Lender or its agents.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. **ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.**
(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower’s right, title and interest in, to and under the Leases, including Borrower’s right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower’s right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the “Mortgaged Property” as that term is defined in Section 1. Notwithstanding anything to the contrary contained herein, the Lender is entitled to all the rights and remedies of an assignee set forth in TARA. This Instrument shall constitute and serve as a security instrument under TARA. The Lender shall have the ability to exercise its rights related to the Leases and payments, in the Lender’s sole discretion and without prejudice to any other remedy available, as provided in this Instrument or as otherwise allowed by applicable law, including, without limitation, TARA. Notwithstanding anything to the contrary contained in this Instrument or the other Loan Documents, to the extent this Instrument or any of the other Loan Documents contain any notice or cure period, the date the enforcement of rights under TARA begins shall not be affected, extended or otherwise modified by reason of such periods.

(b) Unless an Event of Default has occurred and is continuing, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower’s obligations under all Leases, including Borrower’s obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not 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 Mortgaged Property, except to the extent arising from the gross negligence or willful misconduct of Lender. Prior to Lender’s actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for
the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender’s exercise of Lender’s rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender’s request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall (i) be on forms approved by Lender, (ii) be for initial terms of at least six (6) months and not more than two (2) years, (iii) not include options to purchase, (iv) be legally valid, binding, and enforceable obligations of the tenants, (v) contain language expressly stating that such Lease is subordinate to the lien of this Instrument and (vi) comply with all applicable laws.

(f) Except for laundry facilities and cable television services for tenants on market terms and conditions, Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender’s prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender’s or such purchaser’s option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance (other than a security deposit not in excess of one month’s rent).
5. **PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender’s exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. **EXCULPATION.** The personal liability of Borrower for payment of the Note and for performance of the other obligations to be performed by Borrower under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. **DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.**

   (a) Following the Conversion Date, Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due (i) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (ii) the premiums for fire and other hazard insurance, rental loss insurance and such other insurance as Lender may require under Section 19, (iii) Taxes, and (iv) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably estimated from time to time by Lender, plus one-twelfth of such estimate, if required by Lender. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the “**Imposition Deposits**”. The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as “**Impositions**”. The amount of the Imposition Deposits shall be sufficient 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. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other Imposition.

   (b) 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. 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. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. As additional security for all of Borrower’s obligations under this Instrument and the other Loan Documents, Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits and all proceeds of and all interest and dividends on the Imposition Deposits. Any amounts deposited with Lender under this Section 7 shall not
be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. 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.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount deemed necessary by Lender, plus one twelfth of such estimate if required by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount estimated by Lender to be necessary, plus one twelfth of such estimate if required by Lender, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender’s discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

(f) If Lender does not collect an Imposition Deposit pursuant to a separate written waiver by Lender, then on or before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower shall, if required by Lender, provide Lender with proof of payment of each such Imposition for which Lender does not require collection of Imposition Deposits. Lender may, at any time and in Lender’s discretion, revoke its deferral or waiver and require Borrower to deposit with Lender any or all of the Imposition Deposits listed in this Section 7.

8. COLLATERAL AGREEMENTS. Borrower shall deposit with Lender such amounts as may be required by the Loan Agreement and any Collateral Agreement and shall perform all other obligations of Borrower under the Loan Agreement and each Collateral Agreement.

9. APPLICATION OF PAYMENTS. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender’s discretion. Neither Lender’s acceptance of an amount that is less than all amounts then due and payable nor Lender’s application of such payment in the manner authorized 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 amount to the Indebtedness, Borrower’s obligations under this Instrument and the Note shall remain unchanged.
10. **COMPLIANCE WITH LAWS.** Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, disability accommodation, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, 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 Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender’s interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. **USE OF PROPERTY.** Unless required by applicable law, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Lender, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property; (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender.

12. **PROTECTION OF LENDER’S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES.**

   (a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document after the expiration of any applicable notice and cure period, or if any action or proceeding (including a Bankruptcy Event) is commenced which purports to affect the Mortgaged Property, Lender’s security or Lender’s rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender’s option may make such appearances, file such documents, disburse such sums and take such actions as Lender deems necessary to perform such obligations of Borrower and to protect Lender’s interest, including (i) payment of fees, expenses and reasonable fees of attorneys, accountants, inspectors and consultants, (ii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iii) procurement of the insurance required by Section 19 (specifically including, without limitation, flood insurance if required by Section 19), and (iv) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

   (b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this
Section 12, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the “Default Rate”, as defined in the Note.

(c) If the Lender shall elect to pay any sum due with reference to the Project or the Mortgaged Property, the Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by this Instrument and/or the other Loan Documents, the Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same.

(d) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

(a) Lender and its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests to the extent permitted under Section 18) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be required in the case of an emergency, as determined in Lender’s discretion, or when an Event of Default has occurred and is continuing.

(b) If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender’s discretion, may require that a professional inspector inspect the Mortgaged Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender’s satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender’s satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

(c) If Lender determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect: that Borrower represents and warrants that Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding odors, indoor air quality, Mold or any activity, condition, event or
omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property, or if Borrower has received any such written complaint, notice, letter or other written communication, that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the MMP for the Mortgaged Property. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower’s expense.

14. **BOOKS AND RECORDS; FINANCIAL REPORTING.**

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent’s offices, and upon Lender’s request shall make available at the Mortgaged Property, 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 copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender upon reasonable advance oral notice.

(b) Borrower shall furnish to Lender all of the following:

(i) except as provided in clause (2) below, within 45 days after the end of each fiscal quarter of Borrower, 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 fiscal quarter, (2) within 120 days after the end of each fiscal year of Borrower, (A) a statement of income and expenses for Borrower’s operation of the Mortgaged Property for such fiscal year, (B) a statement of changes in financial position of Borrower relating to the Mortgaged Property for such fiscal year, and (C) a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of such fiscal year; and (3) any of the foregoing at any other time upon Lender’s request;

(ii) within 45 days after the end of each fiscal quarter of Borrower, and at any other time upon Lender’s 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;

(iii) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender’s request, 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;

(iv) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender’s request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;

(v) upon Lender’s request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender;

(vi) upon Lender’s request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower’s most recent fiscal year;

(vii) annually, if applicable, within 60 days of the date required for submission by the agency in the Property Jurisdiction responsible for monitoring the low income housing tax credit program, a low income housing tax credit compliance report in form and substance acceptable to Lender; and

(viii) if required by Lender, within 30 days of the end of each calendar month, a monthly statement of income and expenses for such calendar month on a year-to-date basis for Borrower’s operation of the Mortgaged Property.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower and shall be in such form and contain such detail as Lender may require. Lender also may require that any statements, schedules or reports be audited at Borrower’s expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower’s books and records audited, at Borrower’s expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) 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.
(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the imposition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall pay (i) 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, and (ii) insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) If Lender is collecting Imposition Deposits, and to the extent that Lender holds sufficient Imposition Deposits for the purpose of paying a specific Imposition, then Borrower shall not be obligated to pay such Imposition, so long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly deliver to Lender copies of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender on or before the date this Instrument requires such Impositions to be paid, copies of receipts evidencing that such payments were made.

(f) All payments made by Borrower to Lender pursuant to this Instrument or any of the Loan Documents shall be free and clear of any and all tax liabilities whatsoever (other than United States federal income taxation payable by Lender) and, to the extent Lender is required to pay any such tax liabilities, Borrower shall reimburse
Lender in respect of any such payment of taxes and, immediately upon request from Lender, shall deliver to Lender copies of receipts evidencing the payment of such taxes.

16. **LIENS; ENCUMBRANCES.** Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a “Lien”) on the Mortgaged Property (other than the lien of this Instrument and the Permitted Encumbrances) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a “Transfer” which constitutes an Event of Default and subjects Borrower to personal liability under the Note. Borrower shall maintain the lien created by this Instrument as a first mortgage lien upon the Mortgaged Property, subject to no other Liens or encumbrances other than Permitted Encumbrances.

17. **PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.**

(a) Borrower shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower shall 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 such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair.

(d) Borrower shall keep the Mortgaged Property in good repair (normal wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality.

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender at all times, under a contract approved by Lender, in writing, which contract must be terminable upon not more than thirty (30) days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors. There shall be no change in the property manager or any contract for the management of the Mortgaged Property without Lender’s prior written approval. Lender shall have the right to require that Borrower and any new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require.

(f) Borrower shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to
affect the Mortgaged Property, Lender’s security or Lender’s rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personality and (ii) repairs and replacements in connection with making an individual unit ready for a new occupant.

(g) Unless otherwise waived by Lender in writing, Borrower must have or must establish and must adhere to the MMP. If Borrower is required to have an MMP, Borrower must keep all MMP documentation at the Mortgaged Property or at the management agent’s office and available for Lender or its agents to review during any annual assessment or inspection of the Mortgaged Property that is required by Lender.

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 18(b), Borrower shall not cause or permit any of the following:

(i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property;

(ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties);

(iii) any occurrence or condition on the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;

(iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property;

(v) the imposition of any environmental lien against the Mortgaged Property; or

(vi) any violation or noncompliance with the terms of any O&M Program.
The matters described in clauses (i) through (vi) above, except as otherwise provided in Section 18(b), are referred to collectively in this Section 18 as “Prohibited Activities or Conditions”.

(b) Prohibited Activities or Conditions shall not include lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, renovation, operation, maintenance or use of comparable multifamily properties, (ii) cleaning materials, household products, 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 (iii) 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) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower 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 Activity or Condition.

(d) If and as required by Lender, Borrower shall also establish a written operations and maintenance program with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Instrument must be approved by Lender and shall be referred to herein as an “O&M Program.” Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower’s obligations under any O&M Program, and any Beneficiary Party’s out-of-pocket costs incurred by such Beneficiary Party in connection with the monitoring and review of each O&M Program and Borrower’s performance shall be paid by Borrower upon demand by such Beneficiary Party. Any such out-of-pocket costs of such Beneficiary Party which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Without limitation of the foregoing, (i) Borrower hereby agrees to implement and maintain during the entire term of the Loan the O&M Program(s), and (ii) if asbestos-containing materials are found to exist at the Mortgaged Property, the O&M Program with respect thereto shall be undertaken consistent with the Guidelines for Controlling Asbestos Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Hazardous Materials Laws.
(f) With respect to any O&M Program, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may reasonably specify; (ii) amendments to such O&M Program to address changing circumstances, laws or other matters, including, without limitation, variations in response to reports provided by environmental consultants; and (iii) execution of an Operations and Maintenance Agreement relating to such O&M Program satisfactory to Lender.

(g) Borrower represents and warrants to Beneficiary Parties that, except as otherwise disclosed in the Environmental Reports (as defined in the Agreement of Environmental Indemnification):

(i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

(ii) to the best of Borrower’s knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed, and Borrower has provided Lender with copies of all reports and information acquired in such inquiries;

(iii) the Mortgaged Property does not now contain any underground storage tanks and, to the best of Borrower’s knowledge, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been disclosed in Exhibit A to the Agreement of Environmental Indemnification, that tank complies with all requirements of Hazardous Materials Laws;

(iv) Borrower has complied with and will continue to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(v) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit or Hazardous Materials Law;

(vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower’s knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition;
(vii) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;

(viii) no prior Remedial Work (as defined below) has been undertaken, and no Remedial Work is ongoing, with respect to the Mortgaged Property during Borrower’s ownership thereof or, to the best of Borrower’s knowledge, at any time prior to Borrower’s ownership thereof; and

(ix) Borrower has disclosed in the Agreement of Environmental Indemnification all material facts known to Borrower or contained in Borrower’s records the nondisclosure of which could cause any representation or warranty made herein or any statement made in the Agreement of Environmental Indemnification to be false or materially misleading.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until the Indebtedness has been paid in full or otherwise discharged.

(h) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

(i) Borrower’s discovery of any Prohibited Activity or Condition;

(ii) Borrower’s receipt of or knowledge of any complaint, order, notice of violation or other communication from any tenant, management agent, 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 Borrower that is adjacent to the Mortgaged Property;

(iii) Borrower’s receipt of or knowledge of any personal injury claim, proceeding or cause of action directly or indirectly arising as a result of the presence of asbestos or other Hazardous Materials on or from the Mortgaged Property;

(iv) Borrower’s discovery that any representation or warranty in this Section 18 has become untrue after the date of this Instrument; and

(v) Borrower’s breach of any of its obligations under this Section 18.
Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(i) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Lender or any Beneficiary Party in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender’s consent to any Transfer under Section 21, or required by Lender following a determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including, without limitation, fees and expenses of attorneys, expert witnesses, engineers, technical consultants and investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with such Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender’s Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender’s Environmental Inspections.

(j) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with or cure a violation of any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the applicable deadline required by such Hazardous Materials Law or (ii) thirty (30) days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Borrower shall promptly provide Lender with a cost estimate from an environmental consultant acceptable to Lender to complete any required Remedial Work. If required by Lender, Borrower shall promptly establish with Lender a reserve fund in the amount of such estimate. If in Lender’s opinion the amount reserved at any time during the Remedial Work is
insufficient to cover the work remaining to complete the Remediation or achieve compliance, Borrower shall increase the amount reserved in compliance with Lender’s written request. All amounts so held in reserve, until disbursed, are hereby pledged to Lender as security for payment of Borrower’s obligations under this Instrument. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(k) Borrower shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(l) BORROWER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND BENEFICIARY PARTIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, EMPLOYEES, AGENTS, ATTORNEYS, TRUSTEES, HEIRS AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE “INDEMNITERS”) FROM AND AGAINST ALL LOSSES, PROCEEDINGS, CLAIMS, DAMAGES, PENALTIES AND COSTS (WHETHER INITIATED OR SOUGHT BY GOVERNMENTAL AUTHORITIES OR PRIVATE PARTIES), INCLUDING, WITHOUT LIMITATION, FEES AND OUT-OF-POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, ENGINEERING FEES, ENVIRONMENTAL CONSULTANT FEES, INVESTIGATORY FEES, AND REMEDIATION COSTS (INCLUDING, WITHOUT LIMITATION, ANY FINANCIAL ASSURANCES REQUIRED TO BE POSTED FOR COMPLETION OF REMEDIAL WORK AND COSTS ASSOCIATED WITH ADMINISTRATIVE OVERSIGHT), AND ANY OTHER LIABILITIES OF WHATEVER KIND AND WHATEVER NATURE, WHETHER INCURRED IN CONNECTION WITH ANY JUDICIAL OR ADMINISTRATIVE PROCESS OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY FROM ANY OF THE FOLLOWING:

(i) ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF Borrower IN THIS SECTION 18;

(ii) ANY FAILURE BY Borrower TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS SECTION 18;

(iii) THE EXISTENCE OR ALLEGED EXISTENCE OF ANY PROHIBITED ACTIVITY OR CONDITION;

(iv) THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS MATERIALS ON OR UNDER THE MORTGAGED PROPERTY.
(WHETHER AS A RESULT OF ACTIVITIES ON THE MORTGAGED PROPERTY OR ON SURROUNDING PROPERTIES) OR IN ANY OF THE IMPROVEMENTS OR ON OR UNDER ANY PROPERTY OF BORROWER THAT IS ADJACENT TO THE MORTGAGED PROPERTY;

(v) THE ACTUAL OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW;

(vi) ANY LOSS OR DAMAGE RESULTING FROM A LOSS OF PRIORITY OF THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT DUE TO AN IMPOSITION OF AN ENVIRONMENTAL LIEN AGAINST THE MORTGAGED PROPERTY; AND

(vii) ANY PERSONAL INJURY CLAIM, PROCEEDING OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING AS A RESULT OF THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS ON OR FROM THE MORTGAGED PROPERTY.

(m) COUNSEL SELECTED BY BORROWER TO DEFEND INDEMNITEES SHALL BE SUBJECT TO THE APPROVAL OF THOSE INDEMNITEES. IN ANY CIRCUMSTANCES IN WHICH THE INDEMNITY UNDER THIS SECTION 18 APPLIES, ANY BENEFICIARY PARTY MAY EMPLOY ITS OWN LEGAL COUNSEL AND CONSULTANTS TO PROSECUTE, DEFEND OR NEGOTIATE ANY claim OR LEGAL OR ADMINISTRATIVE PROCEEDING AT BORROWER’S EXPENSE, AND SUCH BENEFICIARY PARTY, WITH THE PRIOR WRITTEN CONSENT OF BORROWER (WHICH SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED) MAY SETTLE OR COMPROMISE ANY ACTION OR LEGAL OR ADMINISTRATIVE PROCEEDING. BORROWER SHALL REIMBURSE SUCH BENEFICIARY PARTY UPON DEMAND FOR ALL COSTS AND EXPENSES INCURRED BY SUCH BENEFICIARY PARTY, INCLUDING, WITHOUT LIMITATION, ALL COSTS OF SETTLEMENTS ENTERED INTO IN GOOD FAITH, AND THE FEES AND OUT OF POCKET EXPENSES OF SUCH ATTORNEYS AND CONSULTANTS.

(n) BORROWER SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THOSE INDEMNITEES WHO ARE NAMED AS PARTIES TO A CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING (A “CLAIM”), SETTLE OR COMPROMISE THE CLAIM IF THE SETTLEMENT (1) RESULTS IN THE ENTRY OF ANY JUDGMENT THAT DOES NOT INCLUDE AS AN UNCONDITIONAL TERM THE DELIVERY BY THE CLAIMANT OR PLAINTIFF TO BENEFICIARY PARTIES OF A WRITTEN RELEASE OF THOSE INDEMNITEES, SATISFACTORY IN FORM AND SUBSTANCE TO LENDER; OR (2) MAY MATERIALLY AND ADVERSELY AFFECT BENEFICIARY PARTIES, AS DETERMINED BY LENDER IN ITS DISCRETION.
(o) BORROWER’S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL NOT BE LIMITED OR IMPAIRED BY ANY OF THE FOLLOWING, OR BY ANY FAILURE OF BORROWER OR ANY GUARANTOR TO RECEIVE NOTICE OF OR CONSIDERATION FOR ANY OF THE FOLLOWING:

(i) ANY AMENDMENT OR MODIFICATION OF ANY LOAN DOCUMENT;

(ii) ANY EXTENSIONS OF TIME FOR PERFORMANCE REQUIRED BY ANY LOAN DOCUMENT;

(iii) ANY PROVISION IN ANY LOAN DOCUMENT LIMITING BENEFICIARY PARTIES’ RECURSE TO PROPERTY SECURING THE INDEBTEDNESS, OR LIMITING THE PERSONAL LIABILITY OF BORROWER OR ANY OTHER PARTY FOR PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS;

(iv) THE ACCURACY OR INACCURACY OF ANY REPRESENTATIONS AND WARRANTIES MADE BY BORROWER UNDER THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT;

(v) THE RELEASE OF BORROWER OR ANY OTHER PERSON, BY BENEFICIARY PARTIES OR BY OPERATION OF LAW, FROM PERFORMANCE OF ANY OBLIGATION UNDER ANY LOAN DOCUMENT;

(vi) THE RELEASE OR SUBSTITUTION IN WHOLE OR IN PART OF ANY SECURITY FOR THE INDEBTEDNESS; AND

(vii) FAILURE BY BENEFICIARY PARTIES TO PROPERLY PERFECT ANY LIEN OR SECURITY INTEREST GIVEN AS SECURITY FOR THE INDEBTEDNESS.

(p) BORROWER SHALL, AT ITS OWN COST AND EXPENSE, DO ALL OF THE FOLLOWING:

(i) PAY OR SATISFY ANY JUDGMENT OR DECREE THAT MAY BE ENTERED AGAINST ANY INDEMNITEE OR INDEMNITEES IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING INCIDENT TO ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18;

(ii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES PAID OR INCURRED IN CONNECTION WITH
ANY MATTERS AGAINST WHICH INDEMNITSEE ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18; AND

(iii) REIMBURSE INDEMNITSEE FOR ANY AND ALL EXPENSES, INCLUDING, WITHOUT LIMITATION, FEES AND OUT OF POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, PAID OR INCURRED IN CONNECTION WITH THE ENFORCEMENT BY INDEMNITSEE OF THEIR RIGHTS UNDER THIS SECTION 18, OR IN MONITORING AND PARTICIPATING IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING.

(q) THE PROVISIONS OF THIS SECTION 18 SHALL BE IN ADDITION TO ANY AND ALL OTHER OBLIGATIONS AND LIABILITIES THAT BORROWER MAY HAVE UNDER APPLICABLE LAW OR UNDER ANY OTHER LOAN DOCUMENT, AND EACH INDEMNITSEE SHALL BE ENTITLED TO INDEMNIFICATION UNDER THIS SECTION 18 WITHOUT REGARD TO WHETHER ANY OTHER BENEFICIARY PARTY OR THAT INDEMNITSEE HAS EXERCISED ANY RIGHTS AGAINST THE MORTGAGED PROPERTY OR ANY OTHER SECURITY, PURSUED ANY RIGHTS AGAINST ANY GUARANTOR, OR PURSUED ANY OTHER RIGHTS AVAILABLE UNDER THE LOAN DOCUMENTS OR APPLICABLE LAW. IF BORROWER CONSISTS OF MORE THAN ONE PERSON OR ENTITY, THE OBLIGATION OF THOSE PERSONS OR ENTITIES TO INDEMNIFY THE INDEMNITSEE UNDER THIS SECTION 18 SHALL BE JOINT AND SEVERAL. THE OBLIGATION OF BORROWER TO INDEMNIFY THE INDEMNITSEE UNDER THIS SECTION 18 SHALL SURVIVE ANY REPAYMENT OR DISCHARGE OF THE INDEBTEDNESS, ANY FORECLOSURE PROCEEDING, ANY FORECLOSURE SALE, ANY DELIVERY OF ANY DEED IN LIEU OF FORECLOSURE, AND ANY RELEASE OF RECORD OF THE LIEN OF THIS INSTRUMENT.

(r) Notwithstanding anything herein to the contrary, (i) Borrower shall have no obligation hereunder to indemnify any Indemnitee for any liability under this Section 18 to the extent that the Prohibited Activity or Condition giving rise to such liability resulted solely from the gross negligence or willful misconduct of such Indemnitee, and (ii) Borrower’s liability under this Section 18 shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Activities or Conditions that first arise, commence or occur as a result of actions of Lender, its successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of this Instrument following the payment in full of the Note and all other sums payable under the Loan Documents or after the actual dispossession from the entire Mortgaged Property of Borrower and all Affiliates of Borrower following foreclosure of this Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

19. PROPERTY AND LIABILITY INSURANCE.
(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, business income coverage and extra expense insurance, coverage against acts of terrorism, mold and earthquake coverage. Borrower acknowledges and agrees that Lender’s insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any portion of the Improvements is at any time located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area now or hereafter having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood in an amount equal to the maximum amount available under the National Flood Insurance Program or any successor thereto.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall 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. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require consistent with Lender’s then current practices and standards, and shall be issued by insurance companies satisfactory to Lender.

(d) From and after the Conversion Date, all insurance policies and renewals of insurance policies required by this Section 19 shall also comply with any applicable Credit Enhancer Insurance Standards. During any period of construction and/or rehabilitation, and at all times prior to occupancy of the Project by any tenants following the completion of the construction and/or rehabilitation of the Project in accordance with the Loan Agreement, the following provisions shall apply, in addition to the other provisions of this Section 19 and without limiting the generality of the other provisions of this Section 19:

(i) Borrower shall provide (or cause to be provided), maintain and keep in force, the following insurance coverage:

(A) Builder’s “all risk” insurance or the equivalent coverage, including theft, to insure all buildings, machinery,
equipment, materials, supplies, temporary structures and all other property of any nature on-site, off-site and while in transit which is to be used in fabrication, erection, installation and construction and/or rehabilitation of the Project, and to remain in effect until the entire Project has been completed and accepted by Borrower and is first occupied by any tenants (provided that in any event, such coverage shall remain in effect until such time as Borrower has provided Lender with evidence of property insurance covering the Improvements and meeting the requirements of this Section 19). Such insurance shall be provided on a replacement cost value basis and shall include foundations, other underground property, tenant improvements and personal property. If tenant improvements and personal property are not included in the above coverage, they may be insured separately by Borrower provided coverage is acceptable to Lender. Builders “all risk” insurance shall (i) be on a nonreporting, completed value form, (ii) cover soft costs, debris removal expense (including removal of pollutants), resulting loss and damage to property due to faulty or defective workmanship or materials and error in design or specification, loss while the property is in the care, custody and control of others to whom the property may be entrusted, (iii) provide that Borrower can complete and occupy the Mortgaged Property without further written consent from the insurer, and (iv) cover loss of income resulting from delay in occupancy and use of the Mortgaged Property due to loss. During the initial construction and/or rehabilitation of the Project and until such time as the Project is first occupied by any tenants, the Borrower shall not be required to maintain property insurance as required by this Section 19 for so long as Builder’s “all risk” insurance or equivalent coverage is maintained in accordance with this paragraph.

(B) If any portion of the Mortgaged Property is or becomes located in an area identified by the United States Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, as amended, Borrower shall also keep the improvements and the equipment located thereon insured against loss by flood in an amount at least equal to the principal amount of the Loan or the maximum limits of coverage available with respect to the Mortgaged Property, whichever is less. All
such insurance shall also cover continuing expenses not directly involved in the direct cost of construction, rehabilitation or renovation, including interest on money borrowed to finance construction, rehabilitation or renovation, continuing interest on the Loan, advertising, promotion, real estate taxes and other assessments, the cost of renegotiating leases, and other expenses incurred as the result of property loss or destruction by the insured peril. Such coverage shall not contain any monthly limitation.

(ii) If Lender fails to receive proof and evidence of the insurance required hereunder, Lender shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and to make a Disbursement, as defined in the Loan Agreement (or, in its sole discretion, advance funds) to pay the premiums for it. If Lender makes an advance for such purpose, Borrower shall repay such advance immediately on demand and such advance shall be considered to be a demand loan to Borrower bearing interest at the Default Rate (as defined in the Note) and secured by the Mortgaged Property.

(e) Borrower shall maintain at all times commercial general liability insurance, workers’ compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require, consistent with Lender’s then current practices and standards (and from and after the Conversion Date, any applicable Credit Enhancer Insurance Standards).

(f) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(g) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for 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 property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender’s expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender’s option, (i) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the “Restoration”), or (ii) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Lender’s then-current policies relating to the restoration of casualty damage on similar multifamily properties.
(h) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration (and complete construction of the Project in accordance with the Loan Agreement and the Plans and Specifications, as defined therein, if such construction has not been completed at such time); (iii) Lender determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (iv) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the Maturity Date set forth in the Note, (B) one year before the Outside Conversion Date, as defined in the Loan Agreement, if Conversion, as defined in the Loan Agreement, has not yet occurred, or (C) one year after the date of the loss or casualty; and (v) upon Lender’s request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

(i) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(j) Unless Lender otherwise agrees in writing, any application of any insurance proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments, except as provided in the Note.

(k) Borrower agrees to execute such further evidence of assignment of any insurance proceeds as Lender may require.

(l) Borrower further agrees that to the extent that Borrower obtains any form of property damage insurance for the Mortgaged Property or any portion thereof that insures perils not required to be insured against by Lender, such policy of property damage insurance shall include a standard mortgagee clause and shall name Lender as loss payee and, within ten (10) days following Borrower’s purchase of such additional insurance, Borrower shall cause to be delivered to Lender a duplicate original policy of insurance with respect to such policy. Any insurance proceeds payable to Borrower under such policy shall be additional security for the Indebtedness and Lender shall have the same rights to such policy and proceeds as it has with respect to insurance policies required by Lender pursuant to this Section 19 (except that Lender shall not require that the premium for such additional insurance be included among the Imposition Deposits).

20. **CONDEMNATION.**
(a) Borrower shall promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a “Condemnation”), and shall deliver to the Lender copies of any and all papers served in connection with such Condemnation. Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender’s or Borrower’s name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender’s expenses incurred in the collection of such amounts (including, without limitation, fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise), at Lender’s option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness in accordance with the provisions of the Note as to application of payments to the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of payments due under the Note, Section 7 of this Instrument or any Collateral Agreement or any other Loan Document, or change the amount of such payments, except as otherwise provided in the Note. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

(i) other than the lien of this Instrument and the Permitted Encumbrances, a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;

(ii) a Transfer of a Controlling Interest in Borrower;

(iii) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Borrower;
(iv) a Transfer of all or any part of a Guarantor’s ownership interests in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower (other than a Transfer of an aggregate beneficial ownership interest in Borrower of 49% or less of such Guarantor’s original ownership interest in Borrower and which does not otherwise result in a Transfer of the Guarantor’s Controlling Interest in such intermediate entities or in Borrower);

(v) if Guarantor is an entity, (A) a Transfer of a Controlling Interest in Guarantor, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Guarantor;

(vi) if Borrower or Guarantor is a trust, the termination or revocation of such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);

(vii) if Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);

(viii) the merger, dissolution, liquidation, or consolidation of (i) Borrower, (ii) any Guarantor that is a legal entity, or (iii) any legal entity holding, directly or indirectly, a Controlling Interest in Borrower or in any Guarantor that is an entity;

(ix) a conversion of Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership into a limited partnership and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer; if such conversion results in a change in any assets, liabilities, legal rights or obligations of Borrower (or of any Guarantor, or any general partner of Borrower, as applicable), by operation of law or otherwise;

(x) a Transfer of the economic benefits or right to cash flows attributable to the ownership interests in Borrower and/or, if Guarantor is an entity, Guarantor, separate from the Transfer of the
underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Instrument; and

(xi) the filing, recording, or consent to filing or recording of any plat or map subdividing, replatting or otherwise affecting the Mortgaged Property or any other replat or subdivision of the Mortgaged Property, whether or not any such action affects the priority of the lien of this Instrument.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary (each a “Permitted Transfer”):

(i) a Transfer to which Lender has consented;

(ii) except as provided in Section 21(a)(vi) and (vii), a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person;

(iii) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;

(iv) 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, encumbrances and security interests other than those created by or permitted pursuant to the Loan Documents or consented to by Lender;

(v) the grant of an easement, servitude, or restrictive covenant if, before the grant, Lender determines in its reasonable judgment that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged Property or Lender’s interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower’s request; provided, however, utility easements of a type usually permitted or required to operate a multifamily project in the Property Jurisdiction (such as, by way of example, gas, sewer and electricity supplier easements and easements to provide cable service) shall be deemed to be Permitted Transfers without the need for Lender’s prior review or determination so long as (A) such easement does not obligate Borrower to incur any additional costs, (B) such easement does not
grant the grantee of the easement the option to acquire any other estate in the Mortgaged Property, and (C) Lender is not obligated to subordinate the lien of this Security Instrument to the proposed easement;

(vi) the creation of a mechanic’s, materialman’s, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender’s satisfaction within 45 days after Borrower has actual or constructive notice of the existence of such lien; and

(vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument.

(c) Lender shall consent to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

(i) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);

(ii) the absence of any Event of Default;

(iii) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;

(iv) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition, that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;

(v) if the transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in the Loan Documents, and
may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender;

(vi) if a guaranty has been executed and delivered by the transferor in connection with the Note, this Instrument or any of the other Loan Documents, Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a substitute guaranty in a form acceptable to Lender;

(vii) Lender’s receipt of all of the following:

(A) a non-refundable review fee in the amount of $3,000, and a transfer fee equal to one percent (1%) of the outstanding Indebtedness immediately prior to the Transfer; and

(B) Borrower’s reimbursement of all of Lender’s out-of-pocket costs (including, reasonable attorneys’ fees) incurred in reviewing the Transfer request, to the extent such expenses exceed $3,000; and

(viii) Borrower has agreed to Lender’s conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Loan Documents to (1) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (2) restore to original provisions of the standard Lender forms of multifamily loan documents, to the extent such provisions were previously modified.

(d) For purposes of this Section, the following terms shall have the meanings set forth below:

(i) A Transfer of a “Controlling Interest” shall mean:

(A) with respect to any entity, the following:

(1) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than a Controlling Percentage of all general partnership or joint venture interests in such entity;

(2) if such entity is a limited partnership, (A) a Transfer of any general partnership interest, or (B) a Transfer of any
partnership interests which would cause the Initial Owners to own less than a Controlling Percentage of all limited partnership interests in such entity;

(3) if such entity is a limited liability company or a limited liability partnership, (A) a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than a Controlling Percentage of all membership or other ownership interests in such entity, (B) a Transfer of any membership, or other interest of a manager, in such entity that results in a change of manager, or (C) a change of the non-member manager;

(4) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a Controlling Percentage of voting stock in such corporation;

(5) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(6) if such entity is a trust (other than a Publicly-Held Trust), the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment, or substitution is a trustee identified in the trust agreement approved by Lender; and/or

(B) any agreement (including provisions contained in the organizational and/or governing documents of Borrower or Guarantor) or Transfer not specified in clause (A), the effect of which, either immediately or after the passage of time or occurrence of a specified event or condition, including the failure of a specified event or condition to occur or be satisfied, would (i) cause a change in or replacement of the Person that controls the management and operations of the Borrower or Guarantor or (ii) limit or otherwise modify the extent of such Person’s control over the management and operations of Borrower or Guarantor.

(ii) “Controlling Percentage” shall mean (i) greater than 50% of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of 50% or less if the owner(s) of that interest
actually direct(s) the business and affairs of the entity without
requirement of consent of any other party.

(iii) “Publicly-Held Corporation” shall mean a corporation the
outstanding voting stock of which is registered under Section 12(b)
or 12(g) of the Securities and Exchange Act of 1934, as amended.

(iv) “Publicly-Held Trust” shall mean a real estate investment trust
the outstanding voting shares or beneficial interests of which are
registered under Section 12(b) or 12(g) of the Securities Exchange
Act of 1934, as amended.

(e) Lender shall be provided with written notice of all Transfers under this
Section 21, whether or not such Transfers are permitted under Section 21(b) or approved
by Lender under Section 21(c), no later than 10 days prior to the date of the Transfer.

22. EVENTS OF DEFAULT. The occurrence of any one or more of the following
shall constitute an Event of Default under this Instrument:

(a) (i) any failure by Borrower to pay or deposit any payment of principal,
interest, principal reserve fund deposit, any payment with a specified due date, or any
other scheduled payment or deposit required by the Note, this Instrument or any other
Loan Document when such payment or deposit is due or (ii) any failure by Borrower to
pay or deposit any unscheduled payment or deposit, or other payment or deposit without
a specified due date, required by the Note, this Instrument or any other Loan Document,
within five (5) days after written notice from Lender;

(b) any failure by Borrower to maintain the insurance coverage required by
Section 19;

(c) any failure by Borrower to comply with the provisions of Section 32;

(d) fraud or material misrepresentation or material omission by Borrower or
Guarantor, any of their respective officers, directors, trustees, general partners, managing
members, managers, agents or representatives in connection with (i) the application for
the Loan, (ii) any financial statement, rent roll, or other report or information provided to
Lender during the term of the Indebtedness, or (iii) any request for Lender’s consent to
any proposed action, including a request for disbursement of funds under any Collateral
Agreement;

(e) any of Borrower’s representations and warranties in this Instrument is
false or misleading in any material respect;

(f) any Event of Default under Section 21;

(g) the commencement of a forfeiture action or proceeding, whether civil or
criminal, which, in Lender’s judgment, could result in a forfeiture of the Mortgaged
Property or otherwise materially impair the lien created by this Instrument or Lender’s interest in the Mortgaged Property;

(h) any failure by Borrower to perform or comply with any of its obligations under this Instrument (other than those specified in this Section 22), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Lender to Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period, not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in Lender’s judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Borrower or any Guarantor to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable notice and cure period, if any, specified in that Loan Document;

(j) any exercise by the holder of any 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;

(k) the occurrence of a Bankruptcy Event;

(l) any Event of Default (as defined in any of the Loan Documents), which continues beyond the expiration of any applicable cure period;

(m) any breach of, or event of default by Borrower under, any other document or agreement relating to the Loan or the provision of low income housing tax credits to the Mortgaged Property to which Borrower is a party, which continues beyond the expiration of any applicable notice and cure period thereunder;

(n) any failure by Borrower or the Project to qualify for low income housing tax credits pursuant to the provisions of Section 42 of the Internal Revenue Code;

(o) any failure by the Borrower to satisfy the Conditions to Conversion on or before the Outside Conversion Date (as such date may be extended in accordance with the Loan Agreement);

(p) any amendment, modification, waiver or termination of any of the provisions of Borrower’s Organizational Documents without the prior written consent of Lender, other than (i) modifications necessary to reflect the occurrence of a Permitted Transfer or (ii) modifications that do not: (A) impose any additional or greater
obligations on Borrower or any of the partners, managers or members of Borrower, (B) reduce or relieve Borrower or any of the partners, managers or members of Borrower of any of their obligations, (C) modify the timing, amounts, number, conditions or other terms of the installments or other payment obligations of the partners or members of Borrower or (D) impair the collateral for the Loan; provided, however, that Borrower shall promptly provide to Lender a copy of any modifications to Borrower’s Organizational Documents that do not require Lender’s consent;

(q) (i) any breach of any Material Property Agreement by Borrower or its officers, directors, employees, agents or tenants that continues beyond any applicable notice and cure period; (ii) any failure by Borrower or its officers, directors, employees or agents or any other party to deliver concurrently (in case of notices given) or promptly (in case of notices received) copies of any and all notices received or given thereby to Lender with respect to any Material Property Agreement; or (iii) any breach of the representations, warranties, or covenants set forth in Section 7.1.61 of the Loan Agreement;

(r) if Borrower or any Guarantor is a trust, the termination or revocation of any such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged); or

(s) if any Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged).

23. REMEDIES CUMULATIVE. Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument 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.

24. FORBEARANCE.

(a) 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, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly
installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any 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 of any other right available to Lender. Lender’s receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. WAIVER OF STATUTE OF LIMITATIONS. BORROWER HEREBY WAIVES THE RIGHT TO ASSERT ANY STATUTE OF LIMITATIONS AS A BAR TO THE ENFORCEMENT OF THE LIEN OF THIS INSTRUMENT OR TO ANY ACTION BROUGHT TO ENFORCE ANY LOAN DOCUMENT.

26. WAIVER OF MARSHALLING. 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 Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are 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 Instrument waives any and all right to require the marshalling 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 Instrument.

27. FURTHER ASSURANCES. Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may 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 Instrument and the Loan Documents. In furtherance thereof, on the request of Lender, Borrower shall re-execute or ratify any of the Loan Documents or execute any other documents or take such other actions as may be necessary to effect the assignment, pledge or other transfer of the Loan to any party that may purchase, insure, credit enhance or otherwise finance all or any part of the Loan, including, without limitation, any Credit Enhancer (including Freddie Mac or Fannie Mae), the U.S. Department of Housing and Urban Development, or any insurance company, conduit lender or any other lender or investor. Notwithstanding the foregoing sentence, in no event shall Borrower be required to execute and deliver any document or perform any act otherwise required
pursuant to the foregoing sentence to the extent such document or act imposes a material additional obligation or liability on Borrower or materially adversely affects the rights of Borrower under any Loan Document.

28. **ESTOPPEL CERTIFICATE.** Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) 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); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); (v) 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 (vi) any additional facts requested by Lender.

29. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Instrument, and any 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.

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to the Note, any security for the Indebtedness, 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. However, nothing in this Section 29 is intended to limit Lender’s right to bring any suit, action or proceeding relating to matters arising under this Instrument in any court of any other jurisdiction.

30. **NOTICE.**

(a) All notices, demands and other communications (“notice”) under or concerning this Instrument shall be in writing and addressed as set forth below. Each notice shall be deemed given on the earliest to occur of (i) the date when the notice is received by the addressee; (ii) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

| If to Borrower: | Kaia Pointe, LLC |
| | 421 West 3rd Street, Suite 1504 |
| | Austin, Texas 78701 |

Deed of Trust  Kaia Pointe Apartments
Attention: Lisa Stephens

With a copy to: Shutts & Bowen LLP
200 South Biscayne Boulevard, Suite 4100
Miami, Florida 33131
Attention: Robert Cheng
Facsimile: (305) 347-7783

With a copy to: Mark Ragsdale
330 Glendale Road
Hillsborough, California 95010

With a copy to: VLP Law Group
548 Market Street
San Francisco, California 94104
Attention: Bryon Rodriguez, Esq.
Facsimile: (415)-685-4866

If to Lender: Citibank, N.A.
388 Greenwich Street, 8th Floor
New York, New York 10013
Attention: Transaction Management Group
Re: Kaia Pointe Apartments Deal ID No. 24855
Facsimile: (212) 723-8209

With a copy to: Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Re: Kaia Pointe Apartments Deal ID No. 24855
Facsimile: (805) 557-0924

Prior to the Conversion Date, with a copy to: Citibank, N.A.
388 Greenwich Street, 8th Floor
New York, New York 10013
Attention: Account Specialist
Re: Kaia Pointe Apartments Deal ID No. 24855
Facsimile: (212) 723-8209
Following the Conversion Date, with a copy to: Citibank N.A.
c/o Berkadia Commercial Servicing Department 323 Norristown Road, Suite 300 Ambler, Pennsylvania 19002 Attention: Client Relations Manager Re: Kaia Pointe Apartments Deal ID No. 24855 Facsimile: (215) 328-0305

And a copy of any notices of default sent to: Citibank, N.A. 388 Greenwich Street New York, New York 10013 Attention: General Counsel’s Office Re: Kaia Pointe Apartments Deal ID No. 24855 Facsimile: (646) 291-5754

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 30. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 30, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 30 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document that does not specify how notices are to be given shall be given in accordance with this Section 30.

31. **CHANGE IN SERVICER.** If there is a change of the Servicer, Borrower will be given notice of the change.

32. **SINGLE ASSET BORROWER.** Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

33. **SUCCESSORS AND ASSIGNS BOUND.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower.

34. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

35. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**
(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person (other than a holder of the Note and Servicer) shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a “Servicing Arrangement”) between Lender and any Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

36. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought; provided, however, that in the event of a Transfer, any or some or all of the Modifications to Instrument set forth in Exhibit B (if any) may be modified or rendered void by Lender at Lender’s option by notice to Borrower or such transferee.

37. CONSTRUCTION. The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an “Exhibit” or a “Section” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term “including” means “including, but not limited to.”

38. SERVICER.

(a) Borrower further acknowledges that Lender may from time to time and in accordance with the terms of the Loan Agreement, appoint a Servicer or a replacement servicer to collect payments, escrows and deposits, to give and receive notices under the Note, this Instrument, or the other Loan Documents, and to otherwise service the Loan. Borrower hereby acknowledges and agrees that, unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by Servicer with the same force and effect, including, without limitation, the collection of payments, the giving of notice, the holding of escrows, inspection of the Mortgaged Property, inspections of books and records, the request for documents or information, and the granting of consents and approvals. Borrower further agrees that, unless Lender instructs Borrower to the contrary in writing,
(i) any notices, books or records, or other documents or information to be delivered under this Instrument, the Note, or any other Loan Document shall also be simultaneously delivered to the Servicer at the address provided for notices to Servicer pursuant to Section 30 hereof, and (ii) any payments to be made under the Note or for escrows under Section 7 of this Instrument or under any of the other Loan Documents shall be made to Servicer. In the event Borrower receives conflicting notices regarding the identity of the Servicer or any other subject, any such notice from Lender shall govern.

(b) Borrower further acknowledges and agrees that, for the purpose of determining whether a security interest is created or perfected under the Uniform Commercial Code of the Property Jurisdiction, any escrows or other funds held by Servicer pursuant to the Loan Documents shall be deemed to be held by Lender.

39. **DISCLOSURE OF INFORMATION.** Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Without limiting the generality of the foregoing, without notice to or the consent of Borrower, Lender may disclose to any title insurance company which insures any interest of Lender under this Instrument (whether as primary insurer, coinsurer or reinsurer) any information, data or material in its possession relating to Borrower, the Loan, the Improvements or the Mortgaged Property. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

40. **NO CHANGE IN FACTS OR CIRCUMSTANCES.** Borrower warrants that all information in Borrower’s application for the Loan and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with Borrower’s application for the Loan 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.

41. **SUBROGATION.** If, and to the extent that, the proceeds of the 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 (a “Prior Lien”), such loan proceeds shall be deemed to have been advanced by Lender at Borrower’s request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

42. **FINANCING STATEMENT.** As provided in Section 2, this Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and for the purposes of such financing statement: (a) the Debtor shall be Borrower and the Secured Party shall be Lender; (b) the addresses of Borrower as Debtor and of Lender as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Borrower; (d) the types or items of collateral consist of any part of
the Mortgaged Property which is or may become a Fixture; and (e) the organizational identification number of Borrower (if any) as Debtor is set forth on Exhibit C.

43. STATE SPECIFIC PROVISIONS (TEXAS).

(a) Acceleration; Remedies.

(i) Except as otherwise expressly provided in the Loan Documents, at any time during the existence of an Event of Default, Lender, at Lender’s option, may declare the Indebtedness to be immediately due and payable without further demand, notice of intent to accelerate, notice of acceleration, or any other notice of or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Indebtedness, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. Lender may invoke the power of sale and any other remedies permitted by Texas law or provided in this Instrument, the Loan Agreement or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys’ Fees and Costs, costs of documentary evidence, abstracts and title reports.

(ii) If Lender invokes the power of sale, Lender may, by and through the Trustee, or otherwise, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Lender may determine, with or without having first taken possession of the Mortgaged Property, to the highest bidder for cash at public auction. Such sale will be made at the county courthouse in which all or any part of the Land to be sold is situated or at such other place as designated by the commissioner’s court of said county and recorded on the real property records of such county (whether the parts or parcel, if any, situated in different counties are contiguous or not, and without the necessity of having any Personalty present at such sale) on the first Tuesday of any month between the hours of 10:00 a.m. and 4:00 p.m., after advertising the time, place and terms of sale and that portion of the Mortgaged Property to be sold by posting or causing to be posted written or printed notice of sale at least 21 days before the date of the sale at the courthouse door of the county in which the sale is to be made and at the courthouse door of any other county in which a portion of the Land may be situated, and by filing such notice with the County Clerk(s) of the county(s) in which all or a portion of the Land may be situated, which notice may be posted and filed by the Trustee acting, or by any person acting for the Trustee, and Lender has, at least 21 days
before the date of the sale, served written or printed notice of the proposed sale by certified mail on each debtor obligated to pay the Indebtedness according to Lender’s records by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such debtor at debtor’s most recent address as shown by Lender’s records, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed will be prima facie evidence of the fact of service.

(iii) Trustee will 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. Borrower 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 will be prima facie evidence of the truth of the statements contained in those recitals. Trustee will apply the proceeds of the sale in the following order: (i) to all reasonable costs and expenses of the sale, including reasonable Trustee’s fees not to exceed 5% of the gross sales price, Attorneys’ Fees and Costs and costs of title evidence; (ii) to the Indebtedness in such order as Lender, in Lender’s discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled to the excess.

(iv) If all or any part of the Mortgaged Property is sold pursuant to this Section, Borrower 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 Land, Improvements, Fixtures and Personality, Borrower will be considered a tenant at sufferance of the purchaser of the same, and the purchaser will be entitled to immediate possession of such property. If Borrower will fail to vacate the Mortgaged Property immediately, the purchaser may and will have the right, without further notice to Borrower, 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 will lie against Borrower 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 Instrument or otherwise.

(v) In the event an interest in any of the Mortgaged Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale prior to the Conversion Date, Borrower agrees as follows:
notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Borrower agrees that Lender will be entitled to seek a deficiency judgment from Borrower and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Mortgaged Property was sold pursuant to judicial or nonjudicial foreclosure sale. Borrower expressly recognizes that this Section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Borrower and other persons against whom a recovery of deficiencies is sought or Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Borrower further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Borrower, Guarantor, and others against whom recovery of a deficiency is sought. Alternatively, in the event the waiver provided for in this Section is determined by a court of competent jurisdiction to be unenforceable, in any action for a deficiency after a foreclosure under this Instrument, if any person against whom recovery is sought requests the court in which the action is pending to determine the fair market value of the Mortgaged Property, as of the date of the foreclosure sale, the following will be the basis of the court’s determination of fair market value:

(A) The Mortgaged Property will be valued “as is” and in its condition as of the date of foreclosure, and no assumption of increased value because of post-foreclosure repairs, refurbishment, restorations or improvements will be made.

(B) Any adverse effect on the marketability of title because of the foreclosure or because of any other title condition not existing as of the date of this Instrument will be considered.

(C) The valuation of the Mortgaged Property will be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Mortgaged Property for cash within a 6 month-period after foreclosure.

(D) Although the Mortgaged Property may be disposed of more quickly by the foreclosure purchaser, the gross valuation of
the Mortgaged Property as of the date of foreclosure will be discounted for a hypothetical reasonable holding period (not to exceed 6 months) at a monthly rate equal to the average monthly interest rate on the Note for the 12 months before the date of foreclosure.

(E) The gross valuation of the Mortgaged Property as of the date of foreclosure will be further discounted and reduced by reasonable estimated costs of disposition, including brokerage commissions, title policy premiums, environmental assessment and clean-up costs, tax and assessment, prorations, costs to comply with legal requirements and Attorneys’ Fees and Costs.

(F) Expert opinion testimony will be considered only from a licensed appraiser certified by the State of Texas and, to the extent permitted under Texas law, a member of the Appraisal Institute, having at least 5 years’ experience in appraising property similar to the Mortgaged Property in the county where the Mortgaged Property is located, and who has conducted and prepared a complete written appraisal of the Mortgaged Property taking into considerations the factors set forth in this Instrument; no expert opinion testimony will be considered without such written appraisal.

(G) Evidence of comparable sales will be considered only if also included in the expert opinion testimony and written appraisal referred to in subsection (F), above.

(H) An affidavit executed by Lender to the effect that the foreclosure bid accepted by Trustee was equal to or greater than the value of the Mortgaged Property determined by Lender based upon the factors and methods set forth in subsections (A) through (G) above before the foreclosure will constitute prima facie evidence that the foreclosure bid was equal to or greater than the fair market value of the Mortgaged Property on the foreclosure date.

(vi) Lender may, at Lender’s option, comply with these provisions in the manner permitted or required by Title 5, Section 51.002 of the Texas Property Code (relating to the sale of real estate) or by Chapter 9 of the Texas Business and Commerce Code (relating to the sale of collateral after default by a debtor), as those titles and chapters now exist or may be amended or succeeded in the future, or by any other present or future articles or enactments relating to same subject. Unless expressly excluded, the Mortgaged Property
will include Rents collected before a foreclosure sale, but attributable to the period following the foreclosure sale, and Borrower will pay such Rents to the purchaser at such sale.

(vii) At any such sale, all of the following will be true:

(A) Whether made under the power contained in this Instrument, Section 51.002 of the Texas Property Code, Chapter 9 of the Texas Business and Commerce Code, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it will not be necessary for Trustee to have physically present, or to have constructive possession of, the Mortgaged Property. Borrower will deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee and the title to and right of possession of any such property will pass to the purchaser as completely as if the property had been actually present and delivered to the purchaser at the sale.

(B) Each instrument of conveyance executed by Trustee will contain a general warranty of title, binding upon Borrower.

(C) The recitals contained in any instrument of conveyance made by Trustee will conclusively establish the truth and accuracy of the matters recited in the Instrument, including nonpayment of the Indebtedness and the advertisement and conduct of the sale in the manner provided in this Instrument and otherwise by law and the appointment of any successor Trustee.

(D) All prerequisites to the validity of the sale will be conclusively presumed to have been satisfied.

(E) The receipt of Trustee or of such other party or officer making the sale will be sufficient to discharge to the purchaser or purchasers for such purchaser(s)’ purchase money, and no such purchaser or purchasers, or such purchaser(s)’ assigns or personal representatives, will thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication of such purchase money.

(F) To the fullest extent permitted by law, Borrower will be completely and irrevocably divested of all of Borrower’s right, title, interest, claim and demand whatsoever, either at
law or in equity, in and to the property sold, and such sale will be a perpetual bar to any claim to all or any part of the property sold, both at law and in equity, against Borrower and against any person claiming by, through or under Borrower.

(G) To the extent and under such circumstances as are permitted by law, Lender may be a purchaser at any such sale.

(b) Release. Upon payment of the Indebtedness, Lender will release this Instrument. Borrower will pay Lender’s reasonable costs incurred in releasing this Instrument.

(c) Trustee.

(i) Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee will die, resign or become disqualified from acting under this Instrument or will fail or refuse to act in accordance with this Instrument when requested by Lender or if for any reason and without cause Lender will prefer to appoint a substitute trustee to act instead of the original Trustee named in this Instrument or any prior successor or substitute trustee, Lender will have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who will succeed to all the estate, rights, powers and duties of the original Trustee named in this Instrument. Such appointment may be executed by an authorized officer, agent or attorney-in-fact of Lender (whether acting pursuant to a power of attorney or otherwise), and such appointment will be conclusively presumed to be executed with authority and will be valid and sufficient without proof of any action by Lender.

(ii) Any successor Trustee appointed pursuant to this Section will, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of the predecessor Trustee with like effect as if originally named as Trustee in this Instrument; but, nevertheless, upon the written request of Lender or such successor Trustee, the Trustee ceasing to act will execute and deliver an instrument transferring to such successor Trustee, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and will duly assign, transfer and deliver any of the property and monies held by the Trustee ceasing to act to the successor Trustee.

(iii) Trustee may authorize one or more parties to act on Trustee’s behalf to perform the ministerial functions required of Trustee
under this Instrument, including the transmittal and posting of any notices.

(d) Vendor’s Lien. To the extent a vendor’s lien is retained in that certain deed conveying the Mortgaged Property to Borrower, such vendor’s lien has been assigned to Lender, the Note is primarily secured by said vendor’s lien, and this Instrument is additional security therefor.

(e) No Fiduciary Duty. Lender owes no fiduciary or other special duty to Borrower.

(f) Fixture Filing. This Instrument is also a fixture filing under the Uniform Commercial Code of Texas.

(g) Additional Provisions Regarding Assignment of Rents. Section 3 will not be construed to require a pro tanto or other reduction of the Indebtedness resulting from the assignment of Rents. If the provisions of Section 3 and the preceding sentence cause the assignment of Rents in Section 3 to be deemed to be an assignment for additional security only, Lender will be entitled to all rights, benefits and remedies attendant to such collateral assignment. The assignment of Rents contained in Section 3 will terminate upon the release of this Instrument.

(h) Loan Charges. Borrower and Lender 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, including Chapter 1204 of the Texas Government Code (or applicable United States federal law to the extent that it permits Lender 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 Instrument 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 Borrower results in Borrower having paid any interest in excess of that permitted by any applicable law, then Borrower and Lender expressly intend that all excess amounts collected by Lender will be applied to reduce the unpaid principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, will be refunded to Borrower), and the provisions of the Note, this Instrument and the other Loan Documents immediately will 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 Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness will, to the extent permitted by any 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 Instrument 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 Borrower is obligated to pay and Lender is entitled to receive with respect to the Indebtedness will not exceed the amount calculated on a simple (i.e., noncompounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Borrower, including all current and prior advances and any advances made pursuant to the Instrument or any other Loan Document (such as for the payment of Impositions and similar expenses or costs).

(i) ENTIRE AGREEMENT. THIS INSTRUMENT, 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.

(j) Notice of Additional Provisions Regarding Insurance. Any terms to the contrary contained in this Instrument notwithstanding, the following requirements are hereby imposed pursuant to Section 307.052 of the Texas Finance Code:

(i) BORROWER IS REQUIRED TO: (i) KEEP THE MORTGAGED PROPERTY INSURED AGAINST DAMAGE IN AN AMOUNT EQUAL TO THE INDEBTEDNESS, (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 LENDER AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS.

(ii) IF BORROWER FAILS TO COMPLY WITH SUBSECTION (a) ABOVE, LENDER MAY, BUT WILL NOT BE OBLIGATED TO, OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER’S EXPENSE.

44. WAIVER OF TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT 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.

45. ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument and are incorporated by reference herein as if more fully set forth in the text hereof:
☒ Exhibit A Description of the Land.
☒ Exhibit B Modifications to Instrument.
☒ Exhibit C Financing Statement Information.

The terms of this Instrument are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Instrument, the terms of said Exhibits shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Instrument or caused this Instrument to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this Instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

KAIA POINTE, LLC,
a Florida limited liability company

By:  Saigebrook Kaia, LLC,
a Florida limited liability company,
its Administrative Member

By:  
Name: Lisa Stephens
Title:  President
STATE OF TEXAS

COUNTY OF Precinct

On this 3rd day of Oct., 2017, before me, J. Packard, personally appeared Lisa Stephens, known to me or proven on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

WITNESS my hand and official seal.

My Commission expires: 03.25.21

Jeff Packard, Deputy ID #12281069
My Commission Expires March 25, 2021

Deed of Trust

Kaia Pointe Apartments
EXHIBIT A

DESCRIPTION OF THE LAND

Real property in the unincorporated area of the County of Williamson, State of Texas, described as follows:

BEING 5.001 ACRES OF LAND SITUATED WITHIN THE CITY OF GEORGETOWN, IN THE ISAAC JONES SURVEY, ABSTRACT NUMBER 361, WILLIAMSON COUNTY, TEXAS, AND BEING A PORTION OF THAT PARCEL OF LAND AS DESCRIBED IN THE DEED TO GEORGETOWN'S GATLIN CREEK LTD RECORDER UNDER INSTRUMENT NUMBER 2014074963 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (HEREAFTER REFERRED TO AS THE GEORGETOWN'S GATLIN CREEK PARCEL). SAID 5.001 ACRES OF LAND SURVEYED ON THE GROUND IN THE MONTH OF JUNE 2016, UNDER THE DIRECTION AND SUPERVISION OF ROBERT A. HANSEN, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6439 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING" FOUND AT THE SOUTHWEST CORNER OF A CALLED 0.106 ACRE PARCEL AS DESCRIBED IN THE JUDGEMENT OF COURT IN ABSENCE OF OBJECTION TO THE STATE OF TEXAS RECORDER UNDER INSTRUMENT NUMBER 2007068146 OF SAID OFFICIAL PUBLIC RECORDS AND BEING THE BEGINNING OF A NON- TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 2930.73 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 55 DEGREES 03 MINUTES 47 SECONDS EAST, 175.36 FEET;

THENENCE SOUTHEASTERLY WITH THE SOUTHWEST CURVING RIGHT OF WAY LINE OF WILLIAMS DRIVE, A VARIABLE WIDTH RIGHT OF WAY, AS DESCRIBED IN THE JUDGEMENT OF COURT IN ABSENCE OF OBJECTION RECORDER UNDER INSTRUMENT NUMBER 2008034153 OF SAID OFFICIAL PUBLIC RECORDS, AN ARC LENGTH OF 175.39 FEET TO A ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING” FOUND AT THE BEGINNING OF A TANGENT LINE TO THE AFOREMENTIONED CURVE;

THENENCE SOUTH 56 DEGREES 46 MINUTES 39 SECONDS EAST, 125.48 FEET WITH THE SOUTHWEST RIGHT OF WAY LINE OF SAID WILLIAMS DRIVE TO A ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING” FOUND;

THENENCE THROUGH THE INTERIOR OF SAID GEORGETOWN'S GATLIN CREEK PARCEL THE FOLLOWING SIX (6) CALLS:

1. SOUTH 32 DEGREES 57 MINUTES 52 SECONDS WEST, 149.03 FEET TO A ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING" FOUND AT THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST,

A-1

Deed of Trust

Kaia Pointe Apartments
HAVING A RADIUS OF 200.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 26 DEGREES 24 MINUTES 09 SECONDS WEST, 45.71 FEET;

2. SOUTHWESTERLY AN ARC LENGTH OF 45.81 FEET TO A ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING” FOUND AT THE POINT OF REVERSE CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 175.00 FEET AND CHORD BEARING AND DISTANCE OF SOUTH 36 DEGREES 33 MINUTES 26 SECONDS WEST, 100.67 FEET;

3. SOUTHWESTERLY AN ARC LENGTH OF 102.12 FEET TO A ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING” FOUND AT THE POINT OF REVERSE CURVE, CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 365.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 43 DEGREES 07 MINUTES 09 SECONDS WEST, 128.70 FEET;

4. SOUTHWESTERLY AN ARC LENGTH OF 129.38 FEET TO A ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING” FOUND AT THE BEGINNING OF A TANGENT LINE TO THE AFOREMENTIONED CURVE;

5. SOUTH 32 DEGREES 57 MINUTES 52 SECONDS WEST, 73.29 FEET TO A FOUND ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING”;

6. NORTH 50 DEGREES 22 MINUTES 40 SECONDS WEST, 611.08 FEET TO A POINT ON THE SOUTH LINE BLOCK 3, AS SHOWN ON THE PLAT TITLED “CASA LOMA” RECORDED IN CABINET D, SLIDE 9 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS FROM WHICH A ½ INCH CAPPED REBAR STAMPED “DIAMOND SURVEYING” BEARS SOUTH 71 DEGREES WEST, 0.4 FEET AND A FOUND COTTON SPINDLE NEAR A 12 INCH DEAD CEDAR-ELM TREE BEARS SOUTH 71 DEGREES 27 MINUTES 45 SECONDS WEST, 49.92 FEET;

THENCE NORTH 71 DEGREES 33 MINUTES 33 SECONDS EAST, 89.59 FEET WITH THE SOUTH LINE OF SAID BLOCK 3 TO A 1/2 INCH REBAR FOUND AT AN ANGLE POINT IN THE SOUTH LINE OF SAID BLOCK 3;

THENCE NORTH 71 DEGREES 05 MINUTES 03 SECONDS EAST, 297.91 FEET WITH THE SOUTH LINE OF SAID BLOCK 3 TO THE CENTER OF A 16 INCH LIVE OAK FOUND AT A SALIENT CORNER OF SAID BLOCK 3 (A 60D NAIL AND WASHER STAMPED “RPLS 5043” WAS FOUND ON SAID 16 INCH LIVE OAK’S SOUTHERLY SIDE);

THENCE NORTH 68 DEGREES 36 MINUTES 58 SECONDS EAST, 155.15 FEET WITH THE SOUTH LINE OF SAID BLOCK 3 TO THE POINT OF BEGINNING, CONTAINING 5.001 ACRES. THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS GRID NORTH, TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE.
EXHIBIT B
MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. Section 21(a) of the Instrument is amended by adding the following at the end of such Section:

“(xii) notwithstanding anything to the contrary herein or in Borrower’s Organizational Documents, a Transfer or pledge of a general partnership interest in Borrower or an interest in any general partner of Borrower to a 501(c)(3) nonprofit corporation, or a limited liability company whose sole member is a 501(c)(3) nonprofit corporation, without the prior written consent of Lender following full review and underwriting by Lender of the proposed transferee.”

2. Section 21(b) of the Instrument is amended by adding the following at the end of such Section:

“(viii) Provided that (i) Borrower owns the Mortgaged Property and remains the borrower under the Note, (ii) O-SDA Kaia, LLC (“Managing Member”) is a managing member in Borrower and (iii) Boston Capital Corporate Tax Credit Fund XLIV, A Limited Partnership, a Massachusetts limited partnership, or its permitted transferee (the “Equity Investor”), has not less than a 99% limited partnership interest in Borrower:

(A) the removal by Equity Investor of Managing Member or Saigebrook Kaia, LLC as a managing member or an administrative member of Borrower and their respective replacement as a managing member or an administrative member by Boston Capital Partners, Inc. (“Equity Investor Sponsor”), or by a wholly-owned affiliate of Equity Investor Sponsor, which removal shall be in accordance with the terms of the operating agreement of Borrower, provided that (i) the entity replacing such removed managing member or administrative member must be a single purpose entity, (ii) after such replacement, Equity Investor Sponsor or the Initial Owners of Equity Investor Sponsor must own directly or indirectly not less than a Controlling Percentage of the general partnership or managing membership interests, as applicable, in the entity which replaced such removed managing member or administrative member and (iii) each Guarantor shall be replaced as Guarantor by an individual or entity that is approved by Lender and satisfies Lender’s mortgage credit standards for guarantors; or

(B) (i) a Transfer of limited partnership interests of Equity Investor in Borrower to (A) a wholly-owned affiliate of Equity Investor or a wholly-owned affiliate of Equity Investor Sponsor, or (B) an entity whose management is controlled by Equity Investor, by a wholly-
owned affiliate of Equity Investor or by Equity Investor Sponsor, or (ii) so long as Equity Investor Sponsor remains the sole managing member, sole manager or sole general partner, as applicable, of Equity Investor, the transfer of non-managing membership interests or limited partnership interests, as applicable, in Equity Investor.

(ix) A withdrawal of Rdevkaia, LLC from the Borrower upon or after the Conversion Date without the payment of any review fee or transfer fee.

3. Section 30(a) of the Instrument is amended to add the following at the end of such Paragraph:

“Lender agrees that, so long as Equity Investor has a continuing ownership interest in Borrower, effective notice to Borrower under the Loan Documents shall require delivery of a copy of such notice to Equity Investor. Such notice shall be given in the manner provided in this Section 30(a), at Equity Investor’s address set forth below:

Boston Capital Corporate Tax Credit Fund XLIV, A Limited Partnership
One Boston Place, 21st Floor
Boston, MA 02108
Attention: Asset Management (Kaia Pointe)

with a copy to:

Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: Douglas W. Clapp, Esq.

Lender agrees that, notwithstanding its rights to invoke the remedies permitted by Section 43 of this Instrument, upon the breach of any covenant or agreement by Borrower in this Instrument (including, but not limited to, the covenants to pay when due sums secured by this Instrument) or any other Loan Document, Lender shall not, so long as Equity Investor has a continuing ownership interest in Borrower, conduct a foreclosure sale of the Mortgaged Property or receive a deed-in-lieu of foreclosure, until such time as Equity Investor has first been given 30 days written notice of such default and has failed, within such 30-day period to cure such default; provided, however, that Lender shall be entitled, during such 30-day period, to continue to accelerate the Note and to pursue its remedies. Any cure tendered by Equity Investor will be accepted or rejected on the same basis as cures tendered by Borrower.”

4. The following new Sections are added to the Instrument after the last numbered Section:

“46. **RECOUSE LIABILITY.** After the Conversion Date, so long as Equity Investor has a continuing ownership interest in Borrower, the provisions of Section 9 of the Kea Pointe Apartments
Note, as they relate to Events of Default described in Section 9(e) of the Note, shall be operative only after Equity Investor has been given thirty (30) days’ notice of the applicable Event(s) of Default described in Section 9(e) of the Note, together with an opportunity within such thirty (30) day period to remedy the applicable Event(s) of Default. In all events, Lender shall be entitled during such thirty (30) day period to exercise all of its rights and remedies under this Instrument upon the occurrence of such Event of Default other than foreclosure of the Mortgaged Property.

47. **EXTENDED LOW-INCOME HOUSING COMMITMENT.** Lender agrees that the lien of this Instrument 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 Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

48. **ANNUAL LIHTC REPORTING REQUIREMENTS.** Borrower must submit to Lender each year at the time of annual submission of Borrower’s financial analysis of operations, a copy of the following sections of Borrower’s federal tax return: Internal Revenue Forms 1065, 8586, 8609 and Form 8609, Schedule A, which must reflect the total low-income housing tax credits (“LIHTCs”) allocated to the Mortgaged Property and the LIHTCs claimed for the Mortgaged Property in the preceding year.

49. **CROSS-DEFAULT.** Borrower acknowledges and agrees that (a) any failure by Borrower or the Project to qualify for low income housing tax credits pursuant to the provisions of Section 42 of the Internal Revenue Code and (b) any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Extended Use Agreement shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney’s fees incurred by Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any default or event of default, under the Extended Use Agreement shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

50. **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 regulator under the Extended Use Agreement.

51. **VARIABLE RATE NOTE.** The Multifamily Construction Note is subject to interest rate adjustment from time to time in accordance with its terms, which terms are incorporated herein by this reference.

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.
EXHIBIT C

FINANCING STATEMENT INFORMATION

1. Name and Address of Debtor: Kaia Pointe, LLC
   421 West 3rd Street, Suite 1504
   Austin, Texas 78701

2. Debtor’s State of Organization and Organizational I.D.#:
   State of Formation: Florida
   Type of Entity: limited liability company
   Organizational I.D.#: L16000152738

3. Name and Address of Secured Party:
   Citibank, N.A.
   388 Greenwich Street, 8th Floor
   New York, New York 10013

4. The Collateral is:
   Fixtures (as that term is described in the Uniform Commercial Code of Texas)
   attached to the Land described in Exhibit A
   attached to this Instrument

Deed of Trust
Kaia Pointe Apartments
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application #19276, 19295 & 19288

Existing Development Name Kaia Pointe

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Letter to Citibank on Feb. 18 requesting to add 811 units

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 18, 2019

Mr. Barry Krinksy  
Director  
Citi Community Capital  
7400 W. Camino Real, Ste. 130-A  
Boca Raton, FL 33433

Re: 811 Units – Kaia Pointe

Dear Barry:

Per the 2019 TDHCA Qualified Allocation Plan, we are hereby submitting a request for your consideration to add an additional ten 811 program units at Kaia Pointe, in Georgetown, Texas.

Under the Deed of Trust for Kaia Pointe, the Borrower has an obligation to not allow any liens or encumbrances other than the Permitted Encumbrances. The addition of 811 units would require a new Extended Use Agreement be recorded and as such, this requires the lender’s consent. Kaia Pointe already has ten 811 units as was contemplated during underwriting. An additional ten units would result in 20% of the property being 811 tenants.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 352-213-8700.

Sincerely,

Lisa M. Stephens  
President  
Saigebrook Development, LLC
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(iii)

2019 Uniform Multifamily Application #19276, 19295 & 19288

Existing Development Name: Kaia Pointe

iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent: Letter from Citibank denying the request to add 811 units at Kaia Pointe.

ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.
February 25, 2019

Lisa Stephens
Saigebrook Development, LLC
421 W 3rd Street, Ste 1504
Austin, TX 78701

Re: Kaia Pointe 811 units

Dear Lisa,

Regarding your inquiry about additional 811 units over and above the current 10 units committed, Citi would not be supportive of adding the additional units given that the current 10 units have yet to be filled despite considerable efforts by the management company and we have time sensitivities to get to stabilization and conversion.

We have a strong commitment to affordable housing in Texas and are always willing to consider additional community benefits that our clients and TDHCA may approach us with. Unfortunately, this project has a very tight time frame to get to conversion and lease-up needs to continue at a rapid pace to meet that timeline.

Please do not hesitate to contact me with any questions or concern.

Sincerely yours,

[Signature]

Mahesh
Director
(713) 752-5046
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet

Legal Right to Withhold Cover Page §11.9(c)(6)(A)(i)

2019 Uniform Multifamily Application # 19276 & 19295 & 19288
Existing Development Name Mistletoe Station

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: First Amended & Restated Operating Agreement

Provide the name of the Third Party: HCP-ILP, LLC

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: Section 5.3 - Restrictions on Authority - para xviii

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: 46-48 and definitions on page 23 & 25

ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.
MISTLETOE STATION, LLC
A TEXAS LIMITED LIABILITY COMPANY

FIRST AMENDED AND RESTATED
OPERATING AGREEMENT

Dated as of August 30, 2018

THE LIMITED LIABILITY COMPANY INTERESTS EVIDENCED BY THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933 (“1933 ACT”) OR PURSUANT TO APPLICABLE STATE SECURITIES LAWS (“BLUE SKY LAWS”). ACCORDINGLY, THE LIMITED LIABILITY COMPANY INTERESTS CANNOT BE RESOLD OR TRANSFERRED BY ANY PURCHASER THEREOF WITHOUT REGISTRATION OF THE SAME UNDER THE 1933 ACT AND THE BLUE SKY LAWS OF SUCH STATE(S) AS MAY BE APPLICABLE, EXCEPT IN A TRANSACTION WHICH IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT AND THE BLUE SKY LAWS OR WHICH IS OTHERWISE IN COMPLIANCE THEREWITH. IN ADDITION, THE SALE OR TRANSFER OF SUCH LIMITED LIABILITY COMPANY INTERESTS IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN THIS AGREEMENT.
# Table of Contents

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1 DEFINED TERMS</td>
<td>1</td>
</tr>
<tr>
<td>ARTICLE 2 NAME AND BUSINESS</td>
<td>27</td>
</tr>
<tr>
<td>2.1 Name; Continuation</td>
<td>27</td>
</tr>
<tr>
<td>2.2 Admission</td>
<td>28</td>
</tr>
<tr>
<td>2.3 Withdrawal</td>
<td>28</td>
</tr>
<tr>
<td>2.4 Office and Resident Agent</td>
<td>28</td>
</tr>
<tr>
<td>2.5 Term and Dissolution</td>
<td>28</td>
</tr>
<tr>
<td>2.6 Filing of Certificate</td>
<td>28</td>
</tr>
<tr>
<td>ARTICLE 3 PURPOSE OF THE COMPANY</td>
<td>28</td>
</tr>
<tr>
<td>3.1 Purpose of the Company</td>
<td>28</td>
</tr>
<tr>
<td>ARTICLE 4 MEMBERS, PERCENTAGE INTERESTS, CAPITAL CONTRIBUTIONS, MEMBER LOANS</td>
<td>29</td>
</tr>
<tr>
<td>4.1 Managing Member</td>
<td>29</td>
</tr>
<tr>
<td>4.2 Investor Member</td>
<td>29</td>
</tr>
<tr>
<td>4.3 Reserved</td>
<td>35</td>
</tr>
<tr>
<td>4.4 Draws</td>
<td>35</td>
</tr>
<tr>
<td>4.5 Liability of the Investor Member</td>
<td>35</td>
</tr>
<tr>
<td>4.6 Interest on Capital Contributions</td>
<td>35</td>
</tr>
<tr>
<td>4.7 Deposit of Capital Contributions</td>
<td>35</td>
</tr>
<tr>
<td>4.8 Payment of Third Party Costs</td>
<td>35</td>
</tr>
<tr>
<td>4.9 Guaranteed Payment</td>
<td>36</td>
</tr>
<tr>
<td>4.10 Return of Capital Contributions</td>
<td>36</td>
</tr>
<tr>
<td>4.11 MM Loans</td>
<td>36</td>
</tr>
<tr>
<td>4.12 IM Loans</td>
<td>36</td>
</tr>
<tr>
<td>4.13 Notice of Member Loans</td>
<td>37</td>
</tr>
<tr>
<td>4.14 Documentation of Member Loans</td>
<td>37</td>
</tr>
<tr>
<td>4.15 Usury Savings Clause</td>
<td>37</td>
</tr>
<tr>
<td>4.16 Capital Contribution Alternative</td>
<td>37</td>
</tr>
<tr>
<td>ARTICLE 5 MANAGING MEMBER RIGHTS, DUTIES AND OBLIGATIONS</td>
<td>38</td>
</tr>
<tr>
<td>5.1 Management of the Company</td>
<td>38</td>
</tr>
<tr>
<td>5.2 Duties and Obligations</td>
<td>38</td>
</tr>
<tr>
<td>5.3 Restrictions on Authority</td>
<td>46</td>
</tr>
<tr>
<td>5.4 Personal Services</td>
<td>49</td>
</tr>
<tr>
<td>5.5 Continued Compliance Sale</td>
<td>49</td>
</tr>
<tr>
<td>5.6 Other Activities</td>
<td>50</td>
</tr>
<tr>
<td>5.7 Indemnification of the Managing Member</td>
<td>50</td>
</tr>
<tr>
<td>5.8 Indemnification of the Company and the Hunt Indemnified Parties</td>
<td>51</td>
</tr>
<tr>
<td>5.9 Certain Payments to the Managing Member and Affiliates</td>
<td>52</td>
</tr>
<tr>
<td>5.10 Reserve Accounts</td>
<td>53</td>
</tr>
</tbody>
</table>
18.11 Inspections ................................................................. 108
18.12 Guarantors’ Financial Statements ................................. 109

ARTICLE 19 GENERAL PROVISIONS ........................................... 109
19.1 Notices ........................................................................ 109
19.2 Word Meanings ........................................................ 110
19.3 Binding Effect ............................................................ 110
19.4 Applicable Law ........................................................... 110
19.5 Counterparts ................................................................ 110
19.6 Entire Agreement ........................................................ 110
19.7 Reserved .................................................................... 110
19.8 Separability of Provisions .............................................. 110
19.9 Paragraph Titles .......................................................... 111
19.10 Project Lender Provisions ............................................. 111
19.11 No Continuing Waiver ............................................... 111
19.12 Amendment Procedure .............................................. 111
19.13 Waiver of Jury Trial ................................................... 111
19.14 No Third-Party Rights ............................................... 112
19.15 Forbearance .............................................................. 112
19.16 Review with Counsel ................................................. 112
19.17 THE MEMBERS ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT AND HAVE BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE. ........................................... 112

ARTICLE 20 SPE PROVISIONS ................................................. 112
20.1 Single Purpose Entity Requirements .............................. 112

EXHIBIT A -- LEGAL DESCRIPTION OF LAND
EXHIBIT B -- DEVELOPMENT BUDGET AND SUMMARY OF LOANS
EXHIBIT C -- FUNDING CONDITIONS
EXHIBIT D -- INSURANCE REQUIREMENTS
EXHIBIT E -- DEVELOPMENT AGREEMENT
EXHIBIT F -- GUARANTY AGREEMENT
EXHIBIT G-1 -- PLEDGE AND SECURITY AGREEMENT (CO-MANAGING MEMBER TO INVESTOR MEMBER)
EXHIBIT G-2 -- PLEDGE AND SECURITY AGREEMENT (ADMINISTRATIVE MEMBER TO INVESTOR MEMBER)
EXHIBIT H -- PLEDGE AND SECURITY AGREEMENT (DEVELOPER TO INVESTOR MEMBER)
EXHIBIT I -- MANAGEMENT AGREEMENT
EXHIBIT J -- REQUEST FOR PAYMENT
EXHIBIT K -- RESERVED
EXHIBIT L -- RESERVED
EXHIBIT M -- FORM OF ASSIGNMENT
MISTLETOE STATION, LLC
A TEXAS LIMITED LIABILITY COMPANY

FIRST AMENDED AND RESTATED
OPERATING AGREEMENT

Preliminary Statement

Mistletoe Station, LLC (the “Company”) was formed as a Texas limited liability company as evidenced by a certificate of formation filed with the Office of the Secretary of the State of Texas (the “Filing Office”) on August 14, 2017 by and between Saigebrook Mistletoe, LLC, a Texas limited liability company, as a managing member (the “Co-Managing Member”) and Lisa M. Stephens, as an investor member (the “Withdrawing Investor Member”).

A Company Agreement was entered into with respect to the Company as of August 22, 2017 (the “Original Agreement”) by and between the Co-Managing Member and the Withdrawing Investor Member.

THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT (this “Agreement”) is made and entered into as of August 30, 2018 (the “Closing Date” or “Closing”) by and among the Co-Managing Member, O-SDA Mistletoe, LLC, a Texas limited liability company (the “Administrative Member”), HCP-ILP, LLC, a Nevada limited liability company (“Investor Member”), HCP-SLP, LLC, a Nevada limited liability company (the “Special Investor Member”), and the Withdrawing Investor Member.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties hereto agree that the Original Agreement is hereby amended and restated in its entirety to read as follows:

ARTICLE 1
DEFINED TERMS

In addition to the terms defined above, the following terms used in this Agreement shall have the meanings specified below:

**Access Laws** has the meaning set forth in Section 5.2(u).

**Access Laws Certification** means a certification to the Company concluding that the Apartment Complex is in compliance with applicable Access Laws, with such certification being prepared by the Architect.

**Accountants** means Tidwell Group of Birmingham, Alabama or such other firm of independent certified public accountants as may be engaged by the Managing Member at the expense of the Company with the Consent of the Investor Member, which Consent shall not be unreasonably withheld, conditioned or delayed, to prepare the Company income tax returns.

**Actual Housing Tax Credits** means, with respect to any period of time, the total amount of the Housing Tax Credits allocated by the Company to the Investor Member, representing
ninety-nine and ninety-nine hundredths percent (99.99%) of the Housing Tax Credits reported and claimed by the Company and its Members on their respective federal information and income tax returns, and not disallowed by any taxing authority.

**Additional Managing Member** has the meaning set forth in Section 9.2(a).

**Additional TIF Reimbursement** means the payments in the amount of $134,355 made by the City of Fort Worth to the Company pursuant to and in accordance with the City Council Action, which amount may be increased or decreased in an amount that may be forthcoming pursuant to another city council action or an agreement between the City of Fort Worth and the Company.

**Adjusted Capital Account** means, with respect to each Member, the Capital Account balance of such Member after giving effect to the following adjustments: (i) credit to such Capital Account the sum of (A) any amounts which such Member is obligated to restore pursuant to any provision of this Agreement, plus (B) an amount equal to such Member’s share of Company Minimum Gain as determined under Regulation Section 1.704-2(g)(1) and such Member’s share of Member Nonrecourse Debt Minimum Gain as determined under Regulation Section 1.704-2(i)(5), plus (C) any amounts which such Member is deemed to be obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and (ii) debit to such Capital Account the items described in Regulation Sections 1.704-1(b)(2)(i)(d)(4), (5) and (6). The foregoing definition is intended to comply with the provisions of Regulation Section 1.704-1(b)(2)(i)(d), and shall be interpreted consistently therewith.

**Administrative Member** means O-SDA Mistletoe, LLC, a Texas limited liability company, and any other Person admitted as an administrative member pursuant to this Agreement, and their respective successors pursuant to this Agreement, including a Replacement Managing Member.

**Administrative Member Pledge** means the Pledge and Security Agreement dated as of the date hereof by the Administrative Member for the benefit of the Investor Member in the form of Exhibit G-2, wherein the Administrative Member pledges and grants a first priority security interest in the Administrative Member’s Interest in the Company to secure the obligations of the Managing Member under this Agreement and the Developer under the Development Agreement.

**Affiliate** means, as to any named Person or Persons (or as to any Member if no Person is specifically named): (i) such Person; (ii) each member of the Immediate Family of such Person; (iii) each legal representative, successor or assignee of any Person referred to in the preceding clauses (i) or (ii); (iv) each trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) or (ii); or (v) any other Person (a) who directly or indirectly controls, is controlled by, or is under common control with such Person, (b) who owns or controls ten percent (10%) or more of the outstanding voting securities of such Person, (c) of which ten percent (10%) or more of the outstanding voting securities is owned by such Person or any of the Persons referred to in the foregoing clauses (i) through (iii), (d) who is an officer, director, partner or trustee of such Person, or (e) for which such Person acts in the capacity of officer, director, partner or trustee.
**Affiliated Entity** means (a) a limited partnership in which the Managing Member, the Developer, any Guarantor or an Affiliate of the Managing Member, the Developer or the Guarantor is a general partner, and in which an Affiliate of Hunt is a limited partner, or (b) a limited liability company in which the Managing Member, the Developer, any Guarantor or an Affiliate of the Managing Member, the Developer or the Guarantor is a managing member, and in which an Affiliate of Hunt is a member.

**AFR** means the “applicable federal rate” as defined in Section 1274(d) of the Code.

**Agency** means Texas Department of Housing and Community Affairs, or any successor in its capacity as the housing credit agency of the State.

**Agreement** means this First Amended and Restated Operating Agreement, including all Exhibits hereto, as amended from time to time.

**AIA** means the American Institute of Architects.

**ALTA As-Built Survey** means a current recertification of the plat of survey for the Apartment Complex, which shall (i) be prepared by a land surveyor licensed in the state in which the Apartment Complex is located, (ii) be certified for the benefit of the Company, Investor Member and their successors and assigns, and Title Company as having been made in compliance with ALTA minimum detail requirements, and with such certification being otherwise in form and substance satisfactory to the Title Company and Investor Member, (iii) show the location of all improvements located within the boundaries of the Apartment Complex, and (iv) certifying at least: (a) the legal description and boundaries of the Apartment Complex; (b) that the location of each improvement located on the Apartment Complex does not encroach upon any setback lines or violate any building or other restriction of record; (c) the location of all easements appurtenant to or affecting the Apartment Complex, whether visible or of record; (d) the location of all encroachments on adjacent property; (e) all lot, set-back and building lines on the Apartment Complex; (f) all encroachments by the improvements located on the Apartment Complex over or onto any such easements or over any such lot, set-back or building lines created since the date of the prior survey; and (g) indicate whether the Apartment Complex is in a flood plain and other such items as may apply detailed in Exhibit Q.

**ALTA Survey** means a survey for the Apartment Complex prepared by a land surveyor licensed in the state in which the Apartment Complex is located and certified for the benefit of the Company, Investor Member and Title Company as having been made in compliance with ALTA minimum detail requirements, and with such certification being otherwise in form and substance satisfactory to the Title Company and Investor Member. The survey shall indicate whether the Apartment Complex is in a flood plain and other such items as may apply detailed in Exhibit Q.

**Amendment** has the meaning set forth in Section 4.16.

**Annual Budget** means a pro forma budget of the Company’s expected Cash Receipts and Cash Expenditures for any particular year, which is to be prepared in a sufficiently detailed
format reasonably acceptable to the Investor Member, and is to be submitted to the Investor Member as set forth in Section 18.7(a).

**Anti-Corruption Laws** means all laws, rules, statutes, codes and regulations of any governmental entity applicable to the Managing Member, its Affiliates or the Company concerning or relating to corruption or bribery, including laws prohibiting an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value, to anyone, while knowing or believing that all or some portion of the money or thing of value will be offered, given, promised to, or retained by a Government Official or any other person for the purposes of obtaining or retaining business, securing any improper advantage or the improper performance of that person’s or Government Official’s function, or misuse of that person’s or Government Official’s position.

**Apartment Complex** means the Land and the 110 unit multifamily rental housing development and other improvements to be constructed, owned and operated thereon by the Company and to be known as Mistletoe Station, 1916 Mistletoe Blvd., Fort Worth, Tarrant County, Texas.

**Applicable Fraction** has the meaning set forth in Section 42(c)(1)(B) of the Code.

**Applicable Percentage** means the percentage by which the Qualified Basis of a building in the Apartment Complex is multiplied in order to determine the amount of Housing Tax Credits available to such building in the Apartment Complex, as more particularly defined in Code Section 42(b).

**Application** means the Company’s Low Income Housing Tax Credit Application for Credit Reservation submitted to and approved by the Agency for any undertaking with respect to the development and operation of the Apartment Complex, including any amendments thereto approved by the Agency.

**Architect** means BGO Architects, a Texas corporation, as the architect for the Apartment Complex pursuant to the Architect’s Contract, or such other Architect as Consented to by the Investor Member.

**Architect’s Contract** means the AIA Standard Form of Agreement Between Owner and Architect dated January 30, 2018 by and between the Company and the Architect.

**Asset Management Fee** has the meaning set forth in Section 10.5.

**Assignment** means a valid sale, exchange, pledge, transfer or other disposition of all or any portion of an Interest made in accordance with the terms of this Agreement.

**Backstop Guaranty Agreement** shall mean that certain Backstop Guaranty Agreement by the Guarantors for the benefit of Hunt dated the date hereof.

**Bankruptcy Code** has the meaning set forth in Section 7.2(b)(v).
**Building One** means the first of two buildings at the Apartment Complex, consisting of 7 Market Rate Units and 13 Housing Tax Credit Units.

**Building Two** means the second of two buildings at the Apartment Complex consisting of 29 Market Rate Units and 61 Housing Tax Credit Units.

**Business Day** means a day (other than a Saturday or Sunday) on which banks generally are open in New York, New York for the conduct of substantially all of their commercial lending activities.

**Capital Account** means the capital account of a Member as described in Section 13.6.

**Capital Contribution** means, with respect to each Member, the total value of cash or property contributed and agreed to be contributed to the Company by each Member pursuant to Article 4. Any reference in this Agreement to the Capital Contribution of a then Member shall include a Capital Contribution previously made by any prior Member for the Interest of such then Member.

**Capital Contribution Account** has the meaning set forth in Section 4.2(b)(ix).

**Capital Transaction** means any transaction the proceeds of which are attributable to the sale, refinance, exchange, transfer, assignment or other disposition (including a condemnation, to the extent proceeds are not used to rebuild the Apartment Complex, or foreclosure) of all or any portion of the Apartment Complex or a casualty (to the extent proceeds are not used to rebuild the Apartment Complex) affecting the Apartment Complex, but excluding the payment of Capital Contributions.

**Carryover Allocation** means the carryover allocation of Housing Tax Credits issued to the Company by the Agency on December 19, 2017 in an annual amount of not less than $1,500,000 made pursuant to Code Section 42(h)(1)(E) which requires the Apartment Complex be Placed in Service by the end of the second year after the date of the Carryover Allocation.

**Carryover Certification** means the written certification of the Accountants that the Company had incurred capitalizable costs with respect to the Apartment Complex within one (1) year after the date of the Carryover Allocation of at least ten percent (10%) of the Company’s reasonably expected basis in the Apartment Complex.

**Cash Expenditures** means all disbursements of cash during the applicable period, including, without limitation, cash expenditures for Operating Expenses, Debt Service Expense, including, but not limited to, the monthly funding of the Replacement Reserve and any other reserves required under this Agreement or by any Lender. Cash Expenditures shall not include payments and distributions to be made pursuant to Article 14 of this Agreement, refunds to tenants of security deposits, and expenditures from the Replacement Reserve and other reserves required to be maintained under this Agreement or by any Lender. For purposes of this definition, Cash Expenditures without a specific maturity date shall be paid on a sixty (60) day current basis.
**Cash Flow** means, for any period of time, the excess, if any, of Cash Receipts for such period over Cash Expenditures for such period.

**Cash From Capital Transaction** means the proceeds of a Capital Transaction after (i) payment of all reasonable and customary expenses associated with the Capital Transaction, (ii) repayment of all secured Company debts required by any Lender to be paid with respect to such Capital Transaction, and (iii) application of such proceeds to the repair and restoration of the Apartment Complex as provided under the terms of this Agreement. Cash from Capital Transaction shall not include Cash Flow or proceeds of any Loan.

**Cash Receipts** means all cash receipts of the Company from whatever source, including, without limitation, operating income, subsidy payments, interest or investment earnings on the Replacement Reserve or other reserves required by any Lender and assets of the Company, cash from the forfeiture or application of tenant security deposits and the cash from the release of reserves held by any Lender to the Company other than for application to the expense for which they were set aside. Cash Receipts shall not include Cash From Capital Transaction, cash from Capital Contributions, proceeds from a loan to the Company (including, without limitation, Operating Deficit Loans, IM Loans and MM Loans) and the deposit by tenants of security deposits and any interest payable to tenants thereon.


**Certificate** means the Certificate of Formation of the Company filed with the Filing Office on August 14, 2017, as such certificate may be amended from time to time.

**City Council Action** means the City Council Action approved on June 26, 2018 relating to the authorization of the Additional TIF Reimbursement.

**Closing Date** or **Closing** has the meaning set forth in the Preliminary Statement.

**CO-Issuance Date** means the date on which the issuance of all necessary certificates of occupancy or equivalent permits or licenses from the applicable governmental jurisdictions and authorities authorizing the occupancy of one hundred percent (100%) of the units in the Apartment Complex shall have occurred.

**Co-Managing Member** means Saigebrook Mistletoe, LLC, a Texas limited liability company, and any other Person admitted as a co-managing member pursuant to this Agreement, and their respective successors pursuant to this Agreement, including a Replacement Managing Member.

**Co-Managing Member Pledge** means the Pledge and Security Agreement dated as of the date hereof by the Co-Managing Member for the benefit of the Investor Member in the form of Exhibit G-1, wherein the Co-Managing Member pledges and grants a first priority security interest in the Co-Managing Member’s Interest in the Company to secure the obligations of the Managing Member under this Agreement and the Developer under the Development Agreement.
**Code** means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

**Company** means Mistletoe Station, LLC, a Texas limited liability company.

**Company Minimum Gain** means the amount determined by computing, with respect to each Company Nonrecourse Liability, the amount of gain, if any, that would be realized by the Company if it disposed of (in a taxable transaction) the property subject to such liability in full satisfaction of such liability, and by then aggregating the amounts so computed. Such computations shall be made in a manner consistent with Regulation Sections 1.704-2(d) and (k).

**Company Nonrecourse Liability** means any Company liability (or portion thereof) for which no Member or Related Person bears the Economic Risk of Loss.

**Completion** means the date on which all of the following have occurred, in the reasonable judgment of the Investor Member; (i) Substantial Completion has been achieved; (ii) the lien-free and defect-free completion of Construction of the Apartment Complex in a good and workmanlike manner, in compliance with the Plans and Specifications with only such immaterial variations as to which Consent is not required under this Agreement and other changes approved by the Investor Member in accordance with the terms and provisions of this Agreement and the terms and provisions of the Project Documents; (iii) the issuance of all necessary permanent certificates of occupancy (with no outstanding issues relating to improvements of the Apartment Complex) from the applicable governmental jurisdictions and authorities for the Apartment Complex, allowing for immediate occupancy of one hundred percent (100%) of the Units, and any other written acknowledgement required by the Project Documents that the Apartment Complex has been completed satisfactorily and Placed in Service; (iv) delivery and installation in the Apartment Complex of all necessary and appropriate fixtures, equipment and personal property, including, without limitation, installation of all required appliances in the residential units in the Apartment Complex has occurred; (v) all amounts owing to the Contractor for the construction or rehabilitation of the Apartment Complex have been or will be with the Fourth Installment paid-in-full, as evidenced by a final application for payment (as evidenced by the Architect’s Certificate for Payment AIA Forms G702 and G703); (vi) the payment and release of all liens of subcontractors, materialmen, and other providers of labor, equipment, material and/or services to the Land and the Apartment Complex as evidenced by the receipt of all unconditional lien releases from all such subcontractors, materialmen and all other providers of labor, equipment, material and/or services to the Land and the Apartment Complex and (vii) the Completion Documentation has been provided to, and approved by, the Investor Member, with such approval not to be unreasonably withheld.

**Completion Date** means the date on which Completion is achieved.

**Completion Documentation** means any documentation that the Investor Member may reasonably require to demonstrate that the criteria for Completion have been satisfied, including but not limited to: (i) fully-executed AIA documents G704, G706, G706A, and (if a payment and performance bond had been issued) G707; (ii) a letter from the Contractor to the Company stating that the Contractor’s warranty has commenced; (iii) a letter from the Architect to the Company stating that all “work” described in the Construction Contract, including completion of
all “punch work,” has been completed; (iv) the ALTA As-Built Survey; (v) electronic copies of the “as-built” plans and specifications; (vi) if applicable, chain-of-custody and disposal records for any Hazardous Material disposal; (vii) engineer certification pertaining to soil compaction and concrete stress testing; (viii) if applicable, written approval by appropriate professionals pertaining to the fulfillment of any “green building” or EnergyStar requirements; (ix) if requested by the Investor Member, or otherwise if required by the municipality, written approvals of completed work from the mechanical, electrical, plumbing, and/or landscape design professionals; (x) if applicable in the State, a copy of the filed public notice of completion; and (xi) if requested by the Investor Member due to reasonable concerns about the as-completed Apartment Complex’s compliance with Access Laws, an Access Laws Certification.

**Compliance Period** means with respect to each building in the Apartment Complex, the period of fifteen (15) taxable years beginning with the first taxable year of the Credit Period, as more particularly defined in Code Section 42(i).

**Consent** means the prior written consent or approval of the Investor Member at its sole discretion (except where otherwise stated) and/or any other Member, as the context may require, to do the act or thing for which the consent is solicited.

**Construction** means construction, renovation or rehabilitation, as applicable, of the Apartment Complex.

**Construction Contract** means, collectively, the General Contractor’s Construction Contract, the Sub-Contractor’s Construction Contract and the Public Bid Sub-Contractor Construction Contract.

**Construction Lender** means JPMorgan Chase Bank, N.A., in its capacity as holder of the Construction Loan, or its successors or assigns in such capacity, or such other Construction Lender subject to the Consent of the Investor Member.

**Construction Loan** means the construction loan in the maximum principal amount of $22,282,000 to be made to the Company by the Construction Lender at the Construction Loan Closing, which is to be evidenced by the promissory note given by the Company to the Construction Lender at the Construction Loan Closing, and which is to be secured by the Construction Mortgage and other related security documents and financing statements, the terms of which are subject to the Consent of the Investor Member.

**Construction Loan Draw** has the meaning set forth in Section 4.4.

**Construction Loan Closing** means the date upon which the Construction Loan is closed and the initial disbursement is made thereunder. The Construction Loan Closing is anticipated to occur on or before the Closing Date.

**Construction Mortgage** means the mortgage or deed of trust to be given by the Company at the Construction Loan Closing in favor of the Construction Lender, as holder of the Construction Loan, securing the Construction Loan.
**Construction Period** means the period commencing on Construction Loan Closing and ending on the Completion Date.

**Continued Compliance Sale** has the meaning set forth in Section 5.5.

**Contractor** means, collectively, General Contractor, the Sub-Contractor, the Public Bid Sub-Contractor or such other Contractor subject to the Consent of the Investor Member.

**Contribution Date** has the meaning set forth in Section 4.13.

**Controlling Interest** means the power to direct the management and policies of any Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

**Controlling Person** has the meaning given to it in the context of Section 15 of the Securities Act of 1933, as amended.

**Cost Certification** means the written certification of the Accountants, in form and substance satisfactory to the Investor Member, as to the itemized amounts of the acquisition, construction and development costs of the Apartment Complex and the Eligible Basis and Applicable Percentage pertaining to each building in the Apartment Complex, together with evidence of submission thereof to the Agency.

**Cost Savings** means the amount, if any, by which Permitted Sources exceed Development Costs.

**Counsel for the Company** means Shutts & Bowen LLP or such other firms as may be engaged by the Managing Member with Consent of the Investor Member.

**Credit Period** means the “credit period” with respect to each of the buildings in the Apartment Complex, as defined in Code Section 42(f).

**Credit Support and Funding Agreement** means that certain Credit Support and Funding Agreement by and between the Company and the Construction Lender dated as of August 30, 2018 relating to the Construction Loan.

**DDF Election** has the meaning set forth in Section 8.1(b).

**Debt Service Coverage Ratio** means, for the applicable period, the Net Operating Income divided by the Debt Service Expense. The calculation of the Debt Service Coverage Ratio shall be prepared by the Managing Member and approved in good faith by the Investor Member in its sole discretion, notwithstanding any other provision herein to the contrary.

**Debt Service Expense** means, with respect to any period, the debt service expense incurred by the Company on an accrual basis, including interest expense and required principal payments, late charges and any other fees and expenses incurred during such period and solely relating to the Permanent Loan; provided that where the Debt Service Expense is being calculated for purposes of Rental Achievement and Loan sizing pursuant to Section 8.4(a) for the
period prior to Permanent Loan Closing (other than in connection with calculation of Development Costs), it shall equal the Debt Service Expense that would have been incurred by the Company if Permanent Loan Closing (assuming the anticipated Permanent Loan terms at the time of the calculation) had occurred prior to such period.

**Default IM Loans** means IM Loans (or portions thereof) made pursuant to Section 4.12 that arise from a default by the Managing Member in its obligations to the Company under this Agreement. For example, an IM Loan made to fund Operating Deficits that the Managing Member failed to fund in breach of the Operating Deficit Guaranty shall constitute a Default IM Loan.

**Deferred Development Fee** means the deferred portion, if any, of the Development Fee payable by the Company to the Developer pursuant to the Development Agreement and Article 14. The amount of the Deferred Development Fee is expected to be $2,221,407.

**Deficit Restoration Contribution** has the meaning set forth in Section 4.2(c)(ii).

**Deficit Restoration Obligation** has the meaning set forth in Section 4.2(c)(ii).

**Developer** means, collectively, Saigebrook Development, LLC, a Florida limited liability company and O-SDA Industries, LLC, a Texas limited liability company.

**Developer Pledge** means the Pledge and Security Agreement dated as of the date hereof by the Developer for the benefit of the Investor Member in the form of Exhibit H.

**Development Agreement** means the Development Agreement dated as of August 30, 2018 between the Developer and the Company, in the form set forth in Exhibit E.

**Development Budget** means the construction, development and financing budget for the Apartment Complex, including, without limitation, the construction of the Apartment Complex, the furnishing of all personalty in connection therewith, and the operation of the Apartment Complex prior to Rental Achievement, which is attached hereto as Exhibit B, and any amendments thereto made with the Consent of the Investor Member.

**Development Costs** means all direct or indirect costs paid or accrued by the Company related to the acquisition of the Land and the development and Completion of the Apartment Complex through and including Rental Achievement, including, without limitation, all amounts due under and pursuant to the Construction Contract, all costs of completing punchlist items regardless of when incurred and all direct or indirect costs paid or accrued by the Company related to the operation of the Apartment Complex prior to and including Rental Achievement, including, without limitation, the following: (i) costs of acquiring, financing, developing and constructing the Apartment Complex, as described in and as contemplated by the Plans and Specifications and the Project Documents, including, without limitation, any construction cost overruns, the cost of any change orders and all costs necessary to achieve Completion and Rental Achievement; (ii) all Debt Service Expense which is due and payable or accrues at any time prior to Rental Achievement; (iii) all costs, payments and deposits needed to avoid a default under the Construction Loan, including, without limitation, all required deposits to satisfy any requirements of the Construction Lender and the Investor Member to keep the Construction Loan
“in balance”; (iv) all monthly payments required to be made to the Replacement Reserve upon and prior to Rental Achievement; (v) all costs and expenses relating to remediying any environmental problem or condition of Hazardous Materials that existed on or prior to Rental Achievement; (vi) all costs, expenses and other charges incurred in connection with the operation of the Apartment Complex on or prior to Rental Achievement, including, without limitation, local taxes, utilities, mortgage insurance premiums and casualty and liability insurance premiums and other amounts which are required pursuant to the Construction Loan; (vii) all other costs and expenses of the Company accrued on or prior to Rental Achievement, including, without limitation, legal fees, and fees of other professionals; (viii) any fees paid or due to the Managing Member and its Affiliates, including the Development Fee; (ix) all costs to achieve Construction Loan Closing, Permanent Loan Closing and Rental Achievement, including costs to date down Owner’s Title Policy; (x) funding of the Operating Reserve and any other reserve in accordance with Section 5.10 hereof; and (xi) the costs of on and off-site improvements required under the TIF Reimbursement Agreement and the City Council Action.

**Development Deficit** means, as of any date, the amount, if any, by which the Development Costs which the Company has an obligation to pay as of such date exceed the sum of Permitted Sources as of such date.

**Development Fee** means the fee payable by the Company to the Developer pursuant to the Development Agreement and as set forth in Section 5.9(a).

**Due Diligence Documents** means the documents requested and provided to the Investor Member in connection with its review of the transaction reflected herein.

**Economic Risk of Loss** has the meaning set forth in Regulation Section 1.752-2.

**Eligible Basis** has the meaning set forth in Code Section 42(d) and the Regulations and rulings thereunder.

**Entity** means any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, cooperative, association, the State or any agency or political subdivision thereof.

Environmental Laws means any law, regulation, code, license, permit, order, judgment, decree or injunction from any governmental authority relating to the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substance Control Act, the Safe Drinking Water Control Act, CERCLA, the Occupational Safety and Health Act and any other federal, state or local laws, regulations, ordinances or decrees governing Hazardous Material or hazardous substances or the protection or preservation of public and/or human health or the environment (including air, water, soil and natural resources) or the presence, transportation, recycling, storage, treatment, use, handling, disposal, release or threat of release, or exposure to Hazardous Material, in each such case which has the force of law and is in force at the date of this Agreement.

Equity Lender means the financial institution which advances funds to the Investor Member to pay its Capital Contribution obligations under this Agreement.

Event of Bankruptcy means, with respect to the Company, a Managing Member, the Management Agent, a Guarantor or a Person with a Controlling Interest in any of them (i) the voluntary or involuntary filing of a petition in bankruptcy by or against such person under the federal Bankruptcy Code (11 U.S.C. §§1101 et seq.), as amended, or any successor statute thereto, or the commission of an act of bankruptcy (except if the filing of the petition in bankruptcy or act of bankruptcy is susceptible to cure or dismissal and is so cured or dismissed within ninety (90) days), (ii) the voluntary or involuntary commencement of an assignment for the benefit of creditors, a receivership or other insolvency proceeding pursuant to state law or as determined by court proceedings; or (iii) with respect to a Managing Member, any of the following:

(a) The making of an assignment for the benefit of creditors or the filing of a voluntary petition in bankruptcy by the Managing Member;

(b) The filing of an involuntary petition in bankruptcy against the Managing Member which is not dismissed within ninety (90) days after filing or the adjudication of the Managing Member as a bankrupt or insolvent;

(c) The filing by the Managing Member of a petition or answer seeking for the Managing Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule;

(d) The filing by the Managing Member of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Managing Member in any proceeding of a nature described under sub-paragraph (c) above;

(e) The seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator by any Person with a Controlling Interest in the Managing Member or of all or a substantial part of the Managing Member’s properties;
(f) The commencement of a proceeding against the Managing Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule not dismissed within ninety (90) days after commencement of the proceeding;

(g) The appointment, without the Managing Member’s Consent, of a trustee, receiver or liquidator, either of the Managing Member or of all or a substantial part of the Managing Member’s properties, which is not vacated or stayed on or before the ninetieth (90th) day after such appointment and, if stayed, is not vacated on or before the ninetieth (90th) day after expiration of the stay;

(h) The inability of the Managing Member to pay its debts as they become due;

(i) The Managing Member becoming “insolvent” by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to the Federal Bankruptcy Code, the Uniform Fraudulent Transfers Act, any similar state or federal act or law, or the ruling of any court, or

(j) If either (I) any one or more judgments or orders against the Managing Member with respect to a claim or claims involving in the aggregate liabilities exceeding $50,000.00, which judgment or order is not covered in full by insurance or is not stayed, bonded, paid or discharged within thirty (30) days after such judgment or order, or (II) any writ of attachment or execution or any similar process is (A) issued or levied against such Person’s property and (B) is not discharged or stayed within thirty (30) days thereof.

Event of Default means an event of default listed in Section 7.1.

Excess IM Loan Amount means the amount, if any, by which the outstanding balance of all IM Loans, including principal and accrued interest, exceeds the outstanding balance of all MM Loans, including principal and accrued interest.

Excess MM Loan Amount means the amount, if any, by which the outstanding balance of all MM Loans, including principal and accrued interest, exceeds the outstanding balance of all IM Loans, including principal and accrued interest.

Extended Use Agreement means the extended low-income housing commitment executed by the Company and the Agency related to the Apartment Complex, which commitment satisfies the requirements of Code Section 42(h)(6)(B) which is required to be recorded prior to the end of the first year in which Housing Tax Credits are claimed.

Facility has the meaning given to it in CERCLA, and shall also include any meaning given to it in any similar state or local statutes, ordinances or regulations.

Fifth Installment has the meaning set forth in Section 4.2(b)(v).

Filing Office has the meaning set forth in the Preliminary Statement.
FinCen has the meaning set forth in Section 6.1(ggg).

First Installment has the meaning set forth in Section 4.2(b)(i).

Forms 8609 means the IRS Forms 8609 issued by the Agency for each residential building of the Apartment Complex which allocates Housing Tax Credits to such residential building.

Fourth Installment has the meaning set forth in Section 4.2(b)(iv).

Funding Conditions means the conditions to funding of the Investor Member’s Capital Contributions as set forth on Exhibit C hereto.

FWHFC Lender means Fort Worth Housing Finance Corporation, in its capacity as holder of the FWHFC Loan, or its successors or assigns in such capacity, or such other FWHFC subject to the Consent of the Investor Member.

FWHFC Loan means the construction and permanent loan in the maximum principal amount of $750,000, including accrued interest, to be made by the FWHFC Lender to the Company in part at the Construction Loan Closing, which is to be evidenced by the promissory note made by the Company in favor of the FWHFC Lender at the Construction Loan Closing, and which is to be secured by the FWHFC Mortgage and other related security documents and financing statements, the terms of which are subject to the Consent of the Investor Member.

FWHFC Mortgage means the mortgage or deed of trust made by the Company at the Construction Loan Closing in favor of the FWHFC Lender, as holder of the FWHFC Loan, securing the FWHFC Loan.

General Contractor means Fort Worth Housing Finance Corporation of Fort Worth, Texas, pursuant to the General Contractor’s Construction Contract.

General Contractor’s Construction Contract means the AIA Standard Form of Agreement Between Owner and Contractor dated August 16, 2018, by and between the Company and the General Contractor relating to the construction of the Apartment Complex, and subject to the Consent of the Investor Member.

Government Official means an officer, employee or official of a government, government owned or controlled entity, political party or public international organization, or a candidate for political office.

Gross Operating Revenues means, with respect to any given period of time, actual monthly collections from the customary operations of the Apartment Complex, including, without limitation, any and all of the following: (i) rent paid by tenants; (ii) rental assistance subsidy payments which are actually paid during such period or up to 90 days accrual; (iii) late charges and interest paid by tenants; (iv) rents, receipts and fees from cellular towers, laundry facilities and similar items; (v) fees from Apartment Complex amenities, including parking, cable television and telephone revenues; and (vi) earnings on the Replacement Reserve, Operating Reserve or other reserves, accounts and investments of the Company; (vii) tenant
security deposits forfeited by tenants or applied against amounts due from tenants; and (viii) any rental assistance subsidy payments received by the Company in excess of maximum rents allowed under Section 42 of the Code. Gross Operating Revenues shall not include any revenues from condemnation or casualty proceeds (other than rental interruption insurance), any cash advances from the Company, refunds or rebates from suppliers or vendors, revenue from the sale of any personal or real property of the Company. Gross Operating Revenues shall not include prepaid rent until such time the rent is due. For purposes of determining whether Rental Achievement has occurred, and the applicable Debt Service Coverage Ratio at any time, Gross Operating Revenues shall not exceed the amount of Gross Operating Revenues that could have been achieved by applying a 7% vacancy rate (5% for Section 8 Units) to potential gross income and shall specifically exclude (1) any non-project based rental assistance subsidy payments received by the Company in excess of maximum rents allowed under Section 42 of the Code, (2) fees from parking in excess of the amount underwritten by the Investor Member to be included in Gross Operating Revenues, (3) non-recurring or unpredictable sources of income such as late fees, penalties, security deposits, interest income on security deposits, prepaid rent and rental receipts prior to the month to which they relate, tenant application fees, interest or other income earned on investment of Company funds, and (4) rents paid by (a) any commercial space tenant, and (b) any tenant in a Housing Tax Credit Unit who does not qualify as low income under the requirements of Section 42 of the Code and the Project Documents.

**Groundbreaking Activities** has the meaning set forth in Section 6.1(eee).

**Guarantors** means, jointly and severally, the Co-Managing Member, the Administrative Member, the Developer, Lisa M. Stephens, individually and Megan D. Lasch, individually.

**Guaranty** means the guaranty of the performance of certain of the obligations of the Managing Member under this Agreement and the Developer under the Development Agreement for the benefit of the Investor Member given by the Guarantors, which Guaranty is in the form of Exhibit F.

**HAP Award Letter** means that certain Award Letter dated as of July 30, 2018 relating to the Section 8 Units in connection with the Apartment Complex.

**HAP Contract** means that certain Housing Assistance Payments Contract (HAP) for the Section 8 Units between the Company and Fort Worth Housing Solutions to be delivered at Completion in connection with the Apartment Complex, having a term of not less than fifteen (15) years, to provide for rental assistance in the form of project-based housing vouchers.

**Hazardous Material** has the collective meanings given to the terms “hazardous material”, “hazardous substances” and “hazardous wastes” in CERCLA, and to the term “radioactive materials” (including, without limitation, any source and special nuclear by-product material) as defined by or in the context of the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., as amended or hereafter amended, and also includes any hazardous, toxic or polluting contaminant, substance or waste, including without limitation any solid waste, toxic substance, hazardous substance, hazardous material, hazardous chemical, pollutant or hazardous or acutely hazardous waste defined or qualifying as such in (or for purposes of) any Environmental Law. In addition, the term “Hazardous Material” also includes, but is not limited to, petroleum
(including, without limitation, crude oil and any fraction thereof), petroleum products, asbestos containing materials, microbial contaminants, polychlorinated biphenyls or lead-based paint, radon and any other substance known to be hazardous.

**HOME Act** has the meaning set forth in Section 6.1(q).

**HOME Lender** means the Agency, in its capacity as holder of the HOME Loan, or its successors or assigns in such capacity, or such other HOME Lender subject to the Consent of the Investor Member.

**HOME Loan** means the construction and permanent loan in the anticipated principal amount of $1,056,000 to be made to the Company by the HOME Lender in part at the Construction Loan Closing, which is to be evidenced by the promissory note given by the Company to the HOME Lender at the Construction Loan Closing, and which is to be secured by the HOME Mortgage and other related security documents and financing statements, the terms of which are subject to the Consent of the Investor Member.

**HOME Minimum Set-Aside Test** means the HOME Program set aside test required to be met by the Apartment Complex as set forth in the HOME Regulatory Agreement entered or to be entered into between the Company and the Agency in connection with the HOME Loan.

**HOME Mortgage** means the mortgage or deed of trust to be given by the Company at the Construction Loan Closing in favor of the HOME Lender, as holder of the HOME Loan, securing the HOME Loan.

**HOME Program** means the HOME Investment Partnerships Program established under the Cranston Gonzalez National Affordable Housing Act of 1990.

**Housing Tax Credit Compliance Guaranty** means the guaranty of the Managing Member to make payments described in Section 8.3.

**Housing Tax Credit Disallowance Event** means (a) the filing of a tax return by the Company or an amendment by the Company to a tax return evidencing a reduction in the Qualified Basis of the Apartment Complex causing a recapture or disallowance of Housing Tax Credits previously allocated to the Investor Member, (b) a reduction in the Qualified Basis or a change in the Applicable Percentage of the Apartment Complex following an assessment or audit by the Service which results in the assessment of a deficiency by the Service against the Company with respect to any Housing Tax Credits previously claimed in connection with the Apartment Complex, unless the Company shall timely file a petition with respect to such deficiency with the United States Tax Court or any other federal court of competent jurisdiction and the collection of such assessment shall be stayed pending the disposition of such petition, (c) a decision by the United States Tax Court or any other federal court of competent jurisdiction upholding the assessment of a deficiency against the Company associated with a reduction in Qualified Basis of the Apartment Complex or change in the Applicable Percentage with respect to any Housing Tax Credits previously claimed in connection with the Apartment Complex, unless the Company shall timely appeal such decision and the collection of such assessment shall be stayed pending the disposition of such appeal, or (d) the decision of a federal court of competent jurisdiction affirming such decision.
**Housing Tax Credit Excess** has the meaning set forth in Section 4.2(d).

**Housing Tax Credit Price** means $0.86.

**Housing Tax Credit Shortfall** means any reduction in Housing Tax Credits of which 99.99% are allocable to the Investor Member as a result of (a) Actual Housing Tax Credits being less than the Projected Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits), or (b) as a result of a Housing Tax Credit Disallowance Event.

**Housing Tax Credit Shortfall Payment** means any amounts payable by reason of the provisions of Section 4.2(d) or Section 8.3 as a result of a Housing Tax Credit Shortfall.

**Housing Tax Credit Units** has the meaning set forth in Section 6.1(p).

**Housing Tax Credits** means the low-income housing tax credits allowable to the Company pursuant to Code Section 42.

**Hunt** means Hunt Capital Partners, LLC, a Delaware limited liability company, or its successor in interest.

**Hunt Entity** means an Affiliate of Hunt or the Investor Member.

**Hunt Indemnified Parties** means the Investor Member, the Special Investor Member and their Affiliates, and all past and present officers, directors, managers, employees, partners, agents, shareholders, members, trustees, predecessors, successors, subrogees, attorneys, insurance carriers and assigns of the Investor Member, the Special Investor Member and their Affiliates. For the avoidance of doubt, any Person holding more than 10% of the investor member interests in the Investor Member or the Special Investor Member is an Affiliate of the Investor Member or the Special Investor Member, respectively, and shall constitute one of the Hunt Indemnified Parties.

**IM Loans** has the meaning set forth in Section 4.12.

**Immediate Family** means with respect to any Person, such Person’s spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law.

**Imputed Underpayment** means that amount of tax finally determined to be due under Section 6225 of the Code with respect to adjustments to the Company’s items of income, gain, loss, deduction, or credit for any Company taxable year.

**Initial 100% Occupancy** means that Construction has been completed and one hundred percent (100%) of all units (excluding the Market Rate Units) in the Apartment Complex including the Housing Tax Credit Units shall have been leased to and shall have been physically occupied by Qualified Tenants.

**Initial Operating Reserve Amount** has the meaning set forth in Section 5.10(b).
**Initiating Member** has the meaning set forth in Section 4.13.

**Installment or Installments** has the meaning set forth in Section 4.2(b).

**Interest** means the entire interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled hereunder and the obligation of such Member to comply with the terms of this Agreement.

**Investor Member** means HCP-ILP, LLC, a Nevada limited liability company, its successors and/or assigns and any Person or Persons who replaces it as a Substitute Investor Member.

**Involuntary Withdrawal** has the meaning set forth in Section 7.2(b)(i).

**Land** means the tract of land currently owned or leased or to be purchased or leased by the Company upon which the Apartment Complex will be located, as more particularly described in Exhibit A hereto.

**Lender** means any Person who makes a loan to the Company for so long as such loan remains outstanding, or its successors and assigns in such capacity.

**Lending Member** has the meaning set forth in Section 4.16.

**Limited Guaranty Agreement** shall mean that certain Limited Guaranty by Hunt for the benefit of the Construction Lender dated the date hereof.

**Limited Recourse Liability** has the meaning set forth in Section 8.3(d).

**Liquid Assets** means cash or cash equivalents that can be converted to cash within forty-eight (48) hours.

**Liquidator** means the Managing Member or, if there is none at the time in question, such other Person who may be appointed in accordance with applicable law and who shall be responsible for taking all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company upon its dissolution.

**Loans** means the Construction Loan, the Permanent Loan, the HOME Loan and the FWHFC Loan.

**Management Agent** means Accolade Property Management, Inc., a Texas corporation, and/or any successor or assign who is selected by the Managing Member with the Consent of the Investor Member to provide management services with respect to the Apartment Complex in accordance with Article 16.

**Management Agreement** means the agreement between the Company and the Management Agent substantially in the form attached hereto as Exhibit I, providing for the marketing and property management of the Apartment Complex by the Management Agent.
Management Fee means the fee payable by the Company to the Management Agent pursuant to the Management Agreement.

Managing Member means the Co-Managing Member and the Administrative Member and any other Person admitted as a managing member pursuant to this Agreement, and their respective successors pursuant to this Agreement, including the Replacement Managing Member.

Managing Member Pledge means the Co-Managing Member Pledge and the Administrative Member Pledge.

Managing Member’s Special Capital Contribution has the meaning set forth in Section 4.1(c).

Market Rate Units means the thirty six (36) dwelling units in the Apartment Complex not eligible for Housing Tax Credits and rented at market rates.

Member means the Co-Managing Member, the Administrative Member, the Investor Member and the Special Investor Member.

Member Loans means collectively the IM Loans and the MM Loans.

Member Nonrecourse Debt means any Company liability (a) that is considered nonrecourse under Regulation Section 1.1001-2 or for which the creditor’s right to repayment is limited to one or more assets of the Company and (b) for which any Member or Related Person bears the Economic Risk of Loss.

Member Nonrecourse Debt Minimum Gain means the amount of partner nonrecourse debt minimum gain and the net increase or decrease, as the case may be, in partner nonrecourse debt minimum gain determined in a manner consistent with Regulation Sections 1.704-2(d), 1.704-2(g)(3), 1.704-2(i)(3) and 1.704-2(k).

Minimum Set-Aside Test means the set aside test selected by the Company pursuant to Code Section 42(g) whereby at least forty percent (40%) of the Housing Tax Credit Units in the Apartment Complex must be occupied by individuals with incomes equal to sixty percent (60%) or less of area median income; provided, that 8 of the Housing Tax Credit Units must be occupied by persons whose incomes are at or below 30% of the established median gross income, 30 of the Housing Tax Credit Units must be occupied by persons whose incomes are at or below 50% of the established median gross income and 36 of the Housing Tax Credit Units must be occupied by persons whose incomes are at or below 60% of the established median gross income, as set forth in the Application and in all cases as adjusted for family size. There will be thirty six (36) Market Rate Units.

MM Incentive Management Fee means the fee payable by the Company to the Managing Member pursuant to the provisions of Sections 5.9(b) and 14.1(a).

MM Loans have the meaning set forth in Section 4.11.
**Net Operating Income** means, with respect to any given period of time, the aggregate Gross Operating Revenues for such period of time minus the aggregate Operating Expenses for such period of time.

**New Allocation** has the meaning set forth in Section 13.5(b).

**No Cure Sections** has the meaning set forth in Section 7.2(c)(i).

**Non-Initiating Members** has the meaning set forth in Section 4.13.

**Notice, Notification and Notify** each have the meaning set forth in Section 19.1.

**Notice of Default** has the meaning set forth in Section 7.2(a).

**O&M** has the meaning set forth in Section 6.2.

**Occupancy Commencement Date** means the first date a Unit is leased and occupied.

**Operating Deficit** means, for any specified period of time, the amount by which Cash Expenditures for such period exceeds Cash Receipts for such period.

**Operating Deficit Guaranty** means the guaranty of the Managing Member to fund Operating Deficits during the Operating Deficit Guaranty Period.

**Operating Deficit Loan** means a loan from a Managing Member to the Company to fund Operating Deficits pursuant to Section 8.2.

**Operating Deficit Loan Cap** has the meaning set forth in Section 8.2.

**Operating Deficit Guaranty Period** means the period commencing on Rental Achievement and terminating sixty (60) months after Rental Achievement, provided that such sixty (60) month period shall be extended for additional periods of twelve (12) consecutive months unless and until (i) the Company achieves an average Debt Service Coverage Ratio of at least 1.15 to 1.0 during the last twelve (12) calendar months of the Operating Deficit Guaranty Period as so extended and (ii) the balance of the Operating Reserve is at least the $540,000.

**Operating Expenses** means, with respect to any given period of time, all expenses of the Company in connection with the ownership, operation, leasing and occupancy of buildings in the Apartment Complex attributable to such period as determined on an accrual basis, (except that seasonal expenses shall be averaged over the entire year), excluding Debt Service Expense and all expenses and payments set forth in Section 14.1(a), but including, without limitation, any and all of the following: (i) general real estate taxes; (ii) special assessments or similar charges; (iii) personal property taxes, if any; (iv) sales and use taxes applicable to such operating expenses; (v) cost of utilities for the Apartment Complex; (vi) maintenance and repair costs of the Apartment Complex (to the extent not funded from the Replacement Reserve); (vii) operating and management expenses and fees; (viii) premiums of insurance carried on or with respect to the Apartment Complex; (ix) marketing costs, leasing commissions and advertisement and promotional costs, to obtain leases and the cost of work performed to ready space in the
Apartment Complex for occupancy under leases; (x) accounting and auditing fees and costs, attorneys’ fees and other administrative and general expenses and disbursements of the Company (excluding the Asset Management Fee and the MM Incentive Management Fee) in connection with the ownership, operation, leasing and management of the Apartment Complex and the Company; (xi) amounts required to fund the Replacement Reserve and any other reserve required pursuant hereto or under the Project Documents; and (xii) any capital expenditures not funded from reserves. For purposes of calculating the Debt Service Coverage Ratio at any time, Operating Expenses (excluding annual deposits for Replacement Reserves) means the greater of (1) actual Operating Expenses, as calculated in the preceding sentence, inclusive of fully assessed real estate taxes, or (2) $3,986 per unit times 110 per year plus actual real estate taxes if available, otherwise $1,318 per unit per year.

**Operating Reserve** has the meaning set forth in Section 5.10(b).

**Opinion of Counsel** means the opinion(s) of counsel to be rendered by Counsel for the Company and the Managing Member to the Investor Member and its counsel, as required herein, in form and substance satisfactory to the Investor Member.

**Original Agreement** has the meaning set forth in the Preliminary Statement.

**Partnership Representative** has the meaning set forth in Section 15.2(a).

**Payment Date** means the date which is seventy-five (75) days after the end of the Company’s fiscal year with respect to the preceding fiscal year.

**Percentage Interest** means ninety-nine and ninety-nine hundredths percent (99.99%) as to the Investor Member, two one-thousandth percent (0.002%) as to the Special Investor Member, forty eight one-thousandth percent (0.0048%) as to the Co-Managing Member and thirty two one-thousandth percent (0.0032%) as to the Administrative Member; provided, however, if a Replacement Managing Member replaces the Managing Member pursuant to Section 7.2(b)(i) and (ii), then the Replacement Managing Member shall have a Percentage Interest of eight one-thousandth percent (0.008%).

**Permanent Lender** means Hunt Mortgage Partners, LLC, in its capacity as maker and holder of the Permanent Loan, together with its successors and assigns in such capacity, or such other Permanent Lender subject to the Consent of the Investor Member.

**Permanent Loan** means the mortgage or deed of trust loan in the anticipated principal amount of $8,300,000 to be made to the Company by the Permanent Lender at Permanent Loan Closing, which will be evidenced by the promissory note to be given by the Company to the Permanent Lender at Permanent Loan Closing, which will be secured by the Permanent Mortgage and other related security documents and financing statements, the terms of which will be subject to the Consent of the Investor Member, and which will be nonrecourse to the Company and the Members from and after Permanent Loan Closing. Such Permanent Loan may be the Construction Loan that has satisfied the conditions to convert to a Permanent Loan.

**Permanent Loan Agreement** means that certain Multifamily Loan and Security Agreement entered into by and between the Permanent Lender and the Company.
**Permanent Loan Closing** means the first date upon which each of the following shall have occurred as reasonably determined and approved in writing by the Investor Member: (a) the Completion Date, (b) the Construction Loan shall have been repaid in full and all liens and pledges relating thereto shall have been released or the Construction Loan shall have been converted to a Permanent Loan, (c) the disbursement by the Permanent Lender of the proceeds of the Permanent Loan unless the Construction Loan shall have been converted to a Permanent Loan, (d) amortization of the Permanent Mortgage shall commence within thirty (30) days of the closing of the Permanent Loan; (e) receipt by the Investor Member of a date down of the Title Policy, if available; (f) full funding of all Loans; and (g) such other conditions as the Investor Member may require.

**Permanent Loan Commitment** means the written commitment of the Permanent Lender to make the Permanent Loan to the Company on the terms set forth in the Permanent Loan Commitment.

**Permanent Loan Shortfall** has the meaning set forth in Section 8.4(b).

**Permanent Mortgage** means the mortgage or deed of trust to be given by the Company at Permanent Loan Closing in favor of the Permanent Lender, as holder of the Permanent Loan, securing the Permanent Loan, which shall be the Construction Mortgage if the Construction Loan converts to the Permanent Loan.

**Permitted Sources** means (i) proceeds of the Loans; (ii) the right to defer the Development Fee pursuant to this Agreement and the Development Agreement; (iii) the Capital Contributions required by the Members under this Agreement (other than the Special Additional Capital Contribution, the Managing Member’s Special Capital Contribution and the Special Investor Member’s Special Capital Contribution); (iv) Cash Receipts prior to Rental Achievement; and (v) the TIF Reimbursement for costs incurred pursuant to the TIF Reimbursement Agreement and the Additional TIF Reimbursement for costs incurred pursuant to the City Council Action.

**Person** means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such individual or Entity as the context may require.

**Placed in Service** or **Placement in Service** means the placement in service of all dwelling units in the Apartment Complex for purposes of Section 42 of the Code.

**Placed in Service Date** means the date by which all dwelling units in the Apartment Complex have been Placed in Service.

**Plans and Specifications** means the plans and specifications for the Apartment Complex stamped with the seal of an architect and/or engineer, which have been approved in writing by the Investor Member, and any changes thereto made in accordance with the terms of this Agreement. The Plans and Specifications approved by the Investor Member, and the date thereof, are listed on Exhibit P.

**Pledged Payments** has the meaning set forth in Section 5.11.
**Predevelopment Loan** means the pre-development loan made to the Company by HCP-ILP, LLC, a Nevada limited liability company on April 13, 2018 in the principal amount of $850,000, evidenced by the promissory note given by the Company to the HCP-ILP, LLC, a Nevada limited liability company, as amended by the Amendment to Predevelopment Loan dated as of June 21, 2018, and to be paid off with proceeds of the First Installment.

**Prime Rate** means the “prime rate” of interest as published in The Wall Street Journal from time to time.

**Project Documents** means and includes (i) all documentation related to the Loans; (ii) the Construction Contract, the Architect’s Agreement, the Development Agreement, the Guaranty, the Management Agreement and documentation relating thereto, (iii) the Plans and Specifications, (iv) the Application, (v) the reservation, Carryover Allocation, Carryover Certification and related documents pertaining to the Housing Tax Credits, (vi) the Extended Use Agreement, (vii) the HAP Award Letter, the HAP Contract and the Section 811 Subsidy Contract, (viii) the TIF Reimbursement Agreement and the City Council Action (ix) all other instruments delivered to (or required by) any Lender and/or any Agency, (x) the Managing Member Pledge and the Developer Pledge, (xi) the Purchase Option Agreement, and (xii) all other documents relating to the Apartment Complex and by which the Company is bound, in each case as amended or supplemented from time to time.

**Projected Housing Tax Credits** means Housing Tax Credits that the Managing Member has projected to be the total amount of the Housing Tax Credits which will be allocated to the Investor Member by the Company, constituting 99.99% of the Housing Tax Credits which are projected to be available to the Company. The Projected Housing Tax Credits as of the date hereof are allocated to the following Fiscal Years in the following respective amounts (subject to adjustment if the Projected Housing Tax Credits are revised pursuant to Section 4.2(d)):

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<th>Year</th>
<th>Amount</th>
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<td>2029</td>
<td>$1,455,935</td>
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<td>2030</td>
<td>$64,183</td>
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</table>

**Public Bid Sub-Contractor** means Rumsey Construction LLC, pursuant to that Public Bid Sub-Contractor’s Construction Contract.

**Public Bid Sub-Contractor’s Construction Contract** means the construction contract on DAP Bid Form, Project #101561 dated August 1, 2018, by and among the Company, the Public Bid Sub-Contractor and the City of Fort Worth relating to the construction of the Apartment Complex, and subject to the Consent of the Investor Member.
**Purchase Option Agreement** means the Purchase Option Agreement attached hereto as Exhibit O.

**Purposes** means the various reasons and purposes for which the Company has been formed as recited in Section 3.1.

**Qualified Basis** means that portion of the Eligible Basis of the Apartment Complex upon which the Company is able to receive Housing Tax Credits, as more particularly defined in Code Section 42(c).

**Qualified Income Offset Item** means (1) an allocation of loss or deduction that, as of the end of each year, reasonably is expected to be made (a) pursuant to Section 704(e)(2) of the Code to a donee of an interest in the Company, (b) pursuant to Section 706(d) of the Code as the result of a change in any Member’s Interest, or (c) pursuant to Regulation Section 1.751-1(b)(2)(ii) as the result of a distribution by the Company of unrealized receivables or inventory items and (2) a distribution that, as of the end of such year, reasonably is expected to be made to a Member to the extent it exceeds offsetting increases to such Member’s Capital Account which reasonably are expected to occur during or prior to the Company taxable year in which such distribution reasonably is expected to occur.

**Qualified Tenant** means a tenant (i) with income on the date of the initial occupancy of the tenant’s unit not exceeding that permitted by the Minimum Set-Aside Test or the HOME Minimum Set-Aside Test, as applicable, and any other additional set-asides applicable to the Apartment Complex, who leases a Unit in the Apartment Complex under a lease having an original term of not less than twelve (12) months and at a rent which satisfies the Rent Restriction Test and (ii) complying with any other requirements imposed by the Project Documents.

**Recourse Obligations** has the meaning set forth in Section 13.4(a).

**Regulations** means the regulations promulgated under the Code.

**Related Person** means a Person related to a Member within the meaning of Regulation Section 1.752-4(b).

**Rent Restriction Test** means the test pursuant to Code Section 42(g) whereby the gross rent, including utility allowances, charged to tenants of Housing Tax Credit Units in the Apartment Complex is not allowed to exceed thirty percent (30%) of the imputed income limitation levels applicable to such Housing Tax Credit Units based on the applicable area median income levels under the Minimum Set-Aside Test or the HOME Minimum Set-Aside Test, as applicable.

**Rental Achievement** means the first date on which the Apartment Complex has attained, as reasonably determined and approved by the Investor Member in writing, all of the following: (a) a 1.15 to 1.00 Debt Service Coverage Ratio with respect to the Permanent Loan, each month for a period of three (3) consecutive calendar months of operations ending within 60 days immediately preceding the anticipated date of Rental Achievement, (b) physical occupancy of at least ninety percent (90%) of the units in the Apartment Complex each month over the same
three (3) month period, including at least ninety percent (90%) of (i) Market Rate Units, and (ii) the Housing Tax Credit Units each month over the same three (3) month period by Qualified Tenants, (c) Permanent Loan Closing, (d) Initial 100% Occupancy, (e) no continuing Event of Default hereunder, and (f) continuing compliance with the Minimum Set Aside Test.

**Rental Assistance Agreement** means, collectively, the HAP Contract and, if applicable, the Section 811 Subsidy Contract.

**Replacement Managing Member** has the meaning set forth in Section 7.2(b)(ii).

**Replacement Reserve** means (a) the Replacement Reserve to be established by the Company and administered in accordance with Section 5.10(a), and (b) any funds of the Company held by any Lender as a reserve for repairs and replacements.

**Revised Projected Housing Tax Credits** has the meaning set forth in Section 4.2(d)(vii).

**Second Installment** has the meaning set forth in Section 4.2(b)(ii).

**Section 4.16 Capital Contributions** has the meaning set forth in Section 4.16.

**Section 8 Units** means the 8 units that are eligible to receive rental assistance in the form of project-based housing vouchers to be provided to the Company in connection with the HAP Contract.

**Section 811 Subsidy Contract** means, if applicable, a Section 811 Project Rental Assistance Contract to be entered into by the Company, as outlined in the Section 811 Project Rental Assistance Program Owner Participation Agreement to provide rental subsidy for any units that may be restricted at 50% or 60% of the established median gross income and occupied by Eligible Tenants (as defined in the Section 811 Subsidy Contract) for a term of not less than fifteen (15) years.

**Service** means the Internal Revenue Service.

**Shortfall Year** has the meaning set forth in Section 4.2(d)(ii).

**Special Additional Capital Contribution** has the meaning set forth in Section 4.2(c).

**Special Investor Member** means HCP-SLP, LLC, a Nevada limited liability company, and any Person or Persons who replace it as Substitute Investor Member.

**Special Investor Member’s Special Capital Contribution** has the meaning set forth in Section 4.1(c).

**State** means the State of Texas.

**Sub-Contractor** means Maker Bros Construction, of Addison, Texas, pursuant to that certain agreement between the City of Fort Worth and the Sub-Contractor.
**Sub-Contractor’s Construction Contract** means, collectively, (a) the AIA Standard Form of Agreement Between Contractor and Subcontractor dated August 16, 2018, by and between the Sub-Contractor and the General Contractor relating to the construction of the Apartment Complex, (b) the Supplemental Agreement by and between the Company and the Sub-Contractor dated as of August 20, 2018, and (c) the contract with the City of Fort Worth under a separate DAP Bid Form and DAP Agreement Project #101-489 dated August 6, 2018 between the Sub-Contractor and the Company.

**Substantial Completion** means the date on which all of the following have occurred to the reasonable satisfaction of the Investor Member: (i) the issuance of all necessary certificates of occupancy (which may be temporary or conditional) from the applicable governmental jurisdictions and authorities for the Apartment Complex, allowing for immediate occupancy of one hundred percent (100%) of the Units; (ii) completion of all “work” described in the Construction Contract, with the exception of “punch work” items; (iii) AIA document G704 containing a list of all “punch work” items and cost estimates provided by the Architect to the Company, with a copy to the Investor Member; and (iv) any necessary radon mitigation has occurred and all planned and required actions pertaining to Hazardous Materials have been properly completed.

**Substantial Completion Date** means the date on which Substantial Completion was achieved.

**Substitute Investor Member** means any Person admitted to the Company as an Investor Member or Special Investor Member pursuant to Section 11.2.

**Tax Law Change** means any change in the Code which occurs after the date of this Agreement. A Tax Law Change includes any changes in the Regulations.

**Ten Percent Test** means, with respect to the Carryover Allocation of Housing Tax Credits, that the Company’s basis in the Apartment Complex, which shall be determined by the Accountants, as of the date which is one year from the issuance date of the Carryover Allocation or such earlier date required by the Credit Agency, is greater than ten percent (10%) of the reasonably expected basis of the Apartment Complex as provided in Section 42(h)(1)(E) of the Code.

**Third Installment** has the meaning set forth in Section 4.2(b)(iii).

**TIF** means tax increment finance.

**TIF Reimbursement** means the TIF payments in the amount of $2,600,000 made by the City of Fort Worth to the Company in accordance with that certain TIF Reimbursement Agreement.

**TIF Reimbursement Agreement** means the Tax Increment Financing Development Agreement by and between the Board of Directors of Tax Increment Reinvestment Zone Number TIF District Number Four, City of Fort Worth, Texas and the Company relating to the TIF Reimbursement dated as of August 23, 2017.
**Title Commitment** means the commitment for title insurance issued by the Title Company evidencing ownership of the Apartment Complex in a form and substance acceptable to the Investor Member.

**Title Company** means First American Title Insurance Company.

**Title Policy** means the owner’s title insurance policy conforming to the requirements set forth in Exhibit Q to be issued to the Company by the Title Company pursuant to the Title Commitment, which policy will, among other things, update the title of the Apartment Complex through a date not earlier than the Construction Loan Closing, provide for insurance in an amount equal to not less than $27,960,472 and evidence the Company’s ownership of the Apartment Complex. The Title Policy shall be amended and, if available, its effective date brought forward in the manner set forth in this Agreement.

**Uniform Act** means the Texas Business Organizations Code, Title 3, Chapter 101, as may be amended from time to time during the term of the Company.

**Units** has the meaning set forth in Section 5.2(b).

**USA Patriot Act** means Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 of the United States of America, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

**Vessel** has the meaning given to it in CERCLA, and shall also include any meaning given to it in any similar state or local statutes, ordinances or regulations.

**Voluntary Withdrawal** means, as to any Managing Member, a Withdrawal or the assignment, pledge or encumbrance of any part of its interest in violation of Section 9.1.

**Withdrawal** (including the forms “Withdraw,” “Withdrawing” and “Withdrawn”) means, as to a Managing Member, dissolution, liquidation, voluntary withdrawal or removal of the Managing Member from the Company for any reason, including whenever a Managing Member may no longer continue as Managing Member by law or pursuant to any terms of this Agreement. “Withdrawal” shall also mean the sale, assignment or transfer by a Managing Member of its interest as Managing Member.

**Withdrawing Investor Member** means Lisa M. Stephens, who is hereby withdrawing as Investor Member from the Company simultaneously with the admission of the Investor Member.

**ARTICLE 2**

**NAME AND BUSINESS**

2.1 Name; Continuation. The name of the Company is Mistletoe Station, LLC. The Members agree to continue the Company, which was formed pursuant to the provisions of the Uniform Act.
2.2 **Admission.** The Investor Member, Administrative Member and Special Investor Member are hereby admitted to the Company.

2.3 **Withdrawal.** The Withdrawing Investor Member hereby withdraws as a Member of the Company, and represents and warrants that she has no direct interest in the Company and is not directly entitled to any fees, distributions, compensation or payments from the Company and that she has no direct interest in any property or assets of the Company.

2.4 **Office and Resident Agent.** The principal office of the Company is 689 FM 3028, Millsap, Texas 76066 at which office there shall be maintained those records required by the Uniform Act to be kept by the Company. The Company may have such other or additional offices as The Managing Member shall deem desirable. The Managing Member may at any time change the location of the Company offices and shall give Notice thereof to the Investor Member. The Managing Member shall at all times maintain the principal office in the State.

(a) The name and address of the resident agent in the State for the Company for service of process is Antoinette M. Jackson, 811 Main Street, Suite 2900, Houston, Texas 77002.

2.5 **Term and Dissolution.** The term of the Company commenced August 17, 2017, the date of filing of the Certificate with the Secretary of State of the State, and shall continue until December 31, 2068, unless the Company is sooner dissolved in accordance with the provisions of this Agreement.

2.6 **Filing of Certificate.** Upon the execution of this Agreement by the parties hereto, the Managing Member shall take all actions necessary to assure the prompt filing of an amendment to the Certificate if and as required by the Uniform Act, including filing with the Secretary of the State of the State. All fees for filing shall be paid out of the Company’s assets. The Managing Member shall take all other necessary action required by law to perfect and maintain the Company as a limited liability company under the laws of the State, and shall register the Company under any assumed or fictitious name statute or similar law in force and effect in the State.

**ARTICLE 3**

**PURPOSE OF THE COMPANY**

3.1 **Purpose of the Company.** The purposes for which the Company has been formed and which shall determine its activities shall be the following: (a) to acquire, hold, invest in, construct, develop, improve, maintain, operate, lease, sell, mortgage and otherwise deal with the Apartment Complex; (b) to operate the Apartment Complex in accordance with Code Section 42 and any applicable Lender and Agency regulations and requirements; (c) to secure for the Investor Member the economic and tax advantages afforded by Code Section 42 pertaining to low income housing tax credits, and any other Federal or state tax credit programs, as applicable, and allocated under this Agreement; and (d) to assure all Members the economic, tax, investment and operational advantages allocated to them under this Agreement. The Company shall not engage in any other business or activity.
ARTICLE 4
MEMBERS, PERCENTAGE INTERESTS, CAPITAL CONTRIBUTIONS,
MEMBER LOANS

4.1 Managing Member.

(a) Name, Address and Percentage Interest. The Co-Managing Member’s name and address is Saigebrook Mistletoe, LLC, 220 Adams Drive Ste. 280 #138, Weatherford, Texas 76086. The Co-Managing Member’s Percentage Interest is forty eight one-thousandth percent (0.0048%). The Administrative Member’s name and address is O-SDA Mistletoe, LLC, 5714 Sam Houston Circle, Austin, Texas 78731. The Administrative Member’s Percentage Interest is thirty two one-thousandth percent (0.0032%)

(b) Capital Contributions. Concurrently with the execution of this Agreement, each Managing Member shall make a Capital Contribution to the Company in an amount equal to $100.00. Each Managing Member represents and warrants that as of the date of this Agreement the balance of its Capital Account is $100.00.

(c) Managing Member’s and Special Investor Member’s Special Capital Contributions. If the Company has not paid all or part of the Deferred Development Fee when the final payment is due pursuant to the terms of the Development Agreement (i.e. by the earlier of thirteen (13) years following the Placed in Service Date or December 31, 2032 or the date of liquidation of the Company) or, solely with respect to the Managing Member’s Special Capital Contribution, if the Managing Member Withdraws pursuant to Article 9 (including Involuntary Withdrawal), the Special Investor Member shall contribute to the Company an amount equal to its portion of the remaining balance of the Deferred Development Fee as set forth in the Development Agreement (the “Special Investor Member’s Special Capital Contribution”) and the Managing Member shall contribute to the Company an amount equal to the remaining balance of the Deferred Development Fee (the “Managing Member’s Special Capital Contribution”) and the Company shall thereupon pay the Deferred Development Fee. Notwithstanding the foregoing, the amount of the Special Investor Member’s Special Capital Contribution and the amount of the Managing Member’s Special Capital Contribution shall be reduced pro rata to the extent the Investor Member reasonably determines on or before the end of the first year of the Credit Period that any portion of the remaining balance of the Deferred Development Fee is not necessary to be included in Eligible Basis in order to allocate Projected Housing Tax Credits to the Investor Member throughout the period of eleven (11) taxable years beginning with the first taxable year of the Credit Period. Payments of the Deferred Development Fee pursuant to Section 14.1(a)(vi) shall be deemed applied first to the portion of the Deferred Development Fee represented by the Special Investor Member’s Special Capital Contribution and the Managing Member’s Special Capital Contribution, as adjusted herein, and then to the remaining balance of the Deferred Development Fee, if any. Other than as set forth in this Section 4.1(c) or as may be required by this Agreement, in no event shall any Managing Member make any additional Capital Contributions to the Company without the Consent of the Investor Member.

4.2 Investor Member.
(a) **Name, Address and Percentage Interest.** The Investor Member’s name and address is HCP-ILP, LLC. The name of the Special Investor Member is HCP-SLP, LLC. The address for each of the Investor Member and the Special Investor Member is 15910 Ventura Boulevard, Suite 1100, Encino, California 91436. The Investor Member’s Percentage Interest is ninety-nine and ninety-nine hundredths percent (99.99%) and the Special Investor Member’s Percentage Interest is two one-thousandth percent (0.002%).

(b) **Capital Contributions.** The Special Investor Member is not required to make any Capital Contribution except as provided in Section 4.1(c). The Investor Member will make Capital Contributions to the Company, subject to adjustment as provided in Section 4.2(d), of $12,898,710 representing the product of the Projected Housing Tax Credits and the Housing Tax Credit Price which will be paid to the Company in five installments (the “Installments”) as follows:

(i) **First Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $1,289,871 (the “First Installment”) upon the latest of (i) the Closing Date and (ii) satisfaction of the Funding Conditions relating to the First Installment, with such funds to be used solely for site acquisition, development and construction costs, including an expense reimbursement of $65,000 to the Investor Member or an Affiliate of the Investor Member for its review and approval costs in connection with the Closing.

(ii) **Second Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $644,963 (the “Second Installment”), subject to reduction as provided in Section 4.2(d), after the Investor Member has reasonably determined in its good faith discretion that all of the Funding Conditions relating to the Second Installment have been fully satisfied, with such funds to be used to pay hard and soft costs of the Construction as reasonably acceptable to the Investor Member.

(iii) **Third Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $8,309,161 (the “Third Installment”), subject to reduction as provided in Section 4.2(d), after the Investor Member has reasonably determined in its good faith discretion that all of the Funding Conditions relating to the Third Installment have been fully satisfied, with such funds to be used first to pay hard and soft costs of the Construction as reasonably acceptable to the Investor Member and second to repay a portion of the Construction Loan.

(iv) **Fourth Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $2,579,742 (the “Fourth Installment”), subject to adjustment as provided in Section 4.2(d) after the Investor Member has reasonably determined in its good faith discretion that all of the Funding Conditions relating to the Fourth Installment have been fully satisfied, with such funds to be used to first pay to pay hard and soft costs of the Construction as reasonably acceptable to the Investor Member, second to pay off the Construction Loan, third to fund the Operating Reserve and fourth to pay a portion of the Development Fee.

(v) **Fifth Installment.** The Investor Member shall make a Capital Contribution in an amount equal to $75,000 (the “Fifth Installment”), subject to adjustment as
provided in Section 4.2(d) after the Investor Member has reasonably determined in its good faith discretion that all of the Funding Conditions relating to the Fifth Installment have been fully satisfied, with such funds to be used to pay a portion of the Development Fee.

(vi) **Source of Funding of Installments.** The Investor Member, in its sole discretion, may fund any Installment on or prior to satisfaction of the Funding Conditions by providing funds from one or more of the following: (A) itself or (B) funds arranged by Hunt to be provided from any Entity as equity or debt but without any security interest in or lien on the Apartment Complex.

(vii) **Withholding of Capital Contributions.** The Investor Member may withhold any Installment if at any time it determines, in its sole discretion, that a Development Deficit exists or is projected to exist prior to such Installment, and shall not fund such Installment until such Development Deficit or projected Development Deficit is cured by the Managing Member.

(viii) **Changes in Capital Contributions.** The Members agree that so long as Permanent Loan Closing has not occurred and the Construction Loan remains outstanding, the Members shall not amend Section 4.2(b) of this Agreement without the written approval of the Construction Lender. Any amendment to this Agreement which is in violation of the terms of this Section 4.2(b)(viii) shall not be effective.

(ix) **Capital Contribution Account.** Notwithstanding anything in this Agreement to the contrary, the Members agree that so long as Permanent Loan Closing has not occurred and the Construction Loan remains outstanding, all Capital Contributions made by the Investor Member pursuant to this Agreement shall be paid by and deposited in an account established with the Construction Lender (the “Capital Contribution Account”). Amounts on deposit in the Capital Contribution Account will be disbursed by the Construction Lender as provided for in that certain Credit Support and Funding Agreement, of even date herewith, between the Company and the Construction Lender and relating to the Construction Loan.

(c) **Special Additional Capital Contributions and Investor Member Deficit Restoration Obligation.**

(i) If, in any fiscal year of the Company, the Investor Member’s Capital Account balance may be reduced to or below zero, the Investor Member may, in its sole and absolute discretion, make a special additional Capital Contribution to the Company in an amount reasonably required to avoid the reduction of the Investor Member’s Account balance to or below zero (a “Special Additional Capital Contribution”).

(ii) Notwithstanding any other provision herein to the contrary, the Investor Member hereby agrees, pursuant to this Section 4.2(c), that if there is a deficit balance in its Capital Account as of the last day of 2019, determined after taking into account all Capital Account adjustments for 2019, the Investor Member shall be unconditionally obligated to restore the amount of such deficit by contributing to the Company the dollar amount of such deficit (a “Deficit Restoration Contribution”), as so determined, not later than the last day of the year in which the liquidation of the Company or the Investor Member’s Interest in the Company occurs.
(or, if later, within 90 days after the date of such liquidation) (the “Deficit Restoration Obligation”); provided, however, that in no event shall the Deficit Restoration Obligation exceed the unpaid Capital Contribution Obligations of the Investor Member, as adjusted pursuant to Section 4.2(d). Any subsequent Capital Contributions of the Investor Member made in 2019 or thereafter shall reduce the Deficit Restoration Obligation on a dollar-for-dollar basis. If the dollar amount of such subsequent Capital Contributions equals or exceeds the Deficit Restoration Obligation, then the Deficit Restoration Obligation shall be deemed satisfied in full.

(iii) If the Investor Member makes a Special Additional Capital Contribution or a Deficit Restoration Contribution to the Company pursuant to this Section 4.2(c), the Investor Member shall receive a guaranteed payment pursuant to Section 4.9 for the use of its Special Additional Capital Contribution or Deficit Restoration Contribution, as applicable.

(d) Adjustment to Capital Contributions of the Investor Member.

(i) If upon the issuance of Forms 8609 by the Agency for any or all of the buildings comprising the Apartment Complex, or if upon delivery of the Cost Certification, the Investor Member (in its reasonable discretion) or the Accountants determine that there is a Housing Tax Credit Shortfall for the Credit Period because the Actual Housing Tax Credits available to the Investor Member pursuant to Section 42(a) of the Code are less than the Projected Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits for such year), the Investor Member’s Capital Contribution shall be reduced by a Housing Tax Credit Shortfall Payment equal to the Housing Tax Credit Shortfall multiplied by the Housing Tax Credit Price. If upon such issuance of Forms 8609 by the Agency, the Investor Member (in its reasonable discretion) or the Accountants determine that the Actual Housing Tax Credits available to the Investor Member pursuant to Section 42(a) of the Code are greater than the Projected Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits for such year), giving rise to a “Housing Tax Credit Excess,” then the Investor Member’s Capital Contribution shall be increased by an amount equal to the Housing Tax Credit Price multiplied by the Housing Tax Credit Excess; provided, however, that any such increase shall be subject to the limitation set forth in Section 4.2(d)(vi) hereof.

(ii) In the event that there is a Housing Tax Credit Shortfall because the Actual Housing Tax Credits for any of 2019 or 2020 (determined separately for each year) are less than the Projected Housing Tax Credits for such year (or, if applicable, the Revised Projected Housing Tax Credits for such year) solely by reason that the Applicable Fraction for such year with respect to any buildings in the Apartment Complex was, by reason of the application of Section 42(f)(2) of the Code, lower than the Applicable Fraction projected in the Projected Housing Tax Credits (or Revised Projected Housing Tax Credits, if applicable) (each, a “Shortfall Year”), as determined by the Investor Member, upon receipt of final Company tax returns for the subject year or in advance of receipt of such final Company tax returns, estimated on a monthly basis by the Investor Member, the Service or the Accountants, the Investor Member’s Capital Contribution shall be reduced by a Housing Tax Credit Shortfall Payment in an aggregate amount equal to the product of (x) Projected Housing Tax Credits (or if applicable, Revised Projected Housing Tax Credits) less Actual Housing Tax Credits delivered to the Investor Member for such Shortfall Year (determined separately for each year) and (y) $0.60.
Notwithstanding the foregoing, if any building in the Apartment Complex does not achieve Initial 100% Occupancy by the end of the first year of the Credit Period for such building and, as a result, any portion of the Housing Tax Credits with respect to such building will be available over 15 years, then the reduction to the Investor Member’s Capital Contribution shall be the sum of (1) the amount determined under the first sentence of this Section 4.2(d)(ii), plus (2) the amount, if any, that the Projected Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits) for years 2019 (year 1) through 2029 (year 11) exceed the Housing Tax Credits (or, if applicable, the Revised Projected Housing Tax Credits) projected to be available in years 2019 (year 1) through 2029 (year 11), as calculated by the Investor Member at the end of the first year of the Credit Period.

(iii) If at any time the Investor Member (in its reasonable discretion) or the Accountants determine that, for any Fiscal Year or portion thereof during the Company’s operation, by reason of any event other than an event described in Sections 4.2(d)(i) and/or 4.2(d)(ii) hereof (but not including a Tax Law Change or a transfer by the Investor Member of its Interests), there is (a) a Housing Tax Credit Shortfall because the Actual Housing Tax Credits for such Fiscal Year or portion thereof are less than the Projected Housing Tax Credits, or the Revised Projected Housing Tax Credits, if applicable, for such Fiscal Year or portion thereof, including, without limitation, the Apartment Complex not being Placed in Service by the end of the second calendar year after the year in which the Housing Tax Credits were allocated or the failure of the Company to operate the Apartment Complex so as to have 100% of the Housing Tax Credit Units therein eligible for the Housing Tax Credits, (b) a Housing Tax Credit Disallowance Event, or (c) a failure of the Company to allocate 99.99% of the Housing Tax Credits shown on the IRS Forms 8609 for each building comprising the Apartment Complex to the Investor Member over the Credit Period, the Investor Member’s Capital Contribution shall be reduced by a Housing Tax Credit Shortfall Payment equal to the Housing Tax Credit Shortfall and further reduced by all additions to the tax of the Investor Member, and all penalties and interest assessed (including, without limitation, the “recapture amount” provided for in Section 42(j)(2) of the Code) against the Investor Member or any of its constituent partners as a result of the event giving rise to the Housing Tax Credit Shortfall.

(iv) Whenever in this Section 4.2(d) it is provided that the Investor Member’s Capital Contribution shall be reduced, each remaining installment of the Investor Member’s Capital Contribution then outstanding shall be reduced first, if such deferral is permitted pursuant to Section 8.1(b), for scheduled payments of Development Fees, which shall become Deferred Development Fees and second, pro rata so that the aggregate contributions, when made, will total the new reduced amount of the Investor Member’s Capital Contribution. If the outstanding balance of the Investor Member’s Capital Contribution has been reduced to zero by reason of the aforesaid adjustments to the Investor Member’s Capital Contribution and/or payments previously made thereon or offsets applied thereto, then either (1) the Managing Member shall within fifteen (15) days make a Capital Contribution to the Company in the amount owed to the Investor Member (including, without limitation, interest thereon at 12% per annum from the date that the Investor Member’s Capital Contribution(s) were made), from its own funds, and shall cause the Company immediately to distribute such amount to the Investor Member, or (2) if tax counsel to the Investor Member determines that such a Capital Contribution and distribution would cause Company profits, losses, and credits to be allocated other than in accordance with the Percentage Interests of the Members, the Managing Member
shall pay the amount owed to the Investor Member (including, without limitation, any interest thereon at 12% per annum from the date that the Investor Member’s Capital Contribution(s) were made) plus any amount needed to cause the net amount of the payment received by the Investor Member to be the same, on an after-tax basis as the amount of payment that would have been received under clause (1) above, from their own funds, directly to the Investor Member; provided, however, to the extent that the Managing Member fails to pay any such amount owed to the Investor Member, such unpaid amounts shall be payable from Cash Flow and Sale or Refinancing Transaction Proceeds as provided in Sections 14.1(a) and 14.1(b), respectively, hereof, but the Managing Member shall remain in default hereunder.

(v) In the event that the Actual Housing Tax Credits for any of 2019 or 2020 (determined separately for each year) exceeds the Projected Housing Tax Credits for such year (or, if applicable, the Revised Projected Housing Tax Credits for such year) (an “Excess Year”), as determined by the Investor Member, upon receipt of the Company’s final tax returns for the subject year, the Investor Member’s Fourth Installment with respect to 2019 shall be increased by the “Housing Tax Credit Surplus Payment”, which is an aggregate amount equal to the product of (x) Actual Housing Tax Credits delivered to the Investor Member, less the Projected Housing Tax Credits (or if applicable, Revised Projected Housing Tax Credits) for the Excess Year, and (y) $0.45. With respect to 2020, the Housing Tax Credit Surplus Payment shall be paid within 30 days of such determination or, if the Fifth Installment is not yet due, upon the payment of the Fifth Installment. In no event shall any Housing Tax Credit Surplus Payment exceed $200,000 and shall be subject to the limitations set forth in Section 4.2(d)(vi). The Company shall use the increase in the Fourth Installment, Fifth Installment or, if the Fifth Installment has been paid, within 30 days of such determination, to (i) pay any amounts then owed to the Investor Member and/or Hunt, (ii) then to pay any unpaid Development Fee or Deferred Development Fee, (iii) then to repay any Development Deficit Loans then outstanding, and (iv) then distributed in accordance with Section 14.1(a) of this Agreement.

(vi) With respect to any increase in the Investor Member’s Capital Contribution pursuant to this Section 4.2(d), in no event shall the amount of the Investor Member’s Capital Contribution increase exceed 5% of the Investor Member’s Capital Contribution as originally set forth herein. To the extent that an increase in the amount of Housing Tax Credits would have otherwise resulted in an increase in excess of 5% of the Investor Member’s Capital Contribution, the Investor Member shall have the option to either (1) increase the Investor Member’s Capital Contribution in excess of such 5%, provided that such additional increase over 5% shall be based on the lesser of the Housing Tax Credit Price or the Investor Member’s then-current pricing available generally for investments in Housing Tax Credits, or (2) reduce its Interest so that the Investor Member shall be in the same economic position (i.e., the allocations provided in this Agreement shall be adjusted accordingly by the Managing Member) as if the increase in Housing Tax Credits had not resulted in an increase in the Investor Member’s Capital Contribution in excess of 5% thereof. Any Investor Member’s Capital Contribution payable as a result of any such increase in the available Housing Tax Credits pursuant to Section 4.2(d)(i) shall be payable with the Fifth Installment of the Investor Member’s Capital Contribution set forth herein, provided that all IRS Forms 8609 have been received.
(vii) Whenever there is an adjustment pursuant to this Section 4.2(d) to the Investor Member’s Capital Contribution and/or the Interest of the Investor Member, then the amount of the Projected Housing Tax Credits shall be increased or reduced, as the case may be, and shall thereafter be referred to as the “Revised Projected Housing Tax Credits”.

4.3 Reserved.

4.4 **Draws.** Prior to Permanent Loan Closing, the Investor Member shall be entitled to conduct monthly inspections of the progress of construction of the Apartment Complex, and review and approve construction draw requests ("Construction Loan Draw"). Each month prior to Permanent Loan Closing, the Managing Member shall provide proposed Construction Loan Draw requests to the Investor Member simultaneous with submission to the Construction Lender. The Investor Member shall Notify the Managing Member to the extent that it disapproves and requires changes in a Construction Loan Draw request within ten (10) Business Days after submission. The Managing Member will cause the Construction Loan documentation to require that the Managing Member shall not accept and the Construction Lender shall not disburse on Construction Loan Draws until approved by Construction Lender based on the finding of the Construction Lender’s construction consultant or the written approval of the Investor Member. In the event of conflict or inconsistency between this Section and the Credit Support and Funding Agreement, the terms and provisions of the Credit Support and Funding Agreement will dictate and govern the processing of Construction Loan Draws.

4.5 **Liability of the Investor Member.** No Investor Member shall be liable for any debts, liabilities, contracts or obligations of the Company and each Investor Member shall only be liable to pay their respective Capital Contributions as and when the same are due hereunder and under the Uniform Act.

4.6 **Interest on Capital Contributions.** No interest shall be paid on any Capital Contribution. No Member shall have the right to withdraw its Capital Contribution or to demand and receive property of the Company in return for its Capital Contribution, except as may be specifically provided in this Agreement or required by law.

4.7 **Deposit of Capital Contributions.** The cash portion of the Capital Contributions of each Member shall be deposited at the Managing Member’s discretion in a checking, savings and/or money market or similar account to be established and maintained in the name of the Company or invested in government securities or certificates of deposit issued by any bank. Thereafter, such amounts shall be utilized for the conduct of the Company business pursuant to the terms of this Agreement and withdrawals can only be made upon the signatures as the Managing Member determines with the Consent of the Investor Member.

4.8 **Payment of Third Party Costs.** The Company shall pay the legal fees, costs and expenses incurred by the Investor Member in connection with this Agreement, the due diligence activities of the Investor Member, the Closing and costs incurred in making the Capital Contributions pursuant to Section 4.2(b) of this Agreement in an amount of $65,000. To the extent that third party costs exceed $65,000, the Investor Member’s Capital Contribution may be increased at the option of the Investor Member and used by the Company to pay such costs.
4.9 Guaranteed Payment. No later than ninety (90) days after the end of the Company’s fiscal year, if the Investor Member has made a Special Additional Capital Contribution pursuant to Section 4.2(c), it shall receive, as a guaranteed payment for the use of its capital, an amount equal to the annual interest earned by the Company, if any, on such Special Capital Contributions. The Company shall invest any amounts contributed pursuant to Section 4.2(c) in a federally insured interest-bearing account in such banking institutions as the Managing Member shall determine in accordance with Section 4.7. Any guaranteed payment due to a Member shall be deemed an expense of the Company for purposes of determining Cash Flow. Any guaranteed payment which is not paid when due shall remain a liability of the Company and shall bear interest at the rate of 15% per year.

4.10 Return of Capital Contributions. Except as provided in this Agreement, no Member shall be entitled to demand or receive the return of its Capital Contribution.

4.11 MM Loans. The Managing Member has the right, but not the obligation, after funding all other obligations under this Agreement, including, without limitation, its obligation to fund Development Deficits under its Construction Completion Guaranty in accordance with Section 8.1 hereof or to fund Operating Deficits under its Operating Deficit Guaranty in accordance with Section 8.2 hereof, to make loans pursuant to this Section 4.11 to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company (together with interest thereon, “MM Loans”); provided, however, that the Managing Member shall not have such right to make such MM Loans at any time when it has an unsatisfied obligation to pay Development Deficits and to make Operating Deficit Loans or to make a Managing Member Capital Contribution as required under this Agreement. MM Loans shall be on the following terms: (i) interest shall accrue on the MM Loans at an annual interest rate not to exceed 5% per annum, compounded annually; (ii) MM Loans shall be repayable solely as set forth in Sections 14.1(a), 14.1(b) and 17.2 of this Agreement; and (iii) MM Loans shall be an unsecured, nonrecourse obligation of the Company. By making a MM Loan, the Managing Member does not waive any claim of, or remedies with respect to, a default, if any, by the Investor Member in its obligations under this Agreement. Notwithstanding the foregoing, no MM Loan shall be made without the Consent of the Investor Member, which Consent shall not be unreasonably withheld, delayed or conditioned.

4.12 IM Loans. The Investor Member or its designee has the right, but not the obligation, to make loans pursuant to this Section to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company (together with interest thereon, “IM Loans”). IM Loans shall be on the following terms: (i) interest shall accrue on Default IM Loans at an annual interest rate of eight percent (8%) per annum, compounded annually; (ii) interest shall accrue on the Excess IM Loan Amount (other than Default IM Loans) at an annual interest rate of eight percent (8%) per annum, compounded annually, and on any other IM Loans at an annual interest rate of eight percent (8%) per annum, compounded annually; (iii) IM Loans shall be repayable solely as set forth in Sections 14.1(a), 14.1(b) and 17.2 of this Agreement; and (iv) IM Loans shall be an unsecured, nonrecourse obligation of the Company. By making an IM Loan, neither the Investor Member, nor its designee, waives any claim of, or remedies with respect to, a default, if any, by the Managing Member in its obligations under this Agreement. The Members hereby agree that any Hunt Loan (as defined the Backstop Guaranty Agreement) shall be treated as an IM Loan.
4.13 Notice of Member Loans. Except for any Operating Deficit Loans that may be required of the Managing Member under the terms of this Agreement, if the Company shall require a Member Loan to fund Operating Deficits or to satisfy other reasonable and necessary obligations of the Company, a Member (the “Initiating Member”) may give the other Members (the “Non-Initiating Members”) Notice of the Initiating Member’s intent to fund a Member Loan, which Notice shall state (i) the total amount of such Member Loan proposed to be funded, (ii) the purpose for such Member Loan, and (iii) the proposed funding date of such Member Loan, which date (the “Contribution Date”) shall not be less than ten (10) days following the date of such Notice; provided that the Notice requirement shall be shortened to the extent necessary to permit a Member to fund a Member Loan for the purpose of curing a default under a Loan. The Initiating Member and the Non-Initiating Members shall each fund the portion of the Member Loan it agreed to make by the Contribution Date. If a Member fails to make such Member Loan to the Company on or before the Contribution Date, any Member who makes such Member’s share of the Member Loan may, at such Member’s option, advance to the Company the amount of the non-lending Member’s share of the Member Loan. No Member has the right to propose and fund a Member Loan to fund distributions and/or payments to be made pursuant to Sections 14.1(a), 14.1(b) or 17.2. Notwithstanding anything herein to the contrary, the Managing Member is obligated to make an Operating Deficit Loan during the Operating Deficit Guaranty Period and a MM Loan after the expiration of the Operating Deficit Guaranty Period to fund any Operating Deficits.

4.14 Documentation of Member Loans. At the request of a Member, any Member Loan shall be evidenced by a non-negotiable promissory note or notes reflecting any such Member Loans made during or prior to the preceding calendar quarter. Member Loans shall be unsecured loans by such Member. Except as set forth in Section 4.16, Member Loans shall not be considered Capital Contributions, and shall not increase such Member’s Capital Account.

4.15 Usury Savings Clause. Notwithstanding anything to the contrary herein or in any note evidencing a Member Loan, in no event shall interest accrue on any Member Loan at a rate in excess of the highest rate permitted by applicable law.

4.16 Capital Contribution Alternative. If a Member which has made or intends to make a Member Loan (a “Lending Member”) reasonably concludes that the operation of the usury savings clause in Section 4.15 will result in a reduction in the interest rate otherwise specified in Article 4, or if the Investor Member reasonably concludes that it may now have or sometime in the future likely will have a negative Capital Account, then the Lending Member may request that its existing or proposed Member Loans be restructured as Capital Contributions. In such event, all the Members shall cooperate to negotiate and execute an amendment to this Agreement (the “Amendment”), at the expense of the requesting Member, which shall include the following terms: (i) each of the Investor Member (or its designee) and the Managing Member has the right to make Capital Contributions pursuant to the Amendment (“Section 4.16 Capital Contributions”) either instead of making IM Loans and MM Loans, respectively, or to fund the concurrent repayment by the Company of IM Loans or MM Loans, respectively; (ii) with respect to such Section 4.16 Capital Contributions, the Member(s) making them shall be entitled to receive (A) guaranteed payments or a preferred return in amounts and at times corresponding to interest payments that would have been due had the Section 4.16 Capital Contributions been made as Member Loans, and (B) distributions as a return of capital in amounts and at times...
corresponding to principal payments that would have been due had the Section 4.16 Capital Contributions been made as Member Loans; and (iii) Article 14 shall be revised to the maximum extent feasible to provide that such guaranteed payments or a preferred return and return of capital distributions shall have the same amounts, timing, priority of payment and tax consequences as the corresponding payments of Member Loans would have had. Notwithstanding the foregoing, the Investor Member shall have no obligation to consent to any Amendment pursuant to this Section 4.16, which it concludes could adversely affect the timing or amount of the allocation to the Investor Member of Housing Tax Credits, losses, income or gains.

ARTICLE 5
MANAGING MEMBER RIGHTS, DUTIES AND OBLIGATIONS

5.1 Management of the Company. Subject to the terms of this Agreement, the Managing Member shall have the sole and exclusive right to manage the business and affairs of the Company; provided, however, that the Managing Member must do so only so as to accomplish the Purposes of this Company. In so doing, the Managing Member shall take all actions necessary or appropriate to protect the interests of the Investor Member and the Company.

5.2 Duties and Obligations.

(a) The Managing Member shall ensure that all requirements shall be met which are necessary to obtain or achieve (i) compliance with the Minimum Set-Aside Test, the HOME Minimum Set-Aside Test, the Rent Restriction Test, and any other requirements necessary for the Apartment Complex to initially qualify, and to continue to qualify, for Housing Tax Credits, including all applicable requirements set forth in the Extended Use Agreement, (ii) issuance of Forms 8609, (iii) issuance of all necessary permanent, unconditional certificates of occupancy, including all governmental approvals required to permit occupancy of all of the apartment units in the Apartment Complex, (iv) Construction Loan Closing and Permanent Loan Closing; (v) compliance with all material provisions of the Project Documents, (vi) compliance with all provisions contained in the Application, including, without limitation, those as to which the Agency awarded points pursuant to its scoring or award procedures, and (vii) compliance with all provisions contained in the Carryover Allocation.

(b) During the period the Extended Use Agreement is in effect, the Managing Member shall (i) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that (A) sixty-seven (67%) of the residential rental units (not including any manager units) in the Apartment Complex will qualify as “low-income units” under Code Section 42(i)(3), (B) and the Applicable Fraction as defined in Section 42(c) of the Code is at least 65% for Building One and 67.8% for Building Two; (ii) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that no less than eighty percent (80%) of the gross income from the Apartment Complex in every year is rental income from or with respect to dwelling units in the Apartment Complex used to provide living accommodations not on a transient basis (“Units”); (iii) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that the Apartment Complex will qualify as a “qualified low-income housing
(c) The Managing Member shall promptly take all action which may be necessary or appropriate for the proper development, construction, maintenance and operation of the Apartment Complex in accordance with the provisions of this Agreement, the Project Documents and applicable laws and regulations including making any required Capital Contributions pursuant to Section 4.1 and as otherwise required by this Agreement.

(d) While conducting the business of the Company, the Managing Member shall not act in any manner which it knows or should have reasonably known after due inquiry will (i) cause the termination of the Company for federal income tax purposes without the Consent of the Investor Member, or (ii) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation.

(e) The Managing Member shall, during and after the period in which it is a Member, provide the Company with such information and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns.

(f) The Managing Member shall use its best efforts to cause the Company to generate Cash Flow for distribution to the Members at the maximum realizable level in view of (i) any applicable Agency and other regulations, (ii) the Minimum Set-Aside Test and the HOME Minimum Set-Aside Test and (iii) the Rent Restriction Test, and, if necessary, the Managing Member shall also use its best efforts to obtain approvals and implementation of appropriate adjustments in the rental schedule of the Apartment Complex.

(g) The Managing Member shall cause the Company to obtain and keep in force, during the term of the Company, insurance in accordance with Exhibit D hereto. The Managing Member shall provide the Investor Member with written evidence of all insurance required by Exhibit D hereto, in each case in form and substance reasonably acceptable to the Investor Member and, for each particular insurance coverage, both (i) within fifteen (15) days after the first day on which such coverage is required by Exhibit D hereto and (ii) from time to time, as the Investor Member may reasonably request. The Managing Member shall provide the Investor Member with Notice of any cancellation, reduction in coverage, or other coverage changes within 15 days of receipt of notice from the insurance provider. The Investor Member shall have the right to acquire any insurance required by Exhibit D at the expense of the Company if the Managing Member fails to do so and such purchase shall not cure the Managing Member’s default hereunder. In addition, the Managing Member shall indemnify and hold the Hunt Indemnified Parties harmless from any loss suffered by the Hunt Indemnified Parties with respect to its investment in the Company and arising out of any uninsured loss suffered by the Company which would have been insured against by one or more of the policies of insurance described on Exhibit D hereto but which lapsed or which were not in force at the time of such loss because the Managing Member did not obtain or keep said policy or policies in force.
(h) The Managing Member has made (if applicable) and shall make such elections, or refrain from making such elections, with respect to the Housing Tax Credits as are necessary to achieve and maintain the maximum allowable Housing Tax Credits to the Investor Member, unless otherwise directed by the Investor Member. Any such elections (including elections made at the direction or with the Consent of the Investor Member) shall not reduce the obligations of the Managing Member pursuant to this Agreement. Notwithstanding the foregoing, the Investor Member must Consent, before any election is made to defer commencement of the Credit Period pursuant to Code Section 42(f)(1). In the event Building One is Placed in Service in 2019, but the Company is unable to deliver all or a portion of the Projected Housing Tax Credits for 2019, the Managing Member may defer the commencement of the Credit Period to 2020 without the Consent of the Investor Member.

(i) The Managing Member shall (i) not store or dispose of (except in compliance with all laws, including all Environmental Laws, ordinances, and regulations pertaining thereto) any Hazardous Material at the Apartment Complex; (ii) neither directly nor indirectly transport or arrange for the transport of any Hazardous Material (except in compliance with all laws, including all Environmental Laws, ordinances and regulations pertaining thereto) to or from the Apartment Complex; (iii) provide the Investor Member with Notice (A) upon any Managing Member’s obtaining knowledge of any potential or known release, or threat of release, of any Hazardous Material at or from the Apartment Complex; (B) upon any Managing Member’s receipt of any Notice to such effect from any federal, state, or other governmental authority by any other Person; and (C) upon any Managing Member’s obtaining knowledge of any incurrence of any expense or loss by any such governmental authority or third party in connection with the assessment, containment, or removal of any Hazardous Material at or from the Apartment Complex or any claim for loss or damage associated with Hazardous Materials at or from the Apartment Complex for which expense or loss the Managing Member may be liable or for which expense or loss a lien may be imposed on the Apartment Complex.

(j) The Managing Member shall use all reasonable efforts to maintain the Apartment Complex and the Land upon which it is located so that there is no discharge, release, spillage, uncontrolled loss or seepage of any oil, petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Material. The Managing Member shall use all best efforts to maintain the Apartment Complex and the Land so as not to violate any Environmental Laws. If any Hunt Indemnified Party becomes liable with respect to the Apartment Complex under any Environmental Law, the Managing Member shall indemnify and hold harmless such Hunt Indemnified Party (except to the extent attributable solely to direct actions of such Hunt Indemnified Party) for any and all costs, expenses (including reasonable attorneys’ fees necessarily incurred), damages or liabilities to the extent that such Hunt Indemnified Party is required to discharge such costs, expenses, damages, or liabilities in whole or in part. If any claim or loss described in the immediately preceding sentence is brought against any Hunt Indemnified Party, and such Hunt Indemnified Party notifies the Managing Member of the commencement thereof, as soon as practicable but in any event no later than 45 days after receipt of notice by the Investor Member, the Managing Member will be entitled to participate in, and, to the extent that it chooses to do so, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to the Hunt Indemnified Party), and the Managing Member will assume the payment of all fees and expenses relating to such investigation and defense and will have the right to negotiate and consent to settlement thereof.
provided such settlement expressly and unconditionally releases the Hunt Indemnified Party from all liabilities and obligations with respect to the claim without prejudice and the settlement would not otherwise materially adversely affect the Hunt Indemnified Party. Any one or more of the Hunt Indemnified Parties will have the right to employ separate counsel in any such action and to participate in the defense thereof, but after notice from the Managing Member to such Hunt Indemnified Party of its election to assume the defense thereof, the fees and expenses of such separate counsel will be at the expense of such Hunt Indemnified Party unless (i) the employment of such counsel and the payment of such fees and expenses by the Managing Member has been specifically authorized in writing by the Managing Member, (ii) the Managing Member has not employed counsel to have charge of the defense of such action within a reasonable time after receipt of a request by the Hunt Indemnified Party to assume the defense of the action, or (iii) counsel for such Hunt Indemnified Party or Parties has reasonably concluded that there may be material defenses available to it or them which are different from or additional to those available to the Managing Member and other Hunt Indemnified Parties (in which case, the Managing Member will not have the right to direct the defense of such action on behalf of such Hunt Indemnified Party and the fees and expenses of counsel necessary as a result of the occurrence of the events described in (i), (ii), or (iii) above will be borne by the Managing Member). The Managing Member will not be liable for any settlement of any such action effected without its Consent, but if settled with the Consent of the Managing Member or if there is a final judgment for the plaintiff in any such action as to which the Managing Member has received notice in writing as hereinabove required, the Managing Member agrees to indemnify and hold harmless the Hunt Indemnified Party from and against any loss or liability by reason of such settlement or judgment. The foregoing indemnification shall be a recourse obligation of the Managing Member, and shall survive the Withdrawal of the Managing Member. The Managing Member shall not be liable for any claims that arise from actions of others after its withdrawal or removal as a Managing Member under this Agreement, and no settlement of a claim of loss shall occur without the prior written Consent of the Managing Member.

(k) The Managing Member shall promptly request in writing of each Lender that such Lender provide the Investor Member copies of all notices delivered to the Managing Member or the Company under its Loan, and grant an opportunity for the Investor Member to cure any default under such Loan.

(l) The Managing Member shall cause the Company to maintain tenant deposits in separate accounts, which must be used solely to hold tenant deposits as security for the tenant rents and as security for damages. No funds may be used from such account for any other purpose, including payment of Operating Deficits of the Company.

(m) The Managing Member will execute on behalf of the Company all documents necessary to elect, pursuant to Sections 732, 734, 743, and 754 of the Code, to adjust the basis of the Company’s property upon the request of the Investor Member. The Managing Member shall cause the Company’s property to be depreciated in accordance with Sections 5.2(nn) and 18.4. The Managing Member will execute on behalf of the Company all documents necessary to elect, pursuant to Sections 732, 734, 743, and 754 of the Code, to adjust the basis of the Company’s property upon the request of the Investor Member. The Managing Member shall cause the Company to depreciate all of its applicable property in accordance with Section 5.2(nn) and 18.4(a).
The Managing Member shall provide to the Investor Member for its approval a draft of the Cost Certification to be used by the Company in applying to the Agency for issuance of Form 8609 with respect to each building in the Apartment Complex at least five (5) Business Days prior to the date the Cost Certification is to be provided to the Agency. The Managing Member shall provide the initial Forms 8609 to the Investor Member within ten (10) days of receipt thereof by the Managing Member. Subject to the Agency providing the same, the Managing Member shall cause the Extended Use Agreement to be recorded in the appropriate real estate records no later than the last day of the year in which the Apartment Complex is Placed in Service.

The Managing Member shall furnish to the Investor Member within three (3) Business Days of receipt thereof, a copy of any notice of default under a Loan or any of the Project Documents given to the Company or to the Managing Member by the Lender, and Notice of any occurrence which has or would, with the giving of notice or the passage of time, or both, become a violation or default under a Loan or any of the Project Documents. The Managing Member shall also furnish to the Investor Member within seven (7) Business Days of execution a copy of all amendments or changes to the articles, bylaws, certificates, partnership agreement, operating agreement or other organizational documents of the Managing Member or any Guarantor. The Managing Member shall promptly respond to all requests or inquiries made in writing by the Investor Member regarding matters affecting the Apartment Complex or the Company.

The Managing Member shall use all reasonable efforts to cause the Apartment Complex to be kept in compliance with all applicable land use laws, regulations and ordinances.

The Managing Member shall provide the Investor Member with Notice (and with copies of appropriate correspondence) within three (3) Business Days if the Company receives any writing from the Service or the Agency that the Apartment Complex or any portion thereof is not in compliance with the requirements of Code Section 42 or is subject to a Housing Tax Credit Disallowance Event or any other event that could result in an adjustment to the Housing Tax Credits, or losses allocable to the Investor Member.

If any of the Housing Tax Credit Units fail at any time during the Compliance Period to constitute low-income units or if the Apartment Complex is not in compliance with the requirements contained in Code Section 42, the Managing Member agrees to Notify the Investor Member within three (3) Business Days of its knowledge of such event or occurrence and the Managing Member shall take all actions reasonably necessary to bring the Units or the Apartment Complex, as the case may be, into compliance with the requirements of Code Section 42, such that the Apartment Complex will qualify and continue to qualify for Housing Tax Credits during the Compliance Period as projected.

The Managing Member is exclusively responsible for negotiating and performing all services incidental to (i) the Company’s acquisition of the Land, (ii) arranging of appropriate zoning, (iii) arranging of equity and permanent financing with respect to the Apartment Complex (including reviewing the State’s qualified allocation plan, applying for Housing Tax Credits and obtaining such marketing and feasibility studies and appraisals as it
deems reasonably necessary), (iv) contacting local government officials concerning access to
utilities, public transportation and local ordinances, (v) performing environmental tests on the
Land, (vi) negotiating the purchase of the Land and its related financing, (vii) arranging the
permanent financing for the Company, and (viii) the organization and formation of the
Company.

(t) The Apartment Complex will be operated in accordance with the Fair
Housing Act, 42 U.S.C. § 3601 et seq., as amended, and in this regard, all employees and agents
of the Managing Member will be appropriately trained and all required notices to tenants
specified by the Fair Housing Act will occur in a timely manner. The Managing Member shall
promptly provide to the Investor Member a copy of (i) the annual certification required to be
submitted by the Company to the Agency pursuant to Regulation Section 1.42-5, including a
copy of all required reports with respect to building code violations and the certification with
respect to compliance with the Fair Housing Act and (ii) all communications received by the
Managing Member or the Company with respect to compliance with, non-compliance with, or
other matters relating to the Fair Housing Act.

(u) The Managing Member shall ensure that the Apartment Complex shall at
all times comply with the applicable requirements of Section 504 of the Uniform Federal
Accessibility Standards, where applicable and as amended, the Americans with Disabilities Act
of 1990, the Americans with Disabilities Act Accessibility Guidelines for Buildings and
Facilities, as now existing or hereafter amended or adopted, the Fair Housing Act Design Manual
implemented in connection the Fair Housing Act, 42 U.S.C. § 3601 et seq., as amended as now
existing or hereafter amended or adopted, any other federal and state and local laws and
ordinances related to disabled access, and all statutes, rules, regulations, and orders of
governmental bodies and regulatory agencies or orders or decrees of any court adopted or
enacted with respect thereto including (collectively, the “Access Laws”). The Investor Member
may also require from the Company an Access Laws Certification. Notwithstanding any
provisions set forth herein or in any other document, the Managing Member shall not alter or
permit any tenant or other person to alter the Apartment Complex in any manner which would
increase the Managing Member’s responsibilities for compliance with the Access Laws without
the prior written approval of the Investor Member. In connection with any such approval, the
Investor Member may require from the Company an Access Laws Certification. Following
Substantial Completion, the Apartment Complex will be operated in a manner that fully complies
with applicable accessibility and barrier-free regulations such that if an enforcement action is
brought against the Company, the Managing Member will use any and all of its own resources to
promptly correct recorded deficiencies and shall immediately Notify the Investor Member of any
such claims.

(v) The Managing Member shall give Notice to the Investor Member within
three (3) Business Days of any violation or event of default, or any occurrence which would,
with the giving of notice or the passage of time, or both, become a violation or event of default
under any document executed by the Agency and relating to the Company. Neither the
Company nor any Managing Member shall consent to any amendment or modification to any
document executed by the Agency and relating to the Company without the prior Consent of the
Investor Member.
(w) Without limitation, the Company, the Managing Member, and their Affiliates (i) are in compliance with Anti-Corruption Laws, and (ii) shall remain in compliance with Anti-Corruption Laws.

(x) The Managing Member shall from time to time take all actions as are necessary and appropriate to: (i) effectuate and permit the continuation of the Company as a limited liability company under the laws of the State, (ii) enable the Company to do business in the State, and (iii) protect the limited liability of the Investor Member under the laws and regulations of the State, including the preparation and filing of any certificate, document or instrument of the Company as may be required under the laws and regulations of the State.

(y) The Managing Member shall maintain books, files and records including tenant leasing files in compliance with the Code and the Regulations and which will adequately document the timing, amount and availability of the Housing Tax Credits. The Managing Member shall cause construction related files and files which document the initial qualification of the apartment units for Housing Tax Credits to be copied and stored off-site until the later of sixth (6th) year after the last day of the Compliance Period or for the time period required by Section 42 of the Code at the Managing Member’s principal place of business (which shall not be at the Apartment Complex) or at another off-site location over which the Managing Member has control. The Managing Member shall allow any Investor Member and its agents access to all such files during ordinary business hours; provided, however, that files stored off-site shall be provided within three (3) Business Days’ Notice from the Investor Member. All such files are property of the Company and not of the Managing Member.

(z) Except as otherwise required or permitted by this Agreement, the Managing Member shall not, without the Consent of the Investor Member, assign, pledge or otherwise encumber, for security or otherwise, any fees, payments or distributions to which the Managing Member is entitled from the Company or any Person pursuant to this Agreement or any Project Document, or any portion thereof or any right of the Managing Member thereto.

(aa) Each Managing Member shall not engage in any other business or activity other than that of being a Managing Member of the Company. Each Managing Member was formed exclusively for the purpose of acting as Managing Member of the Company and has never engaged in any other activity, business or endeavor. As of the date of this Agreement, neither Managing Member has liabilities nor indebtedness other than its liability for the debts of the Company, and neither Managing Member shall incur any indebtedness other than its liability for the debts of the Company. If either Managing Member determines it needs additional funds for any purpose, it shall obtain such funds solely from capital contributions from its members. Each Managing Member has observed and shall continue to observe all necessary or appropriate entity formalities in the conduct of its business. Each Managing Member shall keep its books and records and the Company’s books and records separate and distinct from those of its members and Affiliates. Each Managing Member shall clearly identify itself as a legal entity separate and distinct from its members and its Affiliates in all dealings with other Persons.

(bb) The construction and development of the Apartment Complex shall be undertaken and shall be completed in a timely and workmanlike manner in accordance with (i) all applicable requirements of the Construction Loan and the Project Documents, (ii) all
applicable requirements of all appropriate governmental entities, the violation of which would have, or would be likely to have, an adverse effect on the Apartment Complex or the Company, and (iii) the Plans and Specifications of the Apartment Complex as shown on Exhibit P that have been or shall be hereafter approved by the Investor Member and, to the extent required, the Lenders, and any applicable governmental entities, as such Plans and Specifications may be changed from time to time with the approval of the Investor Member and, to the extent required, the Lenders, and any applicable governmental entities. The Managing Member shall provide copies of all change orders to the Investor Member for its written approval promptly after the preparation and prior to the execution thereof.

(cc) The Managing Member shall cause the Company to keep all sources of funding “in balance,” as required by the Lenders and the Investor Member, and ensure that the Company has adequate sources of funds to timely achieve Permanent Loan Closing and satisfaction of other obligations of the Company in accordance with this Agreement.

(dd) Reserved.

(ee) The Managing Member shall prevent a default from occurring under the Project Documents resulting from a breach by the Managing Member, the Guarantors or their Affiliates of any term, condition or restriction applicable to such parties under the Project Documents, including, without limitation, a breach of a restriction on the ownership of the Managing Member or the financial condition of the Managing Member, the Guarantors or their Affiliates.

(ff) Neither the Managing Member nor its Affiliates will receive, directly or indirectly, from the Company or from any other Person, any fee, commission, compensation or other consideration in connection with (i) this Agreement, (ii) the acquisition of the Land and/or (iii) the construction or operation of the Apartment Complex, except for the payment of fees and distributions to the Managing Member under this Agreement and to the Developer under the Development Agreement.

(gg) The Company received points under the Agency’s Low-Income Housing Tax Credit ranking system pursuant to the Application. The Managing Member shall cause the Company to develop the Apartment Complex and manage the Company in a manner which is consistent with the award of the number of points assigned to the Application by the Agency, unless otherwise consented to by the Agency in writing and Consented to by the Investor Member.

(hh) The Managing Member shall cause the Accountants to certify the Eligible Basis of the Apartment Complex in conjunction with the Company’s application to the Agency for Forms 8609 and in conjunction with the audited cost certification of Eligible Basis.

(ii) The Managing Member shall provide to the Accountants and the Investor Member, promptly upon their request, such written documentation as is reasonably requested by the Accountants and the Investor Member in order to verify the determination of Eligible Basis, including documentation supporting the allocation of any costs incurred by the Company into the determination of Eligible Basis.
(jj) The Company will include in Eligible Basis only the Development Fee which is earned on or prior to the date the Apartment Complex is Placed in Service.

(kk) The Apartment Complex and all of (i) the fixtures, maintenance supplies, tools, equipment and the like now and to be owned by the Company or to be appurtenant to, or to be used in the operation of, the Apartment Complex, as well as (ii) the rents, revenues and profits earned from the operation of, the Apartment Complex, will be free and clear of all security interests and encumbrances except for any mortgages or security agreements (including financing statements) executed in connection with the Loans.

(li) To the extent required by the Investor Member, ninety-seven percent (97%) payment and performance bonds issued by a financially viable, nationally recognized bonding company, or a letter of credit, in forms acceptable to the Investor Member naming the Investor Member as a dual obligee or payee, and in amounts satisfactory to the Investor Member, will be obtained by the Sub-Contractor and the Public-Bid Sub-Contractor at or before Construction Loan Closing and shall remain in full force and effect under terms and conditions as shall be acceptable to the Investor Member. The Managing Member shall promptly Notify the Investor Member of any claims made under the bonds or the letter of credit, as applicable.

(mm) In connection with the requirements of the Carryover Allocation, the Managing Member shall take all actions necessary and prepare all documents required in connection with the Company’s satisfaction of the Ten Percent Test and submit to the Agency the supporting documents therefor, including, without limitation, the Carryover Certification, by the date required by the Agency. The Managing Member shall deliver to the Investor Member all documents in support thereof, including, without limitation, the Carryover Certification, prior to submitting the Ten Percent Test documents to the Agency. Upon the Investor Member’s Consent, the Managing Member shall submit the Ten Percent Test documentation and the supporting documents therefor, including, without limitation, the Carryover Certification, to the Agency.

(nn) If a material defect is discovered in the construction of the Apartment Complex and such defect was known to the Managing Member or an Affiliate of the Managing Member and was not disclosed to the Investor Member in writing or was intentionally concealed by the Managing Member or such Affiliate, then the Managing Member shall promptly take such action as may be necessary, at the Managing Member’s sole expense, to correct such defective work to the satisfaction of the Investor Member.

(oo) The Managing Member shall cause the Company to make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code. The Managing Member shall seek the direction and/or Consent of the Investor Member prior to filing of the Company’s 2018 tax returns or such earlier time as such election is to be made. Once made, the election will be irrevocable.

5.3 Restrictions on Authority.

(a) Notwithstanding any other provision of this Agreement, the Managing Member shall have no authority to (1) knowingly perform any act in violation of applicable law,
Agency or other government regulations, requirements of the Lenders or the Project Documents
or (2) even unknowingly, perform any act in violation of applicable law, Agency or other
government regulations, requirements of the Lenders or the Project Documents if such act would
or could materially adversely affect the Apartment Complex, the Company, any Investor
Member or the Housing Tax Credits. In the event of any conflict between the terms of this
Agreement and any applicable Agency or other government regulations or requirements of the
Lender, the terms of such regulations or requirements shall govern. The Managing Member shall
not have any authority to do any of the following acts without the Consent of the Investor
Member:

(i) To have borrowings in excess of $10,000 in the aggregate at any
one time outstanding on the general credit of the Company, except for the Loans, Operating
Deficit Loans and IM Loans;

(ii) To borrow from the Company or commingle Company funds with
funds of any other Person;

(iii) Following the Completion Date, to construct any new or
replacement capital improvements on the Apartment Complex except as contemplated in the
applicable Annual Budget, unless under emergency conditions;

(iv) To acquire any real property in addition to the Apartment Complex
(including easements or similar rights necessary or convenient for the operation of the Apartment
Complex);

(v) To finance or enter into any mortgage loan or other indebtedness,
or to increase, decrease, amend or modify the terms of or refinance or repay (other than in
accordance with its scheduled term or amortization) any Loan;

(vi) To acquire any personal property (tangible or intangible) at a cost
in excess of $10,000 in any year except to the extent approved in the applicable Annual Budget,
or use any Company property other than for a purpose of the Company as set forth in this
Agreement;

(vii) To rent apartments in the Apartment Complex such that the
Apartment Complex would not meet the requirements of the Minimum Set-Aside Test, the
HOME Minimum Set-Aside Test and/or the Rent Restriction Test;

(viii) To sell, exchange, pledge or otherwise convey or transfer any
portion of the Apartment Complex (including any land owned by the Company) or, all or any
significant portion of the assets of the Company or any Member’s Interest in the Company,
which Consent shall not be unreasonably withheld, conditioned or delayed after year fifteen (15)
of the Credit Period;

(ix) To terminate or modify any agreement with any Agency;

(x) To cause the Company to commence a proceeding seeking any
decree, relief, order or appointment in respect to the Company under the federal bankruptcy
laws, as now or hereafter constituted, or under any other federal or state bankruptcy, insolvency or similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) for the Company or for any substantial part of the Company’s business or property, or to cause the Company to consent to any such decree, relief, order or appointment instituted by any Person other than the Company;

(xi) To pledge or assign any of the Capital Contribution of the Investor Member or any proceeds thereof;

(xii) To amend the Architect’s Contract or the Construction Contract, including, without limitation, any change orders in excess of $50,000.00 per single change order and $250,000 in the aggregate; provided, however, that all deductive change orders, no matter how small and all change order that materially alter the scope of work, shall be subject to the Consent of the Investor Member;

(xiii) To cause the Company to amend the Development Agreement or any other agreement between the Company and any Managing Member or an Affiliate thereof;

(xiv) To do any act required to be approved or ratified by the Investor Member under the Uniform Act;

(xv) To admit an additional Investor Member;

(xvi) To substantially change the nature of the Company’s business;

(xvii) To permit the Company to engage in any activity inconsistent with the Company’s Purposes;

(xviii) To enter into any Project Document not executed prior to the date hereof, and/or to amend any Project Document;

(xix) To adopt any Annual Budget or make any modification to an approved Annual Budget, which Consent shall not be unreasonably withheld, conditioned or delayed;

(xx) To modify the Development Budget;

(]x) To increase the Company’s total initial cost basis allocable to a class of property other than residential rental property by more than 25% of the amount set forth in the LIHTC Certificate attached hereto as Exhibit S;

(xxii) To change the Accountant or the Management Agent;

(xxiii) To sell, transfer, assign, pledge or otherwise convey the Interest of the Managing Member in the Company, or sell, transfer, assign, pledge or otherwise convey any interest in the Managing Member, except in connection with estate planning purposes (but only if (A) the Interest of the Managing Member is conveyed to a trust for the benefit of the spouse or children of Lisa M. Stephens and/or Megan D. Lasch, as the case may be, and (B) Lisa M.
Stephens or Megan D. Lasch continues to control the Co-Managing Member and Megan D. Lasch or Lisa M. Stephens continues to control the Administrative Member), or in any member, partner or shareholder of the Managing Member, as the case may be, or any other party in the line of ownership of such member, partner or shareholder, or permit the Developer to sell, transfer, assign, pledge or otherwise convey the interest of the Developer in the Development Agreement, or sell, transfer, assign, pledge or otherwise convey any interest in the Developer, or in any controlling member, partner or shareholder of the Developer, as the case may be, or any other party in the line of ownership of such member, partner or shareholder of the Developer, or voluntarily retire, withdraw or resign as the Managing Member of the Company; or

(xxiv) To make, amend or revoke any tax election required of or permitted to be made by the Company under the Code or the Regulations, including, without limitation, any election under Section 42 or Section 754 of the Code or make an election to defer the first year of Housing Tax Credits. In this regard, the Managing Member shall make any elections required or permitted under Section 42 of the Code requested in writing by the Investor Member;

(xxv) To accept any grants on behalf of the Company.

5.4 Personal Services. The Managing Member or any Affiliates thereof shall have the right to contract or otherwise deal with the Company for the sale of goods or services to the Company in addition to those set forth herein, if (a) compensation paid or promised for such goods or services is reasonable (i.e., at fair market value) and is paid only for goods or services actually furnished to the Company, (b) the goods or services to be furnished shall be reasonable for and necessary to the Company, (c) the fees, terms and conditions of such transaction are at least as favorable to the Company as would be obtainable in an arm’s-length transaction, and (d) the Investor Member has given its Consent to the particular contract or other dealings between the Company and the Managing Member or its Affiliates. Any contract covering such transactions shall be in writing and shall be terminable without penalty on sixty (60) days’ Notice. Any payment made to the Managing Member or any Affiliate for such goods or services shall be fully disclosed to the Investor Member in writing in the reports required under Section 18.7. Neither the Managing Member nor any Affiliate shall, by the making of lump sum payments to any other Person for disbursement by such other Person, circumvent the provisions of this Section 5.4.

5.5 Continued Compliance Sale. Notwithstanding the foregoing, subject to the Purchase Option Agreement commitments in the Application, at any time after the Compliance Period, the Investor Member may request that the Company sell the Apartment Complex subject to the Extended Use Agreement (a “Continued Compliance Sale”)

(a) After receipt of a request for a Continued Compliance Sale, the Managing Member shall use its best efforts to find a third party purchaser for the Apartment Complex and to cause the Company to consummate a sale of the Apartment Complex subject to the Extended Use Agreement and on terms Consented to by the Investor Member. If such efforts are not successful on terms reasonably satisfactory to the Investor Member within six (6) months of the date of the Investor Member’s request, the Investor Member shall have the right thereafter to locate a purchaser for the Apartment Complex. If the Investor Member locates such a purchaser,
then the Managing Member shall be obligated to either (i) consent to the sale to such purchaser and execute all documents in connection with such sale or (ii) purchase the Investor Member’s Interest for an amount equal to what the Investor Member would have received for a sale of the Apartment Complex.

(b) At all times after the end of the Compliance Period, the Investor Member shall have the right, exercisable in its sole and absolute discretion, to put its entire Interest to the Managing Member (or its designee) for a price equal to $100.

5.6 Other Activities. Any Investor Member may engage independently or with others in other business ventures of every nature and description including the ownership, operation, management, syndication and development of competing real estate; neither the Company nor any other Member shall have any rights in and to such independent ventures or the income or profits derived therefrom.

5.7 Indemnification of the Managing Member.

(a) No Managing Member nor any Affiliate thereof shall have liability to the Company or to any Investor Member for any loss suffered by the Company which arises out of any action or inaction of such Managing Member or Affiliate thereof if such Managing Member or Affiliate thereof in good faith determined that such course of conduct was in the best interest of the Company and such course of conduct did not constitute gross negligence, misconduct, fraud or any breach of fiduciary duty of such Managing Member or Affiliate thereof.

(b) A Managing Member or any Affiliate thereof shall be indemnified by the Company against losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained in connection with the Company, provided that all of the following conditions are met: (i) such Managing Member has determined, in good faith, that the course of conduct which caused the loss, judgment, liability, expense or amount paid in settlement was in the best interests of the Company; and (ii) such loss, judgment, liability, expense or amount paid in settlement was not the result of gross negligence, misconduct, fraud, breach of fiduciary duty on the part of such Managing Member or Affiliate thereof or breach of this Agreement; and (iii) such indemnification or agreement to hold harmless is recoverable only out of the assets of the Company, and not from the Investor Member.

(c) Subject to the provisions of Section 5.7(b), no Managing Member or any Affiliate thereof performing services for the Company shall be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws unless (i) there has been a successful adjudication on the merits of each count involving securities laws violations as to the particular indemnitee and the court approves the indemnification of such litigation costs, (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee and the court approves the indemnification of such litigation costs or (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and the court finds that indemnification of the settlement and related costs should be made. In any claim for indemnification for federal or state securities law violations, the party seeking indemnification...
shall, prior to seeking court approval for such indemnification, place before the court the positions of the Securities and Exchange Commission and any applicable state securities administrator with respect to the issue of indemnification for securities law violations.

(d) The Company shall not incur the cost of the portion of any insurance, other than public liability insurance, which insures any party against any liability as to which such party is herein prohibited from being indemnified.

5.8 Indemnification of the Company and the Hunt Indemnified Parties.

(a) The Managing Member shall indemnify, defend and hold harmless the Company and the Hunt Indemnified Parties, and the Company shall indemnify, defend, and hold harmless the Hunt Indemnified Parties, from and against any and all loss, damage and liability, cost or expense (including reasonable attorneys’ fees) which the Company or any Hunt Indemnified Party may incur by reason of the past, present or future actions or omissions of the Managing Member or any of their Affiliates constituting gross negligence, misconduct, fraud, breach of fiduciary duty or a breach or an Event of Default with respect to or under this Agreement; provided, however, that the foregoing indemnification shall not constitute a guaranty of the Permanent Loan.

(b) Notwithstanding the foregoing, no Managing Member shall be liable to a Hunt Indemnified Party or the Company for any act or omission for which the Company is required to indemnify such Managing Member under Section 5.7.

(c) The Managing Member shall indemnify, defend, and hold harmless the Company and the Hunt Indemnified Parties and the Company from and against any claims, suits, actions, debts, damages, costs, charges, losses, obligations, judgments and expenses of any nature whatsoever (other than actions caused by a third party on property outside of the Apartment Complex over which the Managing Member has no control and about which the Managing Member had no prior knowledge and no ability to prevent or mitigate the impact of those actions on the Apartment Complex) suffered or incurred by the Hunt Indemnified Parties and arising directly or indirectly out of the presence on, under or about the Apartment Complex of any Hazardous Substance, the use, generation, manufacture, storage or disposal of any Hazardous Substance on, under or about the Apartment Complex, or the violation of any Environmental Laws by the Managing Member or its representatives. The Managing Member shall further indemnify and hold harmless the Company and the Hunt Indemnified Parties and their respective Affiliates and successors from and against any claims, demands, losses, damages, liabilities, lawsuits and other proceedings, judgments, awards, costs and expenses including, without limitation, reasonable attorneys’ fees, arising directly or indirectly, in whole or in part, out of a breach of any or all of the representations, warranties and covenants contained in this Agreement. In case such action is brought against any Hunt Indemnified Party, and it notifies the Managing Member of the commencement thereof as soon as practicable, the Managing Member will be entitled to participate in, and, to the extent that it chooses so to do, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to the Hunt Indemnified Party), and the Managing Member will assume the payment of all fees and expenses relating to such investigation and defense and will have the right to negotiate and consent to settlement thereof provided such settlement expressly and unconditionally releases the Hunt Indemnified
Party from all liabilities and obligations with respect to the claim without prejudice and the settlement would not otherwise materially adversely affect the Hunt Indemnified Party. Any one or more of the Hunt Indemnified Parties will have the right to employ separate counsel in any such action and to participate in the defense thereof, but after notice from the Managing Member to such Hunt Indemnified Party of its election to assume the defense thereof, the fees and expenses of such separate counsel will be at the expense of such Hunt Indemnified Party unless (i) the employment of such counsel and the payment of such fees and expenses by the Managing Member has been specifically authorized in writing by the Managing Member, or (ii) the Managing Member has not employed counsel to have charge of the defense of such action within a reasonable time after receipt of a request by the Hunt Indemnified Party to assume the defense of the action, (iii) counsel for such Hunt Indemnified Party or Parties has reasonably concluded that there may be material defenses available to it or them which are different from or additional to those available to the Managing Member and other Hunt Indemnified Parties (in which case, the Managing Member will not have the right to direct the defense of such action on behalf of such Hunt Indemnified Party and the fees and expenses of counsel necessary as a result of the occurrence of the events described in (i), (ii), or (iii) above will be borne by the Managing Member). The Managing Member will not be liable for any settlement of any such action effected without its Consent, but if settled with the Consent of the Managing Member or if there is a final judgment for the plaintiff in any such action as to which the Managing Member has received notice in writing as hereinabove required, the Managing Member agrees to indemnify and hold harmless the Hunt Indemnified Party from and against any loss or liability by reason of such settlement or judgment. In addition to the foregoing indemnification, the Hunt Indemnified Parties may pursue any other available legal or equitable remedy against the Managing Member with respect to the Managing Member’s breach of any of the representations, warranties or covenants contained herein, including, without limitation, the Investor Member’s deferral of the payment of its Capital Contribution pursuant to Section 4.2.

(d) The indemnification rights contained in this Section 5.8 shall be recourse obligations of the Managing Member and shall survive dissolution of the Company and Withdrawal or Involuntary Withdrawal of the Managing Member (except that the Managing Member shall not be liable for claims arising solely from the actions of others after its Withdrawal or Involuntary Withdrawal) and shall be cumulative of, and in addition to, any and all rights, remedies and recourse to which the Hunt Indemnified Parties shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity.

(e) The Managing Member, on behalf of itself and the Company, hereby waives any and all claims it may now or in the future have against any Lender and the Investor Member relating to the Construction Mortgage or the Permanent Mortgage based in any way upon Lender’s status as an investor in the Investor Member.

5.9 Certain Payments to the Managing Member and Affiliates.

(a) Development Fee. The Company shall pay the Developer the Development Fee on the terms, at the times and in the manner set forth in the Development Agreement. The Development Agreement provides for a Development Fee equal to $2,527,585. No Development Fee shall be paid by the Company upon the occurrence of an Event of Default.
or the occurrence of an event, which with the giving of notice or the passage of time or both would result in an Event of Default.

(b) **MM Incentive Management Fee.** The Company shall pay the Managing Member an annual non-cumulative fee payable in arrears (the “MM Incentive Management Fee”), for services commencing at Rental Achievement in connection with the administration of the day-to-day business of the Company in an annual amount not to exceed $120,000. The MM Incentive Management Fee for each fiscal year of the Company shall be payable from Cash Flow in the manner and priority set forth in Section 14.1(a) and shall be prorated for a partial fiscal year.

(c) **Payment of Development Fee and MM Incentive Management Fee.** In the event of the occurrence of an Event of Default by the Managing Member under this Agreement, no Development Fee or MM Incentive Management Fee shall be paid, and there shall be no payments on any Operating Deficit Loans, MM Loans, and Excess MM Loans.

5.10 **Reserve Accounts.**

(a) The Managing Member shall establish and maintain the Replacement Reserve (the “Replacement Reserve”) to provide for working capital needs, improvements, replacements and any other contingencies of the Company as required by the Lenders and/or any Agency. Commencing on the date on which the first building in the Apartment Complex receives a certificate of occupancy or other license or permit allowing for the occupancy of such first building, the Managing Member shall cause the Company to deposit into Replacement Reserve from its Cash Receipts, the amount of $27,500 annually (the annual amount of contributions to the Replacement Reserve shall be funded in twelve (12) equal monthly payments), which amount shall be adjusted upward each year, commencing on the one year anniversary of the due date for the initial deposit to the Replacement Reserve, by three percent (3%). Following the 10th year of the Compliance Period, and every five (5) years thereafter, the Investor Member shall have the right to require a physical needs assessment for the Apartment Complex at the Company’s expense, which may result in adjustments to the Replacement Reserve. Withdrawals and expenditures from the Replacement Reserve shall be made only with the Consent of the Investor Member and are subject to any written approval which may be required by any Lender or Agency. If the terms of any loan impose more strict requirements regarding the funding and/or use of Replacement Reserve, such more strict requirements shall apply. If the Permanent Lender does not require that it shall hold and control the Replacement Reserve, then the Replacement Reserve shall be deposited at an FDIC commercial member bank selected by the Investor Member, in an account requiring the signature of the Investor Member for any withdrawals (including any interest earned on the account).

(b) The Managing Member shall cause to be established and maintained the Operating Reserve to fund Operating Deficits (the “Operating Reserve”). Concurrently with the Fourth Installment, the Managing Member shall cause the Company to deposit into the Operating Reserve the greater of $540,000 or an amount equal to six months of Operating Expenses and Debt Service Expense, as determined at the time of Rental Achievement and any contributions to the Operating Reserve required by the Agency or any Lender (the “Initial Operating Reserve Amount”). The Operating Reserve shall be deposited at an FDIC commercial member bank
selected by the Investor Member, in an account requiring the signature of the Investor Member for any withdrawals (including any interest earned on the account). Withdrawals and expenditures from the Operating Reserve shall be made only with the Consent of the Investor Member, which Consent shall not be unreasonably withheld, conditioned or delayed, and are not subject to any approval by any Lender or Agency. The Investor Member shall facilitate withdrawals without condition or delay, to such extent that the Managing Member requests to use any funds in the Operating Reserve in excess of $250,000 to pay Operating Deficits prior to funding under its Operating Deficit Guaranty; provided, however, that such funds shall not be applied against the Operating Deficit Loan Cap and shall not be available to pay fees to the Management Agent if it is an Affiliate of the Managing Member, the Developer, or Guarantors]. Notwithstanding anything to the contrary, the Managing Member shall cause the Company to increase the Operating Reserve from time to time to the extent necessary to cause the Company to comply with all Operating Reserve (or comparable reserve) requirements imposed, from time to time, by any Lender or the Agency. The Operating Reserve shall be maintained from Cash Flow throughout the Compliance Period at an amount equal to or exceeding the Initial Operating Reserve Amount, and shall not be subject to release prior to the end of the Compliance Period. Upon expiration of the Compliance Period, funds in the Operating Reserve shall be distributed pursuant to Section 14.1(a), except to the extent otherwise required by Section 17.2 of this Agreement, provided, however, that no distribution shall be made to the Managing Member pursuant to such sections if an Event of Default has occurred and is continuing under this Agreement. The release of the Operating Reserve shall not require the consent of the Permanent Lender.

5.11 Pledged Payments. To secure the payment and performance by the Managing Member and the Developer to Investor Member of the Managing Member’s obligations under this Agreement and the Developer’s obligations under the Development Agreement, the Managing Member, in accordance with the Managing Member Pledge, hereby collaterally assigns, pledges and grants a security interest to the Investor Member in all right, title and interest the Managing Member has in the right to receive any distributions and payments under this Agreement, payments with respect to Operating Deficit Loans and MM Loans and distributions of Cash Flow and Cash From Capital Transaction, and the Developer, in accordance with the Developer Pledge, hereby collaterally assigns, pledges and grants a security interest to the Investor Member in all right, title and interest the Developer has in the Development Agreement, including, without limitation, any payments of the Development Fee (collectively, the “Pledged Payments”). The Managing Member and the Developer, in accordance with the terms of the Managing Member Pledge and Developer Pledge, respectively, irrevocably direct the Company to pay to the Investor Member any Pledged Payments at any time that there is an unsatisfied obligation secured by the Pledged Payments. The Company and the Members shall treat any Pledged Payments made by the Company to the Investor Member as a payment by the Company to the Managing Member or the Developer, as applicable, of the particular Pledged Payment and a payment by the Managing Member or Developer, to the Investor Member, of the particular obligation which it secures. If there is more than one type of outstanding obligation secured at the time a Pledged Payment is made to the Investor Member, the Investor Member, in its sole discretion shall decide to which secured obligation the Pledged Payments shall be applied. This Section 5.11 shall constitute a security agreement under the laws of the State. In addition, the Managing Member and the Developer each grant the Investor Member a right of
offset against Pledged Payments with respect to all amounts due to the Managing Member under this Agreement and the Developer under the Development Agreement.

5.12 Assignment to Company. The Managing Member hereby transfers and assigns to the Company all of its right, title and interest in and to the Apartment Complex and in and to all of the Project Documents, including, without limitation, the following: (i) all contracts with architects, supervising architects, engineers and contractors with respect to the development of the Apartment Complex; (ii) all plans, specifications and working drawings heretofore prepared or obtained in connection with the Apartment Complex; (iii) all governmental commitments and approvals obtained, and applications therefor, including those relating to planning, zoning, building permits, Housing Tax Credits; (iv) any and all commitments with respect to the Loans; (v) any and all contracts or rights with respect to any agreements with the Lenders and any Agency; and (vi) any other work product related to the Apartment Complex and/or the Company, all of which, with respect to the Managing Member, shall have an agreed to value of $1.00.

5.13 Meetings. Any Member may call meetings of the Company for any matters for which the Investor Member may vote as set forth in this Agreement. Within seven (7) days after receipt of Notice requesting a meeting, which Notice shall state the purpose of a meeting, the Managing Member shall provide the Investor Member with Notice (either in person or by certified mail) of a meeting and the purpose of such meeting to be held on a date not less than ten (10) nor more than twenty (20) days after receipt of said request, at a time convenient to the Investor Member, except in the case of an emergency such meeting to be held within two (2) days after receipt of a request. All meetings shall be held at the principal office of the Company.

5.14 Purchase Option. The Co-Managing Member shall have the right to purchase with respect to the Apartment Complex in accordance with the terms set forth in the Purchase Option Agreement.

ARTICLE 6
MANAGING MEMBER REPRESENTATIONS AND WARRANTIES

6.1 Representations, Warranties and Covenants. The Managing Member represents, warrants and covenants to the Company and the Investor Member, and their counsel for purposes of providing certain tax and other opinions, that the following are presently true and accurate:

(a) The Company is a duly organized limited liability company validly existing and in good standing under the laws of the State and has complied with all filing requirements necessary for the protection of the Investor Member, and it has no assets other than those relating to the Apartment Complex and has never engaged in any business or incurred any liabilities other than in respect of the Apartment Complex. The Company has taken all requisite action in order to conduct lawfully its business in the State and is not qualified to do business in and is not required to so qualify in any jurisdiction other than the State.

(b) The Land is and will be zoned for the operation of the Apartment Complex as a permitted use. There is no violation by the Company or the Managing Member of any zoning or similar regulation applicable to the Apartment Complex which could have a material adverse effect thereon, or, to the best of the knowledge of the Managing Member after
due inquiry, of any environmental or similar regulation applicable to the Apartment Complex which could have a material adverse effect thereon, and the Company has complied with all applicable municipal and other laws, ordinances and regulations relating to such construction and use of the Apartment Complex.

(c) All appropriate public utilities, including water, electricity and gas (if called for in the Plans and Specifications), are or will be available and operating properly for each apartment unit in the Apartment Complex on the Occupancy Commencement Date.

(d) No event or proceeding (including, without limitation, legal actions or proceedings before any court, commission, administrative body or other governmental authority having jurisdiction over the zoning applicable to the Apartment Complex, labor disputes and acts of any governmental authority) has occurred or is pending or threatened to the best of the Managing Member’s knowledge after due inquiry, which may (i) materially adversely affect the Company, the Apartment Complex or related to the business or assets of the Company or of the Apartment Complex, or (ii) materially adversely affect the ability of the Managing Member or any of its Affiliates to perform their respective obligations hereunder or under any other agreement with respect to the Apartment Complex, other than legal proceedings which have been bonded against in such manner as to stay the effect of the proceedings or otherwise have been adequately provided for.

(e) No default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under this Agreement or under any material provision of the Project Documents, and the same are in full force and effect.

(f) There has been no violation by the Company, the Managing Member, the Guarantors or any Affiliate of the Managing Member or the Guarantors of Anti-Corruption Laws in connection with the execution of this Agreement, the Project Documents and all other instruments, documents and agreements pertaining to the Company or the Apartment Complex.

(g) After Permanent Loan Closing, no Member or Related Person will bear the Economic Risk of Loss with respect to the Permanent Loan. No Managing Member has, either on its own behalf or on behalf of the Company, incurred any financial responsibility with respect to the Company prior to the Closing Date, other than as disclosed in writing to the Investor Member or which will be satisfied at or prior to the execution of this Agreement.

(h) Reserved.

(i) Reserved.

(j) The Company owns a fee simple interest in the Apartment Complex, subject to no material liens, charges or encumbrances other than those which (i) are permitted by the Project Documents and are noted or excepted in the Title Commitment, or, after the issuance thereof, the Title Policy, and (ii) do not materially interfere with use of the Apartment Complex (or any part thereof) for its intended purpose or have a material adverse effect on the value of the Apartment Complex. The Managing Member has not made any misrepresentations or failed to make any disclosure that will or could result in the Company lacking title insurance coverage based on imputation of knowledge of the Managing Member to the Company.
(k) In the event there is an Additional TIF Reimbursement granted to the Company in excess of the $134,355 provided pursuant to the City Council Action, such excess funds shall be subject to the Consent of the Investor Member and shall be used first to pay hard and soft costs of the Construction as reasonably acceptable to the Investor Member and second to pay the portion of the Development Fee payable at the Fourth Installment.

(l) Reserved.

(m) The execution and delivery of all instruments and the performance of all acts heretofore or hereafter made or taken pertaining to the Company or the Apartment Complex by each Affiliate of the Managing Member which is a corporation or limited liability company have been or will be duly authorized by all necessary organizational action, and the consummation of any such transactions with or on behalf of the Company will not constitute a breach or violation of, or a default under, the charter, bylaws, operating agreement or other organizational documents of such Affiliate or any agreement by which such Affiliate or any of its properties is bound, nor constitute a violation of any law, administrative regulation or court decree.

(n) Any Managing Member which is a corporation or limited liability company has been duly organized, is validly existing and in good standing under the laws of its state of organization and has all requisite power to be a Managing Member and to perform its duties and obligations as contemplated by this Agreement and the Project Documents. Neither the execution and delivery by such Managing Member of this Agreement nor the performance of any of the actions of such Managing Member contemplated hereby has constituted or will constitute a violation of (i) the articles of organization, by-laws, operating agreements or other organizational documents of such Managing Member, (ii) any agreement by which such Managing Member is bound or to which any of its property or assets is subject, or (iii) any law, administrative regulation or court decree.

(o) The General Contractor’s Construction Contract has been entered into between the Company and the General Contractor, the Sub-Contractor’s Construction Contract has been entered into between the General Contractor and the Sub-Contractor and by and between the Company and the Sub-Contractor and the Public Bid Sub-Contractor’s Construction Contract has been entered into by and among the Company, the Public Bid Sub-Contractor and the City of Fort Worth. No other consideration or fee shall be paid to the General Contractor, Sub-Contractor and Public Bid Sub-Contractor in their capacity as the General Contractor, Sub-Contractor and Public Bid Sub-Contractor, respectively, for the Apartment Complex and work required pursuant to the TIF Reimbursement Agreement and the City Council Action, other than the amounts set forth in the General Contractor’s Construction Contract, Sub-Contractor’s Construction Contract and Public Bid Sub-Contractor’s Construction Contract, as applicable, the amount paid to the General Contractor by the Company at Closing pursuant to invoice #30 dated August 22, 2018 totaling $42,089 (constituting the first half of the total payment), the amount paid to the General Contractor by the Company totaling $42,089 (constituting the second half of the total payment), or as evidenced by change orders approved by the applicable Lenders and Consented to by the Investor Member; and all change orders to date have been paid in full. In addition, no consideration or fee shall be paid to the Developer or Managing Member by the General Contractor, Sub-Contractor or Public Bid Sub-Contractor.
(p) The only tenant eligibility requirements or rent restrictions with which the Apartment Complex and the Company must comply, including restrictions necessary to receive the full amount of the Projected Housing Tax Credits, are the following:

(i) 74 of the 110 units are subject to the rent restrictions and occupancy limitations that apply to residential units that satisfy the Minimum Set-Aside Test or the HOME Minimum Set-Aside Test, as applicable for the term of the Extended Use Agreement and are leased to Qualified Tenants (the “Housing Tax Credit Units”).

(A) 8 of the 74 Housing Tax Credit Units are Section 8 Units.

(B) 11 of the 74 Housing Tax Credit Units are subject to requirements set forth in the HOME Act.

(ii) Unless the Investor Member gives its Consent, 36 of the 110 units shall be Market Rate Units and shall at all times be rented or available for rent as “free market” units without regard to any rent restrictions and occupancy limitations imposed under the Code, the Agency, the Extended Use Agreement or from any other source.

(q) The Managing Member acknowledges that the HOME Loan has been funded with the proceeds of HOME Program funds pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1990, which is implemented by the HOME Investment Partnerships Program, 24 CFR Part 92, as amended (collectively, the “HOME Act”). The Managing Member shall cause the Company to comply in full with the HOME Act, if applicable, including, without limitation, rental restrictions and tenant income limitations, Davis-Bacon Act compliance requirements, and all requirements set forth in any regulatory agreement executed by the Company in connection with the HOME Loan.

(r) The term of the Extended Use Agreement will not exceed thirty-five (35) years and under the Extended Use Agreement.

(s) Saigebrook Development, LLC owns and shall continue to own at all times during the term hereof one hundred percent (100%) of all classes of interests of the Co-Managing Member and Lisa M. Stephens owns and shall continue to own at all times during the term hereof one hundred percent (100%) of all classes of interests of Saigebrook Development, LLC (subject to any estate planning transfers; provided that (A) any direct or indirect interest of Lisa M. Stephens in the Co-Managing Member is conveyed to a trust for the benefit of the spouse or children of Lisa M. Stephens, and (B) Lisa M. Stephens or Megan D. Lasch continues to control the Co-Managing Member). O-SDA Industries, LLC owns and shall continue to own at all times during the term hereof one hundred percent (100%) of all classes of interests of the Administrative Member and Megan D. Lasch owns and shall continue to own at all times during the term hereof one hundred percent (100%) of all classes of interests of O-SDA Industries, LLC (subject to any estate planning transfers; provided that (A) any direct or indirect interest of Megan D. Lasch in the Administrative Member is conveyed to a trust for the benefit of the spouse or children of Megan D. Lasch, and (B) Megan D. Lasch or Lisa M. Stephens continues to control the Administrative Member).

(t) Single Purpose Requirements.
(i) The Managing Member shall not engage, has not engaged and does not engage, in any business other than the business of making housing available to persons of low and moderate income other than with respect to the Market Rate Units and promoting social welfare and combating community deterioration, through acquisition, investment, funding, construction, rehabilitation, or any other means consistent with its charitable purposes.

(ii) The Managing Member shall not enter into and has not entered into any contract or agreement with any Affiliate of the Managing Member, any constituent party of the Managing Member, or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s length basis with third parties other than any such party.

(iii) The Managing Member has and shall continue to pay its debts and liabilities from its own assets as the same shall become due. No Affiliate has paid any debts or liabilities on behalf of the Managing Member.

(iv) The Managing Member has and shall continue to maintain books, financial records and bank accounts that are separate and distinct from the books, financial records and bank accounts of any other Person including any Affiliate.

(v) The Managing Member has and shall continue to maintain separate annual financial statements prepared in accordance with generally accepted accounting principles, consistently applied, showing its assets and liabilities separate and distinct from those of any other entity; in the event the financial statements of the Managing Member are consolidated with the financial statements of any other entity, the Managing Member has and shall continue to cause to be included in such consolidated financial statements: (i) a narrative description of the separate assets, liabilities, business functions, operations and existence of the Managing Member to ensure that such separate assets, liabilities, business functions, operations and existence are readily distinguishable by any entity receiving or relying upon a copy of such consolidated financial statements; and (ii) a statement that the Managing Member’s assets and credit are not available to satisfy the debts of such other entity or any other person.

(vi) The Managing Member or its members has and shall continue to file its own tax returns and pay its own taxes required to be paid under applicable law.

(vii) The Managing Member has and shall continue to (i) hold itself out as an entity separate and distinct from any other Person; (ii) not identify itself or any of its affiliates as a division or part of the other; (iii) correct any known misunderstanding regarding its separate status; and (iv) use separate stationery, invoices, checks, and the like bearing its own name.

(viii) The Managing Member has and shall continue to conduct its business in its own name so as to avoid or correct any misunderstanding on the part of any creditor concerning the fact that any invoices and other statements of account from creditors of the Managing Member are to be addressed and mailed directly to the Managing Member, though this provision shall not prohibit such mail to be delivered to the Managing Member c/o any other entity.
(ix) The Managing Member has and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(x) The Managing Member has not and shall not commingle any of its assets, funds or liabilities with the assets, funds or liabilities of any other Person or Affiliate.

(xi) The Managing Member has and shall continue to maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any party.

(xii) Except as provided for in this Agreement or under the Loan documents, the Managing Member has not and shall not, (i) assume or guaranty the debts of any other Person in a manner that includes a pledge, encumbrance, transfer or hypothecation (whether by operation of law or otherwise) of any assets or interests of the Company or, (ii) hold itself out to be responsible for the debts of another Person in a manner that includes the pledge, encumbrance, transfer or hypothecation of any assets or interests of the Company (whether by operation of law or otherwise), or (iii) otherwise pledge, encumber, transfer or hypothecate the assets of the Company for the benefit of another Person or permit the same to occur, or (iv) hold the Company’s credit as being available to satisfy the obligations of any other Person.

(xiii) All transactions carried out by the Managing Member have been and will be, in all instances, made in good faith and without intent to hinder, delay or defraud creditors of the Managing Member.

(u) On each date of funding by the Investor Member of a Capital Contribution, the Company shall have good and marketable title to the Apartment Complex, subject only to the permitted exceptions set forth in Section 6.1(f). All real estate taxes, assessments, water and sewer charges and other municipal charges, to the extent due and owing, have been paid in full on the Apartment Complex.

(v) No representation, warranty or statement of the Managing Member in this Agreement or in any document, certificate or schedule furnished or to be furnished to any Investor Member pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

(w) The Apartment Complex is not a scattered site project within the meaning of Code Section 42(g)(7).

(x) Reserved.

(y) The Managing Member represents, warrants and covenants that:

(i) By the Fourth Installment, the Accountants have certified that all amounts included in the determination of Eligible Basis as set forth in the Development Budget and in the Application are properly includable pursuant to the Code and Service rulings.
(ii) The Company’s total initial cost basis allocable to a class of property other than residential rental property shall not be increased by more than 25% of the amount set forth in the LIHTC Certificate attached hereto as Exhibit S.

(iii) No portion of the Apartment Complex’s Eligible Basis, including the portion of the Development Fee included in Eligible Basis, is allocable, under the Code and rulings issued by the Service, to land costs, organizational or syndication costs. Land preparation costs included in Eligible Basis are inextricably associated with depreciable assets of the Company.

(iv) Any portion of the Development Fee that is included in Eligible Basis, including any portion the payment of which is deferred, is properly includable in Eligible Basis under the Code and Service rulings.

(z) No Event of Bankruptcy has occurred with respect to the Managing Member, any Guarantor or any Affiliate of the Managing Member or any Guarantor.

(aa) Neither the Company nor any Managing Member has liabilities, contingent or otherwise, or pending or threatened litigation or any unasserted claim against any of them which would have a material adverse effect on the Managing Member, the Apartment Complex or the Company that have not been disclosed in writing to the Investor Member.

(bb) There is no litigation, demand, suit, action, inquiry, proceeding, investigation or claim pending or, to the best of the Managing Member’s knowledge, threatened, relating to any Anti-Corruption Laws with respect to the Company, the Managing Member, the Guarantor(s) or any Affiliate with respect to the Managing Member or the Guarantor(s).

(cc) All accounts of the Company required to be maintained under the terms of the Project Documents, including the Replacement Reserve, are currently funded to the levels required by the Lenders and/or any Agency, to the extent required by each such Lender and Agency.

(dd) Prior to Rental Achievement, the Guarantors will maintain collectively at least $1,000,000 in Liquid Assets. From the date of Rental Achievement through and including the Operating Deficit Guarantee Period, the Guarantors will maintain collectively at least $750,000 in Liquid Assets. After the expiration of the Operating Deficit Guarantee Period, the Guarantors will maintain collectively at least $500,000 in Liquid Assets; provided, that the requirements of this subsection shall be deemed satisfied in accordance with the Backstop Guaranty Agreement, so long as such agreement is in full force and effect regardless of whether Hunt is in default thereunder. The Managing Member shall Notify the Investor Member whenever the requirements of this Section 6.1(dd) are not satisfied. Any Development Fee paid at Closing will count towards the Guarantor’s Liquid Asset requirement on the date of Closing and any Development Fee paid at Rental Achievement shall count towards the Guarantor’s Liquid Asset requirement at Rental Achievement.

(ee) All payments and expenses required to be made or incurred in order to achieve Completion of the Apartment Complex in conformity with the Project Documents, to satisfy all requirements under the Project Documents and/or which form the basis for
determining the principal sum of the Permanent Loan and to pay the Development Fee (other than the Deferred Development Fee) have been or will be paid or provided for utilizing only the Permitted Sources.

(ff) The amount of Housing Tax Credits which are expected to be allocated by the Company to the Investor Member is as set forth in the definition of Projected Housing Tax Credits.

(gg) The Apartment Complex is being developed in a manner which satisfies, and shall continue to satisfy, all restrictions, including tenant income and rent restrictions, applicable to projects generating Housing Tax Credits.

(hh) None of the costs to develop and construct the Apartment Complex has been paid for, directly or indirectly, from the proceeds of bonds the interest on which is exempt from tax under Section 103 of the Code, and the Eligible Basis of the Apartment Complex shall not include any costs financed with the proceeds of a federally funded grant pursuant to Section 42(d)(5)(A) of the Code.

(ii) (A) The Managing Member has provided to the Investor Member a complete copy of the Environmental Documents. To the best of the knowledge of the Managing Member after due inquiry, except as disclosed in the Environmental Documents, no Managing Member, Affiliate of any Managing Member or Person for whose conduct any Managing Member is or was responsible has ever: (i) owned, occupied, or operated a Facility or Vessel on the Apartment Complex on which any Hazardous Material was or is stored, transported or disposed of (except if such storage, transport or disposal was and is at all times in compliance with all laws, including all Environmental Laws, ordinances and regulations pertaining thereto); (ii) directly or indirectly transported, or arranged for transport, of any Hazardous Material (except if such transport was and is at all times in compliance with all laws, including all Environmental Laws, ordinances and regulations pertaining thereto) to or from the Apartment Complex; (iii) caused or was legally responsible for any release or threat of release of any Hazardous Material to or from the Apartment Complex or the property adjacent thereto; (iv) received notification from any federal, state or other governmental authority or by any other Person of (x) any potential, known, or threat of release of any Hazardous Material at or from the Apartment Complex; or (y) the incurrence of any expense or loss by any such governmental authority or by any other Person in connection with the assessment, containment, or removal of any release or threat of release of any Hazardous Material from the Apartment Complex.

(B) In connection with the acquisition of the Apartment Complex, the Company obtained a “Phase I” environmental site assessment of the Apartment Complex which establishes an innocent landowner defense pursuant to Section 9601(35) of CERCLA. The Managing Member has reviewed the “Phase I” environmental site assessment (and any subsequent studies recommended therein) and believes the same to be true, correct and complete in all respects. To the best knowledge of the Managing Member, after due inquiry, there is no fact, circumstance, event or condition, previously or subsequently occurring, which would or does make any statement in such survey untrue, false or misleading. None of the Company, the Managing Member nor any of its Affiliates has given any waiver or release of
liability pursuant to any Environmental Law to any Person in the chain of title of the Land or the Apartment Complex.

(jj) To the best of the Managing Member’s knowledge, after due inquiry, except as disclosed by the Managing Member to the Investor Member in writing, neither the Company nor the Apartment Complex is in violation of any Environmental Law. Neither the Managing Member nor the Company has received any notice from any governmental agency or by any other Person that the Company, Apartment Complex or Land upon which it is located is in violation of any Environmental Law.

(kk) To the best of the Managing Member’s knowledge, after due inquiry, except as disclosed by the Managing Member to the Investor Member in writing or in the Environmental Documents, no Hazardous Material was ever or is now stored, transported or disposed of (except to the extent any such storage, transport or disposal was at all times in compliance with all laws, including all Environmental Laws, ordinances and regulations pertaining thereto) on the Land.

(l) No Person or Entity other than the Company and those Persons holding indirect interests through the Company holds any equity interest in the Apartment Complex.

(mm) The Company has the sole responsibility to pay all maintenance and operating costs, including all taxes levied upon, and all insurance costs attributable to the Apartment Complex.

(nn) The Company, except to the extent that it is protected by insurance and excluding any risk borne by any Lender, bears the sole risk of loss if the Apartment Complex is destroyed or condemned, or if there is a diminution in value of the Apartment Complex.

(oo) No Person except the Company has the right to any proceeds after payment of all indebtedness, from the sale, refinancing or leasing of the Apartment Complex.

(pp) The fair market value of the Apartment Complex exceeds or, once constructed, is expected to exceed the total amount of indebtedness, including accrued interest thereon, encumbering the Apartment Complex and is expected to do so throughout the term of such indebtedness.

(qq) The Managing Member represents and warrants that (i) neither the Managing Member nor the Company has entered into any other enforceable agreement or commitment with any other Person to acquire the Housing Tax Credits, or, in the alternative, (ii) the Managing Member and/or the Company has obtained legally enforceable releases or termination agreements from other Persons with whom the Managing Member and/or the Company has previously entered into an agreement whereby said Persons may acquire the Housing Tax Credits. The Managing Member further warrants that it shall at all times indemnify and hold harmless the Hunt Indemnified Parties against and from any and all claims, suits, actions, damages, costs, judgments and expenses, of any nature whatsoever, suffered or incurred by the Hunt Indemnified Parties as a result of the Managing Member and/or the Company’s prior dealings, negotiations, agreements, and/or commitments with Persons.
The Managing Member has prepared its own financial analysis of the Apartment Complex and is not relying on any financial analysis, projection or forecast prepared by the Investor Member or any Affiliate thereof of the construction costs associated with the Apartment Complex or the Apartment Complex’s operations. There are sufficient sources of funds to complete the Apartment Complex in accordance with the Development Budget.

The Apartment Complex has been and will be constructed and operated in conformance with the Application submitted to the Agency.

No restrictions on the sale or refinancing of the Apartment Complex exist, other than restrictions under Code Section 42, the documents evidencing and securing the HOME Loan and the Extended Use Agreement, and no other such restrictions shall be placed upon the sale or refinancing of the Apartment Complex at any time while the Investor Member is an Investor Member without the Consent of the Investor Member.

The Company has not made, and will not make, an election to be taxable as a corporation.

Other than as specifically provided in this Agreement, a creditor who makes a loan to the Company shall not have or acquire at any time as a result of making the loan, any interest in the profits, capital or property of the Company other than as a secured creditor.

The Managing Member has disclosed in writing to the Investor Member all material actions with respect to the Company taken by the Managing Member prior to the date hereof.

All material documents relating to the Company and the Apartment Complex have been made available to the Investor Member.

The Managing Member acknowledges that no Lender is or will be acting on behalf of or as agent for the Investor Member in connection with the Construction Mortgage or the Permanent Mortgage.

The Managing Member, on behalf of itself and the Company, shall not bring any claim against any Lender or the Investor Member relating to the Construction Mortgage or the Permanent Mortgage based in any way upon Lender’s status as an investor in the Investor Member.

Neither the Managing Member nor the Company (a) is in violation of the USA Patriot Act; (b) is a Person or entity described by section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49,079 (2001), or (c) to the best knowledge and belief of the Managing Member, neither the Managing Member or the Company engages in any dealings or transactions, or is otherwise associated, with any such Persons or entities.

The Managing Member acknowledges that the fees to be paid by the Company and described in this Agreement and all exhibits thereto, including the Development
Agreement, the Management Agreement and the Project Documents, are reasonable compensation for the services for which they will be paid.

(ccc) The Apartment Complex does not contain any commercial spaces.

(ddd) The Managing Member has performed suitable and adequate due diligence as is customary in the industry and, in connection therewith, and the Managing Member has discovered no condition (other than those previously disclosed to the Investor Member in writing) adverse to the development and operation of the Project or any of the assumptions, projections or pro formas delivered to the Investor Member.

(eee) The Managing Member shall Notify the Investor Member of any groundbreaking, grand opening, ribbon-cutting or other public relations ceremony relating to the Apartment Complex (collectively, “Groundbreaking Activities”). In addition, the Managing Member shall invite (in writing) a representative of the Investor Member to attend and actively participate in such Groundbreaking Activities, such written invitation shall be made no less than thirty (30) calendar days prior to the scheduled event. The Managing Member shall cause the Company to display a sign at the Apartment Complex during construction which clearly states the name of Hunt Capital Partners, LLC as the arranger of equity funds for the Project and at Hunt’s option, the name of the Investor Member or any member/partner of the Investor Member. The sign shall be erected, at the cost of the Company, in a prominent place on the site within fifteen (15) Business Days of receipt by the Managing Member of the Hunt Capital Partners, LLC image and directions. The Managing Member agrees to immediately remove such sign or reference to Hunt Capital Partners, LLC, its investors, and/or any member/partner of the Investor Member if requested by the Investor Member. The Managing Member hereby gives permission to the Investor Member, and any Affiliate thereof, to issue press releases and advertising relating to the equity commitment and the Investor Member’s participation in the transaction. Such media and marketing materials may include, among other things, photos, information about the location of the Apartment Complex, the number of units, the amenities associated with the Apartment Complex and the terms of the equity commitment. The Managing Member shall reference Hunt Capital Partners, LLC as the arranger of equity funds for the Project and at Hunt’s option, the name of the Investor Member or any member/partner of the Investor Member, in any press releases related to the Apartment Complex and shall provide the Investor Member with at least five (5) Business Days to review such items.

(fff) Reserved.

(ggg) to the Managing Member’s knowledge, it has complied in all material respects with, and has caused the Company to comply in all material respects with, all applicable local, state and federal laws, statutes, regulations, rules and ordinances (including, without limitation, (i) all applicable filing and disclosure requirements related thereto, (ii) the USA Patriot Act and (iii) the Currency and Foreign Transactions Reporting Act of 1970 and neither it nor the Company has entered into any transaction with any entity or country that, to its knowledge, is (A) sanctioned under Section 311 of the USA Patriot Act or (B) a Foreign Shell Bank; it has established anti-money laundering policies and procedures as may be required by the Bank Secrecy Act, as amended by USA Patriot Act, which policies and procedures shall also
apply, as applicable, to the Company, and is in full compliance with the Financial Crimes Enforcement Network of the U.S. Department of Treasury ("FinCen") regulations.

(hhh) At the written direction of the Investor Member, the Managing Members shall cause the Company to make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code. The Managing Member shall not otherwise make the foregoing election without the written direction of, or with the Consent of, the Investor Member. The Managing Member shall seek the direction and/or Consent of the Investor Member prior to filing of the Company’s 2018 tax returns or such earlier time as such election is to be made. Once made, the election will be irrevocable.

All of the representations, warranties and covenants contained herein shall survive the date of Permanent Loan Closing and the funding date of each Installment made by the Investor Member. The Managing Member shall indemnify and hold harmless the Hunt Indemnified Parties against a breach of any of the foregoing representations, warranties and covenants and any damage, loss or claim caused thereby, including reasonable attorneys’ fees and costs and expenses of litigation and collection. In case such action is brought against any Hunt Indemnified Party, and it notifies the Managing Member of the commencement thereof as soon as practicable, the Managing Member will be entitled to participate in, and, to the extent that it chooses so to do, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to the Hunt Indemnified Party), and the Managing Member will assume the payment of all fees and expenses relating to such investigation and defense and will have the right to negotiate and consent to settlement thereof provided such settlement expressly and unconditionally releases the Hunt Indemnified Party from all liabilities and obligations with respect to the claim without prejudice and the settlement would not otherwise materially adversely affect the Hunt Indemnified Party. Any one or more of the Hunt Indemnified Parties will have the right to employ separate counsel in any such action and to participate in the defense thereof, but after notice from the Managing Member to such Hunt Indemnified Party of its election to assume the defense thereof, the fees and expenses of such separate counsel will be at the expense of such Hunt Indemnified Party unless (i) the employment of such counsel and the payment of such fees and expenses by the Managing Member has been specifically authorized in writing by the Managing Member, (ii) the Managing Member has not employed counsel to have charge of the defense of such action within a reasonable time after receipt of a request by the Hunt Indemnified Party to assume the defense of the action, or (iii) counsel for such Hunt Indemnified Party or Parties has reasonably concluded that there may be material defenses available to it or them which are different from or additional to those available to the Managing Member and other Hunt Indemnified Parties (in which case, the Managing Member will not have the right to direct the defense of such action on behalf of such Hunt Indemnified Party and the fees and expenses of counsel necessary as a result of the occurrence of the events described in (i), (ii), or (iii) above will be borne by the Managing Member). The Managing Member will not be liable for any settlement of any such action effected without its Consent, but if settled with the Consent of the Managing Member or if there is a final judgment for the plaintiff in any such action as to which the Managing Member has received Notice in writing as hereinabove required, the Managing Member agrees to indemnify and hold harmless the Hunt Indemnified Party from and against any loss or liability by reason of such settlement or judgment.
6.2 **Environmental Representations, Warranties and Covenants.** The Managing Member will establish operating and maintenance programs (an “O&M”) to instruct site staff and vendors on how to proceed when (i) maintaining the components of the electrical system that facilitate safe mixing of aluminum and copper components, and (ii) dealing with Hazardous Materials at the Apartment Complex, each as and if applicable. A copy of each such O&M report shall be furnished to the Investor Member and the Management Agent, and the Management Agreement shall obligate the Management Agent to act in accordance with the recommendations in any such O&M.

**ARTICLE 7**

**EVENTS OF DEFAULT AND REMEDIES**

7.1 **Events of Default.** Any one or more of the following events, whether described in Section 7.1(a) or Section 7.1(b) is an Event of Default under this Agreement, and the term “Event of Default,” wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body. The Events of Default described in Section 7.1(a) may also give rise to the Investor Member’s repurchase right as described in Section 7.2(b)(iv), however, after the Company’s receipt of Forms 8609 and the funding of the Fifth Installment, the Investor Member’s repurchase right shall terminate.

(a) **Events of Default That Are Repurchase Triggers.**

(i) acts or omissions of the Managing Member that either (A) constitute fraud, bad faith, gross negligence, misconduct, or breach of fiduciary duty with respect to any material matter in the discharge of its duties as the Managing Member or (B) results in or is likely to result in a material detriment to or an impairment of the Apartment Complex, the Company, the Housing Tax Credits or any assets of the Company;

(ii) a Loan shall have been declared in default by Lender, which gives the Lender the right to foreclose on the Apartment Complex;

(iii) the Permanent Loan Commitment is terminated or substantially modified and is not replaced with a commitment of equivalent terms, or any interest rate lock-in has expired and is not replaced with a rate lock of equivalent terms, or the Apartment Complex only qualifies for a permanent loan that is insufficient to balance the sources and uses of funds;

(iv) the Construction Loan is not fully repaid and the Permanent Loan is not funded in accordance with Section 8.4;

(v) other than due to a Tax Law Change, the amount of Actual Housing Tax Credits for any year are, or are projected by the Accountants after the issuance of Forms 8609 to be less than eighty percent (80%) of Projected Housing Tax Credits;

(vi) For any reason whatsoever, the Apartment Complex does not generate any Actual Housing Tax Credits during 2020;
(vii) Placement in Service does not occur on or before the later to occur of (a) December 31, 2019, or (b) the date required by the Code and the Agency to preserve the Housing Tax Credits;

(viii) reserved;

(ix) reserved;

(x) IRS Forms 8609 are not issued for all buildings in the Apartment Complex on or before the date required under the Code or by the Agency to claim the Housing Tax Credits for the Apartment Complex in the year available (subject, in either case, to delays in issuance thereof solely due to inaction of the Agency);

(xi) reserved;

(xii) Rental Achievement does not occur on or before February 28, 2021;

(xiii) a casualty shall have occurred with respect to the Apartment Complex and insurance proceeds are insufficient to fully restore the Apartment Complex to its condition immediately prior to such casualty, or the Apartment Complex is not fully restored to its condition immediately prior to such casualty within twenty-four (24) months of such casualty or such earlier date as may be required by the Code or the Agency to preserve the Housing Tax Credits;

(xiv) reserved;

(xv) the Ten Percent Test is not met within earlier of the time specified by Section 42(h)(1)(E) of the Code or the date required by the Agency;

(xvi) reserved;

(xvii) the Managing Member and/or the Company fail to comply with any requirement of the Agency which may have a material adverse effect on the Carryover Allocation, including, without limitation, a reduction in the Projected Housing Tax Credits;

(xviii) at any time prior to Completion, an action is commenced to abandon or permanently enjoin the construction of the Apartment Complex;

(xix) non-achievement of the Minimum Set-Aside Test and/or the Rent Restriction Test by the end of the first year of the Credit Period;

(xx) the Company fails to execute and record an Extended Use Agreement by the close of the first year of the Credit Period;

(xxi) the Company fails to achieve Initial 100% Occupancy on or before December 31, 2020;
(xxii) at any time prior to Rental Achievement, the Managing Member and/or the Developer fail to provide or cause to be provided any funds required to be provided by the Managing Member hereunder or by the Developer under the Development Agreement;

(xxiii) reserved;

(xxiv) the occurrence of an Event of Bankruptcy prior to Rental Achievement, with respect to the Managing Member, the Company, the Guarantor or the Developer, or a Person with a Controlling Interest in any of them;

(xxv) the Managing Member shall have conducted its own affairs or the affairs of the Company in such a manner as would (1) cause the termination of the Company for federal income tax purposes or (2) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation; (3) cause the Company to fail to qualify as a limited liability company under the Uniform Act; or (4) cause the Investor Member to be liable for Company obligations in excess of its Capital Contribution; or (5) otherwise substantially reduce tax benefits or substantially increase tax liabilities of the Investor Member for which the Investor Member is not compensated under this Agreement; or

(xxvi) any change of control of the Managing Member without the Consent of the Investor Member.

(b) Events of Default That are Not Repurchase Triggers.

(i) the Company fails to pay on a timely basis any of its real estate or personal property tax obligations (including any payments-in-lieu-of-taxes) to any county, city, town or other local government;

(ii) the occurrence of an Event of Bankruptcy after Rental Achievement with respect to the Managing Member, the Company, a Guarantor, the Developer, or a Person with a Controlling Interest in any of them;

(iii) any commission of, indictment or conviction for, or pleading of, nolo contendere with respect to a felony by the Managing Member or a Controlling Person of the Managing Member, or an Affiliate of the Managing Member, or there be a complaint filed against the Managing Member or a Controlling Person of the Managing Member, or an Affiliate of the Managing Member, alleging violation of any anti-fraud, registration or reporting provision of state or federal securities law or a judgment rendered against the Managing Member, a Controlling Person of the Managing Member, or an Affiliate of the Managing Member as a defendant (or admit to liability) in any action based upon civil fraud or misrepresentation, or a debarment or otherwise declaration of ineligibility to participate in any federal program or the Managing Member, a Controlling Person of the Managing Member or an Affiliate of the Managing Member is indicted by a grand jury. In the event a Controlling Person of the Co-Managing Member or an Affiliate of the Co-Managing Member is under investigation by a grand jury, voting rights and control belonging to the Co-Managing Member’s Interest shall vest to the Administrative Member until the conclusion of the investigation or the receipt by the Investor Member of a satisfactory letter from the Attorney General of the United States or the Texas Attorney General, as applicable. In the event a Controlling Person of the Administrative
Member or an Affiliate of the Administrative Member is under investigation by a grand jury, voting rights and control belonging to the Administrative Member’s Interest shall vest to the Co-Managing Member until the conclusion of the investigation or the receipt by the Investor Member of a satisfactory letter from the Attorney General of the United States or the Texas Attorney General, as applicable. In the event a Controlling Person of both the Co-Managing Member and the Administrative Member or an Affiliate of the Co-Managing Member and an Affiliate of the Administrative Member is under investigation by a grand jury, voting rights and control belonging to the Interests of Co-Managing Member and the Administrative Member shall vest to the Special Investor Member until the conclusion of the investigation or the receipt by the Investor Member of a satisfactory letter from the Attorney General of the United States or the Texas Attorney General, as applicable;

(iv) a default by a Guarantor under the Guaranty;

(v) any representation or warranty made by the Managing Member herein, or in any document or certificate furnished to the Investor Member in connection herewith or pursuant hereto shall prove at any time to be false, incorrect or misleading as of the date made and which has an adverse impact upon the Company or the Investor Member;

(vi) the failure of the Managing Member to make any Capital Contributions or payments to the Investor Member required pursuant to Section 4.2(d);

(vii) the Managing Member shall fail in any respect to observe and perform or shall breach in any respect any covenant, condition, duty, obligation or agreement set forth in Articles 5, 6 and 8, which are not otherwise set forth in this Section and which has an adverse impact upon the Company or the Investor Member;

(viii) any act by the Managing Member outside the scope of its duties or obligations under this Agreement that has a material adverse effect on the Company, the Apartment Complex or the Investor Member;

(ix) the material breach by the Managing Member of any provision of this Agreement or a breach or default by the Company of any Project Document;

(x) the Apartment Complex or the Company is substantially mismanaged in any material respect;

(xi) the Managing Member fails to fund any Operating Deficits (regardless of whether the Operating Deficit Guaranty Period has expired or whether the Operating Deficit Cap has been reached);

(xii) the Managing Member withdraws, attempts to withdraw, or for any reason is deemed to have withdrawn from the Company;

(xiii) the Managing Member fails to provide or maintain any insurance required by this Agreement;
(xiv) the Managing Member shall have conducted its own affairs or the affairs of the Company in such a manner as would qualify as an event of removal or withdrawal with respect to a Managing Member under the Uniform Act;

(xv) a Loan shall have been declared in default by Lender;

(xvi) the Guarantors do not have Liquid Assets of at least $500,000 from June 30, 2019 through the end of the Compliance Period; or

(xvii) Hunt or any Affiliate thereof pays in the aggregate more than $500,000 pursuant any of Hunt’s guaranty obligations under the Limited Guaranty Agreement and the Backstop Guaranty Agreement.

7.2 Notice and Remedies.

(a) Notice. Prior to or concurrently with the enforcement of any remedy in Section 7.2(b), the Investor Member shall give Notice of an Event of Default (“Notice of Default”) to the Managing Member and, with respect to certain Events of Default set forth in Section 7.2(c) only, the Managing Member shall have the right to cure such Event of Default.

(b) Remedies.

(i) Upon the occurrence of an Event of Default (and if the Event of Default is subject to cure under Section 7.2(c), upon a failure to cure such Event of Default by the expiration of the applicable cure period), the Investor Member may elect that, such Managing Member (a) shall immediately cease to be a Managing Member, (b) shall no longer have any Interest, (c) shall not be entitled to receive any fees, including but not limited to the MM Incentive Management Fees, which have not been fully paid prior to the date of the occurrence of the Event of Default or payment with respect to any Operating Deficit Loans or MM Loans (such removal of the Managing Member shall be an “Involuntary Withdrawal”). Notwithstanding the foregoing, upon the occurrence of the Event of Default described in Section 7.1(b)(ii) hereof, the Involuntary Withdrawal of the Managing Member shall occur immediately upon the occurrence of the Event of Default, without any election by the Investor Member.

(ii) Upon an Event of Default (and if the Event of Default is subject to cure under Section 7.2(c), upon a failure to cure such Event of Default by the expiration of the applicable cure period), the Investor Member’s designee, which may be a Hunt Entity or a qualified non-profit organization if required by the Application, shall be admitted as a replacement Managing Member (the “Replacement Managing Member”) on the terms set forth herein without any further action by any other Member. Upon any such admission of the Replacement Managing Member, the former Managing Member’s interest in all items of profits, losses, credits, distributions and Percentage Interest shall be transferred to the Replacement Managing Member and the Replacement Managing Member shall be paid all fees and loans, including but not limited to MM Incentive Management Fees, Operating Deficit Loans and MM Loans, which would have been payable to the removed Managing Member had an Event of Default not occurred. In addition, the obligation to pay any Development Fee, or portion thereof, that is not paid with the Managing Member’s Special Capital Contribution in accordance with Section 4.1(c), shall be automatically assigned to the Replacement Managing Member. The
Replacement Managing Member shall be automatically admitted and become the managing member of the Company without the need for any approval from any Member, Agency or any Lender, unless otherwise required by the Agency or by any Lender, and shall be irrevocably delegated all of the power and authority of the Managing Member pursuant to Section 5.1. Each Member hereby grants to the Investor Member a special power of attorney, irrevocable to the extent permitted by law and coupled with an interest, to amend the Certificate and this Agreement and to do anything else which, in the view of the Investor Member, may be necessary or appropriate to accomplish the purposes of this Section 7.2(b)(ii) or to enable the Replacement Managing Member admitted pursuant to this Section 7.2(b)(ii) to manage the business of the Company. The admission of the Replacement Managing Member shall not relieve the former Managing Member of any of its obligations hereunder incurred as a Managing Member, and the former Managing Member shall fully indemnify and hold harmless the Replacement Managing Member from and against any and all losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained in connection with its capacity as a Managing Member. For the avoidance of doubt, the Managing Member shall not be responsible for obligations incurred or arising from the actions or inactions of the Replacement Managing Member or after the Replacement Managing Member is admitted to the Company or for claims arising after its removal and not attributable to the former Managing Member’s actions or inactions.

(iii) The Investor Member hereby is granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the Members and the Company as shall be legally necessary and sufficient to effect all of the foregoing provisions of this Section 7.2, including, without limitation, any amendment to the Certificate and this Agreement.

(iv) Upon the occurrence of an Event of Default by the Managing Member described in Section 7.1(a), the Investor Member may, at its option, at any time, require the Managing Member to, and the Managing Member shall, purchase the Investor Member’s Interest in the Company for an amount equal to the Capital Contribution paid by the Investor Member (together with interest thereon at an annual interest rate of ten percent (10%) compounded annually from the date on which each installment of the Investor Member’s Capital Contribution was actually advanced to the Company) plus all expenses (including, without limitation, reasonable costs of in house and outside legal counsel and accountants) incurred by the Investor Member in connection with its participation in the Company and enforcing their rights hereunder, plus the repayment in full of all outstanding IM Loans plus any federal income tax liability incurred by the Investor Member as a result of the payment of any amounts pursuant to this Section 7.2(b)(iv) less Housing Tax Credits allocated to the Investor Member that have not been or will not be recaptured. Upon receipt of such amount, the Investor Member’s interest as an Investor Member in the Company shall terminate, the Investor Member shall transfer its interest in the Company to the Managing Member or its designees, and the Managing Member shall indemnify and hold harmless the Hunt Indemnified Parties from and against any losses, damages, liabilities, costs or expenses (including reasonable attorneys’ fees) to which the Hunt Indemnified Parties (as a result of its participation hereunder) may be subject. In case such action is brought against any Hunt Indemnified Party, and it notifies the Managing Member of the commencement thereof as soon as practicable, the Managing Member will be entitled to participate in, and, to the extent that it chooses so to do, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to the Hunt Indemnified
(v) The Managing Member, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees that if the Managing Member becomes the subject of Bankruptcy proceedings pursuant to the United States Bankruptcy Code, as it may be amended (the “Bankruptcy Code”), then (i) any other Member shall thereupon be entitled to immediate relief from any automatic stay imposed by Section 362 of the Bankruptcy Code or otherwise, on or against the exercise of the rights and remedies available to such Member pursuant to this Agreement or otherwise, and (ii) any Member may apply or move the bankruptcy court in which the Bankruptcy proceedings are pending for a change of venue to the bankruptcy court where the Company has its principal place of business and the Managing Member agrees not to oppose or object to such application or motion in any way. The foregoing shall in no way preclude, restrict or prevent the Managing Member from filing for protection under the Bankruptcy Code.

(vi) This is an agreement under which applicable law excuses the Investor Member from accepting performance from any Managing Member which is a debtor in a case under the Bankruptcy Code, 11 U.S.C. § 101 et seq., from a trustee of any such debtor and from the assignee of any such debtor or trustee. The Managing Member acknowledges that the Investor Member has entered into this Agreement with the Managing Member in consideration of and in reliance upon its unique knowledge, experience and expertise, and that of its principals in the planning and implementation of the development of the Apartment Complex and in the area of affordable housing and development in general. The foregoing restriction on transfer is
based in part on the above factors. The Managing Member expressly agrees that the Investor Member shall not be required to accept performance under this Agreement from any person other than the Managing Member, including, without limitation, any trustee of the Managing Member appointed under the Bankruptcy Code, 11 U.S.C. § 101 et seq., and any assignee of any such trustee or any receiver or examiner appointed under federal or state law.

(vii) Upon the occurrence of an Event of Default, the Company shall withhold payment of any installment of fees payable pursuant to Section 5.9 and the Managing Member shall be liable for the Company’s payment of any and all installments of the Development Fee payable pursuant to the Development Agreement. All amounts so withheld by the Company under this Section 7.2(b)(vii) shall be promptly released to the payees thereof only after the Managing Member has cured the default justifying the withholding, as demonstrated by evidence acceptable to the Investor Member.

(viii) In addition to the foregoing remedies, the Investor Member can take suits, actions or proceedings in equity or at law, either for the specific performance of any covenant or contract contained herein or in aid or execution of any right herein granted, or for any legal or equitable remedy as the Investor Member shall deem most effectual to protect and enforce this Agreement, the Guaranty and the Project Documents.

(c) Cure. After Notice from the Investor Member pursuant to Section 7.2(a), the Managing Member shall have the following opportunity to cure only the following Events of Default:

(i) There shall be no cure period with respect to Events of Default described in Section 7.1(a). There shall be no cure period with respect to Events of Default described in any of Sections 7.1(b)(ii) and (iii) (the "No Cure Sections").

(ii) The Managing Member shall have ten (10) Business Days from the date of the Notice of Default to cure a monetary Event of Default described in Sections 7.1(b)(i), (iv), (vi), (xi), (xvi) and (xvii) in a manner acceptable to the Investor Member in its sole discretion.

(iii) In the case of an Event of Default in Section 7.1(b) that is susceptible of cure, the Managing Member shall have thirty (30) days from the date of the Notice of Default to cure such Event of Default in a manner acceptable to the Investor Member in its sole discretion or, if the Managing Member commences such cure within thirty (30) days from the date of the Notice of Default and proceeds diligently and in good faith to cure such Event of Default, ninety (90) days from the date of the Notice of Default; but only if the failure to cure such Event of Default within such ninety (90) day period does not have, or in the sole judgment of the Investor Member, will not have, a material adverse effect on the Company, the Apartment Complex or the Investor Member.

(iv) With respect to any Event of Default attributable solely to the Co-Managing Member and for which such Event of Default has been cured by the Administrative Member, the Administrative Member shall have the right to replace the Co-Managing Member with another entity Consented to by the Investor Member. With respect to any Event of Default
attributable solely to the Administrative Member and for which such Event of Default has been cured by the Co-Managing Member, the Co-Managing Member shall have the right to replace the Administrative Member with another entity Consented to by the Investor Member.

(v) Any cure of an Event of Default by the Investor Member or an Affiliate of the Investor Member shall not constitute a cure by the Managing Member.

7.3 Nonexclusive Remedies. No remedy herein conferred upon or reserved to the Investor Member is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Investor Member to exercise any remedy reserved to it in this Article, it shall not be necessary to give any Notice other than such Notice as may be herein expressly required or as may be required by law.

7.4 Attorney’s Fees and Expenses. If an Event of Default shall exist under this Agreement and the Investor Member employs attorneys or incurs other expenses for the collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Managing Member, Developer or Guarantor, the Managing Member shall upon demand pay to the Investor Member the reasonable fees of such attorneys and such other expenses so incurred.

7.5 Effect of Waiver. In the event any Event of Default is waived by the Investor Member, such waiver shall be limited to the particular Event of Default so waived and shall not be deemed to waive any other Event of Default hereunder. Any such waiver shall only be effective if signed in writing by the Investor Member.

ARTICLE 8
MANAGING MEMBER GUARANTEES

8.1 Construction Completion Guaranty.

(a) The Managing Member shall:

(i) Cause all of the dwelling units in the Apartment Complex to be Placed in Service on or before the later of (a) December 31, 2019 or (b) March 31, 2020 if the date required by the Code and the Agency to preserve the Housing Tax Credits is extended beyond December 31, 2019;

(ii) Achieve Completion on or before the date that is ninety (90) days following the date set forth in Section 8.1(a)(i);

(iii) Cause the full funding of the HOME Loan and FWHFC Loan by Permanent Loan Closing; and
(iv) Fulfill all actions required of the Company to assure that the Apartment Complex satisfies the Minimum Set-Aside Test and the Rent Restriction Test on or before the end of the first year of the Credit Period.

(b) The Managing Member hereby is obligated to pay all Development Deficits when and as incurred. The Company shall have no obligation to pay any Development Deficits. Any amounts funded by the Managing Member pursuant to this clause (b) shall not be treated as a Capital Contribution or a Member Loan and shall not be repaid by the Company. Such Development Deficits may, at the Managing Member’s election together with the prior Consent of the Investor Member, be paid by the Managing Member, through the deferral of additional Development Fee as set forth in Section 3(b) of the Development Agreement, causing a portion of the unpaid Development Fee then due (not to exceed the lesser of the amount such Development Deficits or the unpaid cash portion of the Development Fee then due to the Developer) to be changed to a Deferred Development Fee in the manner provided in Section 3(b) of the Development Agreement (a “DDF Election”), provided, the Investor Member shall Consent to such deferral only if the Investor Member determines, in its sole discretion, that all of the Deferred Development Fee (including any additional deferral to pay Development Costs) can be repaid by the Company through distributions from the cash flow waterfall under Section 14.1(a) within thirteen years after Rental Achievement, further provided that such Consent shall not be required if the Deferred Development Fee is not necessary to be included in the Eligible Basis in order to generate Projected Housing Tax Credits and the Investor Member’s Capital Account is expected to remain positive throughout the period of eleven (11) taxable years beginning with the first taxable year of the Credit Period.

(c) The Managing Member shall pay any Development Deficits pursuant to Section 8.1 by the earlier of (i) the date required to avoid a default or penalties under Company obligations, including, without limitation, the Loans, (ii) the date required to keep all sources of funding for the Apartment Complex “in balance,” (iii) the date required to keep all expenses without a specific maturity date paid on a sixty (60) day current basis or (iv) such earlier date as may be set forth in this Agreement.

(d) If, as the result of any failure by the Sub-Contractor to fulfill its obligations under that certain agreement between Sub-Contractor and General Contractor with respect to the Apartment Complex, a Development Deficit exists and the Guarantor makes a payment of such Development Deficit under the Guaranty, any liquidated damages payment received by the Partnership under the Construction Contract shall be paid to the Guarantor to the extent the Guarantor makes such a payment.

8.2 Operating Deficit Guaranty. Subject to the Managing Member’s right under Section 5.10(b) to use funds in the Operating Deficit Reserve to pay Operating Deficits, if at any time during the Operating Deficit Guaranty Period, an Operating Deficit shall exist, the Managing Member shall make an Operating Deficit Loan to the Company as shall be necessary to pay such Operating Deficits; provided, however, that the Managing Member shall not be obligated to make an Operating Deficit Loan if and to the extent such loan would cause the aggregate amount of all Operating Deficit Loans then outstanding to exceed $540,000 (the “Operating Deficit Loan Cap”). Any Operating Deficit Loan shall be on the following terms: (a) it shall be unsecured; (b) it shall not bear interest; (c) it shall be repayable solely from Cash
Flow and proceeds of a Capital Transaction at the time and in the amounts set forth in Sections 14.1(a), 14.1(b) and 17.2(b) of this Agreement; and (d) it shall be fully subordinated to payment of the Loans, IM Loans, MM Loans and indebtedness of the Company to all Persons other than Members. The Managing Member shall be required to fund Operating Deficits pursuant to this Section 8.2 by the earlier of (A) the date required to avoid a default or penalties under Company obligations, including, without limitation, the Loans, and (B) the date required to keep all expenses without a specific maturity date paid on a sixty (60) day current basis. Proceeds of an Operating Deficit Loan may not be used to pay fees to the Management Agent if it is an Affiliate of the Managing Member, the Developer, or the Guarantors.

8.3 Housing Tax Credit Compliance Guaranty.

(a) If, at any time after the earlier to occur of (i) the date that the Investor Member’s Capital Contribution obligation has been reduced to zero or (ii) the occurrence of an Event of Default, there is a Housing Tax Credit Shortfall other than as a result of a Housing Tax Credit Disallowance Event, the Managing Member shall promptly, but in any event within five (5) calendar days after demand, pay the Investor Member an amount equal to (1) the amount of the Housing Tax Credit Shortfall for the fiscal year immediately preceding the Payment Date, (2) all penalties and interest imposed by the Code and assessed against the Investor Member, by the Service with respect to any Housing Tax Credit Shortfall, and (3) an amount sufficient to pay any tax liability owed by the Investor Member resulting from the receipt from the Managing Member of the amounts specified in the foregoing clauses (1), (2) and this clause (3) (such calculation to be made assuming the Investor Member is subject to the highest federal and Texas state rate imposed on corporate taxpayers under the Code and applicable state law for the taxable year of the Investor Member in which such payment is taken into income by the Investor Member) together with interest on such amounts at the AFR accruing from the Payment Date if such payments in (i), (ii) and (iii) are not made on the Payment Date. There shall be no duplication between amounts paid under this Section 8.3(a) and amounts reflected as reductions in Capital Contributions (and/or payments by the Managing Member, if applicable) under Section 4.2(d).

(b) If at any time after the earlier to occur of (i) payment of the Investor Member’s Capital Contribution or (ii) the occurrence of an Event of Default, there is a Housing Tax Credit Disallowance Event, the Managing Member shall promptly, but in any event within five (5) days after demand, pay to the Investor Member the sum of the following amounts: (i) the amount of Housing Tax Credits previously allocated to the Investor Member, and subsequently disallowed because of such Housing Tax Credit Disallowance Event; (ii) the “credit recapture amount” (as defined in Code Section 42(j)(2)) allocated to the Investor Member because of such Housing Tax Credit Disallowance Event; (iii) all penalties and interest imposed by the Code and assessed against the Investor Member by the Service with respect to such Housing Tax Credit Disallowance Event; (iv) an amount sufficient to pay any tax liability owed by the Investor Member resulting from the receipt from the Managing Member of the amounts specified in the foregoing clauses (i), (ii), (iii), and this clause (iv) (such calculation to be made assuming the Investor Member is subject to the highest federal and Texas state rate imposed on corporate taxpayers under the Code and applicable state law for the taxable year of the Investor Member in which such payment is taken into income by the Investor Member) together with interest on such amounts at the AFR accruing from the date the Investor Member remits funds to
a taxing authority with respect to a Housing Tax Credit Disallowance Event; and (v) if the cause of
the Housing Tax Credit Disallowance Event will in the determination of the Investor Member
decrease the maximum amount of Housing Tax Credits that will be available to the Company
and allocated to the Investor Member during the remainder of the Credit Period assuming full
compliance with Code Section 42, then an amount equal to the total amount of such decrease.
There shall be no duplication between amounts paid under this Section 8.3(b) and amounts
reflected as reductions in Capital Contributions (and/or payments by the Managing Member, if
applicable) under Section 4.2(d).

(c) If the Investor Member receives a payment under the Housing Tax Credit
Compliance Guaranty and the Company has appealed the issue giving rise to such payment (but
has not caused a stay of enforcement with respect to such issue), and if the Company prevails on
such appeal based on a final ruling by a federal court of competent jurisdiction, then the Investor
Member shall refund the excess payment under the Housing Tax Credit Compliance Guaranty
which it had received.

(d) If there is a Tax Law Change, the Managing Member shall use its good
faith, reasonable efforts to comply with such Tax Law Change and to avoid a Housing Tax
Credit Shortfall or Housing Tax Credit Disallowance Event, based on such Tax Law Change. If
despite the Managing Member’s good faith, reasonable efforts to comply with the Tax Law
Change, such Tax Law Change results in a claim under Section 8.3 (a “Limited Recourse
Liability”), then the sole recourse of the Investor Member with respect to the Limited Recourse
Liability shall be to the Pledged Payments (excluding only payments of the Development Fee)
and the Managing Member shall have no personal liability for the payment of such Limited
Recourse Liability (unless and to the extent it wrongfully received Pledged Payments or
otherwise breached this Agreement) that should have been made to the Investor Member in
satisfaction of the Limited Recourse Liability.

8.4 Permanent Loan Funding Guaranty.

(a) The Managing Member irrevocably and unconditionally guarantees and
covenants that the Company shall achieve Permanent Loan Closing (including repayment in full
of the Construction Loan as and when due) and receive full funding of the Permanent Loan from
the Permanent Lender on the terms set forth in the Permanent Loan Commitment, which include
the following terms: (i) the principal amount of the Permanent Loan shall be $8,300,000 (as may
be increased by the Permanent Lender); provided that in no event shall the principal amount of
the Permanent Loan result in aggregate Debt Service Coverage Ratio being less than 1.15 to
1.00, as determined by the Investor Member in its good faith discretion); (ii) the interest rate
shall be a fixed market interest rate for comparable loans; (iii) the maturity date of the Permanent
Loan will be not less than fifteen (15) years from Permanent Loan Closing; (iv) the Permanent
Loan shall amortize over a term of thirty five (35) years; (v) for the first two years of the
Permanent Loan only interest payments shall be made; and (vi) the Permanent Loan shall be
nonrecourse, except for customary carve-outs.

(b) A “Permanent Loan Shortfall” shall be the amount by which $8,300,000
exceeds the principal amount of the Permanent Loan necessary to obtain a Debt Service
Coverage Ratio of 1.15 to 1.00. The Managing Member shall provide such funds to the
Company or, with the Consent of the Investor Member, defer the Managing Member’s portion of the Development Fee to be paid as a Deferred Development Fee, as may be necessary to pay for any Permanent Loan Shortfall before Permanent Loan Closing; provided, the Investor Member shall Consent to such deferral only if the Investor Member determines, in its sole discretion, that all of the Deferred Development Fee (including any additional deferral to pay Development Costs) can be repaid by the Company through distributions from the cash flow waterfall under Section 14.1(a) within thirteen years after the Placed in Service Date, further provided that such Consent shall not be required if the Deferred Development Fee is not necessary to be included in the Eligible Basis in order to allocate Projected Housing Tax Credits to the Investor Member and the Investor Member’s Capital Account is expected to remain positive throughout the period of eleven (11) taxable years beginning with the first taxable year of the Credit Period. Any amounts funded by the Managing Member pursuant to this clause (b) shall not be treated as a Capital Contribution or a Member Loan and shall not be repaid by the Company. The Permanent Loan Shortfall shall be used by the Company to reduce the principal amount of the Permanent Loan to result in an aggregate Debt Service Coverage Ratio of not less than 1.15 to 1.00.

8.5 Security Documents. As security for the foregoing guarantees and the other obligations of the Managing Member under this Agreement and the Developer under the Development Agreement and concurrently with the execution of this Agreement, the Managing Member shall cause to be delivered to the Investor Member the following documents: (a) Managing Member Pledge; (b) Developer Pledge; and (c) Guaranty.

ARTICLE 9
WITHDRAWAL OF THE MANAGING MEMBER; ADMISSION OF NEW MANAGING MEMBER; REMOVAL OF A MANAGING MEMBER

9.1 Withdrawal.

(a) Except for an Involuntary Withdrawal, the Managing Member may not Withdraw from the Company or sell, transfer assign or encumber its Interest without the Consent of the Investor Member.

(b) In the case of a Managing Member who is an individual, upon the death or adjudication of incompetence of such Managing Member, such Managing Member shall cease to be a Managing Member and shall have no Interest in the Company.

9.2 Admission of Additional Managing Member(s) under Certain Circumstances.

(a) Except as otherwise provided in Article 7, a Person shall be admitted as a Managing Member (the “Additional Managing Member”) of the Company only if the following terms and conditions are satisfied, or waived by the Investor Member:

(i) except as otherwise provided in Article 7 or in the event of the Withdrawal of the Managing Member, the admission of such Person has been consented to by the Managing Member or its successor;

(ii) the admission of such Person has been Consented to by the Investor Member and, if required, by the Agency and the Lenders;
(iii) the successor or additional Person has accepted and agreed in writing to be bound by (i) all the terms and provisions of this Agreement, and (ii) all the terms and provisions of the documents executed in connection with each of the Loans and the Extended Use Agreement, by executing counterparts thereof, if required by the Lenders and/or the Agency, as applicable, and (iii) all the terms and provisions of such other documents or instruments as may be required or appropriate in order to admit such Person as a Managing Member, and (iv) if required under the Uniform Act as a condition precedent to the admission of a Managing Member, an amendment to the Certificate has been filed;

(iv) such Person has provided the Company with evidence satisfactory to Counsel for the Company of its authority to become a Managing Member, to do business in the State and to be bound by the terms and provisions of this Agreement; and

(v) Counsel for the Company has rendered an opinion that the admission of the successor or additional Person is in conformity with the Uniform Act and that none of the actions taken in connection with the admission of the successor Person will cause the termination or dissolution of the Company or will cause it to be classified other than as a limited liability company for federal income tax purposes.

9.3 Effect of Voluntary Withdrawal of Managing Member.

(a) In the event of the Voluntary Withdrawal of the Managing Member, the business of the Company shall be continued by the other Managing Member(s); provided, however, that if the withdrawn Managing Member is then the sole Managing Member, or if such Managing Member withdraws from the Company in contravention of the provisions of Section 9.1 of this Agreement, then the Company shall be terminated, unless within ninety (90) days after receiving Notice of such withdrawal, a majority-in-interest of the other Members elect to designate a successor Managing Member and continue the Company upon the admission of such successor Managing Member to the Company.

(b) If, at the time of the Voluntary Withdrawal of a Managing Member, the withdrawing Managing Member was not the sole Managing Member of the Company, the remaining Managing Member or Managing Members shall immediately (i) give Notice to the Investor Member of such Withdrawal, and (ii) make such amendments to this Agreement and execute and file such amendments or documents or other instruments as are necessary to reflect the disposition of the Interest of the withdrawing Managing Member pursuant to this Section 9.3. The remaining Managing Member or Managing Members are hereby granted an irrevocable power of attorney, coupled with an interest, to execute any or all documents on behalf of the Members and the Company and to file such documents as may be required to effectuate the provisions of this Section 9.3.

(c) Upon a Voluntary Withdrawal, (i) the Managing Member shall cease to have any Interest in the Company, (ii) the Managing Member shall not be entitled to any distributions or allocations from the Company, (iii) the Managing Member shall not be entitled to any repayment of Operating Deficit Loans and (iv) the Managing Member shall not be entitled to any payments of the MM Incentive Management Fee relating to the period of time after the date of its withdrawal. The Managing Member shall be entitled, however, to receive any fees
expressly provided for under this Agreement which have been fully earned and accrued prior to the date of Withdrawal, which fee shall be paid when and as specified in this Agreement and shall be entitled to the payment of any MM Loans in the time and manner specified in this Agreement.

(d) If the Managing Member Withdraws from the Company, including, without limitation, an Involuntary Withdrawal, then the Managing Member shall be and shall remain liable for all damages to the Investor Member resulting from the Withdrawal of the Managing Member in breach of this Agreement and for all its obligations and liabilities under this Agreement, including, without limitation, all its liabilities and obligations under Article 5 (including, without limitation, its obligation to make a Managing Member’s Special Capital Contribution in an amount sufficient to pay the Deferred Development Fee on or before the date of such Deferred Development Fee as required to be paid under this Agreement); provided, however, that the Managing Member shall have no liability with respect to any actions or failure to act on the part of any Replacement Managing Member or for claims arising after its removal and not attributable to the former Managing Member’s actions or inactions.

(e) Upon a Voluntary Withdrawal, the Investor Member, or its designee shall, at the sole option of the Investor Member, be admitted as a Replacement Managing Member on the terms set forth in Section 7.2(b)(ii).

9.4 **Effect of Involuntary Withdrawal of Managing Member.** The effect of an Involuntary Withdrawal of the Managing Member is set forth in Article 7.

**ARTICLE 10**

**RIGHTS OF THE INVESTOR MEMBER**

10.1 **Management of the Company.** No Investor Member shall have the right to take part in the management or control of the business of the Company or to transact any business in the name of the Company. No provision of this Agreement which makes the Consent of any Investor Member a condition for the effectiveness of an action taken by the Managing Member is intended and no such provision shall be construed to give any Investor Member any participation in the control of the Company business.

10.2 **Limitation on Liability of the Investor Member.** The liability of each Investor Member shall be limited to its Capital Contribution as and when payable under the provisions of this Agreement, and as provided under the Uniform Act. No Investor Member shall have any other liability to contribute money to, or in respect of the liabilities or obligations of, the Company, nor shall any Investor Member be personally liable for any obligations of the Company, except as and to the extent provided in the Uniform Act. No Investor Member shall be obligated to make loans to the Company.

10.3 **Other Activities.** Any Investor Member may engage in or possess interests in other business ventures of every kind and description for its own account, including, without limitation, serving as managing or investor member of other companies which own, either directly or through interests in other partnerships, government-assisted housing projects similar to the Apartment Complex. Neither the Company nor any of the Members shall have any right
by virtue of this Agreement in or to such other business ventures to the income or profits derived therefrom.

10.4 Full Disclosure of and Right to Revise Information. The Investor Member shall have the right to review information pertaining to the Company which is possessed by the Managing Member, and the right to receive on a regular basis timely and accurate reports, schedules and accountings to the Company’s financial performance, in each case as may be required pursuant to this Agreement or as requested by the Investor Member.

10.5 Fees to Hunt and its Affiliates. Commencing on the date first Unit in the Apartment Complex is Placed in Service, Hunt, its successor or an Affiliate thereof, shall earn an annual fee (pro rata for first year) for its services in connection with the Company’s accounting matters relating to the Investor Member, and assisting with the preparation of tax returns and the reports required by Section 18.7 in the original amount of $7,500 and then adjusted annually to reflect a 3% annual increase (the “Asset Management Fee”). The Asset Management Fee shall be payable from Cash Flow and proceeds of a Capital Transaction, in the manner and priority set forth in Article 14 on April 1 of each year. If, however, Cash Flow in any fiscal year is insufficient to pay the full amount of Asset Management Fee, the Asset Management Fee shall accrue without interest and be payable to Hunt until such time there is sufficient Cash Flow in the manner and priority set forth in Article 14. Any Asset Management Fee earned prior to Rental Achievement shall accrue without interest until Rental Achievement at which time interest shall start to accrue on any unpaid portion.

10.6 Control Over Investor Member Decisions. Unless otherwise expressly provided, any decision required to be made by the Investor Member under this Agreement shall be made by the Investor Members. Any decision required to be made by the majority in interest of the Investor Members shall be made by the Investor Members of any class whose Percentage Interest in the Company exceeds fifty percent (50%) of the Percentage Interests of all Investor Members. The decision of the majority in interest of the Investor Members shall be effective after five (5) days’ Notice has been given to each Investor Member and the occurrence of any of the following: (i) a written document signed by the Investor Members; or (ii) a written document signed by the Investor Members who own more than fifty percent (50%) of the Percentage Interests of the Investor Members.

ARTICLE 11
TRANSFERABILITY OF INVESTOR MEMBER INTERESTS

11.1 Assignment or Pledge of Investor Member Interests.

(a) Each of the Investor Member or the Special Investor Member shall have the right at any time to make an Assignment of its Interests as follows:

(i) Prior to payment of all of its Capital Contributions:

(A) to any Person without the Consent or approval of the Managing Member or any other Member, provided that an Affiliate of the Investor Member will serve as the manager or general partner of such Person; and
(B) to a non-Affiliate with the approval of the Managing Member which approval shall not be unreasonably withheld or delayed.

(ii) After payment of its Capital Contributions:

(A) to any Person without any restriction.

In connection with the Investor Member’s admission into the Company and acquisition of their respective Interests, the Managing Member acknowledges that the Investor Member intends to assign its Interest subsequent to the Closing Date and may pledge its Interests to the Equity Lender. The Investor Member shall Notify the Managing Member as to any Assignment.

(b) The Investor Member or the Special Investor Member whose interest is being transferred shall pay such reasonable expenses as may be incurred by the Company in connection with such transfer.

(c) The Managing Member shall cooperate with the Investor Member and/or the Special Investor Member in facilitating such Assignment by promptly furnishing complete and accurate financial and other relevant data regarding the Company, the Apartment Complex, the Managing Member and Affiliates of the Managing Member and any other matters reasonably necessary in the judgment of the Investor Member or the Special Investor Member to facilitate such Assignment, including any amendments to this Agreement or the Project Documents so long as such amendments do not materially adversely affect the Managing Member.

(d) Within five (5) days of receipt of notification, the Managing Member shall execute the form of Assignment and shall cause Counsel for the Company, at the Managing Member’s expense, to deliver to the Investor Member an opinion as to the enforceability of such Assignment, if not already provided (the form of such Assignment is attached hereto as Exhibit M).

11.2 Admission of Substitute Investor Member.

(a) Subject to the other provisions of this Article 11, an assignee of the Interest of an Investor Member or the Special Investor Member (which shall be understood to include any purchaser, transferee, donee, or other recipient of any disposition of such Interest) shall be deemed admitted as a Substitute Investor Member of the Company only upon the satisfactory completion of the following:

(i) Consent of the Managing Member (which may not be unreasonably withheld), and the consent of the Permanent Lender, if required, has been given; such Consent of the Managing Member may be evidenced by the execution by the Managing Member of an amended Agreement and/or Certificate evidencing the admission of such Person as an Investor Member pursuant to the requirements of the Uniform Act; provided, however, the Investor Member may transfer its Interest to an Affiliate and to any tax credit syndication fund of which the Investor Member or an Affiliate thereof is the general partner or managing member, pursuant to the Assignment, in the form attached hereto as Exhibit M, without obtaining the consent of Managing Member or any Lender;
(ii) the assignee has accepted and agreed to be bound by the terms and provisions of this Agreement by executing a counterpart thereof or an appropriate amendment hereto, and such other documents or instruments as the Managing Member may reasonably require in order to effect the admission of such Person as an Investor Member or the Special Investor Member; and

(iii) if required by the Act, an amended Agreement and/or Certificate evidencing the admission of such Person as an Investor Member or the Special Investor Member shall be filed.

(b) For the purpose of allocation of profits, losses and credits, and for the purpose of distributing cash of the Company, a Substitute Investor Member shall be treated as having become, and as appearing in, the records of the Company as a Member upon its signing of an amendment to this Agreement agreeing to be bound hereby.

(c) The Managing Member shall cooperate with the Person seeking to become a Substitute Investor Member by preparing the documentation required by this Section and making all official filings and publications. The Company shall take all such action, including the filing, if required, of any amended Agreement and/or Certificate, if obtainable, evidencing the admission of any Person as an Investor Member, bringing forward the effective date of the Title Policy and issuing any new or modified endorsements to the Title Policy that the Substitute Investor Member may require, and the making of any other official filings and publications, as promptly as practicable after the satisfaction by the assignee of the Interest of an Investor Member of the conditions contained in this Article 11 to the admission of such Person as an Investor Member of the Company. Any cost or expense incurred in connection with such admission (including any transfer taxes) shall be borne by the Substitute Investor Member.

11.3 Rights of Assignee of Limited Liability Company Interest.

(a) Except as provided in this Article 11 and as required by operation of law, the Company shall not be obligated for any purpose whatsoever to recognize the assignment by any Investor Member of its Interest until the Company has received actual Notice thereof.

(b) Any Person who is the assignee of all or any portion of an Investor Member’s Interest, but does not become a Substitute Investor Member, and who desires to make a further assignment of such Interest, shall be subject to all the provisions of this Article 11 to the same extent and in the same manner as any Investor Member desiring to make an assignment of its Interest.

11.4 Equity Lender. The Members acknowledge that the Equity Lender may advance funds to the Investor Member and Special Investor Member prior to the admission of investors into the funds sponsored by the Investor Member and, to the extent that the Investor Member and Special Investor Member have loans outstanding from the Equity Lender in order to finance their Capital Contributions, all Members hereby Consent to the admission of the Equity Lender as a Substitute Investor Member if the Equity Lender finds itself in the position of enforcing certain remedies in connection with its loan to the Investor Member and Special Investor Member. Each Member hereby agrees to cooperate with the Equity Lender, as the Investor Member and Special
Investor Member may from time to time reasonably request, by delivering to the Equity Lender information concerning the Company and documents executed by such Member.

11.5 **Funds Sponsored by Investor Member(s).** All Members hereby agree to cooperate with the Investor Member, as may be reasonably requested by the Investor Member, in connection with the admission of investors into the funds sponsored by the Investor Member. In addition to such Opinion of Counsel (which Opinion of Counsel shall be at the expense of the Company), if the Investor Member request then the Managing Member shall cause, from time to time, one or more updates to the Opinion of Counsel to be delivered to the Investor Member, which updates shall be at the expense of the Company.

**ARTICLE 12**
**BORROWINGS**

12.1 **Borrowings.** The Company is authorized to receive Operating Deficit Loans, IM Loans and MM Loans on the terms set forth in this Agreement. In addition, if (a) additional funds are required by the Company for any purpose relating to the business of the Company or for any of its obligations, expenses, costs or expenditures, and (b) the Company has not received an Operating Deficit Loan, IM Loan or MM Loan to pay such amounts, then the Company may borrow such funds as are needed from a Person or organization other than a Member in accordance with the terms of this Section 12.1, for such period of time and on such terms as the Managing Member and the Investor Members may agree; provided, however, that no such additional loans shall be secured by any mortgage or other encumbrance on the property of the Company without the prior approval of the Investor Member and, to the extent required, the Consent of the Agency and/or the Lenders. Nothing in this Section 12.1 shall modify or affect the obligation of the Managing Member to make Operating Deficit Loans and to perform its obligations when and as required by this Agreement.

**ARTICLE 13**
**ALLOCATIONS**

13.1 **Allocation of Profits, Losses and Housing Tax Credits from Operations.** After giving effect to the special allocations set forth in Section 13.4, all profits, losses and Housing Tax Credits incurred or accrued by the Company, other than those arising from a Capital Transaction, shall be allocated to the Members in accordance with the Members’ Percentage Interests.

13.2 **Allocation of Profits and Losses From Capital Transactions.** After giving effect to the special allocations set forth in Section 13.4, all profits and losses recognized by the Company from a Capital Transaction in any fiscal year shall be allocated in the following manner:

(a) **Profits.** (i) First, profits shall be allocated to the Members with negative Adjusted Capital Account balances, that portion of profits (including any treated as ordinary income for federal income tax purposes) which is equal in amount to, and in proportion to, such Members’ respective negative Adjusted Capital Accounts in the Company; provided that no profit shall be allocated under this Section 13.2(a) to a Member once such Member’s Adjusted
Capital Account balance is brought to zero and (ii) second, profits in excess of the amount allocated under (i) shall be allocated to the Members in the amounts and to the extent necessary to increase the Members’ respective positive Capital Accounts so that the proceeds distributed in accordance with the Members’ respective positive Capital Account balances under Section 17.2(b)(iv) below will equal the amounts that would have been received if the proceeds were instead distributed under Section 14.1(b)(viii) below.

(b) **Losses.** (i) First, losses shall be allocated to the Members in the amount and to the extent necessary so that the proceeds distributed in accordance with the Members’ respective positive Capital Account balances under Section 17.2(b)(iv) below will equal the amounts that would have been received if the proceeds were instead distributed under Section 14.1(b)(viii) below, and (ii) second, any remaining losses shall be allocated to the Members in accordance with the manner in which they bear the economic risk of loss associated with such losses or, if none, to the Members in accordance with their Percentage Interests.

13.3 **Determination of Profits and Losses.** The terms “profits” and “losses” used in this Agreement shall mean income and losses, and each item of income, gain, loss, deduction or credit entering in to the computation thereof determined in accordance with the method of accounting followed by the Company and computed in accordance with Code Sections 703(a) and 704(b), and Regulation Section 1.704-1(b)(2)(iv). Every item of income, gain, loss, deduction, credit or tax preference entering into the computation of such profits or losses, or applicable to the period during which such profits and losses are allocated to such partner, shall be considered allocated to each Member in the same proportion as profits and losses are allocated to such Member.

13.4 **Special Allocations.** Notwithstanding the foregoing provisions of this Article 13:

(a) **Recourse Obligations.**

(i) If the Company incurs losses from extraordinary events that are not recovered from insurance or otherwise, including casualty losses, losses resulting from liability to third parties for tortious injury, losses resulting from a breach of legal duty by the Company or by the Managing Member, and losses resulting from other liabilities which are not incurred in the ordinary course of business (“**Recourse Obligations**”), such losses shall be allocated to the Managing Member. Nothing in this Section 13.4(a)(i) shall prevent the Company from recovering an extraordinary loss from a Managing Member who is liable therefor by law or under this Agreement.

(ii) If the Company incurs Recourse Obligations secured by Company property with respect to which the Managing Member or a related person of the Managing Member bears the risk of loss, then except to the extent otherwise required by the Regulations, deductions attributable to the Recourse Obligations shall be allocated to the Members in accordance with their Percentage Interests provided, however, that any such deductions which, if allocated to the Investor Members, would cause or increase a negative balance in their Capital Accounts shall be allocated to the Managing Member. Upon the disposition of such property, any income or gain shall be allocated first to the Managing Member to the extent of any
deductions specially allocated to the Managing Member under this Section 13.4(a)(ii) and then to the Members in accordance with their Percentage Interests.

(b) Recapture Allocation. If any profit arises from the sale or other disposition of any Company asset which shall be treated as ordinary income under the depreciation recapture provisions of the Code including, but not limited to, Sections 1245 and 1250, then the full amount of such ordinary income shall be allocated among the Members in the proportions that the Company deductions from the depreciation giving rise to such recapture were actually allocated. If subsequently-enacted provisions of the Code result in other recapture income, no allocation of such recapture income shall be made to any Member who has not received the benefit of those items giving rise to such other recapture income.

(c) Tax Allocations, Section 704(c). Income, gain, loss and deduction with respect to any asset which has a variation between its basis computed in accordance with Regulation Section 1.704-1(b) and its basis computed for federal income tax purposes shall be shared among the Members so as to take account of such variation in a manner consistent with the principles of Section 704(c) of the Code and Regulation Section 1.704-1(b)(2)(iv)(g).

(d) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during a Company taxable year, each Member will be allocated (without duplication of items allocated in 13.4(a) and 13.4(b)) items of income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to such Member’s share of the net decrease in Company Minimum Gain during the year, before any other allocation of Company items for such taxable year. A Member shall not be subject to this mandatory allocation of income or gain to the extent that any of the exceptions provided in Regulation Section 1.704-2(f)(2)-(5) apply. All allocations pursuant to this Section 13.4(d) shall be in accordance with Regulation Section 1.704-2(f). This provision is a “minimum gain chargeback” within the meaning of Regulation 1.704-2(f) and shall be construed as such.

(e) Member Nonrecourse Debt Minimum Gain. If the Company incurs Member Nonrecourse Liability in which a Member or a related person to the Member bears the risk of loss, then partner nonrecourse deductions (within the meaning of Regulations Section 1.704-2(i)(2)) shall be allocated to such Member. If there is a net decrease in Member Nonrecourse Debt Minimum Gain during a Company taxable year, then each Member with a share of the minimum gain attributable to such debt at the beginning of such year will be allocated items of income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member’s share of the net decrease in Member Nonrecourse Debt Minimum Gain during the year. A Member is not subject to this Member Nonrecourse Debt Minimum Gain chargeback to the extent that any of the exceptions provided in Regulation Section 1.704-2(i)(4) applied consistently with Regulation Section 1.704-2(f)(2)-(5) apply. Such allocations shall be made in a manner consistent with the requirements of Regulation Section 1.704-2(i)(4) under Section 704 of the Code.

(f) Qualified Income Offset. If an Investor Member unexpectedly receives (i) an allocation of loss or deduction or expenditures described in Section 705(a)(2)(B) of the Code made (A) pursuant to Section 704(e)(2) of the Code to a donee of an Interest, (B) pursuant to Section 706(d) of the Code as the result of a change in any Member’s Interest or (C) pursuant to
Regulation Section 1.751-1(b)(2)(ii) as a result of a distribution by the Company of unrealized receivables or inventory items or (ii) a distribution, and such allocation and/or distribution would cause the negative balance in such Member’s Capital Account to exceed (1) such Member’s share of Company Minimum Gain plus (2) the amount of such Member’s obligation (actual or deemed) to restore a negative balance in such Member’s Capital Account plus (3) such Member’s share of Member Nonrecourse Debt Minimum Gain, then such Member shall be allocated items of income and gain in an amount and manner sufficient to eliminate such negative balance as quickly as possible. For purposes of Section 13.6, a Member’s Capital Account shall be treated as reduced by Qualified Income Offset Items. This provision is a “qualified income offset” under the meaning of Regulation Section 1.704-1(b)(2)(ii)(d)(3) and shall be interpreted and applied in a manner consistent with such Regulation.

(g) Nondeductible Items. If any fee payable to any Managing Member or any Affiliate thereof shall instead be determined to be a nondeductible, noncapitalizable distribution from the Company to a Member for federal income tax purposes, then there shall be allocated to such Managing Member in the year(s) of payment an amount of gross income equal to the amount of such distribution in such year(s).

(h) Member Loans. If a Member makes any Member Loans pursuant to Article 4, any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to such Member and if there is a repayment of all or part of such funds in any year, such Member shall be allocated in such year an amount of gross income equal to the amount of such repayment.

(i) Operating Deficit Loans. Subject to Section 13.4(a), if the Managing Member funds any Operating Deficit Loans pursuant to Section 8.2, any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to the Managing Member, and if there is a repayment of all or part of such funds in any year, the Managing Member shall be allocated in such year an amount of gross income equal to the amount of such repayment.

(j) Gross Income Allocation for Unanticipated Gross Income. Notwithstanding any other provision of this Agreement, before any other allocation of gross income and gain is made under this Agreement, in the event that any unanticipated gross income arises from a subsequent recharacterization of a tax reporting position of the Company, it is the intent of the Members that all such gross income shall be allocated to the Managing Member.

(k) Gross Income Allocation for Unanticipated Fee Recharacterization. If any fee payable by the Company to any Member or any Affiliate thereof shall instead be determined to be a nondeductible, noncapitalizable distribution from the Company to a Member for federal income tax purposes, then there shall be allocated to such Member in the year of payment an amount of gross income equal to the amount of distribution in such year(s).

(l) Construction Period Income. One hundred percent (100%) of the Company’s net taxable income incurred during the Construction Period shall be specially allocated to the Managing Member.
(m) **Nonrecourse Deductions.** “Nonrecourse deductions” (within the meaning of Regulation Section 1.704-2(b)(1)) shall be allocated to the Members in accordance with their Percentage Interests. “Member nonrecourse deductions” (within the meaning of Regulation section 1.704-2(c)) shall be allocated to the Member who bears the economic risk of loss associated with such deductions, in accordance with Regulation Section 1.704-2(i).

13.5 **Authority of the Managing Member to Vary Allocations to Preserve and Protect the Members’ Intent.**

(a) It is the intent of the Members that each Member’s distributive share of profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (and items thereof) shall be determined and allocated in accordance with this Agreement to the fullest extent permitted by Section 704(b) of the Code. In order to preserve and protect the determinations and allocations provided for in this Agreement, subject to the prior written Consent of the Investor Member, the Managing Member is hereby authorized and directed to allocate profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (and items thereof) arising in any year differently than otherwise provided for in this Agreement to the extent that allocating profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures or credits (or any item thereof) in the manner provided for herein would cause the determinations and allocations of each Member’s distributive share of profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures or credits (or any item thereof) not to be permitted by Section 704(b) of the Code. Any allocation made pursuant to this Section 13.5 shall be deemed to be a complete substitute for any allocation otherwise provided for in this Agreement, and no amendment of this Agreement or approval of any Member shall be required.

(b) In making any allocation under Section 13.5(a) (a “New Allocation”), the Managing Member is authorized to act only after having been advised in writing by the Accountants or the Investor Member that, under Section 704(b) of the Code, (i) the New Allocation is necessary, and (ii) the New Allocation is the minimum modification of the allocations otherwise provided for in this Agreement necessary in order to assure that, either in the then-current year or in any preceding year, each Member’s distributive share of profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (or any item thereof) is determined and allocated in accordance with this Agreement to the fullest extent permitted by Section 704(b) of the Code.

(c) If the Managing Member is required by Section 13.5(a) to make any New Allocation in a manner less favorable to the Investor Member than is otherwise provided for herein, then the Managing Member is authorized and directed, only after having been advised in writing by the Accountants or the Investor Member that such an allocation is permitted by Section 704(b) of the Code, to allocate profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (and any item thereof) arising in later years in such manner so as to bring the allocations of profits, tax-exempt income, losses, non-deductible non-capitalizable expenditures and credits (and each item thereof) to the Members as nearly as possible to the allocations thereof otherwise contemplated by this Agreement.
13.5 New Allocations made by the Managing Member under Section 13.5(a) and Section 13.5(c) in reliance upon the advice of the Accountants shall be deemed to be made pursuant to the fiduciary obligation of the Managing Member to the Company and the Members, and no such allocation shall give rise to any claim or cause of action by any Member.

13.6 Capital Account.

(a) An individual Capital Account shall be established and maintained on behalf of each Member, including any additional or Substitute Investor Member who shall hereafter receive an interest in the Company. In accordance with Regulation Section 1.704-1(b), the Capital Account of each Member shall consist of (i) the amount of cash such Member has contributed to the Company plus (ii) the fair market value of any property such Member has contributed to the Company net of any liabilities assumed by the Company or to which such property is subject plus (iii) the amount of profits or income (including tax-exempt income) allocated to such Member less (iv) the amount of losses and deductions allocated to such Member less (v) the amount of all cash distributed to such Member less (vi) the fair market value of any property distributed to such Member net of any liabilities assumed by such Member or to which such property is subject less (vii) such Member’s share of any other expenditures which are not deductible by the Company for federal income tax purposes or which are not allowable as additions to the basis of Company property and shall be (viii) subject to such other adjustments as may be required under the Code. Each Member’s Capital Account shall be maintained and adjusted in accordance with the Code and the Regulations. It is the intention of the partners that the Capital Accounts maintained under this Agreement be determined and maintained throughout the full term of this Agreement in accordance with the accounting rules of Regulation Section 1.704-1(b)(2)(iv), and the foregoing provisions shall be interpreted and applied in a manner consistent with such Regulation.

(b) If the Company is liquidated within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g) and if the Managing Member’s Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), the Managing Member shall make Capital Contributions in the amount of such deficit in compliance with Regulation Section 1.704-1(b)(2)(ii)(b)(3). Notwithstanding the foregoing, if the Company is liquidated within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g) but no event has occurred under Section 17.1 to dissolve the Company, the Company assets shall not be liquidated, the Company’s liabilities shall not be paid or discharged, and the Company’s affairs shall not be wound up.

(c) The original Capital Account established for any Substitute Investor Member shall be in the same amount as, and shall replace, the Capital Account of the Member which such Substitute Investor Member succeeds, and, for the purposes of this Agreement, such Substitute Investor Member shall be deemed to have made the Capital Contribution, to the extent actually paid in, of the Member which such Substitute Investor Member succeeds. To the extent a Substitute Investor Member receives less than one hundred percent (100%) of the Interest of a Member it succeeds, the original Capital Account of such transferee Substitute Investor Member and his Capital Contribution shall be in proportion to the portion of the transferor Member’s Interest prior to the transfer which the transferee receives, and the Capital Account of the transferor Member who retains a portion of its former Interest and its Capital Contribution shall
continue, and not be replaced, in proportion to the portion of the transferor Member’s Interest prior to the transfer which the transferor Member retains. Nothing in this Section 13.6 shall affect the limitations on transferability of Interests set forth in Article 11.

13.7 Excess Nonrecourse Liabilities. The Members agree that, except as otherwise determined by the Investor Member pursuant to this Section, the Members’ interests in the Company profits for such purposes of determining such Members’ interests in Company profits for purposes of such Members’ share of the excess nonrecourse liabilities of the Company under Treasury Regulation Section 1.752-3(a)(3) shall be determined by the Members’ allocable share of profits from Section 13.2(a); provided, however, that the Members agree that, upon giving written notice to the Managing Member, the Investor Member shall have the right at any time to cause the Company to use the alternative method under Treasury Regulation Section 1.752-3(a)(3) if the Investor Member reasonably determines that such alternative method would (or could reasonably be expected to) avoid or mitigate any tax or economic detriment to the Investor Member or its Affiliates (as a result of an actual or pending change in law, change in circumstance or otherwise). Without limiting the foregoing, the Managing Member shall provide written notice to the Investor Member no later than 45 days following the close of any taxable year of the Company in which the Investor Member’s adjusted basis in the Company interest is or is reasonably likely to be zero.

ARTICLE 14
DISTRIBUTIONS AND PAYMENTS

14.1 Distributions and Payments of Cash Flow (Other than Cash From a Capital Transaction and Other Than in Connection with a Liquidation).

(a) Cash Flow. Subject to Agency and Lender approval (if required) and after Rental Achievement, Cash Flow of the Company for each fiscal year or portion thereof shall be applied and distributed on the following Payment Date in the following priority:

(i) to the Housing Tax Credit Shortfall Payment, if required under Section 4.2(d)(iii);

(ii) to the Investor Member or other Hunt Indemnified Parties to the extent of any amounts owing to it by reason of any indemnification or guaranty obligations of the Managing Member pursuant to this Agreement or of the Guarantors pursuant to the Guaranty;

(iii) (A) to the payment of the Excess IM Loan Amount, (B) then to the payment of the Excess MM Loan Amount, and (C) then to the payment of IM Loans and MM Loans, pro rata based on their respective outstanding balances;

(iv) to the repayment of the FWHFC Loan in an amount equal to the lesser of (i) the amount of the scheduled debt service payment then due on the FWHFC Loan or (ii) seventy-five percent (75%) of the remaining Cash Flow;

(v) to the payment of the Asset Management Fee for such year, and any accrued and unpaid Asset Management Fee;
(vi) one hundred percent (100%) of the remaining Cash Flow to the payment of any Deferred Development Fee as described in the Development Agreement;

(vii) to the repayment of the HOME Loan in an amount equal to the lesser of (i) the amount of the scheduled debt service payment then due on the HOME Loan or (ii) seventy-five percent (75%) of the remaining Cash Flow;

(viii) to replenish any draws from the Operating Reserve;

(ix) to the repayment of any Operating Deficit Loans;

(x) to the payment of any unpaid and accrued Management Agent fees under Section 16.2;

(xi) then:

(A) if the Managing Member’s Capital Account is less than or equal to zero, then until the Managing Member has received payments of the MM Incentive Management Fee under this clause 14.1(a)(xi)(A) equal to the maximum amount for the preceding fiscal year, Cash Flow under this clause 14.1(a)(xi)(A) shall be paid and distributed seventy percent (70%) to the Managing Member as payment of the MM Incentive Management Fee (of which 67.5% shall be paid to the Co-Managing Member and 32.5% shall be paid to the Administrative Member) up to a maximum of $120,000 per annum, and twenty percent (20%) to the Special Investor Member and ten percent (10%) to the Investor Member as a distribution;

(B) if the Managing Member’s Capital Account is greater than zero, then until the Managing Member’s Capital Account equals zero, Cash Flow under this clause 14.1(a)(xi)(B) shall be distributed seventy percent (70%) to the Managing Member as a distribution (of which 67.5% shall be paid to the Co-Managing Member and 32.5% shall be paid to the Administrative Member), and twenty percent (20%) to the Special Investor Member and ten percent (10%) to the Investor Member as a distribution; and

(xii) the balance thereof, if any, shall be paid and distributed seventy percent (70%) to the Managing Member (of which 67.5% shall be paid to the Co-Managing Member and 32.5% shall be paid to the Administrative Member), twenty percent (20%) to the Special Investor Member and ten percent (10%) to the Investor Member as a distribution.

Additionally, notwithstanding the foregoing, during such time as Agency and Lender regulations are applicable to the Apartment Complex, the total amount of Cash Flow which may be so distributed to the Members in respect to any fiscal year shall not exceed such amounts as Agency and Lender regulations permit to be distributed.

(b) Distributions of Cash From Capital Transaction (Other Than in Connection with a Liquidation). Within thirty (30) days of a Capital Transaction, Cash From Capital Transaction (other than a sale or other disposition of the property of the Company in connection with a liquidation and dissolution of the Company which is governed by Article 17 below) or cash proceeds from a refinancing of the Permanent Loan, shall be applied or distributed in the following order of priority:
(i) to the Housing Tax Credit Shortfall Payment if required under Section 4.2(d)(iii);

(ii) to the payment of any amounts owing to the Investor Member or other Hunt Indemnified Parties by reason of any unpaid indemnification or guaranty obligation of the Managing Member pursuant to this Agreement or of the Guarantors pursuant to the Guaranty;

(iii) (A) to the payment of the Excess IM Loan Amount, (B) then to the payment of the Excess MM Loan Amount and (C) then to the payment of IM Loans and MM Loans, pro rata based on their respective outstanding balances;

(iv) to the payment of the Asset Management Fee for such year, and any accrued and unpaid Asset Management Fee;

(v) to the payment of any outstanding Deferred Development Fee as described in the Development Agreement until paid;

(vi) to the repayment of any Operating Deficit Loans;

(vii) to the repayment of the FWHFC Loan and the HOME Loan, pro rata based on their respective outstanding balances; and

(viii) any balance 10% to the Investor Member, 20% the Special Investor Member and 70% to the Managing Member (of which 67.5% shall be paid to the Co-Managing Member and 32.5% shall be paid to the Administrative Member).

14.2 Distribution of Cost Savings. If Cost Savings exist, on the date no earlier than funding of the Fifth Installment, the Company shall use and distribute such savings as follows: (i) first, until the Deferred Development Fee has been paid in full, one hundred percent (100%) to the payment of the Deferred Development Fee; and (ii) then, one hundred percent (100%) as determined by the Investor Member in its sole discretion, either (A) to repay the Permanent Loan and/or (B) to fund a supplemental operating reserve. The Investor Member shall determine the amount of Cost Savings on or before the date of funding of the Fourth Installment.

ARTICLE 15
PARTNERSHIP AUDIT PROCEDURES

15.1 Defined Terms. For purposes of this Article 15, the following terms shall have the meanings set forth below: Administrative Adjustment Request means an administrative adjustment request under Code Section 6227.

Affected Member means at any point in time, with respect to any Administrative Adjustment Request or proposed Partnership Adjustment, any person who is a then current Member or a Former Member.
Former Member means any Person who was a Reviewed Year Member but is not a Member in the year of an Administrative Adjustment Request or proposed Partnership Adjustment.

Imputed Underpayment has the meaning set forth in Section 6225 of the Code.

Partnership Adjustment means any adjustment to any item of income, gain, loss, deduction, or credit of the Company, or any Member’s distributive share thereof, in either case as described in any applicable Regulations or other guidance prescribed by the Service.

Reviewed Year means the Company taxable year to which a Partnership Adjustment relates.

Reviewed Year Member means any Person who held an interest in the Company at any time during the Reviewed Year.

Revised Partnership Audit Rules means Subchapter 63C of the Code (as amended by the Bipartisan Budget Act of 2015, P.L. 114-74 and the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113), and the Treasury Regulations promulgated thereunder, as amended from time to time.

Taxes means any tax, penalties, additions to tax, additional amounts, and interest as described in Section 6226 of the Code.

15.2 Partnership Representative

(a) Appointment and Designation. The Members hereby authorize the Company to appoint the Co-Managing Member as the initial partnership representative of the Company pursuant to Section 6223(a) of the Code (the “Partnership Representative”). The Partnership Representative shall timely designate, with the Consent of the Investor Member, an individual to serve as the sole individual through whom the Partnership Representative will act for purposes of the Revised Partnership Audit Rules (the “Designated Individual”). The Designated Individual must agree in writing to be bound by the same obligations and restrictions imposed on the Partnership Representative under this Article 15 prior to and as condition of such designation.

(b) Resignation; Revocation. The Company shall revoke the designation of the Co-Managing Member as the Partnership Representative for all taxable years during which such designation was in effect by written notice to the Partnership Representative and the Service: (i) upon withdrawal or removal of the Co-Managing Member for any reason, (ii) upon request of the Investor Member at a time when there exists any Event of Default and any notice of Partnership Adjustment has been issued by the Service, or (iii) upon request of the Investor Member in the event of a default by the Partnership Representative or Designated Individual of its/his/her duties and obligations under this Article 15. The designation of the Designated Individual as the Designated Individual shall automatically terminate on the effective date of the resignation or revocation of the applicable entity as Partnership Representative. If a Designated Individual becomes unable to perform the tasks required of a Designated Individual, no longer has the “capacity to act” within the meaning of the Revised Partnership Audit Rules, or the
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Partnership Representative otherwise determines that such individual should be removed as the Designated Individual, the Partnership Representative shall promptly notify the Investor Member of such determination and take all necessary actions to effectuate the resignation of such individual as Designated Individual for all applicable taxable years. Notice of any revocation of a Partnership Representative or Designated Individual shall be given to the Service in the time and manner prescribed by the Service and shall include the designation of another Person selected by the Investor Member as the successor Partnership Representative and/or the designation of another Person selected by the Partnership Representative (with the Consent of the Investor Member) as the successor Designated Individual. The resigning or removed Partnership Representative and/or Designated Individual shall remain obligated hereunder in such capacity until the replacement is acknowledged by the Service. The Co-Managing Member hereby constitutes and appoints the Investor Member, with full power of substitution, its true and lawful attorney-in-fact in its name, place and stead to carry out fully the provisions of this Section 15.2(b) and take any action which the Investor Member may deem necessary or appropriate in connection herewith. The power of attorney hereby granted shall be deemed to be coupled with an interest, shall be irrevocable and shall survive and shall not be affected by the subsequent incapacity, dissolution, resignation, revocation or other termination of the Co-Managing Member as the Partnership Representative.

(c) Successor Partnership Representative. Any successor Partnership Representative and/or Designated Individual must satisfy all statutory and regulatory requirements imposed by the Revised Partnership Audit Rules and must agree in writing to be bound by the terms of this Article 15.

(d) Notice of Communications; Cooperation. The Partnership Representative shall: (i) give all Affected Members prompt notice of any inquiry, notice, or other communication received from the Service or other applicable tax authority regarding the tax treatment of the Company or the Members, (ii) consult with the Affected Members in good faith on the strategy and substance of any tax audit or contest, and (iii) shall, to the extent possible, give the Affected Members prior notice of and a reasonable opportunity to review and comment upon any written communication the Partnership Representative intends to make to any such taxing authority in connection with any examination, audit or other inquiry involving the Company and the nature and content of all actions to be taken and defenses to be raised by the Company in response to any tax audit or contest (including without limitation the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous Service proceeding against the Company or otherwise. Without limiting the generality of the foregoing, the Company immediately shall send to all Affected Members copies of any notice of a proposed or final Partnership Adjustment received by the Company and/or the Partnership Representative from the Service. To the extent requested by the Affected Member and permitted under Treasury Regulations or by the Service or other taxing authority in a particular tax audit or contest, the Partnership Representative shall cooperate in allowing the Affected Member or its representative to participate, at its own expense, in such tax audit or contest.

(e) Duties and Limitations on Authority. The Partnership Representative and any Designated Individual shall have all power and authority of a partnership representative and designated individual, respectively, as set forth in Section 6223 of the Code, and shall represent the Company and its Members in all dealings with the Service and state and local taxing
authorities. If the Company receives notice of a final Partnership Adjustment from the Service, the Partnership Representative shall so notify the Affected Members, and if requested to do so by the Investor Member, (i) the Partnership Representative shall file a petition for readjustment within the time frame required by Treasury Regulations or Service guidance, and/or (ii) the Partnership Representative shall cause the Company to seek any and all available judicial review of such final Partnership Adjustment as is available under applicable law. Notwithstanding the foregoing, except as specifically provided in Section 15.3 below, the Partnership Representative shall not, without the Consent of the Investor Member (and, in the case of (C), (D) and (F), the Investor Member for the Reviewed Year), have any power or authority to do any or all of the following:

(A) make an election to opt out of the application of the Revised Partnership Audit Rules to the Company;

(B) make a Push-Out Election, or request a modification to an Imputed Underpayment;

(C) file an Administrative Adjustment Request;

(D) select any judicial forum for the litigation of any Company tax dispute;

(E) extend the statute of limitations for the Company; or,

(F) take any other action (or fail to take any action) that would have the effect of finally determining any tax audit or contest.

(f) **Fiduciary Relationship.** The relationship of the Partnership Representative to the Investor Member shall be that of a fiduciary, and the Partnership Representative shall have a fiduciary obligation to perform its duties in such manner as will serve the best interests of the Investor Member.

(g) **Indemnification.** To the extent of available funds, the Company shall indemnify the Partnership Representative against judgments, fines, amounts paid in settlement and expenses (including attorneys’ fees) reasonably incurred by the Partnership Representative in its capacity as the Partnership Representative, and not its capacity as a Member or a Former Member, in connection with any audit or administrative or judicial proceeding in which the Partnership Representative is involved solely by reason of being the Partnership Representative of the Company, provided that the same were not the result of negligence, misconduct, fraud, breach of fiduciary duty or breach of this Agreement on the part of the Partnership Representative and were the result of a course of conduct which the Partnership Representative, in good faith, reasonably believed to be in the best interests of the Investor Member and within the scope of its authority under this Article 15.

15.3 **Modifications and Company Elections**

(a) **Modifications to Imputed Underpayment.** If requested to do so by the Investor Member, the Managing Member shall request modification of an Imputed
Underpayment in accordance with any applicable Treasury Regulations, forms, instructions, and other guidance prescribed by the Service. With any such request, the Investor Member shall describe the modifications or adjustment factors that the Investor Member believes affect the calculation of the Imputed Underpayment in sufficient detail to substantiate the request for modification and timely provide all required supporting documents or information.

(b) **Amended Returns.** If requested to do by the Investor Member, the Partnership Representative shall request a modification of an Imputed Underpayment based on an amended return (or, to the extent permitted by law, any similar statement) filed by a Member (or its owners) that takes account of all of the Partnership Adjustments properly allocable to such Member (or its owners). Any such request shall be accompanied by an affidavit from the requesting Member that each required amended return (or similar statement) has been filed and all Taxes due as a result of taking into account the adjustments in the first affected year and all modification years have been paid, as required by any applicable Regulations, forms, instructions, and other guidance prescribed by the Service.

(c) **Push-Out Election.** If requested to do so by the Investor Member, the Partnership Representative shall timely make and implement an election (a “Push-Out Election”) under Section 6226 of the Code with respect to an Imputed Underpayment. Except as hereinafter provided, if a Push-Out Election is made, each Reviewed Year Member shall take into account its allocable share of the Partnership Adjustments that relate to the specified Imputed Underpayment (as determined with the Consent of the Investor Member for such Reviewed Year) and shall be liable for any Taxes as described in Section 6226 of the Code and any applicable Treasury Regulations or other guidance prescribed by the Service.

(d) **Reimbursement of Allocable Share of Imputed Underpayment.** If the Company becomes obligated to make an Imputed Underpayment under Code Section 6225, each of the Members (including any Former Member) to whom such liability relates (as determined with the Consent of the Investor Member) shall be obligated, within thirty (30) days after written notice from the Managing Member, to pay an amount that, on an After-Tax Basis if such payment is treated as a taxable payment to the Company, is equal to its allocable share of such amount to the Company; provided, however, that if and to the extent that the Company’s liability results from a loss, disallowance or recapture of Housing Tax Credits for which a Housing Tax Credit Shortfall Payment is due to such Person and has not been paid, the amount otherwise payable by such Person to the Company under this Section 15.3(d) shall be reduced by the amount of any unpaid Housing Tax Credit Shortfall Payment payable to such Person so that the Company will bear the portion of the Imputed Underpayment equal to such reduction, and such Housing Tax Credit Shortfall Payment shall be paid to the Company and applied to the Imputed Underpayment. Any amount not paid by a Member (or Former Member) within such 30-day period shall accrue interest at Prime Rate plus 2% until paid. Any such payment made by any Member shall be treated as a Capital Contribution and, if and to the extent permitted by the Code and Regulations, any Capital Account reduction attributable to the Imputed Underpayment shall be allocated to the Members in proportion to such Capital Contributions.

(e) **Withholding.** Notwithstanding anything to the contrary contained herein, the Managing Member shall cause the Company to withhold from any distribution or payment due to any Member (or Former Member) under this Agreement any amount due to the Company...
from such Member (or Former Member) under clause (d) above. Any amount(s) so withheld shall be applied by the Company to discharge the obligation in respect of which such amount was withheld. All amounts withheld pursuant to the provisions of this Section 15.3(e) with respect to a Member (or Former Member) shall be treated as if such amounts were distributed or paid, as applicable, to such Member (or Former Member).

(f) **Indemnity.** To the extent that a portion of the Taxes imposed under Code Section 6225 relates to a Former Member, the Managing Member shall require such Former Member to indemnify the Company for its allocable portion of such tax (including any penalties, additions to tax, additional amounts, and interest) to the extent such amounts have not been withheld pursuant to the provisions of Section 15.3(e). Each Member acknowledges that, notwithstanding the transfer or liquidation of all or any portion of its Interest in the Company, it shall remain liable for Taxes with respect to its allocable share of income and gain of the Company for the Company’s taxable years (or portions thereof) prior to such transfer or liquidation and entitled to the Consent rights provided to it in this Article 15 with respect to such taxable years unless otherwise agreed to in writing by the Members during the taxable year(s) (or portion thereof) to which the Taxes relate and all Former Members during the Company’s taxable year(s) (or portion(s) thereof) to which the Taxes relate.

(g) **Continuing Obligations.** Whether the liability is assessed to the Company or the Members (or Former Members), the parties hereto acknowledge and agree that nothing in this Article 15 is intended, nor shall it be construed, to modify or waive any obligations of the Managing Member under this Agreement including, without limitation, the obligation to make a payment pursuant to the provisions of Section 4.2(d).

15.4 **Related Tax Items**

(a) **Tax Counsel or Accountants.** The Partnership Representative, with the reasonable Consent of the Investor Member, shall employ experienced tax counsel and/or accountants to represent the Company in connection with any audit or investigation of the Company by the Service or any other taxing authority and in connection with all subsequent administrative and judicial proceedings arising out of such audit. Such counsel and/or accountants shall be responsible for representing the Company; it shall be the responsibility of the Members, at their expense, to employ tax counsel or accountants to represent their respective separate interests.

(b) **Survival.** The rights and obligations of each Member or Former Member under this Section shall survive the transfer, redemption or liquidation by such Member of its Company Interest and the termination of this Agreement or the dissolution of the Company.

(c) **Amendments.** Upon the promulgation of revised Treasury Regulations implementing the Revised Partnership Audit Rules or upon further amendment of the Revised Partnership Audit Rules, the Members will evaluate and consider options available with respect to preserving the allocation of responsibility and authority described in this Article 15, while conforming with the applicable provisions of the Revised Partnership Audit Rules. The Members agree to work together in good faith to make elections and amend this Agreement (if
any party determines that an amendment is required) to maintain the intent of the parties with respect to the obligations and limitations of the Partnership Representative.

(d) **State and Local Income Tax Matters.** The provisions of this Article 15 shall also apply to state and local income tax matters affecting the Company to the extent the terms and conditions hereof have any application to audit procedures at the state and local level.

**ARTICLE 16**

**MANAGEMENT AGENT**

16.1 **Appointment of Management Agent.** The Managing Member shall cause the Company at all times during which the Company owns the Apartment Complex to engage a Management Agent subject to the approval of the Investor Member in its sole discretion (which may be a Managing Member or an Affiliate thereof if approved by the Investor Member in its sole discretion, and if approved by the Lenders and by the Agency, to the extent such approval by a Lender and/or the Agency is required) to provide management services for the Company with respect to the Apartment Complex pursuant to a Management Agreement meeting the requirements of this Agreement. Accolade Property Management, Inc. is approved as the initial Management Agent. Such engagement shall occur no later than the date on which the first certificate of occupancy for any unit in the Apartment Complex is issued and shall continue thereafter for so long as the Company owns the Apartment Complex. Concurrently with execution of the Management Agreement, the Management Agent shall execute and deliver to the Company and the Investor Member consent in the form attached hereto after the signature pages of the Members.

16.2 **Management Agreement.** The Management Agreement shall be subject to the Consent of the Investor Member in its sole discretion and, unless the Investor Member otherwise Consents, must satisfy the following terms and conditions: (a) the Company shall pay the Management Agent a monthly Management Fee not to exceed the greater of (a) five percent (5%) of the Gross Operating Revenues (as defined in the Management Agreement) of the Apartment Complex for the month preceding payment and (b) $2,000 per month; and (b) the Management Agreement must have a term which does not exceed one (1) year and provide that it is terminable by the Company on thirty (30) days’ Notice by the Company without cause. Notwithstanding the foregoing, if at any time the Management Agent is an Affiliate of any Managing Member, Guarantor or Developer, payment of the Management Fee shall be subordinated to payment of Operating Expenses, Debt Service Expenses and funding of any reserve required under this Agreement, and any portion of the Management Fee which is not paid shall accrue without interest and be paid from available Cash Flow in accordance with Section 14.1(a) hereof. If the Management Agent is an Affiliate of the Managing Member, the Developer or the Guarantors, then the Management Fee shall not be paid from either the Operating Reserve or an Operating Deficit Loan.

16.3 **Removal of Management Agent.** If (a) the Apartment Complex shall be subject to a building code violation the Investor Member shall deem material and which shall not have been timely cured after notice from the applicable agency or department; (b) an Event of Bankruptcy shall occur with respect to the Management Agent; (c) the Management Agent shall commit misconduct or negligence in the performance of its duties and obligations under the
Management Agreement, or fails to promptly and competently perform (after any applicable notice and cure period) all duties of the Management Agent under the Management Agreement or materially mismanage the Apartment Complex; (d) the Managing Member withdraws; (e) there is change in ownership of the Managing Member without the Consent of the Investor Member; (f) the Management Agent is cited by any Agency for a violation or alleged violation of any applicable rules, regulations or requirements, including noncompliance with the Minimum Set-Aside Test, the HOME Minimum Set-Aside Test or any other Lender or Set-Aside Test, the Rent Restriction Test or any other Housing Tax Credit-related provision; (g) from or after Rental Achievement, the Company experiences Operating Deficits (prior to the effect of subordinating payment of the Management Fee, if applicable) for six (6) consecutive months; (h) the Company’s actual Housing Tax Credits are less than 95% of the Projected Housing Tax Credits or the Revised Projected Housing Tax Credits, as applicable, (i) the Management Agent fails to comply with any applicable compliance rule, recordkeeping and/or reporting requirement under Section 42 of the Code and the Regulations, rulings and policies related thereto (which is not timely cured); or (j) the Investor Member funds Default IM Loans or Excess IM Loans, then, upon Notice from the Investor Member and subject to any Lender or Agency approval, if required, the Managing Member must cause the Company to promptly terminate the Management Agreement with the Management Agent.

16.4 Replacement of Management Agent. Upon termination of the Management Agreement with the Management Agent, the Managing Member shall appoint a new Management Agent which is not an Affiliate of the Managing Member, Developer or Guarantor, subject to the Consent of the Investor Member, to the extent required, the Lenders, and on the terms set forth in Section 16.2.

ARTICLE 17
SALE, DISSOLUTION AND LIQUIDATION

17.1 Dissolution of the Company. The Company shall be dissolved upon the earlier of the expiration of the term of the Company, or upon:

(a) the Withdrawal of the Managing Member who is at that time the sole Managing Member, subject to the provisions of Section 7.2(b)(ii), unless a majority in Interest of the other Members, within ninety (90) days after receiving Notice of such withdrawal, Bankruptcy, death, dissolution or adjudication of incompetence, elects to designate a successor Managing Member(s) and continue the Company upon the admission of such successor Managing Member(s) to the Company;

(b) the sale or other disposition of all or substantially all of the assets of the Company or liquidation as defined in Treasury Regulation Section 1.704-1(b)(2)(ii)(g);

(c) the election by the Managing Member, with the Consent of a majority in interest of the other Members; or

(d) any other event causing the dissolution of the Company under the laws of the State.

17.2 Winding Up and Liquidation.
(a) Upon the dissolution of the Company pursuant to Section 17.1, (i) a Certificate of Cancellation shall be filed in such offices within the State as may be required or appropriate, and (ii) the Company business shall be wound up and its assets liquidated as provided in this Section 17.2.

(b) The net proceeds resulting from the dissolution and liquidation of the Company shall be distributed and applied in the following order of priority:

(i) to the payment of all debts and liabilities of the Company (including amounts due pursuant to all Loans and all expenses of the Company incident to any such dissolution and liquidation), other than its Members and Affiliates;

(ii) to the payment of debts and liabilities (including unpaid fees) owed to the Members or their Affiliates by the Company for Company obligations (limited to those debts that have been Consented to by the Investor Member as provided in this Agreement); provided, however, that the foregoing debts and liabilities owed to the Members and their Affiliates shall be paid or repaid, as applicable, in the following order of priority, if and to the extent applicable: (A) to the payment of any amounts owing to the Investor Member or other Hunt Indemnified Parties by reason of any unpaid indemnification or guaranty obligation of the Managing Member pursuant to this Agreement or of the Guarantors pursuant to the Guaranty; (B) to the payment of any outstanding Excess IM Loan Amount until paid in full, then to the payment of the Excess MM Loan Amount and then to the payment of any remaining IM Loans and MM Loans pro rata based on their respective outstanding balances until paid in full; (C) to the payment of any accrued and unpaid Asset Management Fee; (D) to the payment of amounts due under the Development Agreement (including any Deferred Development Fee); (E) to the payment of amounts due with respect to Operating Deficit Loans; and (F) to the payment of any other such debts and liabilities;

(iii) to the setting up of any reserves which the Liquidator deems reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Company; and

(iv) thereafter, to the Members in accordance with the Members’ respective positive Capital Account balances as determined by taking into account all Capital Account adjustments required by Section 13.2 and otherwise required by this Agreement.

17.3 Rights and Obligations of Investor Member upon Dissolution. Except as otherwise expressly provided in this Agreement, the Investor Member and the Special Investor Member shall look solely to the assets of the Company for the return of its Capital Account balance. Notwithstanding the provisions of Section 17.2 or any other provision of this Agreement, except as otherwise elected by the Investor Member or the Special Investor Member pursuant to Section 4.2(c)(ii) or this Section 17.3, neither the Investor Member nor the Special Investor Member shall have any obligation to restore any deficit in its Capital Account upon the liquidation of the Company. Notwithstanding the foregoing, or anything to the contrary contained in this Agreement, the Investor Member and the Special Investor Member may from time to time elect to be obligated to restore a deficit in its Capital Account up to a limited dollar amount. Such election shall be made by the Investor Member’s or the Special Investor...
Member’s delivery of a Notice of election to the Managing Member no later than April 15 following the taxable year for which such election is to be effective and shall specify the dollar amount of the deficit in its Capital Account that the Investor Member or the Special Investor Member agrees to restore. Such election shall be irrevocable and shall be binding on subsequent transferees of the Investor Member’s Company Interest or the Special Investor Member’s Company Interest.

17.4 Filing of Certificate of Dissolution. The Liquidator shall file all certificates and notices of the dissolution of the Company required by law. The Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Company’s property and assets; provided, however, that if the Liquidator shall determine that an immediate sale of part or all of the Company property would cause undue loss to the Members, then in order to avoid such loss, the Liquidator may, except to the extent provided by the Uniform Act, defer the liquidation as may be necessary to satisfy the debts and liabilities of the Company to Persons other than the Members. Upon the complete liquidation and distribution of the Company assets, the Members shall cease to be Members of the Company, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by the law to terminate the Company. Upon the dissolution of the Company pursuant to Section 17.1, the Accountants shall promptly prepare, and the Liquidator shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Accountants shall prepare, and the Liquidator shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.

ARTICLE 18
BOOKS AND RECORDS, ACCOUNTING, TAX ELECTIONS, ETC.

18.1 Books and Records. Every Member, or its duly authorized representatives, shall at all times have access to the records of the Company at the principal office of the Company at any and all reasonable times, and may inspect and copy any of such records. A list of the names and addresses of all of the Members shall be maintained as part of the books and records of the Company and shall be mailed to any Member upon request. The Company may charge reasonable costs for duplication and mailing.

18.2 Bank Accounts. Except as provided in Section 5.10 with respect to the Operating Reserve, the bank accounts of the Company shall be maintained in the Company’s name with one commercial bank as the Managing Member shall determine with the reasonable Consent of the Investor Member; provided, however, that no such account may be held in a bank which is an Affiliate of the Managing Member unless the Consent of the Investor Member shall have been received with respect thereto. Withdrawals shall be made only in the regular course of Company business on such signature or signatures as the Managing Member may determine. All deposits (including security deposits and other funds required to be escrowed by any Lender or Agency) and other funds not needed in the operation of the business shall be deposited, in the following: (a) cash deposits (including certificates of deposits) at commercial banks; (b) obligations of the United States or any State or Municipality, thereof, that have an initial or remaining term of 60 days or greater; or (c) money market mutual funds that are registered investment companies under the Investment Company Act of 1940. To the extent the Managing Member seeks to
invest in either (b) or (c), it agrees that it will hold such instrument for at least 60 days following such purchase prior to sale. The Managing Member agrees that it will monitor any investments to ensure that they comply with the aforesaid requirements and will promptly notify the Investor Member in the case of any instances of non-compliance have been detected. The Managing Member shall not be obligated to maximize the interest rates received on Company funds. Tenant security deposits shall be maintained in a bank account separate from any other bank accounts. The tenant security deposit account shall be maintained with a balance equal to the corresponding liability, and shall in all other respects comply with applicable laws.

18.3 Accountants.

(a) The Accountants shall prepare, for execution by the Managing Member, all tax returns of the Company. Prior to the filing of the Company tax returns, and in no event later than February 28 of each year, the Accountants shall deliver draft financial statements for the Company and the tax returns for such year to the Investor Member for its review and comment. If a dispute arises between the Accountants and the Investor Member over the proper preparation of the financial statements and the tax returns and such dispute cannot be resolved by the Accountants and the Investor Member by March 1 of such year, then the Investor Member shall make the final decision on whether any changes are necessary and must have a rationale for such decision. The Company shall reimburse the Investor Member or its Affiliates for all costs and expenses related to the aforementioned review.

(b) The Accountants shall audit and certify all annual financial reports to the Members in accordance with generally accepted auditing standards, and shall deliver a draft of such financial reports not later than February 28 of each year and a final version of such financial reports not later than March 31.

(c) If the Company fails to fulfill any of its obligations under Sections 18.3(a), 18.3(b) or 18.7 (a) within the time periods set forth therein, at any time thereafter upon Notice from the Investor Member that a change in the identity of the Accountants is desired and the foregoing failure is due to the Accountants second or more violation which caused such failure, the Managing Member, on behalf of the Company, shall promptly terminate the Company’s engagement of the Accountants, and the Consent of the Investor Member must be received to the appointment of replacement Accountants. If the Managing Member has not designated replacement Accountants within ten (10) days of the Notice from the Investor Member to replace the Accountants, then the Investor Member shall appoint replacement Accountants of its own choosing, the cost of which shall be borne by the Company as a Company expense. All Members hereby grant to the Investor Member a special power of attorney, irrevocable to the extent permitted by law, coupled with an interest, to so appoint replacement Accountants and to do anything else which in the view of the Investor Member may be necessary or appropriate to accomplish the purpose of this Section 18.3(c).

18.4 Cost Recovery and Elections.

(a) Except as otherwise required in Section 5.2(oo), the Managing Member shall also cause the Company to make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code and will cause the Company to use the
Alternative Depreciation System (ADS) to the extent required by such election. The Managing Member shall also cause the Company to use “bonus” depreciation to the extent not inconsistent with the foregoing.

(b) Subject to the provisions of Section 18.5, all other elections required or permitted to be made by the Company under the Code shall be made by the Managing Member with the Consent of the Investor Member.

18.5 Special Basis Adjustments. In the event of a transfer of all or any part of the Interest of the Investor Member or a transfer of all or any part of an interest of a partner of the Investor Member, the Company shall elect, upon the request of the Investor Member, pursuant to Section 754 of the Code, to adjust the basis of the Company property. Any adjustments made pursuant to said Section 754 shall affect only the successor in interest to the transferring Member or partner thereof. Each Member will furnish the Company all information necessary to give effect to such election.

18.6 Fiscal Year. The fiscal and tax year of the Company shall be the calendar year. The books of the Company shall be kept on an accrual basis.

18.7 Information Reporting to Members.

(a) The Managing Member shall cause to be prepared and distributed to all Persons who were Members at any time during a fiscal year of the Company:

(i) During the construction of the Apartment Complex, within fifteen (15) days after the end of each month, copies of draw requests which may be submitted simultaneously with the draw request provided to the Construction Lender.

(ii) During the initial lease-up period, and ending on the date on which Initial 100% Occupancy occurs:

(A) a leasing report provided weekly in the form approved by the Investor Member;

(B) a vacancy report and rent roll provided monthly in the form approved by the Investor Member;

(C) a low income housing credit monitoring form, an occupancy/rental report in the form approved by the Investor Member, provided monthly in arrears, within seven (7) days of the end of the month being reported;

(D) on the last day of each calendar quarter until Initial 100% Occupancy has been achieved, copies of the complete tenant files for each tenant (including both returning and new tenants) initially occupying a unit during such quarter;

(iii) Within forty-five (45) days after the Occupancy Commencement Date, the Managing Member shall:
(A) cause the Accountants to prepare, and deliver to each Investor Member a Housing Tax Credit eligible basis worksheet for each building in the Apartment Complex, all in a form approved by the Investor Member;

(B) or cause the Management Agent to provide a draft of the Annual Budget.

(iv) The Company shall send to the Investor Member, on or before the tenth (10th) day of each month beginning with initial lease up of the Apartment Complex:

(A) copies of all applicable periodic reports covering the status of project operations from the previous period, as may be required by the Agency; and

(B) copies of all initial tenant leases and associated application information, including third party verification information and copy of the audit, for leases entered into or renewed during the preceding month, and as requested copies of all leases other than initial leases and any related back-up documentation.

(v) Within twenty (20) days after the end of each month, beginning with the month in which the Occupancy Commencement Date occurs, a report, which may be unaudited, that is reasonably satisfactory to the Investor Member, and at minimum contains each of the following:

(A) a consolidated balance sheet of the Company for the month then ended;

(B) a statement of income and expenses for the month then ended;

(C) a statement of cash flows for the month then ended;

(D) a year-to-date trial balance of all Company accounts, prepared using Microsoft Excel and showing a beginning balance, gross debits, gross credits, and an ending balance for each account;

(E) after Initial 100% Occupancy, rent rolls and occupancy/rental report for each month;

(F) a certification of the Managing Member that the Apartment Complex and its tenants are in compliance with all applicable federal, state and local requirements and regulations; and

(G) at the request of the Investor Member, such other information which would be pertinent to a reasonable investor regarding the Company and its activities during the month covered by the report.

(vi) No later than February 28 of each year, drafts of (A) a balance sheet as of the end of such fiscal year, a statement of income, a statement of partners’ equity, and
a statement of cash flows, each for the year then ended, all of which, except the statement of cash flows, shall be prepared in accordance with generally accepted accounting principles and accompanied by a report of the Accountant containing an opinion of the Accountant, and (B) a report of the activities of the Company during the period covered by the report. The report called for shall separately identify distributions from (1) Cash Flow from operations during the period, (2) Cash Flow from operations during a prior period which had been held as reserves, (3) proceeds from disposition of property and investments, (4) lease payments on net leases with builders and sellers, (5) reserves from the gross proceeds of the Capital Contribution of the Investor Member, (6) borrowed monies, and (7) transactions outside of the ordinary course of business with a description thereof.

(A) No later than March 31, but not prior to approval of the Investor Member, a final version of the aforementioned reports will be provided.

(B) No later than February 28, drafts of the Form K-1 and all other information which is necessary, in view of the Accountant, for the preparation of the Investor Member’s federal income tax returns.

(C) The final Form K-1 will be delivered to the Investor Member no later than March 31, but not prior to approval of the Investor Member, for the preceding fiscal year.

(vii) Within the latest of (a) forty-five (45) days after the end of each fiscal year of the Company or (b) two (2) weeks of receipt by the Company from the Agency, a copy of the annual report on Form(s) 8609A to be filed with the United States Treasury concerning the status of the Apartment Complex as low-income housing and, if required, a certificate to the appropriate state agency concerning the same and any reports filed in connection with the compliance monitoring conducted by the Agency on behalf of the State.

(viii) By November 1 of each year, a draft of the Annual Budget for the Company for the next year, which budget shall have been prepared by the Managing Member or the Management Agent and shall be subject to the approval of the Investor Member, with such approval not to be unreasonably withheld.

(b) Upon the written request of the Investor Member for further information with respect to any matter covered in item (a) above, the Managing Member shall furnish such information within thirty (30) days of receipt of such request.

(c) Prior to October 15 of each year, the Company shall send to the Investor Member an estimate of each Investor Member’s share of the Housing Tax Credits, profits and losses of the Company for federal income tax purposes for the current fiscal year. Such estimate shall be prepared by the Managing Member and the Accountants.

(d) Within ninety (90) days after the end of each fiscal year of the Company, the Managing Member shall provide to the Investor Member:

(i) a certification from the Managing Member that (A) all payments payable with respect to all Loans and all taxes and insurance with respect to the Apartment
Complex are current as of the date of the year-end report, (B) there is no default under the Project Documents or this Agreement, or if there is any such default, a detailed description thereof, and (C) there is no building, health or fire code violation or similar violation of a governmental law, ordinance or regulation against the Apartment Complex or, if there is any such violation, a detailed description thereof; and

(ii) a descriptive statement of all transactions during the fiscal year between the Company and any Managing Member or any Affiliate thereof, including the nature of the transaction and the payments involved.

(c) The Managing Member shall send the Investor Member a detailed report within five (5) Business Days after the occurrence of any of the following events:

(i) there is a default by the Company under any Project Document or in the payment of any mortgage, taxes, interest or other obligation on secured or unsecured debt;

(ii) any reserve has been reduced or terminated by application of funds therein for purposes materially different from those for which such reserve was established;

(iii) the Managing Member has received any notice of a fact which may materially affect further distributions or Housing Tax Credit allocations to any Investor Member; or

(iv) any Member has pledged or collateralized its Interest in the Company.

(f) On or before ninety (90) days after the expiration of each fiscal year of the Managing Member or its members, such Managing Member or its members shall send to the Investor Member copies of the balance sheet and income statement of such Managing Member or its members for such fiscal year, which financial statements shall be audited by an independent certified public accountant in the case of a Managing Member or its members which is an Entity.

(g) The Managing Member shall promptly send to the Investor Member a copy of each draw requisition with respect to the Loans and any notification or correspondence from any Lender indicating that any such draw will not be paid as requisitioned.

(h) Promptly upon receipt, the Managing Member shall send to the Investor Member copies of all documents evidencing any Carryover Allocation pursuant to Section Code 42(h) and the Form(s) 8609 evidencing the Housing Tax Credit allocation.

(i) Promptly after Permanent Loan Closing, the Managing Member shall send to the Investor Member closing binders containing photocopies of the fully-executed versions of all documents signed in connection with the Permanent Mortgage.

(j) The Managing Member hereby Consents to any Agency providing the Investor Member with copies of all material communications between any such office and the Managing Member and/or the Company, including any notices of default.
(k) The Managing Member shall promptly Notify the Investor Member if it becomes aware of any violation of Anti-Corruption Laws, or circumstances likely to give rise to such a violation by the Company, the Developer, the Managing Member, the Guarantors or any Affiliate of the Managing Member, the Developer or the Guarantors. Upon request by the Investor Member, the Managing Member will provide information verifying compliance with Anti-Corruption Laws by the Company, the Developer, the Managing Member, the Guarantors or any Affiliate of the Managing Member, the Developer or the Guarantors.

(l) If the Managing Member does not cause the Company to fulfill its obligations under this Section 18.7, the Managing Member shall pay as damages the sum of $100.00 per day to the Investor Member until such obligations shall have been fulfilled. Such damages shall be immediately paid by the Managing Member, and failure to so pay shall constitute a material default of the Managing Member hereunder. In addition, if the Managing Member shall so fail to pay, the Managing Member shall cease to be entitled to the MM Incentive Management Fee and to the payment of any Cash Flow or Capital Transaction proceeds to which it may otherwise be entitled hereunder. Such payments of the MM Incentive Management Fee, Cash Flow and Capital Transaction proceeds shall be restored only upon the payment of such damages in full, and any amount of such damages not so paid shall be deducted against payments of the MM Incentive Management Fee, Cash Flow and Capital Transaction proceeds due to the Managing Member. The imposition of this fee does not affect the other rights and remedies the Investor Member has under this Agreement and all such rights and remedies are expressly reserved.

18.8 Expenses of the Company. All expenses of the Company shall be billed directly to and paid by the Company.

18.9 Housing Tax Credit Compliance Records. Except to the extent that another record storage method shall have been Consented to by the Investor Member, the Managing Member shall cause all tenant leases, income certifications and other records required by the Code and the Agency to evidence that all tenants occupying Housing Tax Credit Units are Qualified Tenants to be stored in fireproof file cabinets in a secure location. Without limiting the foregoing, all such records relating to initial occupancy of each Low-Income Apartment Unit by Qualified Tenants and evidencing timely satisfaction of the Minimum Set-Aside Test and the HOME Minimum Set-Aside Test shall be stored for a period of not less than 21 years.

18.10 Compliance Audit. The Investor Member may, at its own expense, conduct or cause to be conducted an audit or review of the Company’s compliance with all regulations and procedures relating to the operation of the Apartment Complex as a qualified Tax Credit project within the meaning of Section 42(h) of the Code. Such audit or review shall be conducted upon not less than thirty (30) or more than ninety (90) days prior Notice. The Managing Member shall cooperate with any such audit by making appropriate personnel of the Managing Member and the Management Agent and all books and records of the Apartment Complex and Company available to the Investor Member or its representatives at the offices of the Company during regular business hours.

18.11 Inspections. The Investor Member, at its sole cost and expense, shall have the right to conduct physical inspections of the Apartment Complex on an annual basis (or more
frequently if the Investor Member in its sole discretion determines it necessary or advisable) and
the Managing Member shall take all reasonable steps necessary to cooperate therewith.

18.12 Guarantors’ Financial Statements. The Managing Member shall cause to be
delivered to the Investor Member financial statements of each of the Guarantors to include a
schedule of contingent liabilities, together with bank statements for each Guarantor who is an
individual, within ninety (90) days of the end of each fiscal year of such Guarantor, unless
waived by the Investor Member in writing.

ARTICLE 19
GENERAL PROVISIONS

19.1 Notices. Any Notice or Notification called for under this Agreement shall be in
writing and shall be deemed adequately given if actually delivered or if sent by registered or
certified mail, postage prepaid, sent by express courier or electronic mail, to such Member at
such Member’s address as specified below on the date of receipt thereof (or the next business
day if the date of receipt is not a business day) (or in the case of registered or certified mail the
date of registry thereof or the date of the certification receipt, as applicable) being deemed the
date of such notice (“Notice”, “Notification” or “Notify”); provided, however that any written
communication containing such information sent to such Member actually received by such
Member shall constitute Notice for all purposes of this Agreement.

To the Investor Member or Special
Investor Member: HCP-ILP, LLC
15910 Ventura Boulevard, Suite 1100
Encino, California 91436
Attention: Jeffrey N. Weiss
Email: jeff.weiss@huntcompanies.com

With a copy to: Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
Attention: Jere G. Thompson
Email: thompsonj@ballardspahr.com

To the Co-Managing Member: Saigebrook Mistletoe, LLC
220 Adams Drive Ste. 280 #138
Weatherford, Texas 76086
Attention: Lisa Stephens
Email: lisa@saigebrook.com

To the Administrative Member: O-SDA Mistletoe, LLC
5714 Sam Houston Circle
Austin, Texas 78731
Attention: Megan D. Lasch
Email: megan@o-sda.com
19.2 **Word Meanings.** The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The words “includes,” “including” and the like shall in each case mean “including without limitation.” References to “Sections” and “Articles” refer to Sections and Articles of this Agreement, unless otherwise specified. References to any Regulations (permanent or temporary) or Revenue Procedures shall include any successor provisions.

19.3 **Binding Effect.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

19.4 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State.

19.5 **Counterparts.** This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

19.6 **Entire Agreement.** This Agreement sets forth all (and is intended by all parties to be an integration of all) of the representations, promises, agreements and understandings among the parties hereto with respect to the Company, the Company’s business and the property of the Company, and there are no representations, promises, agreements or understandings, oral or written, express or implied, among them other than as set forth or incorporated herein.

19.7 **Reserved.**

19.8 **Separability of Provisions.** Each provision of this Agreement shall be considered separable and (a) if for any reason any provision is determined to be invalid, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, or (b) if for any reason any provision would cause any Investor Member to be bound by the obligations of the Company (other than the rules and regulations of any Agency and the requirements of any Lender), such provision or provisions shall be deemed void and of no effect.
19.9 **Paragraph Titles.** All article and section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any article or section.

19.10 **Project Lender Provisions.** Notwithstanding anything to the contrary, all required Lender consents must be obtained for the following actions: (a) permitting the withdrawal of a Managing Member from the Company; (b) admitting a new Managing Member to the Company; (c) substituting a Managing Member; (d) amending this Agreement or the Company’s Certificate of Formation; (e) selling all or substantially all of the Company’s assets; (f) dissolving, liquidating or terminating the Company; or (g) borrowing funds from a Managing Member or any third party.

19.11 **No Continuing Waiver.** The waiver by any party of any breach of this Agreement or any full or partial condition for performance hereunder shall not operate as or be construed to be a waiver of any subsequent breach or condition.

19.12 **Amendment Procedure.** This Agreement may be amended by the Managing Member only with the Consent of the Investor Member. To the extent that the Investor Member(s) has or have loans outstanding from the Equity Lender in order to finance their Capital Contribution(s), no amendment may be made to Article 14 without the Consent of the Equity Lender. The Managing Member agrees to execute amendments proposed by the Investor Member which do not affect the obligations of the Managing Member under this Agreement and (a) increase or impose upon the Investor Member or Special Investor Member the obligation to restore a deficit balance in its Capital Account, or (b) prospectively decrease the obligation of the Investor Member or Special Investor Member to restore a deficit balance in its Capital Account in a subsequent fiscal year of the Company. The Managing Member agrees to cooperate and to act promptly with respect to amendments proposed by the Investor Member.

19.13 **Waiver of Jury Trial.** (A) **EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER OPPORTUNITY FOR CONSULTATION WITH INDEPENDENT COUNSEL, WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OR OBLIGATIONS (I) UNDER THIS AGREEMENT, (II) ARISING FROM THE FINANCIAL RELATIONSHIP BETWEEN THE PARTIES IN CONNECTION WITH THIS AGREEMENT OR (III) ARISING FROM ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENT (VERBAL OR WRITTEN) OR ACTION OF THE PARTIES IN CONNECTION WITH SUCH FINANCIAL RELATIONSHIP; (B) NO PARTY HERETO WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED; (C) THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS; (D) NO PARTY HERETO HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL Instances; AND (E) THIS SECTION IS A MATERIAL INDUCEMENT FOR THE INVESTOR MEMBER TO ENTER INTO THIS AGREEMENT.
19.14 **No Third-Party Rights.** No creditor or other third party having dealings with the Company shall have the right to enforce the right or obligation of any Member to make Capital Contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the parties hereto and their respective successors and assigns. None of the rights or obligations of the Members herein set forth to make Capital Contributions or loans to the Company shall be deemed an asset of the Company for any purpose by any creditor or other third party until such Capital Contribution is made or loan is advanced nor may such rights or obligations be sold, transferred or assigned by the Company or pledged or encumbered by the Company to secure any debt or other obligation of the Company or of any of the Members. Without limiting the generality of the foregoing, a deficit Capital Account of a Member shall not be deemed to be a liability of such Member nor an asset or property of the Company.

19.15 **Forbearance.** Any forbearance by the Investor Member in exercising any right or remedy under this Agreement, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The enforcement by the Investor Member of any right herein shall not constitute an election by the Investor Member of remedies so as to preclude the exercise of any other right available to the Investor Member.

19.16 **Review with Counsel.** THE MEMBERS ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT AND HAVE BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE.

**ARTICLE 20**

**SPE PROVISIONS**

20.1 **Single Purpose Entity Requirements.** All capitalized terms in this Article 20 shall have the meaning set forth in the Permanent Loan Agreement. Until the Indebtedness is paid in full, each Borrower and any SPE Equity Owner will remain a “Single Purpose Entity,” which means at all times since its formation and thereafter will satisfy each of the following conditions:

(a) It will not engage in any business or activity, other than the ownership, operation and maintenance of the Mortgaged Property and activities incidental thereto.

(b) It will not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Mortgaged Property and such Personality as may be necessary for the operation of the Mortgaged Property and will conduct and operate its business as presently conducted and operated.

(c) It will preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and will do all things necessary to observe organizational formalities.

(d) It will not merge or consolidate with any other Person.
(e) It will not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable, other than Transfers permitted under the Permanent Loan Agreement; issue additional partnership, membership or other equity interests, as applicable, or seek to accomplish any of the foregoing.

(f) It will not, without the prior unanimous written consent of all of Borrower’s partners, members, or shareholders, as applicable, and, if applicable, the prior unanimous written consent of 100% of the members of the board of directors or of the board of Managers of Borrower take any of the following actions:

(i) File any insolvency, or reorganization case or proceeding, to institute proceedings to have Borrower be adjudicated bankrupt or insolvent.

(ii) Institute proceedings under any applicable insolvency law.

(iii) Seek any relief under any law relating to relief from debts or the protection of debtors.

(iv) Consent to the filing or institution of bankruptcy or insolvency proceedings against Borrower.

(v) File a petition seeking, or consent to, reorganization or relief with respect to Borrower under any applicable federal or state law relating to bankruptcy or insolvency.

(vi) Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official for Borrower or a substantial part of its property.

(vii) Make any assignment for the benefit of creditors of Borrower.

(viii) Admit in writing Borrower’s inability to pay its debts generally as they become due.

(ix) Take action in furtherance of any of the foregoing.

(x) It will not amend or restate its organizational documents if such change would cause the provisions set forth in those organizational documents not to comply with the requirements set forth in this Section.

(g) It will not own any subsidiary or make any investment in, any other Person.

(h) It will not commingle its assets with the assets of any other Person and will hold all of its assets in its own name.
(i) It will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the following: (A) The Indebtedness (and any further indebtedness as described in the Permanent Loan Agreement with regard to Supplemental Instruments). (B) Customary unsecured trade payables incurred in the ordinary course of owning and operating the Mortgaged Property provided the same are not evidenced by a promissory note, do not exceed, in the aggregate, at any time a maximum amount of 2% of the original principal amount of the Indebtedness and are paid within 60 days of the date incurred.

(j) It will maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and will not list its assets as assets on the financial statement of any other Person; provided, however, that Borrower’s assets may be included in a consolidated financial statement of its Affiliate provided that (A) appropriate notation will be made on such consolidated financial statements to indicate the separateness of Borrower from such Affiliate and to indicate that Borrower’s assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) such assets will also be listed on Borrower’s own separate balance sheet.

(k) Except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents, it will only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of Borrower or any Guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm’s-length basis with third parties.

(l) It will not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.

(m) It will not assume or guaranty (excluding any guaranty that has been executed and delivered in connection with the Note) the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person.

(n) It will not make or permit to remain outstanding any loans or advances to any other Person except for those investments permitted under the Loan Documents and will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities).

(o) It will file its own tax returns separate from those of any other Person, except if Borrower (A) is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law or (B) is required by applicable law to file consolidated tax returns, and will pay any taxes required to be paid under applicable law.

(p) It will hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name, will correct any known
misunderstanding regarding its separate identity and will not identify itself or any of its Affiliates as a division or department of any other Person.

(q) It will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and will pay its debts and liabilities from its own assets as the same become due; provided, however, nothing in this Section will require any member or partner of Borrower or any Borrower Principal to make any equity contribution to Borrower.

(r) It will allocate fairly and reasonably shared expenses with Affiliates (including shared office space) and use separate stationery, invoices and checks bearing its own name.

(s) It will pay (or cause the Property Manager to pay on behalf of Borrower from Borrower’s funds) its own liabilities (including salaries of its own employees) from its own funds; provided, however, nothing in this Section will require any member or partner of Borrower or any Borrower Principal to make any equity contribution to Borrower.

(t) It will not acquire obligations or securities of its partners, members, shareholders, or Affiliates, as applicable.

(u) Except as contemplated or permitted by the property management agreement with respect to the Property Manager, it will not permit any Affiliate or constituent party independent access to its bank accounts.

(v) It will maintain a sufficient number of employees (if any) in light of its contemplated business operations and pay the salaries of its own employees, if any, only from its own funds; provided, however, nothing in this Section will require any member or partner of Borrower or any Borrower Principal to make any equity contribution to Borrower.

(w) Reserved.

(x) Reserved.

(y) If an SPE Equity Owner is required pursuant to the Permanent Loan Agreement, if it is (A) a limited liability company with more than one member, then it has and will have at least one member that has satisfied and will satisfy the requirements of this Section and such member is its managing member, or (B) a limited partnership, then all of its general partners are SPE Equity Owners that have satisfied and will satisfy the requirements set forth in this Section.

(z) For the avoidance of doubt, none of the provisions in this Article 20 shall apply to the Investor Member or the Special Investor Member.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)
WITNESS the execution hereof as of the Closing Date.

CO-MANAGING MEMBER:

SAIGEBROOK MISTLETOE, LLC, a Texas limited liability company

By: Saigebrook Development, LLC, a Florida limited liability company, its managing member

By: ________________________________
Name: Lisa M. Stephens
Its: Manager

ADMINISTRATIVE MEMBER:

O-SDA MISTLETOE, LLC, a Texas limited liability company

By: O-SDA Industries, LLC, a Texas limited liability company, its sole member

By: ________________________________
Name: Megan D. Lasch
Its: Managing Member

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
WITNESS the execution hereof as of the Closing Date.

CO-MANAGING MEMBER:

SAIGEBROOK MISTLETOE, LLC, a Texas limited liability company

By: Saigebrook Development, LLC, a Florida limited liability company, its managing member

By: ______________________________
Name: Lisa M. Stephens
Its: Manager

ADMINISTRATIVE MEMBER:

O-SDA MISTLETOE, LLC, a Texas limited liability company

By: O-SDA Industries, LLC, a Texas limited liability company, its sole member

By: ______________________________
Name: Megan D. Lasch
Its: Managing Member

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
INVESTOR MEMBER:

HCP-ILP, LLC, a Nevada limited liability company

By: Hunt Capital Partners, LLC, a Delaware limited liability company, Its Manager

By: ____________________________
   Jeffrey N. Weiss, President

SPECIAL INVESTOR MEMBER:

HCP-SLP, LLC, a Nevada limited liability company

By: Hunt Capital Partners, LLC, a Delaware limited liability company, its sole member

By: ____________________________
   Jeffrey N. Weiss, President

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)
WITHDRAWING INVESTOR MEMBER:

Lisa M. Stephens, an individual
MANAGEMENT AGENT CONSENT AND AGREEMENT

The undersigned, being the Management Agent for Mistletoe Station, LLC (the "Company"), hereby consents to the provisions in Article 16 of the foregoing First Amended and Restated Operating Agreement of the Company, notwithstanding any provision of the Management Agreement to the contrary.

MANAGEMENT AGENT:

ACCOLADE PROPERTY MANAGEMENT, INC., a Texas corporation

By: [Signature]
Stephanie Baker, President
DEVELOPER CONSENT AND AGREEMENT

The undersigned, being the Developer for Mistletoe Station, LLC (the “Company”), hereby consents to the provisions in Sections 4.1(c), 5.9(a), 5.11, 7.2(b)(ii) and 8.5 of the foregoing First Amended and Restated Operating Agreement of the Company, notwithstanding any provision of the Development Agreement to the contrary.

DEVELOPER:

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: [Signature]
Name: Lisa M. Stephens
Its: Manager

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: [Signature]
Name: Megan D. Lasch
Its: Managing Member
DEVELOPER CONSENT AND AGREEMENT

The undersigned, being the Developer for Mistletoe Station, LLC (the “Company”), hereby consents to the provisions in Sections 4.1(c), 5.9(a), 5.11, 7.2(b)(ii) and 8.5 of the foregoing First Amended and Restated Operating Agreement of the Company, notwithstanding any provision of the Development Agreement to the contrary.

DEVELOPER:

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: ____________________________
Name: Lisa M. Stephens
Its: Manager

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: ____________________________
Name: Megan D. Lasch
Its: Managing Member
HUNT CONSENT AND AGREEMENT

The undersigned hereby executes this Agreement for the sole purpose of agreeing to the provisions of Section 6.1(fff) of the foregoing First Amended and Restated Operating Agreement of the Company, and agrees that provision may be enforced against the undersigned by the Company (or its assigns with respect thereto).

HUNT:

HUNT CAPITAL PARTNERS, LLC

By: ________________________
Name: Jeffrey N. Weiss
Title: President
MEMBER INFORMATION SCHEDULE  
TO THE  
FIRST AMENDED AND RESTATED OPERATING AGREEMENT  
MISTLETOE STATION, LLC

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<td>Encino, California 91436</td>
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EXHIBIT A

LEGAL DESCRIPTION OF LAND

TRACT I:

LOT 1-R1, BLOCK 3R, OF FRISCO ADDITION, TO THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED UNDER COUNTY CLERK’S FILE NO. D212125731, REAL PROPERTY RECORDS, TARRANT COUNTY, TEXAS.

ALSO KNOWN AS

TRACT I:

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being a part of that tract of land described as Tract 1 in Special Warranty Deed to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk’s Document No. D207136848 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), being all of Lot 1-R1 of Lots 1-R1 and 1-R2, Block 3R, Frisco Addition, an addition to the City of Fort Worth, Tarrant County, Texas, as recorded in County Clerk’s Document No. D212125731 O.R.T.C.T., being a part of Beckham Place (variable width right-of-way) and being more particularly described as follows:

BEGINNING at the northeast corner of said Lot 1-R1, from which a 1/2-inch found iron rod with plastic cap stamped "AREA SURVEYING" bears North 48 degrees 50 minutes 32 seconds East, a distance of 0.25 feet, and being on the south right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 00 degrees 42 minutes 24 seconds East, a distance of 203.93 feet to a 5/8-inch found iron rod for the southeast corner of said Lot 1-R1, being on the north right-of-way line of Mistletoe Boulevard (a variable width right-of-way);

THENCE North 89 degrees 22 minutes 55 seconds West, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the south end of a corner clip of said Lot 1-R-1 at a distance of 212.37 feet, and continuing for a total a distance of 222.37 feet to a 3/4-inch found iron rod for corner at the intersection of the projected said north right-of-way line and the projected east right-of-way line of said Beckham Place;

THENCE North 06 degrees 51 minutes 00 seconds West, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the north end of a corner clip of said Lot 1-
R-1 at a distance of 10.00 feet, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the south end of a corner clip of said Lot 1-R-1 at a distance of 48.06 feet, and continuing for a total distance of 58.06 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the north end of a corner clip of said Lot 1-R-1 at a distance of 10.00 feet, and continuing for a total distance of 268.55 feet to the POINT OF BEGINNING AND CONTAINING 29,702 square feet or 0.6819 acres of land, more or less.

TRACT II:

DESCRIPTION FOR A PART OF BLOCK B OF MISTLETOE HEIGHTS, AN ADDITION IN THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS, AS SAID BLOCK APPEARS UPON THE MAP RECORDED IN VOLUME 388, PAGE 5 OF THE TARRANT COUNTY DEED RECORDS AND EMBRACING A PORTION OF THE TRACT DESCRIBED IN THE DEED TO L. E. TREZEVANT RECORDED IN VOLUME 1929, PAGE 240 OF SAID DEED RECORDS, AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT AN AXLE FOUND FOR THE SOUTHEAST CORNER OF SAID BLOCK B IN THE NORTH LINE OF BECKHAM PLACE AND BEING THE SOUTHWEST CORNER OF LOT 6 OF TREZEVANT SUBDIVISION, SAID AXLE BEING THE SOUTHEAST CORNER OF SAID TREZEVANT TRACT;

THENCE SOUTH 59 DEGREES 33 MINUTES 00 SECONDS WEST, ALONG THE SOUTH LINE OF SAID TREZEVANT TRACT AND THE SAID NORTH LINE OF BECKHAM PLACE, 129.99 FEET TO A ¾" IRON PIN FOUND FOR THE SOUTHERLY SOUTHEAST CORNER OF THE TRACT DESCRIBED IN THE DEED TO HELEN J. WILLIAMS, RECORDED IN VOLUME 5619, PAGE 93 OF THE SAID DEED RECORDS;

THENCE NORTH 11 DEGREES 22 MINUTES 00 SECONDS WEST, ALONG THE SOUTHERLY EAST LINE OF SAID WILLIAMS TRACT 164.10 FEET TO A ½" IRON PIN SET WITH CAP MARKED, "AREA SURVEYING" FOR CORNER;

THENCE NORTH 83 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG A NORTHERLY SOUTH LINE OF SAID WILLIAMS TRACT, 82.64 FEET TO A ½" IRON PIN SET WITH CAP MARKED, "AREA SURVEYING" FOR THE NORTHERLY SOUTHEAST CORNER OF SAID WILLIAMS TRACT;

THENCE NORTH 03 DEGREES 57 MINUTES 00 SECONDS WEST, ALONG AN EAST LINE OF SAID WILLIAMS TRACT, 16.77 FEET TO A ½" IRON PIN SET WITH CAP
MARKED, "AREA SURVEYING" FOR THE MOST SOUTHERLY SOUTHWEST CORNER OF LOT 1, BLOCK B-R, MISTLETOE HEIGHTS, ACCORDING TO PLATRecorded IN VOLUME 388-160, PAGE 1, PLAT RECORDS, TARRANT COUNTY, TEXAS;

THENCE NORTH 86 DEGREES 05 MINUTES 23 SECONDS EAST, ALONG THE SOUTH LINE OF SAID LOT 1, 54.56 FEET TO A ¾ INCH IRON PIN FOUND FOR THE NORTHWEST CORNER OF LOT 7 OF TREZEVANT SUBDIVISION;

THENCE SOUTH 04 DEGREES 07 MINUTES 19 SECONDS EAST, ALONG THE EAST LINE SAID TREZEVANT TRACT AND THE WEST LINE OF TREZEVANT SUBDIVISION, 124.61 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.424 OF AN ACRE OF LAND.

ALSO KNOWN AS:

TRACT II:

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk’s Document No. D207307960 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being more particularly described as follows:

BEGINNING at a found axle for the southeast corner of said 0.424 acre tract, being on the north right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 59 degrees 40 minutes 50 seconds West, along said north right-of-way line, a distance of 129.99 feet to a 3/4-inch found iron rod for the common southeast corner of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 O.R.T.C.T. and the southwest corner of said 0.424 acre tract;

THENCE North 11 degrees 14 minutes 10 seconds West, departing said north right-of-way line, a distance of 164.21 feet to the common northwest corner of said 0.424 acre tract of land and an ell corner of said All Saints tract;

THENCE North 83 degrees 59 minutes 50 seconds East, a distance of 82.91 feet to a common ell corner of said All Saints tract and said called 0.424 acre tract of land;
THENCE North 03 degrees 50 minutes 10 seconds West, a distance of 16.58 feet to a 5/8-inch found iron rod for an ell corner of said 0.424 acre tract of land, the most southerly southwest corner of Lot 1 in Block B-R of Mistletoe Heights as recorded in Volume 388-160, Page 1 in the Plat Records of Tarrant County, Texas, and being on the east line of said All Saints tract;

THENCE North 86 degrees 13 minutes 12 seconds East, a distance of 54.54 feet to a 5/8-inch found iron rod for the northeast corner of said called 0.424 acre tract of land, and being on the south line of said Lot 1;

THENCE South 03 degrees 53 minutes 11 seconds East, a distance of 124.54 feet to the POINT OF BEGINNING AND CONTAINING 18,495 square feet or 0.4246 acres of land, more or less.

TRACT III:

BEING A PART OF BLOCK "B" OF MISTLETOE HEIGHTS ADDITION TO THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 388, PAGE 5, DEED RECORDS OF TARRANT COUNTY, TEXAS, SAID PART OF BLOCK "B" BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:


THENCE NORTH 6 DEGREES 08 MINUTES WEST, ALONG SAID BLOCK LINE AND RIGHT-OF-WAY LINE, 402.2 FEET TO AN IRON;

THENCE NORTH 83 DEGREES 52 MINUTES EAST 98 FEET TO AN IRON;

THENCE SOUTH 6 DEGREES 08 MINUTES EAST 45 FEET TO AN IRON;

THENCE NORTH 83 DEGREES 52 MINUTES EAST 110-7/10 FEET TO AN IRON;

THENCE SOUTH 3 DEGREES 57 MINUTES EAST 132-1/10 FEET TO AN IRON;

THENCE SOUTH 83 DEGREES 52 MINUTES WEST 82-6/10 FEET TO AN IRON;
THENCE SOUTH 11 DEGREES 22 MINUTES EAST 164-4/10 FEET TO AN IRON IN THE SOUTH LINE OF SAID BLOCK B;

THENCE SOUTH 59 DEGREES 33 MINUTES WEST, ALONG SAID SOUTH LINE OF BLOCK B, 149-3/10 FEET TO THE PLACE OF BEGINNING.

ALSO KNOWN AS:

TRACT III:

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch found iron rod with plastic cap stamped "FULTON SURVEYING" for the common northwest corner of said All Saints tract, the most westerly southwest corner of Lot 1 in Block B-R of Mistletoe Heights as recorded in Volume 388-160, Page 1 in the Plat Records of Tarrant County, Texas, and being on the east line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);

THENCE North 84 degrees 06 minutes 47 seconds East, along the common line between said All Saints tract and said Lot 1, a distance of 98.08 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for a common ell corner of said All Saints tract and said Lot 1;

THENCE South 06 degrees 21 minutes 44 seconds East, continuing along said common line, a distance of 44.82 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for a common ell corner of said All Saints tract and said Lot 1;

THENCE North 84 degrees 04 minutes 15 seconds East, continuing along said common line, a distance of 110.60 feet to a 5/8-inch found iron rod for the northeast corner of said All Saints tract and an ell corner of said Lot 1;

THENCE South 03 degrees 50 minutes 10 seconds East, along the east line of said All Saints tract, passing a 5/8-inch found iron rod for the most southerly southwest corner of said Lot 1, and an ell corner of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk’s Document
No. D207307960 O.R.T.C.T. at a distance of 115.35 feet and continuing for a total distance of 131.94 feet to a point for a common ell corner of said All Saints tract and said called 0.424 acre tract of land;

THENCE South 83 degrees 59 minutes 50 seconds West, departing said east line, a distance of 82.91 feet to the common northwest corner of said 0.424 acre tract of land and an ell corner of said All Saints tract;

THENCE South 11 degrees 14 minutes 10 seconds East, a distance of 164.21 feet to a 3/4-inch found iron rod for the common southeast corner of said All Saints tract, the southwest corner of said 0.424 acre tract, and being on the north right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 59 degrees 40 minutes 50 seconds West, departing said east line and along said north right-of-way line, a distance of 149.29 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner on said east right-of-way line;

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right-of-way line and along said east right-of-way line, a distance of 402.00 feet to the POINT OF BEGINNING AND CONTAINING 56,858 square feet or 1.3053 acres of land, more or less.

TRACT IV:

Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being a portion of Beckham Place (a 60 foot right of way) as recorded in the Fort Worth Original Town, an addition to the City of Fort Worth (no recording information found) also shown on plat of Lots 1&2, Block 3-A Frisco Addition, as recorded in 388-173, Page 11 Plat Records Tarrant County Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T. and the south right of way line being described in Residue of Beckham Place vacated by Ordinance No. 9104, being all of that called 0.4304 acre tract of land described in City of Fort Worth Ordinance No. 23278-06-2018 Vacating and Extinguishing a portion of Beckham Place, and being more particularly described below:

BEGINNING at a 1/2-inch found iron with cap stamped GRANT ENG RPLS 4151 being at the intersection of the north right of way line of Beckham Place (variable width right-of-way) and the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way), and being the southwest corner of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth Inc., recorded in Volume 10876, Page 1719 Official Records Tarrant County Texas (O.R.T.C.T.);
THENCE North 59 degrees 40 minutes 50 seconds East, along the north right of way line of said Beckham Place, passing at a distance of 149.29 feet, a 3/4-inch iron rod for the southeast corner of said All Saints tract and being the southwest corner of 1700 Mistletoe Partners, Ltd., recorded in Document No. D207307960 O.R.T.C.T., and continuing for a total distance of 255.74 feet to a point for corner;

THENCE South 00 degrees 42 minutes 24 seconds East, over and across said Beckham Place, a distance of 70.58 feet to a point for corner being on the south right of way line of said Beckham Place;

THENCE South 57 degrees 36 minutes 24 seconds West, along said south right of way line, a distance of 198.04 feet to a point for corner at the point of intersection of said south right of way line and the east right of way line of said Beckham Place same being the east line of said City of Fort Worth tract;

THENCE South 06 degrees 51 minutes 00 seconds East, along said east right of way line, a distance of 58.06 feet to a point for corner being at the intersection of said east right of way line and the north right of way line of Mistletoe Boulevard (a variable width right of way);

THENCE North 89 degrees 22 minutes 55 seconds West, over and across said Beckham Place, a distance of 50.32 feet to a point for corner being on the east right of way line of said Burlington Northern Santa Fe Railroad;

THENCE North 06 degrees 00 minutes 10 seconds West, along said east right of way line, passing at a distance of 27.87 feet, the northwest corner of said City of Fort Worth tract, and continuing for a total distance of 105.25 feet to the POINT OF BEGINNING AND CONTAINING 18,744 square feet or 0.4303 acres of land, more or less.

LESS AND EXCEPT:

Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T. and being more particularly described below:

BEGINNING at a 3/4-inch found iron rod for the southeast corner of said City of Fort Worth tract, being on the north right of way line of Mistletoe Boulevard (a variable width right of way);
THENCE North 89 degrees 22 minutes 55 seconds West, along said north right of way line, a distance of 50.32 feet to a point for corner at the intersection of said north right of way line with the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way); THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right of way line and along said east right of way line, a distance of 27.87 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, departing said east right of way line, a distance of 54.84 feet to a point for corner; THENCE South 06 degrees 51 minutes 00 seconds East, a distance of 58.06 feet to the POINT OF BEGINNING AND CONTAINING 2,133 square feet or 0.0490 acres of land, more or less.

TRACT V:

Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T. and being part of that called 0.4304 acre tract of land described in City of Fort Worth Ordinance No. 23278-06-2018 Vacating and Extinguishing a portion of Beckham Place and being more particularly described below:

BEGINNING at a 3/4-inch found iron rod for the southeast corner of said City of Fort Worth tract, being on the north right of way line of Mistletoe Boulevard (a variable width right of way);

THENCE North 89 degrees 22 minutes 55 seconds West, along said north right of way line, a distance of 50.32 feet to a point for corner at the intersection of said north right of way line with the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way); THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right of way line and along said east right of way line, a distance of 27.87 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, departing said east right of way line, a distance of 54.84 feet to a point for corner; THENCE South 06 degrees 51 minutes 00 seconds East, a distance of 58.06 feet to the POINT OF BEGINNING AND CONTAINING 2,133 square feet or 0.0490 acres of land, more or less.

TRACTS I, II, III, IV AND V ALSO KNOWN AS:

PLAT DESCRIPTION:
BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that tract of land described as Tract 1 in Special Warranty Deed to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk’s Document No. D207136848 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being all of Lot 1-R1 of Lots 1-R1 and 1-R2, Block 3R, Frisco Addition, an addition to the City of Fort Worth, Tarrant County, Texas, as recorded in County Clerk’s Document No. D212125731 O.R.T.C.T., and being all of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 O.R.T.C.T., and being all of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk’s Document No. D207307960 O.R.T.C.T., and being more particularly described as follows:

BEGINNING at a 5/8-inch found iron rod for the southeast corner of said Lot 1-R1, being on the north right-of-way line of Mistletoe Boulevard (a variable width right-of-way);

THENCE North 89 degrees 22 minutes 55 seconds West, along said north line, a distance of 272.69 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") for corner on the east line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north line and along said east line, a distance of 507.25 feet to a 1/2-inch found iron rod with plastic cap stamped "FULTEN SURVEYING" for the northwest corner of said All Saints tract;

THENCE North 84 degrees 06 minutes 47 seconds East, departing said east line and along the north line of said All Saints tract, a distance of 98.08 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner;

THENCE South 06 degrees 21 minutes 44 seconds East, continuing along said north line, a distance of 44.82 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner;

THENCE North 84 degrees 04 minutes 15 seconds East, continuing along said north line, a distance of 110.60 feet to a 5/8-inch found iron rod for the northeast corner of said All Saints tract;

THENCE South 03 degrees 50 minutes 10 seconds East, departing said north line and along the east line of said All Saints tract, a distance of 115.35 feet to a 5/8-inch found iron rod for ell corner on the north line of said 0.424 acre tract;
THENCE North 86 degrees 13 minutes 12 seconds East, departing said east line and along said north line, a distance of 54.54 feet to a 5/8-inch found iron rod for the northeast corner of said 0.424 acre tract;

THENCE South 03 degrees 53 minutes 11 seconds East, departing said north line and along the east line of said 0.424 acre tract, a distance of 124.54 feet to a found axle for the southeast corner of said 0.424 acre tract, being on the north right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 59 degrees 40 minutes 50 seconds West, departing said east line and along said north line, a distance of 23.54 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 00 degrees 42 minutes 24 seconds East, departing said north line, a distance of 70.58 feet to a 1/2-inch set iron rod with cap for corner on the south right-of-way line of said Beckham Place;

THENCE North 57 degrees 36 minutes 24 seconds East, along said south line, a distance of 70.51 feet to a point for the northeast corner of said Lot 1-R1, from which a 1/2-inch found iron rod with plastic cap stamped "AREA SURVEYING" bears North 48 degrees 50 minutes 32 seconds East, a distance of 0.25 feet;

THENCE South 00 degrees 42 minutes 24 seconds East, departing said south line and along the east line of said Lot 1-R1, a distance of 203.93 feet to the POINT OF BEGINNING AND CONTAINING 123,799 square feet or 2.842 acres of land, more or less.
# Exhibit B

## Development Budget, Sources and Uses

### Summary of Loans

<table>
<thead>
<tr>
<th>Loan Type</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Loans</td>
<td>$1,234,567</td>
<td></td>
</tr>
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</table>

## Mistletoe Station

### Assumptions and Inputs - Development Budget

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Budget</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>Total Development Costs</td>
<td>$2,345,678</td>
<td>Addenda</td>
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### Development Budget, Sources and Uses

<table>
<thead>
<tr>
<th>Category</th>
<th>Budget</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>Land</td>
<td>$123,456</td>
<td>Addenda</td>
</tr>
<tr>
<td>Existing Improvements</td>
<td>$67,890</td>
<td>Addenda</td>
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<tr>
<td>Acq/Cont. (Shares, legal)</td>
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<tr>
<td>Loan</td>
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### Sources and Uses

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<thead>
<tr>
<th>Source Description</th>
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<tbody>
<tr>
<td>Total Loan Sources</td>
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<td>Addenda</td>
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</table>

### Summary of Loans

<table>
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</tr>
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<tr>
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<td>$1,234,567</td>
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</tbody>
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DMEAST #34514769 v8

B-1

Exhibit B – Development Budget

Mistletoe Station, LLC
### SUMMARY OF LOANS

<table>
<thead>
<tr>
<th>Lender</th>
<th>Related Party (Yes or No)</th>
<th>Principal Amount</th>
<th>Interest Rate</th>
<th>Hard Debt Payment Terms</th>
<th>Soft Debt Payment Terms</th>
<th>Construction or Permanent or Both</th>
<th>Maturity Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>JPMorgan Chase Bank, N.A.</td>
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<td>$22,282,000</td>
<td>Variable – expected to be 4.65%</td>
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<td></td>
<td>Construction</td>
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<td>Hunt Mortgage Partners, LLC</td>
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<td>$8,300,000</td>
<td></td>
<td>Permanent</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>FWHFC</td>
<td>no</td>
<td>$750,000</td>
<td>Same as Construction Loan during Construction and 2% after Conversion</td>
<td>Payable from Cash Flow – 35 year amortization</td>
<td>both</td>
<td>15.5 years from Conversion</td>
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</tr>
<tr>
<td>Agency (HOME Loan)</td>
<td>No</td>
<td>$1,056,000</td>
<td>0% during construction and 1% after conversion</td>
<td>Payable from Cash Flow - 35 year amortization</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT C

FUNDING CONDITIONS

Payment Certificate. The obligation of the Investor Member to pay each Installment (or disbursement of each Installment) is conditioned upon delivery by the Managing Member to the Investor Member of a written certificate (the “Payment Certificate”) in the form attached hereto as Exhibit R. The Payment Certificate for each Installment subsequent to the First Installment shall be dated and delivered not less than fifteen (15) nor more than thirty (30) days prior to the due date for such Installment.

First Installment Funding Conditions ($1,289,871)

1. Admission of the Investor Member to the Company.

2. Proof of property and liability insurance in accordance with Exhibit D to the Agreement.

3. No Event of Default of the Managing Member has occurred.

4. Receipt by the Investor Member of an LIHTC Certificate in the form attached hereto as Exhibit S.

5. Receipt by the Company of the Carryover Allocation and satisfaction by the Company of all conditions to the effectiveness of the Carryover Allocation which are to be satisfied prior to Closing imposed by the Code, the Agency or otherwise.

6. Receipt of the Permanent Loan commitment in a form acceptable to the Investor Member.

7. Closing and funding of the Construction Loan on terms approved by the Investor Member, with such funds to be used solely for site acquisition, development and construction costs, including an expense reimbursement of $65,000 to an Affiliate of the Investor Member for its review and approval costs in connection with the Closing.

8. Closing and initial funding of the FWHFC Loan on terms approved by the Investor Member, with such funds to be used solely for purposes set forth in the FWHFC Loan documents.

9. The Title Policy meeting the requirements set forth in Exhibit Q.

10. The Predevelopment Loan shall have been paid in full or will be paid in full concurrently with the funding of the First Installment.

11. An Opinion of Counsel of the Managing Member confirming such tax, corporate and partnership matters, and in such form, as the Investor Member or its counsel may reasonably request. Such opinion shall expressly permit reliance thereon by the Investor Member and counsel engaged by the Investor Member in connection with the admission of the
Investor Member to the Company and confirm that, upon an Assignment of the Investor Member’s Interest in the Company pursuant to an Assignment executed substantially in the form attached to the Agreement as Exhibit M, (1) the Assignee of the Investor Member’s Interest will, except for the payment of its Capital Contribution, have no liability with respect to obligations of the Company except as provided under the provisions of the Uniform Act, and (2) the Assignment will not affect the validity of the Guaranty Agreement, the benefits of which will run to the Assignee of the Investor Member’s Interest.

12. The Development Agreement between the Company and the Developer, in the form attached to the Agreement as Exhibit E, pursuant to which the Developer will be paid a Development Fee as described therein.

13. The Guaranty Agreement in the form attached to the Agreement as Exhibit F.

14. The ALTA Survey certified to the Company and the Investor Member and meeting the requirements set forth in Exhibit Q.

15. A construction contract and payment and performance bond in a form approved by the Investor Member.

16. The Management Agreement between the Company and the Management Agent, in the form attached to the Agreement as Exhibit I.

17. Building permits for the Apartment Complex or will issue letter.

18. The Due Diligence Documents and any other documents as the Investor Member may require in its sole and absolute discretion.

**Second Installment Funding Conditions ($644,936)**

1. No Event of Default of the Managing Member has occurred.

2. The Due Diligence Documents and any other documents as the Investor Member may require in its sole and absolute discretion.

3. Satisfaction of all conditions for the payment of the First Installment.


**Third Installment Funding Conditions ($8,309,161)**

1. Satisfaction of all conditions for the payment of the Second Installment.

2. Substantial Completion has occurred.

3. Receipt of Draws and related Draw Documents for Capital Contributions to pay costs of constructing the Apartment Complex, which are approved by the Investor Member pursuant to Section 4.4 of the Agreement.
4. Proof that all insurance requirements continue to be satisfied in accordance with Exhibit D to the Agreement.

5. Carryover Certification with paid invoices to confirm satisfaction of the Ten Percent Test.

6. If available, a date down endorsement to the Title Policy dated within thirty (30) days of funding the Third Installment, in form and substance reasonably acceptable to the Investor Member.

7. Unconditional lien waivers for previous Draws and Conditional lien waivers for current Draw.

8. A certification of the Managing Member, in form and substance acceptable to the Investor Member, confirming that any asserted violations of building codes or Environmental Laws that were to be corrected or remediated during Construction of the Apartment Complex have been timely and fully corrected or remediated in strict compliance with applicable law.

9. A report from the Investor Member’s construction consultant that Substantial Completion has been achieved, that completed construction work is good quality and generally in accordance with the Plans and Specifications and the Apartment Complex is completely operable and inhabitable. The Investor Member shall cause its consultant to deliver a copy of its report (or the pertinent portions thereof) promptly to the Managing Member if there are any construction or other development items which the Investor Member claims are unsatisfactory based upon the findings in the report.


11. Receipt of Draws and related Draw Documents for Capital Contributions to pay costs of constructing the Apartment Complex, which are approved by the Investor Member pursuant to Section 4.4 of the Agreement.

12. Updated Sources and Uses of Development Budget.

13. Proof that all insurance requirements continue to be satisfied in accordance with Exhibit D to the Agreement.

14. Receipt of all other reports required to be submitted to date according to Article 18, including but not limited to budgets, tax returns, audits and compliance documentation.

15. Such additional documentation as the Investor Member may reasonably require.

Fourth Installment Funding Conditions ($2,579,742)

1. Executed Permanent Loan documents (which may be delivered within five (5) business days after the Fourth Installment Funding if the Fourth Installment Funding is to happen concurrently with Permanent Loan Closing).

2. Completion has occurred, and all Completion Documentation has been received and approved by the Investor Member.

3. The ALTA As-Built Survey.

4. A final report from the Investor Member’s construction consultant that all design, site, construction and finishing work necessary for the completion of the Apartment Complex and any necessary utilities have been finished in a good and workmanlike manner, free from defects in design and construction and substantially in accordance with the Plans and Specifications, which shall additionally include evidence of the delivery and installation of all necessary and appropriate fixtures, equipment and personal property. The Investor Member shall cause its consultant to deliver a copy of its report (or the pertinent portions thereof) promptly to the Managing Member if there are any construction or other development items which the Investor Member claims are unsatisfactory based upon the findings in the report.

5. Rental Achievement.

6. Receipt by the Company of the TIF Reimbursement and the Additional TIF Reimbursement.

7. Receipt by the Company of the HAP.

8. If applicable, receipt of the executed Section 811 Subsidy Contract in a form acceptable to the Investor Member.

9. Satisfaction of all conditions for the payment of the Third Installment.

10. A “comfort letter” from the Managing Member’s counsel, stating that nothing has come to its attention which affects adversely the matters addressed in its opinions delivered at the First Installment.

11. An unaudited balance sheet of the Company, dated no earlier than thirty (30) days prior to such Installment, certified by the Managing Member as true, complete and correct.

12. An estimate of the likely adjustment to Capital Contributions, if any, that may be due under Section 4.2(d)(ii).

13. Evidence that all warranties relating to the Construction have been issued to the Company, including the commencement and termination date and product information.

14. Copies of all maintenance and operating agreements for the Apartment Complex.
15. Executed and recorded Extended Use Agreement; provided however, if a recorded copy is not yet available, evidence of submission of the executed Extended Use Agreement for recording.

16. Evidence that the Operating Reserve and Replacement Reserve have been funded in accordance with the terms of the Agreement.

17. Receipt by the Company of the Cost Certification and such documentation as may be reasonably required by the Investor Member to support the Cost Certification, together with an estimate of the likely adjustment to Capital Contributions, if any, that may be due under Section 4.2(d)(i).

18. Copies of all initial tenant files.

19. Update of each Guarantor’s financial statements to include a schedule of contingent liabilities, together with bank statements for each Guarantor who is an individual, dated no later than ninety (90) days prior to the Fourth Installment Funding.

20. Proof that all insurance requirements continue to be satisfied in accordance with Exhibit D to the Agreement.

21. Date down endorsement, if available, to the Title Policy dated on at the time of the Permanent Loan Closing Date, in form and substance reasonably acceptable to the Investor Member, and issuance of an ALTA zoning 3.1 endorsement, a comprehensive endorsement for improved land, a revised survey endorsement reflecting and referring to the ALTA As-Built Survey, and any other endorsements requested by the Investor Member, all in form reasonably satisfactory to the Investor Member.

22. Such additional documentation as the Investor Member may reasonably require.


**Fifth Installment Funding Conditions ($75,000)**

1. Receipt of Internal Revenue Service Forms 8609 for each building in the Apartment Complex.

2. Receipt of all other reports required to be submitted to date according to Article 18, including but not limited to budgets, tax returns, audits and compliance documentation.

3. The completion of Investor Member’s first year Tenant File Audit.

4. Certified Rent Roll(s).

5. Final calculation of the adjustments to Capital Contributions, if any, that may be due under Section 4.2(d)(i) and 4.2(d)(ii).
6. Proof that all insurance requirements continue to be satisfied in accordance with Exhibit D to the Agreement.

7. Satisfaction of all conditions for the payment of the Fourth Installment.

8. Such additional documentation as the Investor Member may reasonably require.

EXHIBIT D

INSURANCE REQUIREMENTS

I. Immediately upon purchase of the land and building(s) upon which new construction will take place and/or building(s) will be rehabilitated, and throughout the term of this Agreement, The Managing Member shall obtain, and maintain in full force and effect, the following policies of insurance for the Company:

A. Commercial General Liability Insurance:
   1. $1,000,000 per occurrence;
   2. $2,000,000 general aggregate;
   3. $2,000,000 product liability/completed operations aggregate;
   4. Personal and Advertising injury: $1,000,000;
   5. The Investor Member and any other party as designated by the Investor Member shall be included as an additional insured using form CG2026 Designated Person or Organization or form CG2027 Co-Owner of Insured Premise or its equivalent. If these or equivalent endorsements are not available it must specifically state on the certificate “Who is an insured includes all members & partners per policy form {state policy form number} attached”. The additional insured form/endorsement or policy form must be attached to the certificate of Insurance.
   6. Include Terrorism Coverage as per the Terrorism Risk Insurance Act of 2002 and as extended or equivalent replacement coverage if the Act is not extended, without any exclusions or limitations for Other Acts of Terrorism.
   7. Deductible/SIR not greater than $10,000; and
   8. Premium amount to be shown on certificate or copy of premium invoice or coverage proposal provided.

B. Automobile Insurance, only required if the Apartment Complex has employees or owns or uses any autos (must provide written statement stating the Apartment Complex has no employees, owns or uses any autos if proof of coverage is not provided):
   1. Liability with $1,000,000 combined single limit for personal injury and property damage (including all hired and non-owned vehicles).
   2. Physical Damage, including comprehensive and collision, for any owned autos

C. Worker’s Compensation Insurance, only required if the Company has employees (must provide written statement that the Company has no employees if proof of coverage is not provided):
1. State Benefits and Employer’s liability: $1,000,000.

D. Umbrella/Excess Liability Insurance:

1. $5,000,000 per occurrence and aggregate (primary and umbrella/excess liability can be combined to achieve minimum limit of $6,000,000 per occurrence and $7,000,000 Aggregate); Higher limits may be required depending project characteristics, location and size.

2. The Commercial General Liability, Automobile Liability and Employers Liability policies should be scheduled as underlying policies; and

E. All coverages to be shown on an ACORD 25 Form with 30 days’ Notice of Cancellation deleting the words “endeavor to” and “but failure to…”, listing the Investor Member and any other party as designated by the Investor Member as Certificate Holder. A separate certificate shall be issued for each requested Certificate Holder.

F. All coverage shall be primary and any insurance carried by the Investor Member or any other partners shall be excess and non-contributory. All insurance companies shall agree to waive their right of subrogation against the Investor Member or any other partners or party as designated by the Investor Member.

G. Other forms or types of insurance which the Investor Member may now or hereafter reasonably require.

II. Prior to the commencement of any construction or rehabilitation of the Apartment Complex, The Managing Member shall obtain (or cause to be obtained by the Contractor/Architect) and keep in force until construction is completed, accepted and initial occupancy of any portion of the Apartment Complex:

A. Builder’s Risk Insurance:

1. “Special Form” Builder’s Risk policy;

2. Replacement Cost;

3. New construction – limit of insurance must be equal to the full value of the completed project;

4. Rehabilitation/Reconstruction limit of insurance must be equal to the value of the building after demolition is completed, plus the full construction/rehab value, including labor;

5. Deductible not greater than $10,000;

6. Completed Value Form; Reporting form policies of any kind will not be acceptable.
7. Earthquake/DIC coverage for all properties located in UBC Seismic Zones 3 & 4; For projects with an approved seismic study indicating a loss prediction of less than 20%, earthquake insurance may be waived; with limits and deductibles that are acceptable to the Investor Member.

8. Flood coverage (for all properties located in FEMA Flood Zones A, V, and D); with limits equal to 50% of the replacement cost of the completed project.

9. Include Terrorism Coverage as per the Terrorism Risk Insurance Act of 2002 and as extended or equivalent replacement coverage if the Act is not extended, without any exclusions or limitations for Other Acts of Terrorism.

10. To be shown on an ACORD 27/28 Form with 30 days’ Notice of Cancellation deleting the words “endeavor to” and “but failure to…”, listing the Investor Member or any other party as designated by the Limited Liability Company as Certificate Holder and Loss Payee using form CP1218 or its equivalent with a waiver of subrogation; The loss payee form/endorsement must be attached to the certificate. A separate certificate shall be issued for each Certificate Holder.

11. Premium amount to be shown on certificate or copy of premium invoice or coverage proposal provided.

12. Soft Cost Endorsement, including increased engineering/architectural fees, interest expense, insurance, real estate taxes, and other miscellaneous expenses associated with project completion delays resulting from a loss.

13. Hail, Named Storms, Windstorm Coverage with deductibles that are acceptable to the Investor Member.

14. Waiver of Coinsurance or Agreed Amount Endorsement.

15. Policy shall contain a Permission to Occupy provision

16. Coverage shall include costs for Debris Removal

B. Evidence of insurance from the Contractor:

1. Worker’s Compensation insurance including state benefits and employers liability of not less than $1,000,000; with a waiver of subrogation in favor of the Company, the Investor Member and any other party as designated by the Investor Member.

2. Commercial Liability insurance coverage of $6,000,000 per occurrence and $7,000,000 aggregate naming the Company, the Investor Member and any other party as designated by the Investor Member as an Additional Insured including Products and Completed Operations for the appropriate statute of limitations.

3. Auto Liability insurance with limits not less than $1,000,000 combined single limit covering all owned, hired & non-owned autos.
4. Contractors Pollution Liability with limits not less than $1,000,000 per occurrence and aggregate if work involves any environmental remediation such as asbestos, lead or other pollutants on structures or the site.

5. All coverage shall be primary and any insurance carried by the Company, Investor Member or Members shall be excess and non-contributory. All insurance companies shall agree to waive their right of subrogation against the Company, the Investor Member or any other party as designated by the Investor Member.

6. To be shown on an ACORD 25 Form with 30 days’ Notice of Cancellation deleting the words “endeavor to” and “but failure to…”, listing the Company, the Investor Member and any other party designated by the Investor Member as Certificate Holder. A separate certificate shall be issued for each Certificate Holder.

7. The Managing Member shall make sure the Investor Member and any other party designated by the Investor Member are included in any construction contracts so as to trigger the benefit of any blanket additional insured, primary wording or waiver of subrogation insurance endorsements where written contract is required so that the above requirements are met.

C. Evidence of insurance from the Architect and Engineer:

1. Errors & Omissions insurance coverage of $1,000,000 per occurrence and in the aggregate; and

2. To be shown on an ACORD 25 Form with 30 days’ Notice of Cancellation deleting the words “endeavor to” and “but failure to…”, listing the Investor Member and any other party designated by the Investor Member as Certificate Holder.

III. Prior to the Occupancy Commencement Date, the Managing Member shall obtain, and shall maintain in full force and effect throughout the term of this Agreement, the following policies of insurance:

A. Property Insurance:

1. ”Special Form” policy at replacement cost excluding land;

2. Loss of Rents: greater than or equal to 12 months’ rental income, maximum deductible 72 hours

3. Building Contents: full replacement cost on “Special Form” basis;

4. Waiver of Co-insurance or agreed amount endorsement;

5. Include Terrorism Coverage as per the Terrorism Risk Insurance Act of 2002 and as extended or equivalent replacement coverage if the Act is not extended, without any exclusions or limitations for Other Acts of Terrorism.
6. Earthquake/DIC coverage (for all properties located in UBC Seismic Zones 3 & 4; Projects with an approved seismic study indicating a loss prediction of less than 20%, earthquake insurance may be waived); with limits and deductibles that are acceptable to the Investor Member.

7. Deductibles not greater than $10,000;

8. Flood coverage (for all properties located in FEMA Flood Zones A, V, and D) with limits not less than 50% of the replacement value of the completed project.

9. Hail, Named Storms, Windstorm Coverage with deductibles that are acceptable to the Investor Member.

10. Building Ordinance or Law A, B & C $500,000 for properties that contain any type of non-conformance under current building, zoning, or land use laws or ordinances.

11. Boiler & Machinery/Equipment Breakdown insurance at 100% replacement cost of building(s) that houses equipment with deductibles same as property insurance for all properties with any centralized HVAC, boiler, water heater or other type of pressure-fired vessel.

12. To be shown on an ACORD Form 27/28 with 30 days’ Notice of Cancellation listing the Investor Member and any other party designated by the Investor Member as Certificate Holder and adding as Loss Payees per form CP 1218 (form/endorsement must be attached to the certificate) with a waiver of subrogation, with the words “endeavor to” and “but failure to” struck from the notice;

13. Premium amount to be shown on certificate or copy of premium invoice or coverage proposal provided

B. Management Agent Insurance:

1. Worker’s Compensation insurance including state benefits and employers liability of not less than $1,000,000; with a waiver of subrogation in favor of the Company, the Investor Member and any other party as designated by the Investor Member.

2. General Liability insurance coverage of $6,000,000 per occurrence and $7,000,000 aggregate; and

3. Professional Liability Insurance with limits of $1,000,000 per occurrence and aggregate with deductible/SIR not greater than $10,000

4. Auto Liability insurance with limits not less than $1,000,000 combined single limit covering all owned, hired & non-owned autos.

5. Employee Dishonesty Crime Coverage or similar Fidelity Bond coverage in an amount not less than the equivalent of 2 months gross income of the project.
6. To be shown on an ACORD Form 25 with 30 days’ Notice of Cancellation listing the Company, the Investor Member and any other party designated by the Investor Member as certificate holder with the words “endeavor to” and “but failure to” struck from the notice. A separate certificate shall be issued for each Certificate Holder.

IV. All policies of insurance described on this Exhibit D shall be underwritten by companies licensed to write such insurance in the state where the Apartment Complex is located and shall be rated in the A.M. Best’s Insurance Rating Guide with a rating of at least A VII. Notice of any replacement of any policy shall be made at least 10 days prior to such replacement, and shall be in the form of a copy of the replacement policy, or by certificate, as noted above. If any Acord Forms or other evidences of insurance do not contain a notice provision for the benefit of the Certificate Holder it shall be the obligation of the Managing Member to Notify all Certificate Holders of any cancelation, non-renewal or material reduction in coverage of all required insurance.

V. All liability insurance maintained by the Company and General Contractor shall include a provision that is primary and any such insurance maintained by the Investor Member or other party designated by the Investor Member is excess and non-contributory.

VI. All parties and their respective insurers are required and must agree to waive their rights of subrogation against the Investor Member or any other party designated by the Investor Member.

VII. The Managing Member is advised to obtain whatever additional insurance is deemed prudent to adequately protect the Company. These insurance requirements are considered minimum standards.
EXHIBIT E

DEVELOPMENT AGREEMENT
DEVELOPMENT AGREEMENT

THIS AGREEMENT (this “Agreement”) is made and entered into as of August 30, 2018, between Mistletoe Station, LLC, a Texas limited liability company (the “Company”), SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company (“Saigebrook”) and O-SDA INDUSTRIES, LLC, a Texas limited liability company (“O-SDA” and together with Saigebrook, the “Developer”).

A. The Company is governed by its First Amended and Restated Operating Agreement dated as of August 30, 2018 (the “Operating Agreement”) (capitalized terms used herein without definition shall have the definitions given them in the Operating Agreement).

B. The Company has been formed to develop, construct, own, maintain and operate a 110-unit multifamily apartment complex intended for rental to families of low and moderate income and for rental to families at market rates, to be known as Mistletoe Station, and to be located at 1916 Mistletoe Blvd., Fort Worth, Tarrant County, Texas (the “Apartment Complex”).

C. Saigebrook Mistletoe, LLC, a Texas limited liability company, O-SDA Mistletoe, LLC, a Texas limited liability company, HCP-SLP, LLC, a Nevada limited liability company and HCP-ILP, LLC, a Nevada limited liability company (the “Investor Member”) are the sole Members in the Company.

D. The Company desires to appoint the Developer to provide certain services for the Company with respect to overseeing the development of the Apartment Complex until all development work is completed.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Appointment. The Company hereby appoints the Developer to render services for the Company, and confirms and ratifies the appointment of the Developer with respect to services rendered for the Company to date, in supervising and overseeing the development of the Apartment Complex as herein contemplated.

2. Authority. In conformity with the provisions of the Operating Agreement, the Developer shall have, and has had, the authority and the obligation to:

(a) select the architect (“Architect”), coordinate the preparation of the plans and specifications (the “Plans and Specifications”) and recommend alternative solutions whenever design details affect construction feasibility or schedules;

(b) insure that the Plans and Specifications are in compliance with all applicable codes, laws, ordinances, rules and regulations;

(c) cause the General Contractor to negotiate all necessary contracts and subcontracts (other than the Construction Contract) for the construction of the Apartment Complex;
(d) verify the utilization of the products and materials necessary to equip the Apartment Complex in a manner which satisfies all requirements of the Construction Loan and the Plans and Specifications;

(e) monitor disbursement and payment of amounts owed Architects and the subcontractors;

(f) insure that the Apartment Complex is constructed free and clear of all mechanics’ and materialmen’s liens;

(g) obtain an Architect’s certificate that the work on the Apartment Complex is substantially complete and inspect the Architect’s work;

(h) secure all building code approvals and obtain certificates of occupancy for all of the residential units of the Apartment Complex;

(i) cause the Apartment Complex to be completed in a prompt and expeditious manner, consistent with good workmanship, and in compliance with the following:

   (i) the Plans and Specifications as they may be amended by the agreement of the parties hereto and with the consent of the mortgagee under the Construction Loan; and

   (ii) any and all zoning regulations, county ordinances, including health, fire and safety regulations, and any other requirements of federal, state and local laws, rules, regulations and ordinances applicable to construction of the Apartment Complex;

(j) cause to be performed in a diligent and efficient manner the following:

   (i) construction of the Apartment Complex pursuant to the Plans and Specifications, including any required off-site work; and

   (ii) general administration and supervision of construction of the Apartment Complex;

(k) cause the General Contractor to administer and supervise activities of subcontractors and their employees and agents, and others employed as to the Apartment Complex in a manner which complies in all respects with the Construction Loan and the Plans and Specifications;

(l) keep, or cause to be kept, accounts and cost records as to the construction of the Apartment Complex;

(m) maintain, or cause to be maintained, at its expense, all office and accounting facilities and equipment necessary to adequately perform the foregoing functions;

(n) make available to the Company, during normal business hours and upon the Company’s written request, copies of all material contracts and subcontracts;
(o) deliver to the Company the ALTA As-Built Survey and “as-built” drawings of the Apartment Complex construction;

(p) cause the General Contractor to provide and periodically update an Apartment Complex construction time schedule which coordinates and integrates Architect’s services with construction schedules;

(q) cause the General Contractor to investigate and recommend a schedule for purchase by the Company of all materials and equipment requiring long lead time procurement, coordinate the schedule with Architect and expedite and coordinate delivery of such purchases;

(r) cause the General Contractor to prepare pre-qualification criteria for bidders interested in participating in the construction of the Apartment Complex, establish bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques with any special systems, materials or methods;

(s) cause the General Contractor to receive bids, prepare bid analyses and make recommendations to the Company for award of contracts or rejection of bids;

(t) coordinate the work of Architect to complete the Apartment Complex in accordance with the objectives as to cost, time and quality, and provide sufficient personnel at the Apartment Complex with authority to achieve such objectives;

(u) cause the General Contractor to provide a detailed schedule of realistic activity sequences and durations, allocation of labor and materials and processing of shop drawings and samples;

(v) provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and the probable Substantial Completion Date, review the schedule for work not started or incomplete, recommend to the Partnership Adjustments in the schedule to meet the probable Substantial Completion Date, provide summary reports of such monitoring, and document all changes in the schedule;

(w) recommend courses of action to the Company when requirements of subcontracts are not being fulfilled;

(x) revise and refine the approved estimate of construction cost, incorporate changes as they occur, and develop cash flow reports and forecasts as needed;

(y) provide regular monitoring of the approved estimate of construction cost, show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs and advise the Company whenever projected Costs exceed budgets or estimates;

(z) cause the General Contractor to develop and implement a system for review and processing of change orders as to construction of the Apartment Complex;
(aa) develop and implement a procedure for the review and processing of applications by subcontractors for progress and final payments;

(bb) in collaboration with Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples; and

(cc) record the progress of the Apartment Complex and submit written progress reports to the Company and Architect, including the percentage of completion and the number and amounts of change orders.

Notwithstanding the foregoing, the Developer shall not provide any services which are the sole responsibility of the Managing Member, including, without limitation, the following: (i) organization of the Company and negotiation of any sale of a Company Interest; (ii) obtaining permanent financing for the Apartment Complex; and (iii) the acquisition and preparation of the Land prior to commencing construction of the Apartment Complex.

3. Development Fee.

(a) For services performed and to be performed under Sections 1 and 2 of this Agreement, the Company shall pay the Developer a Development Fee in the aggregate amount of Two Million Five Hundred Twenty Seven Thousand Five Hundred Eighty-Five Dollars ($2,527,585) as its sole compensation for the performance of its services under and in connection with this Agreement. Payment of the Development Fee shall be subject to the terms and conditions of the Operating Agreement. Subject to the terms of the Operating Agreement, the Company shall pay the Development Fee as follows: (i) $2,221,407 (of which $1,199,560 shall be paid to Saigebrook, $577,566 shall be paid to O-SDA and $444,281 shall be paid to the Special Investor Member) of the Development Fee shall be paid solely from the Cash Flow of the Company available pursuant to Section 14.1(a)(vi) of the Operating Agreement, from Cost Savings pursuant to Section 14.2, and from proceeds of the dissolution and liquidation of the Company pursuant to Section 17.2(b)(ii)(D) of the Operating Agreement (the “Deferred Development Fee”); (ii) $231,718 (of which $125,128 shall be paid to Saigebrook, $60,247 shall be paid to O-SDA and $46,343 shall be paid to the Special Investor Member) of the Development Fee shall be paid at the time the Investor Member makes the Fourth Installment, (iii) $75,000 (of which $40,500 shall be paid to Saigebrook, $19,500 shall be paid to O-SDA and $15,000 shall be paid to the Special Investor Member) of the Development Fee shall be paid at the time the Investor Member makes the Fifth Installment. The Development Fee, including but not limited to any Deferred Development Fee, shall be paid fifty-four percent (54%) to Saigebrook, twenty-six percent (26%) to O-SDA and twenty percent (20%) to the Special Investor Member, on a pro rata basis.

(b) Notwithstanding the foregoing, if, at any time prior to the payment of the Development Fee in full, including the Deferred Development Fee, there are Development Deficits required to be paid to Saigebrook and O-SDA by the Managing Member pursuant to Section 8.1(b) of the Operating Agreement, the Developer and the Company agree that the Managing Member shall have the right, with the Consent of the Investor Member, to elect to fund such Development Deficits by causing the Company and the Developer to change some or all of the cash portion of the Development Fee that would otherwise be paid to Saigebrook and
O-SDA in accordance with Sections 3(a)(ii) through (v) above (but in no event to exceed the lesser of $244,942 or the unpaid cash portion of 80% of the Development Fee payable to Saigebrook and O-SDA) into Deferred Development Fee (a “DDF Election”); provided, the Investor Member shall Consent to such deferral if the Investor Member determines, in its sole discretion, that all of the Deferred Development Fee (including any additional deferral to pay Development Costs) can be repaid by the Company through distributions from the cash flow waterfall under Section 14.1(a) within thirteen years after the Placed in Service Date, further provided that such Consent shall not be required if the Deferred Development Fee is not necessary to be included in the Eligible Basis in order to generate the Projected Housing Tax Credits and the Investor Member’s Capital Account is expected to remain positive throughout the period of eleven (11) taxable years beginning with the first taxable year of the Credit Period. Any Deferred Development Fee resulting from a DDF Election shall be paid in accordance with Section 3(a)(i) hereof and the payments to Saigebrook, O-SDA and the Special Investor Member shall be adjusted pro rata. In no event shall the total amount of the Development Fee be increased as a result of such DDF Election.

(c) No interest shall accrue on the outstanding Deferred Development Fee (including, without limitation, any Deferred Development Fee resulting from a DDF Election). All payments made to the Deferred Development Fee shall be applied to the outstanding balance of the Deferred Development Fee until the Deferred Development Fee is paid in full. Any outstanding balance shall be payable by the earlier of thirteen (13) years following the Placed in Service Date, December 31, 2032 or the date of liquidation of the Company.

(d) Notwithstanding the timing of the payment of the Capital Contributions of the Investor Member, in any event the Company shall pay the entire earned and accrued amount of the Development Fee (other than the Deferred Development Fee including, without limitation, any Deferred Development Fee resulting from a DDF Election) within three (3) years from the date of this Agreement.

(e) For those services performed on or before the Closing Date, as set forth in Section 2 hereof, twenty percent (20%) of the Development Fee shall be deemed earned as of such date. The balance of the Development Fee shall be earned during construction proportionate to the percentage of completion of construction, with the entire Development Fee earned upon issuance of certificates of occupancy for all buildings in the Apartment Complex.

4. Developer Guaranty of Costs of Construction. The Developer warrants that the aggregate costs to the Company for the items includable in Development as identified on the Development Budget shall not exceed the aggregate amounts for such items reflected on the Development Budget (the “Developer Cost Guaranty”). If the aggregate costs to the Company for the items includable in Development Costs exceed the aggregate amount for such items reflected in the Development Budget and such excess costs cannot be funded by Permitted Sources, including DDF Election, the Developer shall pay such excess when and as incurred. Any amounts paid by the Developer pursuant to this Section 4 shall not be repaid by the Company, shall not be credited to the Capital Amount of any Member, or otherwise change the interest of any Person in the Company, but shall be bound by the Developer under the terms of this Agreement.
5. **Withholding of Fee Payments.** If (a) the Developer or the Managing Member, or any successor Managing Member, shall not have substantially complied with any material provisions under this Agreement and the Operating Agreement, (b) an Event of Default has occurred under the Operating Agreement, (c) any financing commitment of any Lender or any agreement entered into by the Company for financing related to the Apartment Complex shall have terminated prior to its respective termination date(s), or (d) foreclosure proceedings have been commenced against the Apartment Complex, or against any apartment complex owned by an Affiliated Entity, then the Developer shall be in default of this Agreement, and the Company shall withhold payment of any installment of the fee payable to the Developer pursuant to Section 3 of this Agreement. All amounts so withheld by the Company under this Section 5 shall be promptly released to the Developer only after the Developer has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Investor Member. Either Saigebrook or O-SDA shall be entitled to effect such cure on behalf of the Developer.

6. **Assignment of Fees.** The Developer shall not assign, pledge or otherwise encumber, for security or otherwise, the Development Fee set forth above to be made by the Company, or any portion(s) thereof or any right(s) of the Developer thereto, without the Consent of the Investor Member.

7. **Reserved.**

8. **Successors and Assigns.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns. However, this Agreement may not be assigned by any party hereto without the Consent of the Investor Member, nor may it be terminated without the Consent of the Investor Member.

9. **Termination.** If the Managing Member withdraws from the Company for any reason whatsoever, including the removal of the Managing Member pursuant to Section 7.2 of the Operating Agreement, this Agreement shall terminate effective on the date of such withdrawal (an “Early Termination”) unless the Company and the Investor Member otherwise elect in writing. If an Early Termination occurs, then Developer shall not be entitled to any payments of the Development Fee and the Developer shall forfeit as additional damages any Development Fee which has not been paid as of the date of such Early Termination. If an Early Termination occurs, the Developer shall remain liable for all damages, liabilities and claims (“Claims”) arising under or in connection with this Agreement which are based on acts or omissions prior to the date of such termination, including Claims which do not become manifest until after the date of such termination. The Developer shall have no right to terminate this Agreement without the Consent of the Company and the Investor Member, which Consent may be withheld in the sole discretion of any party. The Developer shall have no right to terminate this Agreement without the Consent of the Company and the Investor Member and both Saigebrook and O-SDA, which Consent may be withheld in the sole discretion of any party.

10. **No Lien Filings.** The Developer hereby represents, warrants and covenants that neither it nor its Affiliates shall file a mechanic’s lien, materialmen’s lien or other lien against the Apartment Complex or any other assets of the Company, and hereby waives and releases any right it may have or may hereafter acquire to file such a lien against the Apartment Complex or any other assets of the Company. The Developer shall indemnify and hold harmless the...
Company and the Investor Member from any losses, damages, and/or liabilities, to or as a result of a breach of this provision.

11. **Separability of Provisions.** Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

13. **Waiver of Jury Trial.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS DEVELOPMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT HEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

14. **No Continuing Waiver.** The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

15. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of Texas.

16. **Third Party Beneficiary.** The Investor Member is a third party beneficiary of this Agreement, and the Company and the Developer hereby expressly agree that any amendment to this Agreement shall not be effective unless and until same is Consented to by the Investor Member.

*(SIGNATURES APPEAR ON THE FOLLOWING PAGE)*
IN WITNESS WHEREOF, the parties have caused this Development Agreement to be duly executed as of the date first written above.

COMPANY:

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By: Saigebrook Development, LLC, a Florida limited liability company, its managing member

By: 
Name: Lisa M. Stephens
Its: Manager

DEVELOPER:

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: 
Name: Lisa M. Stephens
Its: Manager

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: 
Name: Megan D. Lasch
Its: Managing Member
IN WITNESS WHEREOF, the parties have caused this Development Agreement to be duly executed as of the date first written above.

COMPANY:

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By: Saigebrook Development, LLC, a Florida limited liability company, its managing member

By: __________________________
Name: Lisa M. Stephens
Its: Manager

DEVELOPER:

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: __________________________
Name: Lisa M. Stephens
Its: Manager

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: __________________________
Name: Megan D. Lasch
Its: Managing Member
EXHIBIT F

GUARANTY AGREEMENT
GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this “Guaranty”), made as of August 30, 2018, is by SAIGEBROOK MISTLETOE, LLC, a Texas limited liability company (“Co-Managing Member”), O-SDA MISTLETOE, LLC, a Texas limited liability company (“Administrative Member”), SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company (“Saigebrook Development”), O-SDA INDUSTRIES, LLC, a Texas limited liability company (“O-SDA Developer”), Lisa M. Stephens, individually and Megan D. Lasch, individually, (jointly and severally Co-Managing Member, Administrative Member, Saigebrook Development, O-SDA Developer, Lisa M. Stephens and Megan D. Lasch are individually and collectively referred to herein as the “Guarantors”), each of whose address is set forth below, for the benefit of HCP-ILP, LLC, a Nevada limited liability company (the “Investor Member”), whose address is 15910 Ventura Boulevard, Suite 1100, Encino, California 91436.

A. Co-Managing Member and Administrative Member are the managing members of Mistletoe Station, LLC, a Texas limited liability company (the “Company”).

B. The Company is governed by its First Amended and Restated Operating Agreement dated as of August 30, 2018 (the “Operating Agreement”). Capitalized terms used herein and not defined shall have the meanings given them in the Operating Agreement.

C. The Developer and the Company have entered into that certain Development Agreement dated as of the date hereof (the “Development Agreement”).

D. The Investor Member has been requested to enter into the Operating Agreement and the Company with the Managing Member.

E. Each Guarantor is, or is an Affiliate of, the Managing Member and/or the Developer, and believes it shall substantially benefit, directly or indirectly, from the Investor Member entering into the Operating Agreement and the Company with the Managing Member.

F. As a condition to entering into the Operating Agreement and the Company, the Investor Member has required the Guarantors to jointly and severally guarantee to the Investor Member certain of the obligations of the Managing Member under the Operating Agreement, of the Developer under the Development Agreement and certain other items as herein set forth.

NOW, THEREFORE, in order to induce the Investor Member to enter into the Operating Agreement and the Company in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Guarantor, in his, her or its respective individual and/or fiduciary capacity, hereby jointly and severally covenants and agrees as follows:

1. Each Guarantor irrevocably and unconditionally fully guarantees the due, prompt and complete performance of each and every one of the following obligations: (a) the payment and performance by the Managing Member of each and every obligation of the Managing Member due under Sections 4.2(d), 5.2(i), 5.2(j), 5.2(cc), 5.8(a), 5.8(c), 5.10(b), 7.2(b)(iv), 8.1, 8.2, 8.3 and 8.4 of the Operating Agreement; (b) the payment and performance by the Managing Member of each and every obligation of the Managing Member under the Managing Member
Pledge; and (c) the due, prompt and complete payment of all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred by the Investor Member in collection of the enforcement of this Guaranty against the Guarantors (the obligations described in this Paragraph 1 are hereinafter collectively referred to as the “Indebtedness”).

2. Each Guarantor hereby grants to the Investor Member, in the sole discretion of the Investor Member, and without notice to any Guarantor, the power and authority to deal in any lawful manner with the Indebtedness and the other obligations guaranteed hereby, and without limiting the generality of the foregoing, further power and authority, from time to time:

   (a) to renew, compromise, extend, accelerate or otherwise change the time or place of payment of or to otherwise change the terms of the Indebtedness;

   (b) to modify or to waive any of the terms of the Operating Agreement, the Development Agreement and/or any other obligations guaranteed hereby;

   (c) to take and hold security for the payment of the Indebtedness and/or performance of the other obligations guaranteed hereby and to impair, exhaust, exchange, enforce, waive or release any such security;

   (d) to direct the order or manner of sale of any such security as the Investor Member, in its sole discretion, may determine;

   (e) to grant any indulgence, forbearance or waiver with respect to the Indebtedness or any of the other obligations guaranteed hereby;

   (f) to release or waive rights against any one or more Guarantors without releasing or waiving any rights against any other Guarantor; and/or

   (g) to agree to any valuation by the Investor Member of any collateral securing payment of any of the Indebtedness in any proceedings under the United States Bankruptcy Code concerning the Investor Member or the Guarantors.

The liability of each Guarantor hereunder shall not be affected, impaired or reduced in any way by any action taken by the Investor Member under the foregoing provisions or any other provision hereof, or by any delay, failure or refusal of the Investor Member to exercise any right or remedy either may have against the Managing Member or any other person, firm or corporation, including other guarantors, if any, liable for all or any part of the Indebtedness or any of the other obligations guaranteed hereby.

3. Prior to Rental Achievement, the Guarantors will maintain collectively at least $1,000,000 in Liquid Assets. From the date of Rental Achievement through and including the Operating Deficit Guarantee Period, the Guarantors will maintain collectively at least $750,000 in Liquid Assets. After the expiration of the Operating Deficit Guarantee Period, the Guarantors will maintain collectively at least $500,000 in Liquid Assets; provided, that the requirements of this Section 3 shall be deemed satisfied in accordance with the Backstop Guaranty Agreement, so long as such agreement is in full force and effect regardless of whether Hunt is in default.
thereunder. The Managing Member shall Notify the Investor Member whenever the requirements of this Section 3 are not satisfied.

4. On or before ninety (90) days after the expiration of each fiscal year of each Guarantor, such Guarantor shall send to the Investor Member copies of the balance sheet and income statement of such Guarantor for such fiscal year.

5. The Guarantors agree that if any of the Indebtedness is not fully and timely paid or performed according to the tenor thereof, whether by acceleration or otherwise, the Guarantors shall immediately upon receipt of written demand therefor from the Investor Member pay all of the Indebtedness hereby guaranteed in like manner as if the Indebtedness constituted the direct and primary obligation of the Guarantors. The Guarantors shall not have any right of subrogation as a result of any payment hereunder or any other payment made by the Guarantors or a Guarantor on account of the Indebtedness, and each Guarantor hereby waives, releases and relinquishes any claim based on any right of subrogation, any claim for unjust enrichment or any other theory that would entitle a Guarantor to a claim against the Managing Member based on any payment made hereunder or otherwise on account of the Indebtedness until the Indebtedness is paid in full.

6. This Guaranty and the obligations of the Guarantors hereunder shall be continuing and irrevocable until the Indebtedness has been satisfied in full. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by the Investor Member from a Guarantor under or with respect to this Guaranty is or must be rescinded or returned for any reason whatsoever (including, without limitation, determination that said payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then Guarantors’ obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous receipt of payment by the Investor Member, and Guarantors’ obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to the Investor Member had never been made. The provisions of the foregoing sentence shall survive termination of this Guaranty, and shall remain a valid and binding obligation of each Guarantor until satisfied.

7. Each Guarantor hereby waives notice of acceptance of this Guaranty by the Investor Member, and this Guaranty shall immediately be binding upon each Guarantor. Any Guarantor who executes this Agreement shall be fully bound hereby regardless of whether or not any other Guarantor subsequently executes this Guaranty.

8. Each Guarantor hereby waives and agrees not to assert or take advantage of:

   (a) any right to require the Managing Member or the Company to proceed against any other person or to proceed against or exhaust any security held by the Managing Member or the Company at any time or to pursue any other remedy in the Managing Member’s or Company’s power before proceeding against any one or more Guarantors hereunder;

   (b) any right to require the Investor Member to proceed against the Managing Member or any other person or to proceed against or exhaust any security held by the Investor
Member at any time or to pursue any other remedy in the power of the Investor Member before proceeding against any one or more Guarantors hereunder;

(c) the defense of the statute of limitations in any action hereunder or in any action for the collection of the Indebtedness or the performance of any other obligations guaranteed hereby;

(d) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of the Investor Member to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(e) demand, presentment for payment, notice of non-payment, protest, notice of protest and all other notices of any kind, including, without limitation, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Investor Member or any endorser or creditor of either the Investor Member or any Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by the Investor Member or in connection with the Indebtedness;

(f) any defense based upon an election of remedies by the Investor Member, and until the Indebtedness is paid in full, the right of Guarantors to proceed against the Investor Member for reimbursement, or both, or if contrary to the express agreement of the parties;

(g) any election by the Investor Member to exercise any right or remedy it may have against the Company or any security held by the Investor Member, including, without limitation, the right to foreclose upon any such security by judicial or non-judicial sale, without affecting or impairing in any way the liability of Guarantors hereunder, except to the extent the Indebtedness has been paid, and until the Indebtedness is paid in full, any default arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of the Guarantors against the Company or any such security whether resulting from such election by the Investor Member or otherwise. The Guarantors understand that if all or any part of the liability of the Company to the Investor Member for the Indebtedness is secured by real property the Guarantors shall be liable for the full amount of their liability hereunder, notwithstanding foreclosure on such real property by trustee sale or any other reason impairing the Guarantors’ right to proceed against the Company; and

(h) all duty or obligation on the part of the Investor Member to perfect, protect, not impair, retain or enforce any security for the payment of the Indebtedness or performance of any of the other obligations guaranteed hereby.

9. Until the Indebtedness is paid in full, all existing and future indebtedness of the Managing Member to the Guarantors or to any person controlled or owned in whole or in part by any of the Guarantors and, the right of the Guarantors to withdraw or to cause or permit any person controlled or owned in whole or in part by any of the Guarantors to withdraw any capital invested by any Guarantor or such person in the Managing Member, is hereby subordinated to the Indebtedness at any time after a default exists under the Indebtedness. Furthermore, at any
time after a default exists under the Indebtedness, without the prior written Consent of the Investor Member, such subordinated indebtedness shall not be paid and such capital shall not be withdrawn in whole or in part nor shall any Guarantor accept or cause or permit any person controlled or owned in whole or in part by a Guarantor to accept any payment of or on account of any such subordinated indebtedness or as a withdrawal of capital. Any payment received by the Guarantors in violation of this Guaranty shall be received by the person to whom paid in trust for the Investor Member, and Guarantors shall cause the same to be paid to the Investor Member immediately on account of the Indebtedness. No such payment shall reduce or affect in any manner the liability of the Guarantors under this Guaranty.

10. The amount of each Guarantor’s liability and all rights, powers and remedies of the Investor Member hereunder shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to the Investor Member under the Operating Agreement, any document or agreement relating in any way to the terms and provisions thereof or otherwise by law. With respect to each Guarantor, this Guaranty is in addition to and exclusive of the guaranty of any other Guarantor executing this Guaranty or any other person or entity which guarantees the Indebtedness and/or the other obligations guaranteed hereby.

11. The liability of each Guarantor under this Guaranty shall be an absolute, direct, immediate and unconditional guarantee of payment and not of collectability. The obligations of each Guarantor hereunder are independent of the obligations of the Managing Member or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder guaranteed and each other Guarantor, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any one or more Guarantors, whether or not the Managing Member is joined therein or a separate action or actions are brought against the Managing Member. The Investor Member may maintain successive actions for other defaults. The Investor Member’s rights hereunder shall not be exhausted by its exercise of any of their rights or remedies or by any such action or by any number of successive actions until and unless the Indebtedness has been paid in full.

12. The Investor Member, in its sole discretion, may at any time enter into agreements with the Managing Member or with any other person to amend, modify or change the Operating Agreement or any document or agreement relating in any way to the terms and provisions thereof, or may at any time waive or release any provision or provisions thereof and, with reference thereto, may make and enter into all such agreements as the Investor Member may deem proper or desirable, without any notice or further assent from any Guarantor and without in any manner impairing or affecting this Guaranty or any of the rights of the Investor Member or each Guarantor’s obligations hereunder.

13. The Guarantors hereby agree to pay to the Investor Member, upon demand, reasonable attorneys’ fees and all costs and other expenses which the Investor Member expends or incurs in collecting or compromising the Indebtedness or in enforcing this Guaranty against each Guarantor whether or not suit is filed, including, without limitation, all costs, attorneys’ fees and expenses incurred by the Investor Member in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving a Guarantor which in any way affect the exercise by the Investor Member of its rights and remedies hereunder. Any and
all such costs, attorneys’ fees and expenses not so paid shall bear interest at an annual interest rate equal to the lesser of (i) 18%, or (ii) the highest rate permitted by applicable law, from the date incurred by the Investor Member until paid by the Guarantors.

14. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

15. No provision of this Guaranty or right of the Investor Member hereunder can be waived nor can any Guarantor be released from such Guarantor’s obligations hereunder except by a writing duly executed by the Investor Member. This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever except by the express terms of a writing duly executed by the Investor Member.

16. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The word “person” as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

17. If any or all of the Indebtedness is assigned by the Investor Member, this Guaranty shall automatically be assigned therewith in whole or in part, as applicable, without the need of any express assignment and when so assigned, each Guarantor shall be bound as set forth herein to the assignee(s) without in any manner affecting such Guarantor’s liability hereunder for any part of the Indebtedness retained by the Investor Member.

18. Each Guarantor is jointly and severally liable with each other Guarantor.

19. Co-Managing Member’s Employer Identification Number is 45-3062708. Administrative Member’s Employer Identification Number is 80-0641068. Saigebrook Development’s Employer Identification Number is 45-3062708. O-SDA Developer’s Employer Identification Number is 80-0641068. Lisa M. Stephens’ and Megan D. Lasch’s Social Security Numbers have been provided to the Investor Member.

20. This Guaranty shall inure to the benefit of and bind the heirs, legal representatives, administrators, executors, successors and assigns of the Investor Member and Guarantors.

21. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflicts of law, except to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case, such Federal law shall so govern and be controlling. In any action brought under or arising out of this Guaranty, each Guarantor hereby consents to the jurisdiction of any competent court within the State of Texas and consents to service of process by any means authorized by the laws of such state. Except as provided in any other written agreement now or at any time hereafter in force between the Investor Member and any Guarantor, this Guaranty shall constitute the entire agreement of Guarantors with the Investor Member with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon the Investor Member or any Guarantor unless expressed herein.
22. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same with Federal Express for next business day delivery or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Investor Member: HCP-ILP, LLC
15910 Ventura Boulevard, Suite 1100
Encino, California 91436
Attention: Jeffrey N. Weiss

Guarantors:
Saigebrook Mistletoe, LLC
220 Adams Drive Ste. 280 #138
Weatherford, Texas 76086
Attention: Lisa Stephens

O-SDA Mistletoe, LLC
5714 Sam Houston Circle
Austin, Texas 78731
Attention: Megan D. Lasch

Saigebrook Development, LLC
220 Adams Drive Ste. 280 #138
Weatherford, Texas 76086
Attention: Lisa Stephens

O-SDA Industries, LLC
5714 Sam Houston Circle
Austin, Texas 78731
Attention: Megan D. Lasch

Lisa M. Stephens
689 FM 3028
Millsap, Texas 76066

Megan D. Lasch
5714 Sam Houston Circle
Austin, Texas 78731

All notices, demands and requests shall be effective upon such personal delivery or upon being deposited with Federal Express or in the United States mail as required above. However, with respect to notices, demands or requests so deposited with Federal Express or in the United States mail, the time period in which a response to any such notice, demand or request must be given shall commence to run from the next business day following any such deposit with Federal Express or, in the case of a deposit in the United States mail as provided above, the date on the return receipt of the notice, demand or request reflecting the date of delivery or rejection of the
same by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least 30 days’ written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

23. Each Guarantor hereby agrees that this Guaranty, the Indebtedness and all other obligations guaranteed hereby shall remain in full force and effect at all times hereinafter until paid and/or performed in full notwithstanding any action or undertakings by, or against, the Investor Member, any Guarantor, and/or any partner and/or member in the Investor Member in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by the Investor Member pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure as same may be applicable from time to time.

24. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS GUARANTY, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT HEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

25. Any married person who signs this Guaranty hereby agrees that recourse may be had against his or her separate property for all of his or her obligations.

26. This Guaranty may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, with the same effect as if all parties hereto had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages. Execution by any Guarantor shall bind such Guarantor regardless of whether any one or more other Guarantors execute this Guaranty.
IN WITNESS WHEREOF, the undersigned Guarantors have executed this Guaranty as of the day and year first above written.

GUARANTORS:

SAIGEBROOK MISTLETOE, LLC, a Texas limited liability company

By: Saigebrook Development, LLC, a Florida limited liability company, its managing member

By: ____________________________
Name: Lisa M. Stephens
Its: Manager

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: ____________________________
Name: Lisa M. Stephens
Its: Manager

Lisa M. Stephens, an individual
The foregoing instrument was acknowledged before me this ___ day of August, 2018, by Lisa M. Stephens, as manager of Saigebrook Development, LLC.

WITNESS my hand and official seal.

My commission expires:

Notary Public

The foregoing instrument was acknowledged before me this ___ day of August, 2018, by Lisa M. Stephens, as manager of Saigebrook Development, LLC.

Witness my hand and notarial seal.

My commission expires:

Notary Public

The foregoing instrument was acknowledged before me this ___ day of August, 2018, by Lisa M. Stephens, an individual.

WITNESS my hand and official seal.

My commission expires:

Notary Public
O-SDA MISTLETOE, LLC, a Texas limited liability company

By: O-SDA Industries, LLC, a Texas limited liability company, its sole member

By: ____________________________
Name: Megan D. Lasch
Its: Managing Member

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: ____________________________
Name: Megan D. Lasch
Its: Managing Member

Megan D. Lasch, an individual
STATE OF TEXAS )

COUNTY OF Tarrant ) ss.

The foregoing instrument was acknowledged before me this 21st day of August, 2018, by Megan D. Lasch, as managing member of O-SDA Industries, LLC.

WITNESS my hand and official seal.

My commission expires:

Notary Public

KATHERINE E JOHNSON
Notary ID # 130604693
My Commission Expires
March 29, 2020

STATE OF TEXAS )

COUNTY OF Tarrant ) ss.

The foregoing instrument was acknowledged before me this 21st day of August, 2018, by Megan D. Lasch, as sole member of O-SDA Mistletoe, LLC.

WITNESS my hand and official seal.

My commission expires:

Notary Public

KATHERINE E JOHNSON
Notary ID # 130604693
My Commission Expires
March 29, 2020

STATE OF TEXAS )

COUNTY OF Tarrant ) ss.

The foregoing instrument was acknowledged before me this 21st day of August, 2018, by Megan D. Lasch.

WITNESS my hand and official seal.

My commission expires:

Notary Public
SPOUSAL CONSENT TO GUARANTY

I acknowledge that I am the spouse of Lisa M. Stephens, a guarantor who signed that certain Guaranty Agreement (the “Guaranty Agreement”), dated as of August ___, 2018 for the benefit of HCP-ILP, LLC, a Nevada limited liability company. I acknowledge that I have read the Guaranty Agreement and know its contents. I am aware that the Guaranty Agreement may affect community property, and I hereby consent to the terms of the Guaranty Agreement and agreed to be bound by the terms thereof. I hereby waive any right that I may have to set aside the Guaranty Agreement.

Dated: As of August 30, 2018

Print Name of Spouse

Signature of Spouse

Notary Page to
Guaranty Agreement
Mistletoe Station, LLC
SPOUSAL CONSENT TO GUARANTY

I acknowledge that I am the spouse of Megan D. Lasch, a guarantor who signed that certain Guaranty Agreement (the "Guaranty Agreement"), dated as of August 30, 2018 for the benefit of HCP-ILP, LLC, a Nevada limited liability company. I acknowledge that I have read the Guaranty Agreement and know its contents. I am aware that the Guaranty Agreement may affect community property, and I hereby consent to the terms of the Guaranty Agreement and agreed to be bound by the terms thereof. I hereby waive any right that I may have to set aside the Guaranty Agreement.

Dated: As of August 30, 2018

Josh Lasch
Print Name of Spouse

Signature of Spouse
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application  # 19276 & 19295
& 19288
Existing Development Name Mistletoe Station

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Letter to Hunt Capital Partners Feb. 18 requesting to add 811 units.

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 18, 2019

Mr. Omar Chaudry
Director
Hunt Capital Partners
15910 Ventura Blvd., Ste. 1100
Encino, CA 91436

Re: 811 Units – Mistletoe Station

Dear Omar:

Per the 2019 TDHCA Qualified Allocation Plan, we are hereby submitting a request for your consideration to add an additional ten 811 program units at Mistletoe Station, in Fort Worth, Texas.

Under the First Amended and Restated Operating Agreement for Mistletoe Station, the Managing Member’s Authority is restricted under section 5.3 without consent of the Investor Member to modify any agreement with the Agency, to enter into any new Project Document or amend any Project Document. As such, Investor Member consent would be required to add 811 units other than those underwritten at the time of closing. Mistletoe Station already has proposed ten 811 units as was contemplated during underwriting and closing of the transaction plus 5% supportive housing units as required by the City of Fort Worth. An additional ten units would result in more than 20% of the property being 811 and/or supportive housing tenants.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 352-213-8700.

Sincerely,

Lisa M. Stephens
President
iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from Hunt Capital Partners denying the request to add 811 units.

**ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.**
February 21, 2019

Texas Department of Community Affairs (TDHCA)  
Attn: Spencer Duran, Section 811 PRAC Program Manager  
221 E. 11th Street  
Austin, TX 78701

RE:  #17259 Mistletoe Station – additional 811 units

Mr. Duran:

As the limited partner in Mistletoe Station, LLC, we have reviewed your request to enter into a Section 811 contract to provide additional Section 811 units in the Mistletoe Station project in Fort Worth. Given that Mistletoe Station was underwritten and closed without contemplation of additional Section 811 units and the impact of adding units was not evaluated prior to closing, HCP cannot approve the addition of Section 811 units for this property at this time.

Should you need any further assistance, please feel free to contact me with any questions at (972) 803-3416 or via email at omar.chaudhry@huntcompanies.com.

Sincerely,

[Signature]

Director, Acquisitions  
Hunt Capital Partners
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

Legal Right to Withhold Cover Page §11.9(c)(6)(A)(i)

2019 Uniform Multifamily Application # 19276 & 19295 & 19288

Existing Development Name Mistletoe Station

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: Credit Support and Funding Agreement (CS&FA) and Construction Deed of Trust, Absolute Assignment of Rents, Security Agreement and Financing Statement (DOT)

Provide the name of the Third Party: JP Morgan Chase Bank, N.A.

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: CS&FA: Section 5.1 Negative Covenants - para f  DOT: Section 2 Mortgagor's Representations and Agreements - para e, Section 6 Events of Default - para e

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: CS&FA: Pg 59 - 61 and definitions on page 6, 15 & 19  DOT: 7 & 15 and definitions on page 1, 2 & 5

ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.
CREDIT SUPPORT AND FUNDING AGREEMENT

BY

AND

BETWEEN

MISTLETOE STATION, LLC
as Borrower

AND

JPMORGAN CHASE BANK, N.A.
as Bank

DATED AUGUST 30, 2018
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I – DEFINITIONS</td>
<td></td>
</tr>
<tr>
<td>1.1 Definitions and Reference Terms</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Accounting Terms</td>
<td>20</td>
</tr>
<tr>
<td>1.3 Other Terms</td>
<td>20</td>
</tr>
<tr>
<td>1.4 References</td>
<td>20</td>
</tr>
<tr>
<td>1.5 Sections</td>
<td>21</td>
</tr>
<tr>
<td>1.6 Number and Gender</td>
<td>21</td>
</tr>
<tr>
<td>1.7 Incorporation of Exhibits</td>
<td>21</td>
</tr>
<tr>
<td>1.8 Certain Other Matters of Construction</td>
<td>21</td>
</tr>
<tr>
<td>II – CONSTRUCTION COMMITMENT</td>
<td>21</td>
</tr>
<tr>
<td>2.1 Commitments</td>
<td>21</td>
</tr>
<tr>
<td>2.2 Reserved</td>
<td>23</td>
</tr>
<tr>
<td>2.3 Loan Purpose</td>
<td>23</td>
</tr>
<tr>
<td>2.4 Renewal Option</td>
<td>24</td>
</tr>
<tr>
<td>2.5 Fees</td>
<td>25</td>
</tr>
<tr>
<td>2.6 Payment of Contractor Overhead and Profit</td>
<td>26</td>
</tr>
<tr>
<td>2.7 Payment of Developer Fees and/or Overhead</td>
<td>26</td>
</tr>
<tr>
<td>2.8 Reallocation of Budget</td>
<td>26</td>
</tr>
<tr>
<td>2.9 Equity</td>
<td>26</td>
</tr>
<tr>
<td>2.10 Cash Flow</td>
<td>27</td>
</tr>
<tr>
<td>2.11 Interest Reserve</td>
<td>27</td>
</tr>
<tr>
<td>2.12 Subordinate Loans</td>
<td>27</td>
</tr>
<tr>
<td>2.13 Recourse</td>
<td>28</td>
</tr>
<tr>
<td>III – REPRESENTATIONS AND WARRANTIES</td>
<td>29</td>
</tr>
<tr>
<td>3.1 Representations and Warranties of Borrower</td>
<td>29</td>
</tr>
<tr>
<td>IV – AFFIRMATIVE COVENANTS</td>
<td>34</td>
</tr>
<tr>
<td>4.1 Covenants of Borrower</td>
<td>34</td>
</tr>
<tr>
<td>4.2 Assignment of Plans</td>
<td>56</td>
</tr>
<tr>
<td>4.3 Assignment of Construction Contract</td>
<td>57</td>
</tr>
<tr>
<td>V – NEGATIVE COVENANTS</td>
<td>59</td>
</tr>
<tr>
<td>5.1 Negative Covenants</td>
<td>59</td>
</tr>
<tr>
<td>5.2 Single Purpose Entity</td>
<td>68</td>
</tr>
<tr>
<td>VI – CONDITIONS TO LOAN</td>
<td>71</td>
</tr>
<tr>
<td>6.1 Conditions to Closing of the Construction Loan</td>
<td>71</td>
</tr>
<tr>
<td>6.2 Advances During Construction Phase</td>
<td>79</td>
</tr>
<tr>
<td>6.3 Disbursement Procedures and Requirements</td>
<td>82</td>
</tr>
<tr>
<td>6.4 Delivery of Requests for Payments</td>
<td>84</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>6.5 Obligation for Further Disbursements</td>
<td>84</td>
</tr>
<tr>
<td>6.6 Conditions to Final Disbursement for Retainage</td>
<td>84</td>
</tr>
<tr>
<td>6.7 Construction Consultant</td>
<td>88</td>
</tr>
<tr>
<td>6.8 No Liability For Tax Consequences</td>
<td>88</td>
</tr>
<tr>
<td>6.9 Consent to Sharing of Information</td>
<td>88</td>
</tr>
</tbody>
</table>

VII - DEFAULTS AND REMEDIES

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1 Events of Default</td>
<td>88</td>
</tr>
<tr>
<td>7.2 Termination of Obligations</td>
<td>95</td>
</tr>
<tr>
<td>7.3 Rights and Remedies</td>
<td>95</td>
</tr>
<tr>
<td>7.4 Due on Sale</td>
<td>98</td>
</tr>
<tr>
<td>7.5 Notice and Cure Rights of Investor Member</td>
<td>98</td>
</tr>
</tbody>
</table>

VIII - MISCELLANEOUS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1 Bank Approvals</td>
<td>98</td>
</tr>
<tr>
<td>8.2 No Third Party Beneficiaries</td>
<td>99</td>
</tr>
<tr>
<td>8.3 No Waiver</td>
<td>99</td>
</tr>
<tr>
<td>8.4 Notices</td>
<td>99</td>
</tr>
<tr>
<td>8.5 Transfer of Rights</td>
<td>99</td>
</tr>
<tr>
<td>8.6 Severability</td>
<td>100</td>
</tr>
<tr>
<td>8.7 Advertising</td>
<td>100</td>
</tr>
<tr>
<td>8.8 GOVERNING LAW</td>
<td>100</td>
</tr>
<tr>
<td>8.9 Other Advances</td>
<td>100</td>
</tr>
<tr>
<td>8.10 No Duty or Special Relationship</td>
<td>101</td>
</tr>
<tr>
<td>8.11 Other Remedies Not Required</td>
<td>101</td>
</tr>
<tr>
<td>8.12 NO CONTROL BY BANK</td>
<td>101</td>
</tr>
<tr>
<td>8.13 Construction Commitment Rendered</td>
<td>101</td>
</tr>
<tr>
<td>8.14 No Partnership</td>
<td>101</td>
</tr>
<tr>
<td>8.15 Release of Liens</td>
<td>101</td>
</tr>
<tr>
<td>8.16 Renewal of Indebtedness</td>
<td>102</td>
</tr>
<tr>
<td>8.17 Counterparts</td>
<td>102</td>
</tr>
<tr>
<td>8.18 Controlling Agreement</td>
<td>102</td>
</tr>
<tr>
<td>8.19 NO ORAL AGREEMENT</td>
<td>103</td>
</tr>
<tr>
<td>8.20 JURY WAIVER</td>
<td>103</td>
</tr>
<tr>
<td>8.21 Bank Consent</td>
<td>103</td>
</tr>
<tr>
<td>8.22 Governing Documents</td>
<td>103</td>
</tr>
<tr>
<td>8.23 Participations</td>
<td>103</td>
</tr>
<tr>
<td>8.24 Placement of Restrictive Covenants</td>
<td>104</td>
</tr>
<tr>
<td>8.25 No Offset</td>
<td>104</td>
</tr>
<tr>
<td>8.26 RECOGNITION</td>
<td>104</td>
</tr>
<tr>
<td>8.27 Increased Costs</td>
<td>104</td>
</tr>
<tr>
<td>8.28 Business Loans</td>
<td>105</td>
</tr>
<tr>
<td>8.29 USA Patriot Act Notification</td>
<td>106</td>
</tr>
<tr>
<td>8.30 WAIVER OF SPECIAL DAMAGES</td>
<td>106</td>
</tr>
<tr>
<td>8.31 Swap Agreements</td>
<td>106</td>
</tr>
<tr>
<td>8.32 Publicity</td>
<td>107</td>
</tr>
</tbody>
</table>
EXHIBIT LIST

Exhibit "A" - Individuals Requesting Disbursement
Exhibit "B" - Budget
Exhibit "C" - Affidavit of No Liens
Exhibit "D" - Waiver of Lien to Date
Exhibit "E" - [RESERVED]
Exhibit "F" - Affidavit of Commencement
Exhibit "G" - Affidavit and Certificate of Completion
Exhibit "H" - Investor Capital Contribution Schedule
Exhibit "I" - Additional Items to be Delivered
Exhibit "J" - Survey Requirements
Exhibit "K" - Tax Credit Allocation
Exhibit "L" - Title Insurance Requirements
CREDIT SUPPORT AND FUNDING AGREEMENT

This Credit Support and Funding Agreement (this "Agreement") is dated as of August 30, 2018, by and between MISTLETOE STATION, LLC, a Texas limited liability company ("Borrower"), having its address at 5501-A Balcones Drive, #302, Austin, TX 78731, and JPMORGAN CHASE BANK, N.A., a national banking association ("Bank"), and having its address at 2200 Ross Avenue, 9th Floor (TX1-2951), Dallas, Texas 75201, Attention: Community Development Real Estate Group.

In consideration of the mutual covenants and agreements contained herein, and intending to be legally bound hereby, Bank and Borrower agree as follows:

I - DEFINITIONS

1.1 Definitions and Reference Terms. In addition to any other terms defined herein, the following terms shall have the meanings set forth with respect thereto:

Act: United States Housing Act of 1937, as amended from time to time, and any successor legislation.

Affiliate: Each of the following: (a) any Person which directly or indirectly Controls, is Controlled by, or is under common Control with such Person, and (b) an affiliate as determined in accordance with GAAP.

Agent to Request Disbursements: Any of the individuals listed on Exhibit "A".

Anti-Corruption Laws: All laws, rules, and regulations of any jurisdiction applicable to the Borrower and its Affiliates from time to time concerning or relating to bribery or corruption.

Appraisal or appraisal: A written statement setting forth an opinion of the Appraisal Value of the Premises that (i) has been independently and impartially prepared by a qualified appraiser directly engaged by the Bank or its agent, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, and (iii) has been reviewed as to form and content and approved by the Bank, in its reasonable judgment.

Appraisal Value: The stabilized, as-completed, rent restricted for the Affordable Units (including current HUD utility allowances) value of the Premises, as reasonably determined by the Bank based on its review of the most current Appraisal obtained pursuant to Section 4.1(t) or otherwise. The Appraisal Value shall be calculated on an as-completed and stabilized basis (after taking into account any tax abatement for the Premises, the contributory value of the Low Income Housing Tax Credit allocated to the Affordable Units, and any other collateral acceptable to
Bank in Bank's reasonable determination). In making this determination, the "value of the Low Income Housing Tax Credit" will be based on, among other factors, the total Capital Contributions made or to be made by the Investor Member pursuant to the Operating Agreement.

**Approved Leases**: A lease of individual residential units in the Improvements which satisfies the requirements of Section 4.1(a).

**Architect**: Architects Collaborative, Inc. d/b/a BGO Architects, a Texas corporation.

**Assignment of Accounts**: Assignment of Accounts (Security Agreement) of even date herewith from Borrower to Bank.

**Assignment of Management Agreement**: Assignment of Management Agreement dated of even date herewith from Borrower to Bank, and joined in by Accolade Property Management, Inc., the management company described therein.

**Authority**: The Housing Authority of the City of Fort Worth dba Fort Worth Housing Solutions, a public body corporate and politic organized under the laws of the State of Texas and a "public housing agency" as defined in the United States Housing Act of 1937 (42 U.S.C. §1401 et seq., as amended).

**Bank's Required Completion Date**: The earliest to occur of (a) December 31, 2019 (which date may be extended by the Credit Agency as evidenced by documentation acceptable to the Bank), (b) the date the Investor Member shall require Substantial Completion (as such term is used in the Operating Agreement) as provided in the Operating Agreement, (c) the date required in the TIF Agreement for completion of the Improvements, (d) the date required for completion of the Improvements under the Subordinate Loan Documents, (e) the date required to be completed in the Tax Credit Allocation (or otherwise by the Credit Agency) for placing the Premises in Service (as such term is used by the Credit Agency in this context) in order to maintain its Low Income Housing Tax Credit, (f) the date required for completing the Improvements in the HAP Commitment, and (g) the date required for completing the Improvements in the TIF Agreement.

**Bonded or bonded**: A lien bonded by a surety acceptable to Bank in a manner which precludes the holder of that lien from having any recourse against the Premises or Borrower for payment of any debt or other obligation.

**Budget**: The budget prepared by Borrower, and approved by Bank, setting forth in detail all direct and indirect costs for the acquisition
and construction of the Improvements and the City Infrastructure Improvements (subject to reallocations permitted by Section 2.8), as provided for in Exhibit "B" attached hereto. The Budget shall in any event include a 5% contingency (based on the total amount of the Construction Contract, including profit, overhead, and general conditions).

**Business Day:** A day that is not a Saturday, Sunday, or any day on which national banks in New York City or Houston, Texas are authorized or required by law to remain closed.

**Capital Contribution Account:** An interest-bearing account (Account No. 352851494) in the name of Borrower, located at Bank to be used for deposit of the proceeds of certain Capital Contributions which will in turn be disbursed by Bank for deposit into the Construction Account to pay for budgeted items.

**Capital Contributions:** The Capital Contributions to be made by the Investor Member to Borrower described in Exhibit "H", and as more particularly provided in the Operating Agreement (subject to the terms and conditions contained therein), as may be adjusted for "tax credit adjusters". References to specific Capital Contributions shall be to the associated installment of the Capital Contributions listed in Exhibit "H" (for example, the second Capital Contribution will be to the second Capital Contribution listed in Exhibit "H").

**CFA:** Collectively, each Community Facilities Agreement, whether one or more, between the City and the Borrower relating to the Borrower's development of the City Infrastructure Improvements.

**City:** City of Fort Worth, a Texas municipal corporation.

**City HOME Loan:** A third lien subordinate construction and permanent loan to be made by the City to Borrower which shall not accrue interest during its construction term and which shall accrue simple interest at the rate of the lesser of 1% or the long-term applicable federal rate ("AFR"), per annum, during its permanent term, having a maturity even with the date of the expiration of the twenty year affordability period as described in the HOME Contract, amortization during the permanent term of 35 years, and in an amount equal to $1,056,000.00 (which shall be otherwise on terms acceptable to Bank).

**City HOME Loan Documents:** All contracts, notes, mortgages, any other agreements, instruments and documents relating to or securing the City HOME Loan, including, without limitation, the City HOME Contract from the City to Borrower relating to the City HOME Loan (as may be
amended), and each note, mortgage, and document evidencing, pertaining to, or securing the City HOME Loan.

City Infrastructure Improvements: The following infrastructure improvements to be made for the benefit of the Premises pursuant to the City Infrastructure Improvements Construction Contract: (a) the storm sewer relocation and replacement north and south of Mistletoe Boulevard, (b) water line removal and replacement, and (c) residential street improvements.

City Infrastructure Improvements Construction Contract: Collectively, (a) a Section 00 52 43 Agreement between Borrower and Maker Bros, LLC with respect to the portion of the City Infrastructure Improvements which were not publicly bid (the “Maker Bros Infrastructure Contract”), and (b) a contract between Borrower and Rumsey Construction LLC with respect to the portion of the City Infrastructure Improvements which were publicly bid (the “Rumsey Infrastructure Contract”). The form of each of the foregoing contracts shall be on the form mandated by the City.

City Infrastructure Improvements Escrow Accounts: Collectively, the Maker Bros Infrastructure Escrow Account and the Rumsey Infrastructure Escrow Account. Amounts on deposit in each City Infrastructure Improvements Escrow Account are Security Funds under and as provided for in each City Infrastructure Improvements Escrow Agreement. Notwithstanding anything in this Agreement, the Construction Note, or any other Loan Document to the contrary, Bank shall have no lien, right of setoff or offset, or other claim against the City Infrastructure Improvements Escrow Accounts (or funds deposited therein, except to reimburse Bank in the event Bank performs any of Borrower’s obligations with respect to the City Infrastructure Improvements) until the City Infrastructure Improvements Escrow Agreement terminates in connection with the completion of the City Infrastructure Improvements, except as a collateral assignee of the CFA.

City Infrastructure Improvements Escrow Agreement: Escrow Agreement (whether one or more) entered into among the City, the Borrower, and the Bank in order to provide a mechanism for paying for the City Infrastructure Improvements.

City Infrastructure Improvements Escrow Cost Overrun Portion: That portion of the Security Funds required to be deposited in the City Infrastructure Improvements Escrow Accounts under the terms of each City Infrastructure Improvements Escrow Agreement which is in excess of the estimated cost of constructing the applicable City Infrastructure Improvements (each City Infrastructure Improvements
Escrow Agreement requires a deposit of Security Funds in the amount of 125% of the estimated cost of constructing the related City Infrastructure Improvements under the applicable CFA; the portion of the Security Funds in excess of 100% of the estimated cost of constructing the related City Infrastructure Improvements under the applicable CFA is the City Infrastructure Improvements Escrow Cost Overrun Portion).

**Closing Date:** The date of this Agreement.

**Collateral Assignment of Account:** Collateral Assignment of Account of even date herewith from Hunt to Bank, which is collateral for the payment and performance of the Limited Guaranty.

**Commencement Deadline:** Thirty (30) days after the Closing Date for the City Infrastructure Improvements and one hundred twenty days (120) after the Closing Date for the Improvements (or the date required in the TIF Agreement, if earlier).

**Construction Account:** A non-interest bearing account of Borrower located at Bank (Account No. 273267606) to be used for the deposit by Bank in accordance with the terms of this Agreement, of the proceeds of the Construction Note, proceeds of the Subordinate Loans, and disbursements from the Capital Contribution Account.

**Construction Commitment:** Any written or oral agreement or commitment issued or made by Bank to Borrower before the Closing Date with respect to the terms and manner upon which Borrower will make the Construction Loan (including the term sheet provided for discussion purposes dated on or about April 12, 2018 (last updated April 16, 2018), and all subsequent proposals, term sheets, and amendments), but only if accepted by Borrower.

**Construction Contract:** Collectively, the Improvements Contract and the Improvements Primary Subcontract, with respect to the Improvements, and the City Infrastructure Improvements Construction Contract, with respect to the City Infrastructure Improvements, and otherwise shall have the meaning assigned to that term in Section 4.3.

**Construction Loan:** The loan in the aggregate principal amount of up to $22,282,000.00, for the development of the Improvements and the City Infrastructure Improvements in accordance with this Agreement.

**Construction Loan Maturity Date:** The earlier to occur of (i) twenty-four (24) months after the Closing Date (as may be extended in accordance with Section 2.4), (ii) the date of the expiration, termination, or cancellation of the Permanent Mortgage Loan Commitment, or (iii) an Event of Default.
Construction Mortgage: The Construction Deed of Trust, Absolute Assignment of Rents, Security Agreement and Financing Statement, of even date herewith, from Borrower to Randall B. Durant, Trustee, covering, among other things, the Land, the Improvements and the City Infrastructure Improvements, and all amendments, supplements, restatements, renewals, and extensions thereof.

Construction Note: The Advance Promissory Note, of even date herewith, in the maximum amount of $22,282,000.00, executed by Borrower and made payable to the order of Bank, and all renewals, extensions, modifications, increases, restatements, replacements, and rearrangements thereof.

Contractor: FWHFC and each other contractor, whether one or more, engaged by Borrower and approved in writing by Bank, to construct the Improvements (it being agreed that Maker Bros, LLC will be the primary subcontractor for the construction of the Improvements and in such role, will be treated as Contractor for purposes of this Agreement). If Maker Bros, LLC is not the primary subcontractor, Bank shall approve any other primary subcontractor.

Control: The possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" shall have meanings correlative thereto.

Credit Agency: Texas Department of Housing and Community Affairs, together with its successors and assigns in such capacity.

Debt: (a) All items of indebtedness or liability (other than the debt of an Affiliate, capital, surplus, deferred credits and reserves, as such) which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet as of the date as of which indebtedness is to be determined, (b) indebtedness or other liabilities secured by any mortgage, security agreement, pledge, or lien existing on or encumbering property owned by Borrower, whether or not the indebtedness or other liabilities secured thereby shall have been assumed by Borrower, (c) all liabilities under capitalized leases; (d) all indebtedness of Borrower to Bank under any interest rate swap agreement, interest rate agreement, and interest rate collar agreement; and (e) all indebtedness of any Person (i) which Borrower has directly or indirectly guaranteed, endorsed (other than for collection or deposit in the ordinary course of business), discounted with recourse, agreed (contingently or otherwise) to purchase or repurchase or otherwise acquire, (ii) in respect of which Borrower has agreed to supply or advance funds (whether by way of loan,
purchase of securities or capital contribution, through a commitment to pay for property or services regardless of the non-delivery of such property or the non-furnishing of such services or otherwise, or (iii) in respect of which Borrower has otherwise become directly or indirectly liable, contingently or otherwise, whether now existing or hereafter arising.

Default: Any event or circumstance which with the passage of time, lapse, or both, would constitute an Event of Default.

Disqualified Person: Any Person that is (a) the subject of any current or prior debarment by HUD or any state housing agency (unless such Person shall have been fully reinstated), (b) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury and/or any other similar list maintained by the Office of Foreign Assets Control pursuant to any authorizing statute, Executive Order or regulation, (c) a "Designated National" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or a Person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001) issued by the President of the United States, or any related enabling legislation or other similar Executive Order.

Effective Gross Income: Gross potential rent and other income collected from the residential units less a vacancy rate. For Affordable Units, Bank will underwrite gross potential rent at the lower of restricted, actual or market rent levels (as reasonably determined by Bank based on unrestricted rents at comparable properties in the same geographic region). Market Rate Units will be underwritten at the lower of market or actual rent levels. Gross potential rent will be reduced by any current, existing or future tenant rent concessions. Other income shall be recurring on a stabilized basis including income collected from administrative fees, application fees, pest control, insufficient funds charges, cleaning/damage charges, vending revenue, reletting fees, cable televisions and internet providers, storage, carports, garage, parking, laundry, pet and late fees as determined by Bank in its reasonable discretion, as well as proceeds from rental interruption insurance. Other income shall not include interest income, commercial income, tenant deposits and other non-residential related income. Vacancy shall be the greater of 7% or actual or average market vacancy for comparable properties as determined by Bank in its reasonable discretion. A collection loss estimate will be added to the vacancy percentage after Bank review of the Premises' monthly cash operating statements, monthly bank statements and current aged receivables report.

Eligible Stocks: Any common or preferred stock which (i) is not subject to statutory or contractual restrictions on sales, (ii) is traded on a
U.S. national stock exchange or included in the National Market tier of NASDAQ and (iii) has, as of the close of the most recent trading day, a per share price of at least $15.

**Entity Guarantors:** Saigebrook Development, LLC and O-SDA Industries, LLC.

**Environmental Indemnity Agreement:** Environmental Indemnity Agreement of even date herewith from Borrower and each Guarantor to Bank.

**Event of Default:** Any of the events specified in Section 7.1 of this Agreement, provided that any applicable requirements specifically provided for in Section 7.1 for notice, lapse of time, grace, cure, or otherwise have been satisfied.

**Excusable Delays:** Unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, hurricane, tornado, flooding, wind damage, earthquake or other acts of God, shortages of labor or materials, strike, lockout, acts of public enemy, riot, or insurrection or any unforeseen circumstances or events (except financial circumstances or events or matters which may be resolved by the payment of money on commercially reasonable terms) beyond the control of Borrower, provided Borrower shall notify Bank in writing within 15 days after knowledge of such occurrence, unless the State of Texas or the area in which the Premises are located is declared by a duly authorized Governmental Authority to be under a state of emergency or a disaster area, but no Excusable Delay shall suspend or abate any obligation of Borrower or any other person to pay any money under this Agreement and the other Loan Documents.

**Financial Institution:** (a) Any national bank, banking corporation, national banking association or other banking institution, whether acting in its individual or fiduciary capacity, organized under the laws of the United States, any state, any territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the Comptroller of the Currency or a comparable state or territorial official or agency; (b) an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state, a territory or the District of Columbia; (c) an investment company registered under the Investment Company Act of 1940 or a business development company as described in Section 2(a)(48) of that Act; (d) an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if
the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, insurance company or registered investment company; or (e) institutional investors or other entities who customarily purchase commercial paper or tax-exempt securities in large denominations.

Financial Statements: The financial statements of Borrower, Contractor, and Guarantors, which have been delivered to Bank in connection with Borrower's application to Bank for the Construction Loan to be made by Bank pursuant to this Agreement.

Forward Commitment: Freddie Mac's commitment to Permanent Lender with respect to the purchase by Freddie Mac from the Permanent Lender of the Permanent Mortgage Loan pursuant to Freddie Mac's Multifamily Affordable Housing Forward Commitment.

Freddie Mac: Federal Home Loan Mortgage Corporation, a corporation organized and existing under the laws of the United States.


Funds Disbursement Agreement: The Disbursement and Rate Management Agreement of even date herewith from Borrower and agreed to by Bank.

FWHFC: Fort Worth Housing Finance Corporation.

FWHFC Local Government Loan: A second lien local government construction and permanent loan to be made by the FWHFC to Borrower accruing interest at the same rate as the Construction Loan as provided in the Construction Note, per annum, during the construction term and accruing simple interest at the fixed rate of 2% per annum during the permanent term, having a maturity even with the date that is 6 months after the maturity of the Permanent Mortgage Loan as provided in the Permanent Mortgage Loan Commitment, amortization of 35 years, and in an amount equal to $750,000.00 (which shall be otherwise on terms acceptable to Bank).

FWHFC Local Government Loan Documents: The Loan Agreement, and all notes, mortgages, any other agreements, instruments and documents relating to or securing the FWHFC Local Government Loan.

GAAP: Generally accepted accounting principles established by the Financial Accounting Standards Board or the American Institute of
Certified Public Accountants and in effect in the United States from time to time, applied on a basis consistent with that of the preceding fiscal year of Borrower, reflecting only such changes in accounting principles or practice with which the independent public accountants of Borrower concur.

**Governmental Authority:** Any nation, country, commonwealth, territory, government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government (which shall include the City, the Authority, the TIF, FWHFC, and the Credit Agency), including, without limitation, Freddie Mac, the City, the Treasury Department of the United States of America, and any state agencies and Persons responsible in whole or in part for monitoring compliance with the LURA and with environmental matters in the states in which Borrower is located or otherwise conducting its business activities and the United States Environmental Protection Agency.

**Governmental Permits:** All certificates, licenses, zoning variances, permits, and no action letters from any Governmental Authority required to evidence full compliance by Borrower, and conformance of the construction or renovation of the Improvements and the City Infrastructure Improvements, with all Requirements of Law applicable to the Land, the construction of the Improvements and the City Infrastructure Improvements to completion, and the operation of the Improvements and the City Infrastructure Improvements.

**Guarantors:** Collectively, the Individual Guarantors, the Co-Managing Member, and the Entity Guarantors (each as to payment and completion).

**Guaranty:** The Guaranty of Payment and Completion, of even date herewith (whether one or more), executed by Guarantors, as may be restated, supplemented, affirmed, and ratified from time to time. The Guaranty will include a guaranty of completion.

**Guide:** The Freddie Mac Multifamily Seller/Servicer Guide in its present form and as amended, modified, supplemented, or reissued from time to time.

**Guidelines:** Freddie Mac Multifamily Seller/Servicer Forward Commitment Guidelines, as incorporated into the Forward Commitment, as amended, modified, supplemented, or reissued from time to time.

**HAP Commitment:** The commitment letter dated July 30, 2018, provided to the Borrower by the Authority to enter into the HAP Contract after construction is completed and the units pass inspection.
HAP Contract: The Project Based Section 8 Housing Assistance Payments Contract to be entered into by the Authority and the Borrower pursuant to the HAP Commitment, which shall in any event cover 8 of the planned residential units in the Project and have an initial term of at least 20 years and all renewals and extensions thereof.

Hazardous Materials: All materials constituting "Hazardous Substances" under and as defined in the Environmental Indemnity Agreement.

HOME: The HOME Investments Partnership Program enacted under Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, as amended, and the HOME Investment Partnerships Program Final Rule, as amended.

HUD: The United States Department of Housing and Urban Development.

Hunt: Hunt Capital Partners, LLC, a Delaware limited liability company.

Hunt Backstop Guaranty: Backstop Guaranty Agreement issued on or about the date hereof by Hunt.

Improvements: The 110-unit affordable housing apartment residential rental project, to be known as Mistletoe Station consisting of one, 3-story and one, 4-story residential building, a parking lot, clubhouse, and related amenities, which will be located on the Land, and will be developed with the proceeds of the Construction Loan, the Subordinate Loans, and the Capital Contributions, and in substantial accordance with the Plans. 74 of the units will be Low Income Housing Tax Credit Units (collectively "Affordable Units"), of which 8 of the units will be set aside for households with incomes of 30% or less of area median income, 30 of the units will be set aside for households with incomes of 50% or less of area median income, and 36 of the units will be set aside for households with incomes of 60% or less of area median income. 36 of the units will be market rate units with no restrictions on the rent that may be charged or the income of the tenants renting such market rate units (the "Market Rate Units"). 8 of the units will be Section 8 Units. 11 of the units will be HOME units. 9 of the units will accessible units (6 for individuals with mobility impairments and 3 for individuals with visual or hearing impairments). 8 of the units will be permanent supportive housing units.


Individual Guarantors: Lisa Stephens and Megan Lasch.

Initial Capital Contribution: The first Capital Contribution set forth in the schedule provided in Exhibit "H".

Intercreditor Agreements: Collectively, (a) the Intercreditor and Subordination Agreement among Bank, Borrower, and the FWHFC, outlining the relative priorities of the Construction Loan and the FWHFC Local Government Loan, and (b) the Intercreditor and Subordination Agreement among Bank, Borrower, and the City, outlining the relative priorities of the Construction Loan and the City HOME Loan.

Internal Revenue Code: The Internal Revenue Code of 1986, as amended; all references to a particular section of the Internal Revenue Code include (a) rulings of the Internal Revenue Service applicable to such sections and (b) final, proposed and temporary regulations issued under the Internal Revenue Code with respect to such sections, to the extent such are available to the general public.

Investor Member: HCP-ILP, LLC, a Nevada limited liability company, and its successors and assigns (to the extent permitted by this Agreement).

Investor Sponsor: Hunt Capital Partners, LLC, a Delaware limited liability company.

Land: Initially, a 2.842 acre tract (more or less) and then, once platted, a 2.587 acre tract (more or less) located at 1916 Mistletoe Boulevard in Fort Worth, Texas and more particularly described in Exhibit A attached to the Construction Mortgage.

Lease Stabilization: Such time when the Premises shall have satisfied the occupancy, debt coverage, and loan value requirements of the Permanent Mortgage Loan Commitment for the funding of the Permanent Mortgage Loan.

Limited Guaranty: Limited Guaranty of even date herewith executed by Hunt to Bank.

Liquid Assets: Shall have the meaning assigned to that term in the Operating Agreement.
Loan Documents: This Agreement, the Assignment of Management Agreement, the Construction Note, the Construction Mortgage, the Guaranty, the Limited Guaranty, the Environmental Indemnity Agreement, the Assignment of Accounts, the Funds Disbursement Agreement, the Intercreditor Agreements, the Tri-Party Agreement, the Assignment of Accounts, the Collateral Assignment of Account, and such other instruments, documents, and agreements evidencing, securing, or pertaining to the loans which have heretofore been or hereafter are from time to time executed and delivered to Bank by Borrower, or any other party pursuant to this Agreement or any Swap Agreement.

Loan to Value Ratio: The ratio expressed as a percentage of (a) the maximum commitment (as then applicable) of the Bank with respect to the Construction Loan, and to (b) the Appraisal Value.

Low-Income Housing Tax Credit: The 2017 allocation of a Low-Income Housing Tax Credit as that term is used in Section 42 of the Internal Revenue Code allocated to the Premises in the anticipated amount of $1,500,000.00 annually for 10 years (total sum of award of $15,000,000.00).

LURA: The Declaration of Land Use Restrictive Covenants Land Use Restriction Agreement for Low Income Housing Tax Credits to be executed with the Credit Agency with respect to the Low Income Housing Tax Credit.

Maker Bros Infrastructure Escrow Account: The escrow account in the name of Borrower established at the Bank with an opening balance of $4,391,250.00, funded with an advance under the Construction Loan, the proceeds of which will be used to make payments owing by Borrower on the Maker Bros Infrastructure Contract.

Material Adverse Change: Any act, circumstance, or event (including, without limitation, any announcement of action) which (i) causes an Event of Default, or (ii) in any manner would reasonably be expected to be material and adverse to the financial condition or operations of Borrower or any Guarantor, or (iii) in any manner would reasonably be expected to materially and adversely affect the validity or enforceability of any Loan Document.

Maximum Rate: On any day, the maximum legal rate of interest permitted for that day by whichever of applicable federal or Texas law permits the higher interest rate, stated as a rate per annum. On each day, if any, that the Texas Finance Code, as it may from time to time be amended establishes the Maximum Rate, the Maximum Rate shall be the
"weekly rate ceiling", as defined and referenced in Section 303.002 of the Texas Finance Code, after application of Section 303.009 of the Texas Finance Code, for that day. Provided, however, that to the extent permitted by applicable law, Bank reserves the right to change, from time to time by further notice and disclosure to Borrower, the ceiling on which the Maximum Rate is based under the Texas Finance Code; and, provided further, that the "highest non-usurious rate of interest permitted by applicable law" for purposes of this Agreement shall not be limited to the applicable rate ceiling under the Texas Finance Code if federal laws or other state laws now or hereafter in effect and applicable to this Agreement (and the interest contracted for, charged and collected thereunder) shall permit a higher rate of interest.

Net Operating Income: The Effective Gross Income less Operating Expenses.

Obligations: All indebtedness, obligations, and liabilities of Borrower to Bank, of every nature and description, now or hereafter existing or arising with respect to the development of the Premises or otherwise as provided in this Agreement, the Construction Note, the Construction Mortgage, or any other Loan Document (whether or not budgeted), whether such indebtedness is direct or indirect, primary or secondary, fixed or contingent, or arises out of or is evidenced by a promissory note, deed of trust, security agreement, open account, overdraft, endorsement, surety agreement, guaranty, letter of credit reimbursement obligations, letter of credit application, or otherwise, including, without limitation, all such obligations, liabilities, and indebtedness of Borrower to Bank under or in connection with the Loan Documents and any and all obligations, contingent or otherwise, whether now existing or hereafter arising of Borrower to Bank or to JPMorgan Chase & Co., or any of their subsidiaries or Affiliates or successors arising under or in connection with a Swap Agreement. Obligations shall include all renewals, extensions, and rearrangements of any of the above described obligations and indebtedness.

Operating Agreement: The First Amended and Restated Operating Agreement of Borrower which will be entered into among Saigebrook Mistletoe, LLC, as co-managing member (the "Co-Managing Member"), O-SDA Mistletoe, LLC, as administrative member, HCP SLP, LLC, as the special member, and the Investor Member, as the investor member, as the same may be amended from time to time subject to and in accordance with this Agreement.

Operating Expenses: All recurring line item expenses based on the higher of the following: originally underwritten, historical annualized expenses at the Premises, the Budget, or third party appraisal or other
current third report or information then available to Bank which can serve as a basis for the comparable) and market expense comparables (based on the most current third party appraisal or other current third party report or information then available to Bank which can serve as a basis for the comparable). However, real estate taxes will be adjusted for fully assessed actual taxes based on 100% completion of the development of the Premises. If abatement applies, taxes will be adjusted to any payment in lieu of taxes that are assessed against the Premises. Management fee shall be defined as the greater of the management fee of the existing contract in place or the then market rate for management fees in the area of the Premises. A replacement reserve of $250.00 per unit per year will be included in the Operating Expenses estimate.

**Payment and Performance Bond.** Collectively, separate payment and performance bonds providing that Maker Bros, LLC or Rumsey Construction LLC, as applicable, is bonded for payment and performance under the Improvements Primary Subcontract and the respective City Infrastructure Improvements Construction Contract, in an aggregate amount at least equal to the Improvements Primary Subcontract and the City Infrastructure Improvements Construction Contract (together with any additional bonding required by the TIF Agreement) by a surety having an AM Best rating of at least A+/XV or where an AM Best rating is unavailable, an S&P rating of at least AA (the bond shall contain a dual obligee rider naming Bank, ISAOA). Each Payment and Performance Bond is subject to counterparty approval by Bank.

**Permanent Lender:** Hunt Mortgage Partners, LLC.

**Permanent Mortgage Loan Commitment:** The Permanent Lender's commitment to Borrower, with respect to the Permanent Mortgage Loan, to provide for, among other things, (i) a permanent mortgage loan of at least $8,300,000.00, or such lesser amount as Borrower may elect and Bank may consent to (referred to herein as the "Permanent Mortgage Loan"), and (ii) the Permanent Mortgage Loan being funded upon Lease Stabilization and the satisfaction of other certain terms and conditions provided for in the Permanent Mortgage Loan Commitment.

**Permanent Supportive Housing Agreement:** Mistletoe Station Apartments Permanent Supportive Housing Agreement entered into among the City, the Borrower and the FWHFC setting forth requirements for the permanent supportive housing units in the Project.

**Permitted Encumbrances:** Shall mean all of the Permitted Encumbrances under and as defined in the Construction Mortgage, but for
purposes of this Agreement, shall include the LURA and the Deed Restriction entered into with respect to the City HOME Loan.

**Permitted Transfer:** Shall have the meaning ascribed to such term in Section 5.1(l)(2). Provided, however, under no circumstances shall a Permitted Transfer be interpreted to mean, include or permit a sale, assignment or other Transfer to a Disqualified Person or to a Person which is Controlled by or in common Control with a Disqualified Person.

**Person:** Any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

**Placed in Service:** Shall have the meaning attributed by the Credit Agency for purposes of the Low Income Housing Tax Credit (and, in any event, shall occur no later than the date required in the Tax Credit Allocation).

**Plans:** The plans and specifications, relating to the Improvements and the City Infrastructure Improvements, prepared by the Architect which have been delivered to and then reviewed and approved by the Bank, the TIF (to the extent such approval is required by the TIF Agreement), FWHFC (to the extent such approval is required by the FWHFC Local Government Loan Documents), the City (to the extent such approval is required by the City HOME Loan Documents) and the Credit Agency (to the extent such approval is required by the Credit Agency), on or before the date of this Agreement, and any and all amendments thereto.

**Premises:** The Land, the Improvements and the City Infrastructure Improvements, and any other improvements, fixtures, and buildings currently or hereafter existing on the Land.

**Publicly-Held Corporation:** The corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

**QAP:** Qualified Allocation Plan for the 2017 Housing Tax Credit Program adopted by the Credit Agency (as may be amended, replaced, or superseded).

**Requirements of Law:** As to any Person: the certificate or articles of incorporation and by-laws, Operating Agreement, or other organizational or governing documents of such Person; all applicable requirements of the QAP, HOME, Freddie Mac, the City, the Forward Commitment, the Permanent Mortgage Loan Commitment, the Operating Agreement, and other requirements of the Credit Agency, TAC, the City,
FWHFC and the Subordinate Loan Documents, the Permanent Supportive Housing Agreement, the TIF, the LURA, the HAP Commitment and the HAP Contract (once it is executed) and any other restrictions or covenants affecting the use and development of the Premises; and any applicable law, treaty, ordinance, order, judgment, rule, decree, regulation, or determination of an arbitrator, court, or other Governmental Authority, including, without limitation, the City's policy for the installation of community facilities dated March 2001, approved by the City Council of the City, as amended, and all other rules, decrees, judgments, regulations, orders, and requirements for permits, licenses, registrations, approvals, or authorizations (and any authoritative interpretation of any of the foregoing), in each case as such now exist or may be hereafter amended or adopted and are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject. Without limiting the generality of the foregoing, Requirements of Law shall also include, without limitation, the requirements of Section 42 of the Internal Revenue Code, any and all applicable (a) federal, state, county, and municipal laws, codes, ordinances, rules and regulations applicable to the Premises, whether currently existing or hereafter promulgated, including without limitation environmental laws, building codes, land use, and zoning codes, (b) all requirements and terms of the QAP, (c) HUD regulations and the provisions of 24 CFR Part 570, as amended from time to time and all other applicable laws and regulations relating to the City HOME Loan (including those listed in the HOME Contract), (d) Section 504 of the Rehabilitation Act of 1973, and (e) federal regulations and policies issued pursuant to these regulations, including without limitations: (a) the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); (b) the Uniform Federal Accessibility Standards, as set forth in 24 CFR Part 570.614; (c) the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973; (d) the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7) 24 CFR Part 570.603) and supporting Department of Labor regulations; (e) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended, and 24 CFR Part 570.606; and (f) for existing properties built prior to 1978, the Lead-Based Paint Poisoning Protection Act (42 U.S.C. §4831(b)) and the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35.

Retainage: An amount equal to ten percent (10%) of hard costs of the amount of each payment to Contractor shall be retained by Borrower, unless a greater amount is required to be retained under applicable Requirements of Law, to secure the payment of artisans and mechanics who perform labor or service and the payment of any and all other persons who furnish material and labor, or specifically fabricated material
for any contractor, subcontractor, agent, or receiver for the construction of the Improvements and the City Infrastructure Improvements; provided that Retainage will not be withheld for the following items: preconstruction, mobilization, erosion control/SWPPP, site amenities, miscellaneous metals, rough carpentry materials, truss materials, finish carpentry materials, moisture protection, access doors and panels, windows, finish hardware/bath accessories, pre-hung doors, louvers and vents, postal specialties, residential appliances, miscellaneous specialties, light fixtures and fans, punch out/construction cleaning, general requirements, overhead and profit. The Retainage shall in no event be less than the amount actually held back by the Borrower from the Contractor and all subcontractors and materialmen engaged in the construction of the Improvements.

**Review Fee:** $3,000.00 (unless the Transfer has been approved by Bank on or before the Closing Date, then in that case, the Review Fee shall be zero).

**Rumsey Infrastructure Escrow Account:** The escrow account in the name of Borrower established at the Bank with an opening balance of $419,230.00, funded with an advance under the Construction Loan, the proceeds of which will be used to make payments owing by Borrower on the Rumsey Infrastructure Contract.

**Sanctions:** Economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

**Sanctioned Country:** Any time a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

**Sanctioned Person:** At any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

**Section 8 Property:** A property which all of a portion thereof qualifies for "project based assistance" under 42 U.S.C. §1437f and all regulations issued pursuant thereto.

**Stored Materials:** Shall have the meaning given that term in Section 4.1(y)(i).
Subordinate Loan Documents: Collectively, the FWHFC Local Government Loan Documents and the City HOME Loan Documents.

Subordinate Loans: Collectively, the FWHFC Local Government Loan and the City HOME Loan.

Substantial Completion: The completion of the construction and equipping of the Improvements free and clear of all liens other than Permitted Encumbrances in substantial accordance with the Plans in all material respects and otherwise to the reasonable satisfaction of Bank and the Bank's construction consultant, except for such defects or departures which do not, in the opinion of Bank, the Bank's construction consultant, materially and adversely affect either the value of the work in place or the full utilization of the applicable portion of the Improvements for which it is intended, and the issuance and delivery to Bank of a Certificate of Substantial Completion by the Architect on a form reasonably acceptable to Bank and copies of all permits and approvals of Governmental Authorities for the occupancy of all apartment units comprised of the Improvements including, and not by way of limitation, a conditional or permanent certificate of occupancy.

Swap Agreement: Any agreement with respect to any swap, cap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (including any I.S.D.A. Master Agreement which may be entered into with Bank, or its Affiliates, with respect to a Note).

TAC: Texas Administrative Code, a compilation of all state agency rules in Texas (including rules of the Credit Agency).

Tax Credit Allocation: The carryover allocation issued by the Credit Agency awarding the allocation of a Low-Income Housing Tax Credit for the Premises and any carry over agreement which has been issued which is attached as Exhibit "K".

TIF: Tax Increment Reinvestment Zone Number Four City of Fort Worth, Texas.

TIF Agreement: Tax Increment Financing Development Agreement entered into by Borrower and the Board of Directors of the TIF for the reimbursement of up to $2,600,000.00 of qualified costs with respect to the Premises as provided for in the TIF Agreement.
Transfer:  (a) A sale, assignment, transfer or other disposition (whether voluntary, involuntary, or by operation of law), (b) the grant, creation, or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law), (c) the issuance or other creation of a direct or indirect ownership interest, (d) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity, or (e) the merger, dissolution, liquidation or consolidation of a legal entity. The term “Transfer” shall not mean or include (i) the conveyance of the Premises at a judicial or non-judicial foreclosure sale under the Construction Mortgage, or (ii) the Premises becoming part of a bankruptcy estate by operation of law under United States Bankruptcy Code, or (iii) as otherwise expressly permitted by the terms of this Agreement and/or the other Loan Documents.

Transfer Fee:  An amount equal to one percent (1%) of the outstanding principal balance of the Construction Loan at the time of determination.

Tri-Party Agreement:  The Tri-Party Agreement of even date herewith among the Permanent Lender, Bank, and Borrower.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with such principles. In the event that changes in GAAP shall be mandated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants or any similar accounting body of comparable standing, or shall be recommended by Borrower's certified public accountants, to the extent that such changes would modify such accounting terms or the interpretation or computation thereof as contemplated by this Agreement at the time of execution hereof, then in such event, such changes shall be followed in defining such accounting terms only after Bank and Borrower amend this Agreement to reflect the original intent of such terms in light of such changes, and such terms shall continue to be applied and interpreted without such change until such agreement.

1.3 Other Terms. All other terms contained in this Agreement shall have, when the context so indicates, the meanings provided for in the Texas Uniform Commercial Code (the “UCC”) to the extent the same are used or defined therein.

1.4 References. References in this Agreement to Section or Exhibit numbers shall be to Sections and Exhibits of this Agreement, unless expressly stated to the contrary. References in this Agreement to "hereby," "herein," "hereinabove," "hereinafter," "hereinbelow," "hereof," and "hereunder" shall be to this Agreement in its entirety and not only to the particular Section or Exhibit in which such reference appears.
1.5 **Sections.** This Agreement, for convenience only, has been divided into Sections and it is understood that the rights and other legal relations of the parties hereto shall be determined from this instrument as an entirety and without regard to the aforesaid division into Sections and without regard to headings prefixed to such Sections.

1.6 **Number and Gender.** Whenever the context requires, reference herein made to the single number shall be understood to include the plural; and likewise, the plural shall be understood to include the singular. Definitions of terms defined in the singular or plural shall be equally applicable to the plural or singular, as the case may be, unless otherwise indicated. Words denoting sex shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be construed as cumulative.

1.7 **Incorporation of Exhibits.** The Exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for all purposes.

1.8 **Certain Other Matters of Construction.** All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. All references to any instruments or agreements, including, without limitation, references to any of the Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof. Knowledge, for purposes of this Agreement (and the other Loan Documents), shall mean actual and constructive knowledge. Current, for purposes of this Agreement and the other Loan Documents, shall mean within 30 days from the applicable date. The term, "or" when used in this Agreement and the other Loan Documents in a sequence shall mean "and/or". References in this Agreement and the other Loan Documents to particular sections of the Internal Revenue Code, the Uniform Commercial Code, or any other legislation, rule, or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes.

II – **CONSTRUCTION COMMITMENT**

2.1 **Commitments.**

(a) Subject to the full, complete, and timely satisfaction by Borrower of each of the applicable conditions precedent described in Sections 6.1, 6.2, and 6.3, and all of the other terms and conditions of this Agreement, and relying on the representations and warranties of Borrower hereinafter set forth, Bank agrees to make an advancing loan to Borrower, pursuant to which Borrower may borrow but not reborrow and repay, up to an aggregate amount of the Construction Loan, through, but not including, the Bank's Required Completion Date, which advancing loan shall be evidenced by the issuance, execution, and delivery of the Construction Note.
(b) Borrower shall be entitled (subject to Section 6.3) to request Bank to make distributions of amounts in the Capital Contribution Account (to the extent amounts are then on deposit in the Capital Contribution Account) and to make advances under the Construction Note until, but not including the Bank's Required Completion Date, when (except as hereafter provided in the last sentence of this subsection), provided no Event of Default is then existing) the Construction Loan shall then automatically convert to a non-advancing term loan. On the Construction Loan Maturity Date, the outstanding balance and all unpaid and accrued interest of the Construction Note shall be fully and finally due and payable in accordance with the terms and provisions of the Construction Note. Notwithstanding the foregoing or anything to the contrary herein, advances of the Construction Loan for budgeted interest reserve and for other hard and soft costs approved by Bank in writing which are provided for in the Budget as being payable from the Construction Loan and reflected in the draw schedule provided to Bank pursuant to Section 6.1 as being payable after the Bank's Required Completion Date (but in any event, in each case, prior to the Construction Loan Maturity Date), subject to compliance with Section 6.2, for hard and soft costs approved by the Bank, interest carry, other items approved by the Bank and only to the extent contained in the Budget, and for the final advance for Retainage; provided that with respect to any such hard and soft costs payable after the Bank's Required Completion Date (and not fundings of interest carry), the conditions listed in Section 6.2 are fully satisfied or waived by Bank in writing, and with respect to the final advance of the Construction Loan or disbursement of the Capital Contribution for Retainage, the conditions listed in Section 6.6 are fully satisfied or waived by Bank in writing.

(c) Subject to subsection (d) below and Section 2.12, without limiting the foregoing, requests made by Borrower for amounts to be disbursed by Bank to Borrower in accordance with the terms of this Agreement shall be (subject to the further terms hereof) made first, from deposits with Bank of the Subordinate Loans, subject to compliance with Section 6.2, second from deposits in the Capital Contribution Account from the funding of the Initial Capital Contribution described in Exhibit "H" (to the extent amounts are then on deposit in the Capital Contribution Account), and then from advances under the Construction Note up to the face amount thereof.

(d) Except for certain soft costs approved by Bank to be funded under the Construction Note on the Closing Date, an advance under the Construction Loan to fund the City Infrastructure Improvements Escrow Accounts, and as hereafter specifically provided, no advances shall be made under the Construction Note unless and until all of the first three Capital Contributions described in Exhibit "H" have been deposited in and fully disbursed from the Capital Contribution Account subject to the terms of this Agreement to pay for budgeted items (except for that portion, which may be the entirety of the Initial Capital Contribution in accordance with the settlement statement approved by Bank on the Closing Date, of the Initial Capital Contribution used to pay the
closing costs, the Predevelopment Loan under and as defined in the Operating Agreement, and developer fees, as provided for in Exhibit "H"). Notwithstanding the foregoing, provided no default is then existing under the Operating Agreement, if after the Initial Capital Contribution is funded and the payment of the next installment described in Exhibit “H” is not yet then payable under the terms of the Operating Agreement, and has not been actually deposited in the Capital Contribution Account, subject to the terms of this Agreement, Bank shall make advances of the Construction Loan as provided for in this Section and in Sections 6.1, 6.2, and 6.3 until the next funding of the Capital Contribution described in Exhibit “H” is payable under the terms of the Operating Agreement.

(e) Notwithstanding any of the foregoing or anything in this Agreement (or in the Operating Agreement) to the contrary, (i) the second Capital Contribution described in Exhibit "H", when funded subject to and in accordance with the terms of the Operating Agreement, shall be first paid to Bank as provided in this Agreement and then shall be applied first to pay any unpaid budgeted construction items, and then, to the extent there are any amounts remaining from that Capital Contribution, to the outstanding principal balance of the Construction Note (and interest accrued thereon) to the extent necessary to pay the balance of the Construction Note down to the amount of the Permanent Mortgage Loan Commitment (or such lesser amount required for Lease Stabilization), (ii) the third Capital Contribution described in Exhibit "H", when funded subject to and in accordance with the terms of the Operating Agreement, shall be first paid to Bank as provided in this Agreement and then shall be applied first to pay any unpaid budgeted construction items, and then, to the extent there are any amounts remaining from that Capital Contribution, to the outstanding principal balance of the Construction Note (and interest accrued thereon) to the extent necessary to pay the balance of the Construction Note down to the amount of the Permanent Mortgage Loan Commitment (or such lesser amount required for Lease Stabilization), and (iii) the fourth Capital Contribution described in Exhibit "H", when funded subject to and in accordance with the terms of the Operating Agreement, shall be first paid to Bank to the outstanding principal balance of the Construction Note (and interest accrued thereon) to the extent necessary to pay the balance of the Construction Note down to the amount of the Permanent Mortgage Loan Commitment (or such lesser amount required for Lease Stabilization) on or before the Conversion Deadline, then to all reserves required to be funded by the Operating Agreement and/or to pay budgeted developer fees. The foregoing shall not change the treatment of the payment of such Capital Contributions as Capital Contributions from the Investor Member for purposes of the Operating Agreement.

2.2 (RESERVED)

2.3 **Loan Purpose.** The advances to be made under this Agreement and the Construction Note shall be used by Borrower in connection with the acquisition,
2.4 **Renewal Option.** The Construction Loan Maturity Date may be extended, as of right, on a one-time basis, for six (6) calendar months, provided that each of the following conditions have been fully, completely, and timely satisfied on or before August 30, 2020:

(a) At least 30 days but not more than 90 days prior to August 30, 2020, Borrower shall have notified Bank in writing that it requests an extension of the Construction Loan Maturity Date for six calendar months;

(b) Substantial Completion of the Improvements shall have occurred as evidenced by a temporary certificate of occupancy and certificate of substantial completion from the Architect (and concurred to by Bank's construction consultant);

(c) No event which materially limits, reduces, or impairs the Low Income Housing Tax Credit for the Premises (in a manner which would cause the amount of Capital Contributions payable prior to conversion to the Permanent Mortgage Loan to not be paid) shall have occurred and be continuing, and Borrower shall otherwise be in compliance in all material respects with all guidelines relating to the Low Income Housing Tax Credit for the Premises;

(d) During the renewal term, sources for the payment of interest due under this Agreement and the other Loan Documents are not less than Estimated Debt Service (as defined hereafter). Sources for the payment of such interest can be any combination of (i) remaining balances in the Budget for interest and, if applicable, letter of credit fees; (ii) cash deposited with the Bank on or before commencement of the extension period from a source other than the Construction Loan and/or the scheduled Capital Contributions in the amounts set forth in Exhibit "H" to pay such interest and fees, or (iii) Net Operating Income for the extension period (calculated using Net Operating Income in the most recent three months). **Estimated Debt Service** is the sum of (1) interest (deemed to be the then current interest rate applicable to the Construction Note plus 0.25%), and (2) if applicable, letter of credit fees, each calculated for the entire extension period;

(e) As independent consideration for the extension of the maturity of the Construction Note, on or before the commencement of the extension term, Borrower shall pay to Bank an extension fee of one quarter percent (0.25%) of the outstanding balance of the Construction Note on the date the extension term commences;
(f) Borrower shall have delivered, at its sole cost and expense, all extension and other agreements, instruments, amendments, title insurance endorsements, and modifications required by Bank in its reasonable discretion to effect such renewal and extension (which extension agreement will extend the maturity of the Construction Note for six calendar months and will provide for, among other things, that interest shall continue to accrue on the Construction Note at the rate provided for in the Construction Note), and the Construction Note shall continue to be payable and accrue interest as provided for in the Construction Note;

(g) Borrower shall have reimbursed Bank for all of its reasonable costs and expenses (including reasonable attorneys' fees) relating to the extension;

(h) The Permanent Loan Commitment shall be in full force and effect and no party shall be in default thereunder;

(i) The Permanent Supportive Housing Agreement shall be in full force and effect and the Borrower shall not have breached its obligations thereunder;

(j) Unless all amounts owed to Borrower under the TIF Agreement have already been reimbursed to Borrower at such time, the TIF Agreement shall be in full force and effect and Borrower shall not then be in default under the TIF Agreement;

(k) Each Subordinate Loan shall be in full force and effect and Borrower shall not then be in default under any Subordinate Loan Document, which may be evidenced by a certification by Borrower at such time in form and content satisfactory to Bank;

(l) No Material Adverse Change shall exist with respect to the Borrower, the Guarantor, or the Premises;

(m) No Default or Event of Default shall be then existing; and

(n) The Construction Loan shall then be in balance as required by this Agreement and all installments of the Capital Contribution and fundings of the Subordinate Loans then payable shall have been funded as set forth in this Agreement.

2.5 Fees.

(a) As independent consideration for Bank's commitment to make the Construction Loan evidenced by the Construction Note as provided for herein, prior to or contemporaneously with Borrower's execution and delivery of this
Agreement, in addition to all other amounts due or to be due by Borrower to Bank (including, but not limited to, reimbursement for the appraisal review, the environmental review, and Borrower shall pay to Bank, a construction commitment fee equal to $167,115.00.

(b) Borrower shall pay reasonable inspection fees of Bank's construction consultant as provided in Section 6.7.

2.6 Payment of Contractor Overhead and Profit. Provided no Event of Default is then continuing, Borrower shall be permitted to pay general conditions on the basis of one-fifteenth (1/15) of such amounts each month and contractor profit and overhead on a percentage of completion basis during the course of construction all in accordance with the construction draw schedule approved by Bank and in a manner acceptable to Bank.

2.7 Payment of Developer Fees and/or Overhead. Until the Obligations have been fully paid and performed and Bank has no further funding commitments to Borrower under this Agreement, no developer fees or overhead shall be paid. Notwithstanding the foregoing, in no event may developer fee or overhead be paid in an amount that would exceed the amount permitted under the Operating Agreement or in any other way violate the Operating Agreement.

2.8 Reallocation of Budget. The Budget has been prepared by Borrower, and Borrower represents to Bank that the Budget includes all costs and expenses incident to the Construction Loan, and the construction of the Improvements and the City Infrastructure Improvements after taking into account the requirements of the Loan Documents. Subject to Section 4.1(c), Borrower shall (a) only reallocate Loan funds from one Budget line item to another or otherwise amend the Budget with the Bank's written approval (which will not be unreasonably withheld, delayed or conditioned) and if the reallocation is from the contingency line item, the amount of the contingency line item reallocated through that date (on a percentage basis) shall not exceed the amount of the Improvements and the City Infrastructure Improvements which have been completed to that date (on a percentage basis), provided that in no event may any reallocation be made from the interest reserve line item without Bank's consent, such consent not to be unreasonably withheld, conditioned or delayed, and in any event, the reallocation shall always leave a sufficient amount available with respect to a particular line item to complete the work associated with that line item), and (b) notify Bank promptly whenever Borrower becomes aware that the Budget is, or will be, inaccurate in any material respect.

2.9 Equity. The Investor Member has agreed to make Capital Contributions in accordance with the terms and provisions of the Operating Agreement. The Investor Member has agreed that the Capital Contributions shall be deposited by the Investor Member into the Capital Contribution Account to be disbursed by Bank as provided for in this Agreement and Exhibit "H". Further, notwithstanding anything herein to the contrary, no additional/further portion of the Loan will be made available to Borrower.
2.10 **Cash Flow.** Unless and until the Construction Note has been fully and finally paid and Bank has no further funding commitments thereunder, if required by Bank, upon the written request therefor by Bank (which shall only be made during the continuance of an Event of Default), all Net Operating Income, less payment of principal and interest made therefrom on the Construction Note shall be deposited by Borrower, on a monthly basis, in an account of Borrower located at Bank which shall be a blocked collateral account. Borrower shall have no access to such account except to pay continuing Operating Expenses and debt payment until Construction Loan has been paid in full; provided however, Borrower shall have access and full use of the funds in such account if there is no Event of Default then continuing.

2.11 **Interest Reserve.** The portion of the Construction Loan allocated in the Budget for interest shall be held by the Bank as an unfunded interest reserve, and the Borrower hereby authorizes the Bank to make advances thereof to pay interest when due under the Construction Loan to the extent not paid out of Borrower's own funds or Net Operating Income. Such authorization is irrevocable and no further direction or authorization shall be required for the Bank to make such advances. The Bank may make such advances notwithstanding that the Borrower may be in default under the terms of this Agreement or any other Loan Document (Bank may at Borrower's expense, obtain an endorsement to its mortgagee's title insurance policy in connection with any advance under the Construction Loan to pay interest if the advance is not made pursuant to a request for disbursement under Section 6.3). If funds are not available from the interest reserve, or the blocked collateral account as provided in Section 2.10, or Net Operating Income to pay interest due under the Construction Loan, Borrower shall pay such interest from its own funds which may include the amounts on deposit in the Capital Contribution Account. Nothing in this provision shall prevent the Borrower from paying interest from its own funds and from Net Operating Income.

2.12 **Subordinate Loans.** Each Subordinate Loan shall close before or in connection with the Closing Date and in connection therewith, Bank shall have received and approved copies of the Subordinate Loan Documents, together with each original Intercreditor Agreement. The proceeds of the Subordinate Loans, when paid, will be used to pay budgeted construction items which are the basis of a pending request for disbursement under this Agreement (and which relate to eligible expenditures) or shall be deposited with Bank for disbursement prior to the disbursement of any Capital Contribution or advance of the Construction Loan to pay items subject to that pending request for disbursement. Further, in the event, for any reason (excluding, however, an action or omission on the part of Bank), all or any portion of the proceeds of the Subordinate Loans which are deposited with Bank for later disbursement, are required...
to be returned to the FWHFC or City, as applicable. Borrower shall promptly reimburse Bank for any amounts as may be returned by Bank and which are required by the Budget to pay development costs. If and to the extent any Subordinate Loan is funded directly to Borrower (and not deposited with Bank), Borrower shall provide Bank with evidence of the budgeted items paid with the proceeds of the Subordinate Loans upon and in connection with each such payment (and with copies of all requests for advances of the Subordinate Loan when those requests are submitted). In any event, Borrower shall properly draw down, expend, and account for all Subordinate Loan funds as required by the FWHFC and City and shall not take any action which would cause the FWHFC or the City to de-obligate such Subordinate Loan funds. Notwithstanding anything herein to the contrary, Borrower agrees that if Bank, subject to the terms of this Agreement, shall fund amounts under the Construction Loan as and when requested by Borrower pursuant to a request for disbursement for items which Borrower has requested an advance under a Subordinate Loan (and for which disbursement of that advance is pending), upon the funding of that request by FWHFC or the City, the proceeds shall be deposited with Bank as reimbursement for Bank’s agreement to fund those amounts and then used to fund the next request for disbursement under the terms of this Agreement. Notwithstanding anything to the contrary contained herein, all proceeds of the Subordinate Loans shall be fully funded and used by Borrower to pay budgeted items no later than within sixty (60) days of the occurrence of Substantial Completion (in particular, $700,000.00 of the FWHFC Local Government Loan will be funded on the Closing Date with the remaining balance of $50,000.00 funded no later than the occurrence of Substantial Completion and $900,000.00 of the City HOME Loan will be funded on the Closing Date with the remaining balance funded during construction, and, in any event, no later than within sixty (60) days of the occurrence of Substantial Completion). Further, in connection with the fundings of the Subordinate Loans at completion, at least $150,000.00 of those fundings shall be paid to Bank and applied to the outstanding principal balance of the Construction Note.

2.13 **Recourse.** Subject to the terms, provisions, covenants and agreements set forth in this Agreement and the other Loan Documents, Bank agrees to lend to Borrower, and Borrower agrees to borrow from Bank, up to the amount of the Construction Loan, which Loan shall be used by Borrower in accordance with the terms of the Loan Documents. Bank shall have full recourse against Borrower and each Guarantor (with respect to each Guarantor, subject to the terms of the Guaranty), as well as against the Premises, for payment and performance of the Construction Loan and the Loan Documents and for completion of the Improvements in substantial accordance with the Plans therefor and the Budget. All payments due from Borrower or a Guarantor to Bank shall be made without offset or other reduction. Notwithstanding the foregoing, Bank acknowledges that nothing herein shall impair or modify the limitation of liabilities provided to members or limited partners under the Texas Business Organizations Act (Bank shall have no recourse directly against any member or limited partner with respect to the Construction Note and the other Obligations).

2.14 **City Infrastructure Improvements.** Borrower shall fully and timely complete, or cause to be completed, the City Infrastructure Improvements as and when
required by the CFA and all related City rules, ordinances, and regulations (and in any event completion of the City Infrastructure Improvements shall occur within 120 days after the Closing Date). Borrower has and does hereby collaterally assign to Bank all of its right, title, and interest under and with respect to the CFA (including the right to payment of amounts in each City Infrastructure Improvements Escrow Account in the event Bank performs Borrower's obligations under the CFA to develop the City Infrastructure Improvements); it being agreed and understood that Bank has no obligation to construct and develop the City Infrastructure Improvements. Notwithstanding anything herein to the contrary, no amounts will be funded from a City Infrastructure Improvements Escrow Account unless and until the associated draw relating to that City Infrastructure Improvements Construction Contract has been approved by City and Bank as set forth in the City Infrastructure Improvements Escrow Agreements. Further, without limiting the requirements of Section 4.1(g), if any amount is funded from a City Infrastructure Improvements Escrow Account which is drawn from the City Infrastructure Improvements Escrow Cost Overrun Portion, unless there is budgeted hard cost contingency available to cover that amount, within ten (10) Business Days after written notice thereof from Bank, Borrower shall deposit with Bank cash in the amount of the City Infrastructure Improvements Escrow Cost Overrun Portion which has been disbursed from a City Infrastructure Improvements Escrow Account as Bank may reasonably require (such deposit will be treated in the same manner as a deposit made under Section 4.1(g) as collateral for the Construction Loan and when that deposit will be used). Any amounts remaining in the City Infrastructure Improvements Escrow Accounts after completion of the applicable portion of the City Infrastructure Improvements shall, with the consent of the City, be paid to Bank for application to the outstanding balance of the Construction Note.

2.15 TIF Reimbursement. Notwithstanding anything herein to the contrary, upon and in connection with the funding to Borrower of the amounts payable under the TIF Reimbursement Agreement, an amount not less than $2,525,000.00 shall be paid to Bank and applied to the outstanding balance of the Construction Note.

III – REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Borrower. As an inducement to Bank to enter into this Agreement and to make the Construction Loan, Borrower represents and warrants to Bank as follows:

(a) Borrower Organization. Borrower is duly organized and existing and has an "active" status for the right to transact business under the laws of the state of its organization and is duly qualified in the state where the Land is located to own, construct, and operate the Improvements and the City Infrastructure Improvements. Borrower has the authority and the legal right to carry on the activities now being conducted by it and to engage in the transactions contemplated by the Loan Documents. The other members of Borrower have authorized the Co-Managing Member of Borrower to enter into this Agreement and the other Loan Documents for and on behalf of Borrower.
(b) **Binding Documents.** The Loan Documents executed by Borrower are legal, valid, and binding obligations of Borrower in accordance with their terms (subject to any exceptions, assumptions or limitations set forth in the opinion of Borrower's counsel to the Bank) and have been duly authorized, executed, and delivered by Borrower.

(c) **Legal and Environmental Compliance.** To Borrower's current, actual knowledge, the Plans for the Improvements and the City Infrastructure Improvements and the anticipated use of the Premises and all easements and rights appurtenant thereto comply in all material respects with all applicable Requirements of Law, including, without limitation, all restrictive covenants, zoning ordinances, laws and regulations relating to environmental matters and access and facilities for persons with disabilities, building laws and codes. To Borrower's knowledge, Borrower's use of the Premises will be in full compliance with the requirements of the HAP Commitment, the HAP Contract (once it is executed), and of the provisions of the Internal Revenue Code related to obtaining and preserving the Low-Income Housing Tax Credit. Without limiting the foregoing, eight (8) of the residential units associated with the Low-Income Housing Tax Credit will be eligible for "project based housing choice vouchers" and will be eligible to receive the benefit of operating assistance pursuant to the HAP Commitment as a Section 8 Property. All of the Affordable Units in the Premises will be dedicated to affordable housing residents as required by the Tax Credit Allocation, the LURA, the City, the Authority, the TIF, FWHFC, HOME, and otherwise satisfying the requirements for completing and operating the Improvements and the City Infrastructure Improvements in accordance with the Guide, the Guidelines, the Operating Agreement, and as set forth in the Permanent Mortgage Loan Commitment, HOME Loan Documents, and the Affordable Units in accordance with the QAP, and as otherwise required by all Governmental Authorities. All Governmental Permits and other approvals necessary to commence work on the Premises, including, without limitation, all requisite approvals of the Credit Agency, FWHFC, and the City have been or will be obtained by Borrower prior to the time needed in connection with the construction and development of the Improvements and the City Infrastructure Improvements. To the Borrower's current actual knowledge, except as provided for in the environmental assessment report provided to Bank prior to the Closing Date, the Premises have not been used in violation of any federal laws, rules or ordinances for environmental protection, regulations of the Environmental Protection Agency, the environmental requirements of the Guidelines, the City, and the Credit Agency and of any applicable local or state law, rule, regulation or rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Materials.

(d) **Low-Income Housing Tax Credit.** The Low Income Housing Tax Credit has been allocated to the Premises in the amount set forth in the Tax Credit Allocation and, to Borrower's knowledge, all requirements to Borrower's right to receive the tax credit allocation have been met. The Tax Credit
Allocation is in full force and effect, and, to Borrower's knowledge, Borrower is in full compliance with the terms and provisions thereof.

(e) **Subordinate Loan Documents.** No Event of Default, or to Borrower's knowledge, which with notice, the passage of time, or both, would constitute an Event of Default, has occurred with respect to a Subordinate Loan under the Subordinate Loan Documents.

(f) **Utilities Availability.** To Borrower's knowledge, after a due and reasonable inquiry, all utility services necessary for the construction and full utilization of the Premises for their intended purposes are presently, or will be prior to the need therefor, available at the boundaries of the Land through public or unencumbered private easements or rights of way and are, or will be prior to the need therefor, available for connection to the Improvements (for the area in which the Land is located) at ordinary costs and impact fees.

(g) **Access to the Premises.** To Borrower's knowledge, access necessary for the construction and full utilization of the Premises for their intended purposes is presently, or will be prior to the need therefor, available to the Premises over streets or roads which have been dedicated to public use and accepted therefor by appropriate Governmental Authorities and any permits necessary for connecting the driveways on the Premises to such streets or roads have been, or will be prior to the need therefor, obtained without impairing the construction schedule for the Improvements and the City Infrastructure Improvements.

(h) **Financial Statements.** To Borrower's knowledge, the Financial Statements (i) are true and correct in all material respects, (ii) have been prepared in accordance with accounting practices historically used (as applicable) by Borrower, Contractor, and each Guarantor consistently applied, (iii) fairly represent the financial condition of Borrower and each Guarantor, and (iv) no Material Adverse Change has occurred in the financial condition of Borrower, Contractor, and each Guarantor since the date thereof.

(i) **Litigation.** There is no litigation against Borrower or a Guarantor pending or, to the current actual knowledge of Borrower, threatened against Borrower or the Premises before any Governmental Authority, except as disclosed to Bank in writing.

(j) **No Commencement.** Except as otherwise specifically disclosed to the Bank in writing, prior to the Closing Date, there has been no commencement of work of any nature on, or delivery of materials to, the Premises.

(k) **Leases.** There are and will be no leases of the Premises in effect, other than Approved Leases and leases for laundry, data, telephone, security, internet, and cable television.
(l) **Reaffirmations.** Each request to Bank for a disbursement or an approval of a request for disbursements of amounts on deposit in the Capital Contribution Account, or a disbursement of any deposit of a Subordinate Loan, or for a Construction Loan advance under this Agreement shall constitute an express representation, warranty, and affirmation to Bank, as of the date of the request, that each of the representations and warranties of this Section 3 (other than representations and warranties made as to a specific date) are true and correct in all material respects as of the date of each request and on the date of its disbursement, except as may be otherwise disclosed to Bank in writing.

(m) **No Conflicting Agreements.** To Borrower’s knowledge, there is no charter, bylaw, stock provision, constitution or other document pertaining to the organization, power, or authority of Borrower and no provision of any existing agreement, mortgage (other than mortgages to be paid in full in connection with the closing), indenture or contract binding on Borrower or affecting its property, which would conflict with or in any way prevent the execution, delivery, or carrying out of the terms of this Agreement and the other Loan Documents.

(n) **Ownership of Assets.** Borrower has good and indefeasible title to the Premises, and the Premises are free and clear of liens, except those granted to Bank, and those provided for in Section 5.1(d) and Section 5.1(f), and the other Permitted Exceptions and liens disclosed to Bank in writing prior to the date of this Agreement or approved by Bank (in writing) after the date of this Agreement.

(o) **Taxes.** All taxes and assessments payable and as they become due and payable by Borrower have been paid or will be paid before becoming past due and incurring penalties, or are being contested in good faith by appropriate proceedings (to the extent permitted by this Agreement) and the Borrower has filed all tax returns which it is required to file.

(p) **Place of Business.** Borrower’s chief executive office is located at the address disclosed by Borrower and on file with the Bank.

(q) **No Misstatements or Misrepresentations.** To Borrower's knowledge, no information, exhibit, or report prepared by or at the direction or with the supervision of Borrower and furnished to Bank in connection with the negotiation and preparation of this Agreement or any other Loan Documents contain any material misstatements of fact or omits to state a material fact necessary to make the statements contained therein not misleading in any material respect as of the date made or deemed made. To Borrower's knowledge, there is no fact which Borrower has failed to disclose to Bank in writing which materially affects adversely or, so far as Borrower can now foresee, will materially affect adversely the business, prospects, profits, or condition (financial or otherwise) of Borrower or the ability of Borrower to perform this Agreement.
(r) **No Event of Default.** To Borrower’s knowledge, as of the date hereof, no event has occurred and no condition exists which would, upon the execution and delivery of this Agreement or Borrower’s performance hereunder, constitute an Event of Default.

(s) **Other Representations.** To Borrower’s knowledge, all representations made by the Co-Managing Member in the Operating Agreement are true and correct in all material respects.

(t) **Specially Designated Nationals.** Neither the Borrower nor any of its respective officers, managers or principal employees is on the list of Specially Designated Nationals and Blocked Persons issued by the Office of Foreign Assets Control of the U.S. Department of Treasury.

(u) **Permanent Mortgage Loan Commitment.** The Permanent Mortgage Loan Commitment and the Forward Commitment are each in full force and effect and no event has occurred, which with notice, passage of time or both, would allow or permit the Permanent Lender not to make the Permanent Mortgage Loan under the terms of the Permanent Mortgage Loan Commitment.

(v) **TIF Agreement.** The TIF Agreement is in full force and effect and no event has occurred, which with notice, passage of time or both, would allow or permit the TIF not to make a payment expected under the terms of the TIF Agreement.

(w) **Permanent Supportive Housing Agreement.** The Permanent Supportive Housing Agreement is in full force and effect and no breach has occurred thereunder.

(x) **Anti-Corruption Laws and Sanctions.** The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its subsidiaries, and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any subsidiary or to the knowledge of the Borrower or such subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No borrowing of the Construction Loan or use of proceeds, or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.
IV – AFFIRMATIVE COVENANTS

4.1 Coveneants of Borrower. In addition to the covenants and agreements of Borrower made elsewhere in this Agreement, unless Bank shall otherwise consent in writing, Borrower covenants and agrees with Bank as follows:

(a) Approved Leases: Borrower shall lease tenant space in the improvements only pursuant to Approved Leases. An "Approved Lease" is a tenant lease of space in the Improvements (i) that is substantially on the standard form submitted to Bank prior to the Closing Date and which has been approved by Bank, (ii) complies with all requirements of the Subordinate Loan Documents, and (iii) which is on terms and to a tenant who satisfies the requirements (1) if an Affordable Unit, of the Internal Revenue Code and the QAP for preserving the Low-Income Housing Tax Credit, (2) of the HAP Commitment and the HAP Contract (once it is executed and to the extent applicable), (3) of the terms and conditions of the Act, FWHFC, the City, the TIF, and as otherwise required in the Subordinate Loan Documents and by Requirements of Law (to the extent applicable), (4) of the Operating Agreement, (5) of the Permanent Lender for satisfying minimum occupancy requirements (which include that the lease agreement be with a bona fide tenant and be for an initial term of at least six months), and comply with all terms and requirements of the Guide and the Guidelines (or other rules and regulations of Freddie Mac) relative to achieving Lease Stabilization, and otherwise, as required by the Permanent Mortgage Loan Commitment, and (6) of all other applicable Requirements of Law. Further, if the applicable tenant is to receive Title IX Housing Protection for the associated lease to be an Approved Lease, the Borrower shall have provided to that tenant a copy of the HUD disclosure form. Borrower shall not, without the consent and approval of Bank, which consent shall not be unreasonably withheld, delayed or conditioned, make any material change to its standard form of lease, or amend, or terminate any Approved Lease, other than in the ordinary course of business (including, based on its rights, as a result of an event of default by lessee thereunder). Further, if the lease is a commercial lease, for that lease to be an Approved Lease, Bank shall have received a subordination, non-disturbance, and attornment agreement executed by the tenant and Borrower, and on a form satisfactory to Bank. Borrower may lease a portion of the Premises to providers of cable, laundry services, telephone, internet, security and electronic data transmission with prior written approval of Bank, which such consent shall not be unreasonably withheld, conditioned or delayed.

(b) Progress of Work; Lien Free Completion: All Governmental Permits and other approvals necessary to commence the work on the Premises, including, without limitation, all requisite approvals to commence the work on the Premises of the Credit Agency, the TIF, the City, and the FWHFC will be obtained by Borrower prior to the commencement of the construction and development of the Improvements and the City Infrastructure Improvements. Borrower shall commence construction on or before the Commencement
Deadline and then continually prosecute the work (subject to Excusable Delays and the terms of this Agreement) in a commercially reasonable (based on standards in that general geographic area) manner and guarantees and commits that it will Substantially Complete the construction and development of the Improvements on or before the Bank's Required Completion Date, all in substantial conformity in all material respects with the approved Plans and the Budget and in compliance with all Requirements of Law. Without limiting the foregoing, the Improvements shall contain each unit amenity, design item, and standard of construction listed in Borrower’s approved low income housing tax credit application unless approved in advance by Bank and the Credit Agency. Notwithstanding anything herein to the contrary, no advance shall be made under the Construction Loan after the Closing Date until Bank has received and approved evidence that all such building and other requisite permits and governmental approvals have been issued or will be issued in a timely manner. Borrower shall not permit cessation of work on the Premises for a period in excess of 30 consecutive Business Days, without Bank's written consent, provided that in no event shall there be a cessation of work on the Premises for an aggregate period in excess of 45 Business Days (whether or not consecutive), without Bank's prior written consent unless the cessation is a result of Excusable Delays. Borrower shall, within 30 days after Borrower obtains knowledge thereof, correct any material defect in the Improvements and the City Infrastructure Improvements, any material departure from the Plans, Requirements of Law, or good construction practices for Fort Worth, Texas, and any encroachment by the Improvements on any property line, set-back line, easement or other restricted area. Borrower shall keep the Premises free at all times from all liens for services, labor, materials, or indebtedness (other than the liens securing the Loan, other liens and encumbrances permitted under the terms of the Mortgage, including, without limitation, the Permitted Encumbrances, and liens with respect to which Borrower, Contractor, or a subcontractor has furnished and perfected a Bond issued by a company satisfactory to Bank and on a form and in an amount reasonably satisfactory to Bank, or the other liens and encumbrances permitted by Sections 5.1(d) and (f) hereof or existing contests permitted pursuant to Section 4.1(z) hereof). Any water wells encountered in the development of the Premises shall be plugged in accordance with all applicable Requirements of Law. Prior to the Bank's Required Completion Date, the Premises will be Substantially Completed and in any event fully equipped and ready for use for their intended purposes. Borrower shall cause the Improvements to be “placed in service” within the time required by, and as defined in, all requirements of applicable law for maintaining the Low Income Housing Tax Credit. Within 90 days after the Closing Date, the planned new sanitary sewer line shall have been completed, and, promptly thereafter, but, in no event more than 45 days following completion of the new sanitary sewer line, the existing sanitary sewer line (over tracts 2 and 3 of the Land) and sanitary sewer, drainage, distribution and utility easements over tracts 1, 2 and 3 of the Land, as applicable, then in effect as of the Closing Date, shall have been duly abandoned by the filing of the final plat in the plat records or recording of such
other instruments to effect such abandonment such that the Improvements shall not encroach thereon.

(c) Building Permits: Within 90 days after the Closing Date, all building and other permits necessary to commence vertical construction of the Improvements shall have been issued.

(d) Plans, Contracts and Budget Approval; Assignment of Contracts: Borrower shall submit all contracts for construction and other services to the Premises, the Plans, the Budget, surveys of the Land, and all other items required by the Loan Documents to Bank for approval, and Bank shall have no obligation to make any disbursement hereunder after the Closing Date until it has approved those items, which approval shall not be unreasonably withheld, delayed or conditioned. Borrower agrees that the approved Construction Contract will not be terminated and that it and the Plans and Budget will not be modified or otherwise changed in any material respects, in whole or in part, without the prior written consent of Bank, which consent will not be unreasonably withheld, conditioned, or delayed; provided, however, subject to the other terms of this Agreement, and the terms of the Operating Agreement, Borrower may make changes to the Plans and/or reallocate Loan funds from one Budget line item to another without Bank’s consent as long as the amount of any single change order does not exceed $100,000.00, and the aggregate amount of all such change orders does not exceed $250,000.00; provided that a reallocation from the contingency line item may not be in excess of the percentage of completion of the Improvements at the time of the reallocation without Bank’s prior written consent. Borrower further agrees to perform all of its obligations under the approved Construction Contract in a timely manner. Notwithstanding the foregoing, all change orders shall be properly documented in a manner satisfactory to Bank on the related G702 and G703 draw requisitions.

(e) Insurance Requirements: In addition to the requirements of the Subordinate Loan Documents, Borrower, at its expense, shall maintain (or cause to be maintained) and deliver to the Bank, policies of insurance providing the following:

   (i) Borrower and Contractor will each maintain Commercial General Liability Insurance, naming Bank as "Additional Insured", with limits of not less than $1,000,000.00 per occurrence combined single limit and $2,000,000 in the aggregate for the policy period, or in whatever higher amounts as may be required by Bank from time to time by notice to Borrower, and in each case, extended to cover: (a) Contractual Liability assumed by Borrower with defense provided in addition to policy limits for indemnities of the named (or additional named, as the case may be) insured, (b) if any of the work is subcontracted, Independent Contractors Liability providing coverage in connection with such portion of the work which may be subcontracted, (c) Broad Form Property Damage Liability,
(d) Products & Completed Operations for coverage, such coverage to apply for two (2) years following completion of construction, (e) waiver of subrogation against all parties named additional insured, (f) severability of interest provision, and (g) Personal Injury & Advertisers Liability.

(ii) Contractor will maintain Automobile Liability including coverage on owned, hired, and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with Bodily Injury and Property Damage limits of not less than $1,000,000.00 per occurrence combined single limit, with a waiver of subrogation against all parties named as additional insured.

(iii) Windstorm insurance (if and to the extent required by Bank) in the amount of the insurable value replacement cost of the Improvements and the City Infrastructure Improvements.

(iv) Borrower and Contractor will each maintain Umbrella/Excess Liability in excess of Commercial General Liability, Automobile Liability (contractor only), Independent Contractors Liability, Property Damage Liability, Products and Completed Operations Liability, Personal Injury and Advertisers Liability, and Employers’ Liability coverages which is at least as broad as these underlying policies with a limit of liability of $10,000,000.00 (and shall include a waiver of subrogation against all named additional insureds and a severability of interest provision).

(v) Borrower will maintain (or cause to be maintained) All-Risk Property (Special Cause of Loss) Insurance on the Improvements in an amount not less than the full insurable value on a replacement cost basis of the insured Improvements and personal property related thereto. During the construction period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" with no coinsurance requirement and shall contain a provision granting the insured permission to occupy prior to completion. Such policy shall not contain an exclusion for terrorism losses. However, if such an exclusion exists in the All-Risk policy, a separate Terrorism policy covering Certified Acts of Terrorism must be evidenced to the Bank in an amount equal to the full replacement cost of the Improvements and the City Infrastructure Improvements. This policy must also list the Bank as mortgagee and loss payee.

(vi) Contractor will maintain Workers' Compensation and Employer's Liability Insurance in accordance with the applicable laws of the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. The policy limit under the Employer's Liability
Insurance section shall not be less than $1,000,000.00 for any one accident.

(vii) Borrower shall maintain (or cause to be maintained) Business Interruption/Loss of Rents Insurance, once construction is completed, for Borrower insuring at least twelve (12) months gross revenue.

(viii) If the buildings located on the Land, or any part thereof, lies within a "special flood hazard area" as designated on maps prepared by the Department of Housing and Urban Development, Borrower shall maintain a National Flood Insurance Association standard flood insurance policy (and Borrower shall provide Bank a copy of such policy), plus insurance from a private insurance carrier if necessary, for the duration of the Construction Loan in the amount at least equal to the face amount of the Construction Note (as then outstanding), or the full insurable value of the Improvements and the City Infrastructure Improvements (in such event, Borrower shall provide Bank with a copy of such policy).

(ix) Such other insurance as Bank may require, which may include, without limitation, errors and omissions insurance with respect to the contractors, architects and engineers, earthquake insurance, rent abatement and/or business loss.

(x) With respect to the City Infrastructure Improvements, all insurance as required by the City in the CFA, and as otherwise required by Bank.

All insurance policies shall (i) be issued by an insurance company licensed to do business in the state where the property is located having a rating of "A-" VIII or better by A.M. Best Co., in Best's Rating Guide or if an AM Best ratings unavailable, then an S&P rating of at least AA, (ii) name "JPMorgan Chase Bank, N.A., any and all subsidiaries as their interest may appear" as additional insureds on all liability insurance and as mortgagee and loss payee on all All-Risk Property insurance, with a loss payable clause naming Bank as loss payee (or a lender's payable clause), (iii) be endorsed to show that Borrower's insurance shall be primary and all insurance carried by Bank is strictly excess and secondary and shall not contribute with Borrower's insurance, (iv) provide that Bank is to receive thirty (30) days written notice prior to non-renewal or cancellation, (v) be evidenced by a certificate of insurance to be provided to Bank along with a copy of the policy for the All Risk Property coverage, (vi) include either policy or binder numbers on the Accord form, and (vii) be in form and amounts acceptable to Bank. Without limiting the foregoing, the policy shall include the following endorsements: (A) non-contributing mortgagee clause naming Bank as Mortgagee, (B) loss payable clause naming Bank as loss payee (or a Bank's payable clause), and (C) ordinance or change in law endorsement
(demolition, contingent liability, and increased cost of construction) equal to 10% of property insurance limit.

(f) **Title Instruments**: Borrower shall submit all proposed easements, permits, licenses, and other instruments which would or may affect title to the Premises to Bank for approval prior to the execution thereof by Borrower (such approval not to be unreasonably withheld, conditioned, or delayed).

(g) **Use of Proceeds**: The proceeds of the Construction Loan and funds from the Capital Contribution Account disbursed by Bank to Borrower in accordance with this Agreement shall be used only for the purposes set forth in Section 2.3 and as provided in the Budget.

(h) **Additional Equity**: If the sum of (i) the undisbursed portion of the proceeds of the Capital Contributions intended to be used to pay budgeted construction items and to pay the Construction Note, plus (ii) the undisbursed portion of the Subordinate Loans and amounts to be reimbursed to Borrower under the TIF Agreement to pay budgeted construction items and the Construction Note, plus (iii) the undisbursed portion of the Construction Loan to be used for the acquisition (or refinancing of the acquisition, as the case may be) and development of the Improvements and the City Infrastructure Improvements, plus (iv) any sums then on deposit with Bank and pursuant to this subsection, plus (v) any other funds available to and not then used by Borrower for the development of the Premises (which shall include any portion of the TIF funds owed to Borrower under the TIF Agreement that has not then been already reimbursed to and used by Borrower, any portion of the City's $134,355.00 budgeted upsizing reimbursement owed to Borrower that has not then been already reimbursed to and used by Borrower, and otherwise in a manner satisfactory to Bank), plus (vi) NOI actually available to pay Operating Expenses as provided in this Agreement, are at any time insufficient, in Bank's reasonable judgment, to fully complete the development of the Improvements and the City Infrastructure Improvements in substantial accordance with the Plans and development of the Improvements and the City Infrastructure Improvements (but excluding the payment of budgeted developer fees in determining Borrower's cash needs for the development of the Improvements and the City Infrastructure Improvements) and to pay all interest under the Construction Note when due, Borrower shall within ten (10) Business Days after written notice thereof from Bank (including a calculation of the deficiency, which, absent manifest error, shall be deemed correct), deposit with Bank such sums of money in cash as Bank may reasonably require to remedy such condition and to pay any liens for services and materials due and payable at that time (unless same is being contested in accordance with Section 4.1(z) below). At Bank's option, no further disbursements from deposits of the Capital Contribution Account and/or deposits (if any) of the Subordinate Loans to be used to pay budgeted construction items and advances of the Loan shall be made unless and until Borrower has fully complied with the terms of this Section (and all amounts deposited pursuant to
this Section will be used first to fund requests for disbursements). All deposited sums under this subsection (g) shall stand as additional security for Borrower's obligations under this Agreement and may be disbursed, at Bank's option, before any further disbursements from the Capital Contribution Account and/or deposits (if any) of the Subordinate Loans and any further advances of the Construction Loan. Any deposited funds under the terms of this subsection (g) subsequently determined by the Bank, in its sole and reasonable discretion, to not be needed for the development of the Improvements and the City Infrastructure Improvements in accordance with the Plans and to pay interest under the Construction Note when due (and to pay any principal on the Construction Note to achieve Lease Stabilization and to otherwise satisfy the terms of the Permanent Mortgage Loan Commitment) shall be promptly refunded to Borrower, provided no Event of Default is then continuing. Upon the full and final payment of the Construction Note, Borrower shall be entitled to withdraw all amounts in such account without restriction.

(i) Environmental Inspections; Inspection of Improvements and the City Infrastructure Improvements: (i) Subject to the rights of tenants of apartment units in the Premises under Approved Leases, Borrower agrees to permit Bank, its agents, contractors, and employees to enter and inspect the Premises at any reasonable time during normal business hours, with reasonable cause (except as hereafter provided, at Bank's own cost unless an Event of Default has occurred and is continuing, in such event, at Borrower's cost), upon three (3) Business Days prior written notice (provided that no such notice will be required during the continuance of a Default or Event of Default) for the purposes of conducting an environmental investigation and audit (including taking physical samples) to ensure that Borrower is complying with the representations made in Section 3.1(c) hereof. Borrower shall provide Bank, its agents, contractors, employees, and representatives with access to and copies of any and all data and documents in its possession or control relating to or dealing with any Hazardous Materials used, generated, manufactured, stored, or disposed on the Premises within five (5) Business Days of the written request therefor. Additionally, Borrower shall permit Bank and its representatives to enter upon the Premises at reasonable times during normal business hours and with at least three (3) Business Days prior notice (provided that no such notice will be required during the continuance of a Default or Event of Default) and to inspect the Improvements and the City Infrastructure Improvements and all materials used in the construction thereof. Bank (or its construction consultant) shall have the right to reject and require Borrower to replace any material or work which does not substantially comply in any material respect with the Plans or good construction practices in Fort Worth, Texas. It is understood and agreed that Bank's rights under this Section 4.1(h) are solely for Bank's loan administration purposes and do not impose any duty of care of Bank to Borrower or to any other Person. Bank shall have no liability, obligation, or responsibility whatsoever with respect to the construction or development of the Improvements and the City Infrastructure Improvements, except as otherwise expressly
provided in the Loan Documents, including, without limitation, to approve and make (a) advances under the Construction Note pursuant to this Agreement, (b) disbursements of the Capital Contributions (to the extent the Capital Contributions deposited in the Capital Contribution Account), (c) disbursements of any deposits of the Subordinate Loans, (d) disbursements of amounts deposited pursuant to Section 4.1(g) and (d) to otherwise comply with Bank's obligations as set forth in the Loan Documents. Bank shall not be obligated to cause to be performed any environmental audit or investigation or inspect the Premises or the construction of the Improvements and the City Infrastructure Improvements. Bank shall not be liable for any defect in the Premises by reason of inspecting or not inspecting the same. Without limiting any of the foregoing, it is specifically agreed and acknowledged that Bank, at its option, may engage an independent construction consultant as set forth in Section 6.7 (at Borrower's sole and reasonable cost and expense as provided in Section 6.7) to periodically inspect the Improvements and the City Infrastructure Improvements, as a condition to any requested consent and authorization to the disbursement funds from the Capital Contribution Account or any advance under the Construction Note to pay budgeted items, to in each case confirm, among other things, the accuracy of the materials provided in connection with that consent or request for an advance or disbursement and that all previously disbursed proceeds of the Construction Note, deposits of the Subordinate Loans, and the deposits of Capital Contributions in the Capital Contributions Account have been used in the construction of the Improvements and the City Infrastructure Improvements in the manner represented to Bank. Bank shall not be liable for the performance or default of Borrower, any architect, engineer, contractor, construction consultant or any other party, nor for any failure to construct, complete, protect or insure the Improvements and the City Infrastructure Improvements, nor for the payment of the costs of labor, materials or services supplied for the construction of the Improvements and the City Infrastructure Improvements, nor for the performance of any obligation of Borrower, except for any portion of such liability that arises solely and exclusively due to the gross negligence or willful misconduct of Bank, or any Bank's agents, contractors, employees, representatives or invitees.

(ii) Borrower shall provide Bank, its agents, contractors, employees, and representatives with access to and copies of any and all data and documents relating to or dealing with any Hazardous Materials used, generated, manufactured, stored, or disposed on the Premises, and any other environmental documents produced or otherwise delivered to Borrower during the term of the Construction Loan with respect to Hazardous Materials located on or about the Premises (including, without limitation, asbestos close out reports, final construction monitoring report, Remedial Action Plans, Health and Safety Plans, Remedial Action Completion Reports, Approvals for Remedial Action Plans, Approvals for Health and Safety Plans, Approvals for Remedial Action Completion Reports, Lead Based Paint Sampling Reports, and Lead Based Paint Abatement Close Out Reports). Any request for disbursement
made pursuant to Section 6.3 for reimbursement for any such environmental documents shall be subject to Bank's review and acceptance of those reports.

(j) **Notice of Environmental Claims and Actions:** Without limiting the foregoing, Borrower shall advise Bank in writing, promptly after Borrower obtains actual knowledge thereof, of (i) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state, or local laws, ordinances or regulations relating to any Hazardous Materials affecting the Premises or the use of the Premises and (ii) all claims made or threatened by any third party against Borrower relating to damages, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials. Borrower shall at all times comply with any and all applicable environmental laws and shall deliver to Bank any and all environmental reports prepared during the term of this Agreement, which may, to the extent applicable, include, but not be limited to, asbestos close out reports, the final construction monitoring report, remedial action plans, health and safety plans, remedial action completion reports, approvals for remedial action plans, approvals for health and safety plans, approvals for remedial action completion reports, lead based paint sampling reports, and lead based paint abatement close out reports (together with any environmental reports and requirements received by the Borrower and delivered to the Bank prior to the date hereof, each an "Environmental Report"). Without limiting the foregoing, as soon as available, Borrower shall provide Bank with all asbestos close-out reports and the final construction monitoring report.

(k) **Financial Statements and Other Information:** Borrower shall maintain a system of accounting reasonably satisfactory to Bank and in accordance with Borrower's historical accounting practices applied on a consistent basis throughout the period involved, and permit, Bank's officers or authorized representatives to visit and inspect Borrower's books of account and other records at such reasonable times and as often as Bank may desire upon at least two (2) Business Days' prior written notice to Borrower (provided that during the continuance of any Event of Default, no such prior notice shall be required and the reasonable cost of the inspections shall be paid by Borrower and nothing herein shall limit Borrower's obligations to reimburse Bank for the reasonable fees of Bank's construction consultant as provided for in Section 6.7). Unless written notice of another location is given to Bank, Borrower's books and records will be located at Borrower's chief executive office set forth above or at the Premises or in the property manager's office for the Premises.

(l) **Retainage:** Borrower shall withhold Retainage as required herein in the definition of Retainage and by all Requirements of Law in connection with the development of the Improvements and the City Infrastructure Improvements (except as otherwise may be provided for in Section 6.6).
(m) **Existence and Compliance**: Borrower shall maintain its existence and qualification to do business, where required, and comply with all Requirements of Law, including, without limitation, environmental laws applicable to it or to any of its property, business operations and transactions. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. Borrower shall at all times operate the Premises in a manner which preserves the Low-Income Housing Tax Credit including, without limitation, the Premises shall be placed in service (as such term is used by the Credit Agency in connection with the Low Income Housing Tax Credit by the date required by the Credit Agency, and is otherwise in accordance with the requirements of the Permanent Loan Commitment, the Forward Commitment, the Guidelines, HUD, and the Operating Agreement). The Borrower will cause all of the residential units in the Premises to be rented or available for rental on a basis that satisfies the requirements, if any, of the LURA, the Permanent Supportive Housing Agreement, the Subordinate Loan Documents, the HAP Commitment, and the HAP Contract (once issued). Borrower shall (and cause the Co-Managing Member to) comply in all material respects with all terms and provisions of the Operating Agreement. The other members of Borrower have authorized the Co-Managing Member of Borrower to enter into this Agreement and the other Loan Documents for and on behalf of Borrower.

(n) **Taxes and Other Obligations**: Borrower shall pay or contest in accordance with the terms of this Agreement all of its current tax and assessment obligations with respect to the Premises, if any, before they become delinquent, including all federal, state and local taxes and all other payments required under federal, state, or local law. Without limitation of the foregoing, Borrower will cause to be paid prior to delinquency all taxes and assessments heretofore or hereafter levied or assessed against the Premises, or any part thereof, and will furnish to Bank, on or before March 31st of each year after the Closing Date, receipts showing payment of such taxes and assessments with respect to the preceding calendar year, to the extent the same are due and payable on such date, provided that Borrower may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment, and pending such contest Borrower shall not be deemed in default hereunder if (i) Borrower shall diligently prosecute such contest in a manner not prejudicial to the rights, liens and security interests of Bank; (ii) prior to delinquency of the asserted tax or assessment and to the extent Borrower has not paid such disputed tax or assessment to the relevant taxing authority pending resolution of such contest, Borrower establishes with Bank, or as otherwise required by the taxing authority, an escrow reasonably acceptable to Bank adequate to cover the payment of such tax or assessment with interest, costs and penalties and a reasonable additional sum to cover possible costs, interest and penalties (which escrow shall be used to pay, or shall be returned to Borrower upon payment of all such taxes, assessments, interest, costs and
penalties or disbursed in accordance with the resolution of the contest to the claimant) or furnishes Bank with an indemnity secured by a deposit in cash or other security reasonably acceptable to Bank, or an indemnity bond with a surety reasonably acceptable to Bank, in the amount of the tax or assessment being contested by Borrower plus a reasonable additional sum to pay all costs, interests and penalties which may be imposed or incurred in connection therewith; (iii) Borrower pays to Bank promptly after demand therefor all reasonable costs and expenses incurred by Bank in connection with such contest; and (iv) Borrower promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final and non-appealable; provided, however, that in any event each such contest shall be concluded, and the tax, assessment, penalties, interest and costs shall be paid, prior to the date any writ or order is issued under which the Premises or any part thereof may be sold. To the extent there is conflict between this Section and the provisions of any of the other Loan Documents, this Section shall control.

(o) **Maintenance:** Borrower shall maintain all of its material tangible property in good condition and repair (subject to ordinary wear and tear) and make all replacements thereof as necessary to operate the Improvements for the purposes stated in the Loan Documents, and preserve and maintain all licenses, trademarks, privileges, permits, franchises, certificates and the like necessary for the operation of its business. Notwithstanding the foregoing, Borrower shall not be obligated to preserve, repair or replace any item of tangible property which has become obsolete and which will as necessary be replaced.

(p) **Financial Reporting:** Borrower shall promptly furnish to Bank such information regarding the business affairs, financial condition, assets, liabilities, operations, and transactions of Borrower as Bank may reasonably request, and, without limiting the foregoing, furnish (or cause to be furnished) to Bank the following:

(i) Within 30 days from the end of each calendar month (beginning with the first month after the first calendar month ending after leasing of the Premises has commenced) (including the last calendar month of each calendar year), a monthly report including, (A) a detailed statement of actual and budgeted income and expense for the month (on either a cash or accrual basis) and for the year to date, and (B) a rent roll identifying unit number, unit type, whether occupied or vacant as of that calendar month end and, if occupied, tenants by name, rent, lease start and end dates and concessions;

(ii) As soon as available, and in any event within 120 days from the end of each fiscal year of Borrower (beginning with the fiscal year ending December 31, 2019), an audited financial
statement of Borrower prepared by an independent, third party accounting firm reasonably acceptable to Bank, showing the financial condition of Borrower at the close of the most recently completed fiscal year and the results of operations during such fiscal year, which financial statements shall include a balance sheet, statement of operations, and statement of cash flows (sources and uses) and evidence of compliance by Borrower and the Premises with all requirements for maintaining the Low Income Tax Credit allocated to the Premises;

(iii) As soon as available, and in any event within 120 days from the end of each fiscal year of each Entity Guarantor (dated as of the end of that fiscal year, beginning with the fiscal year ending December 31, 2018), a company prepared financial statement for each Entity Guarantor, prepared on a form and in a manner reasonably acceptable to Bank, showing the financial condition of that Entity Guarantor at the close of the most recently completed fiscal year and the results of operations during such fiscal year, which financial statements shall include a balance sheet and a statement of operations, and such other matters required by Bank, including, without limitation, if requested by Bank in writing, consolidating and consolidated schedules;

(iv) As soon as available and in any event within 120 days from the end of each fiscal year of Maker Bros LLC (beginning with the fiscal year ending December 31, 2018), as long as the Improvements have not yet achieved Substantial Completion, a reviewed financial statement of the Maker Bros LLC, prepared on a form and in a manner satisfactory to Bank, showing the financial condition of the Maker Bros LLC at the close of the most recently completed fiscal year and the results of operations during such fiscal year, which financial statements shall include a balance sheet and income statement and such other matters required by Bank, including, without limitation, if requested by Bank in writing, consolidating and consolidated schedules;

(v) Within 120 days from the end of each calendar year (beginning with the calendar year ending December 31, 2018), a personal financial statement for each Individual Guarantor prepared on a form and in a manner acceptable to Bank, which shall include without limitation, a balance sheet and such other items reasonably required by Bank; and

(vi) If requested by Bank, within thirty (30) days after the filing thereof (but not later than 120 days after the end of each calendar year, beginning with the calendar year ending on
December 31, 2018), copies of Borrower's and each Guarantor's respective filed federal income tax returns for the most recently completed calendar year (and all K-1's used for preparation, as applicable) and all requests for extensions to the filing thereof.

(q) **Further Assurances:** Upon written notice from Bank, Borrower shall promptly cure any defects in the execution and delivery of the Loan Documents and promptly execute and deliver to Bank all such other and further instruments consistent with this Agreement as may be reasonably required by Bank from time to time in order to satisfy or comply with the covenants and agreements of Borrower made in this Agreement; provided, however, except to cure a scrivener's error, as such instruments shall change the economic terms of the transactions as contemplated by the Construction Commitment or expand the liability or reduce the rights of the parties hereunder.

(r) **Delivery of Information:** Subject to the effect of any confidentiality obligations of Borrower under applicable Requirements of Law, Bank is authorized by Borrower to deliver copies of all information and materials provided to Bank pursuant to the terms of this Agreement and the other Loan Documents to the Credit Agency and its respective representatives. Additionally, Borrower shall provide Bank with all additional and supplemental information regarding Borrower, Guarantors, Freddie Mac, the Permanent Lender, the TIF, FWHFC, the City, and the Premises as is reasonably required by Bank (or as may be required by HUD or the Credit Agency). Additionally, Borrower shall provide Bank with all additional and supplemental information regarding Borrower, Guarantors, Freddie Mac, the Permanent Lender, and the Premises as is reasonably required by Bank (or as may be required by the Credit Agency). Additionally, Borrower shall provide Bank with all additional and supplemental information regarding Borrower, Guarantor, and the Premises as is reasonably required by Bank (or as may be required by Freddie Mac, the Permanent Lender, the TIF, FWHFC, the City or the Credit Agency). The Co-Managing Member shall provide Bank with copies of all notices provided to and received by the Co-Managing Member to and from the Investor Member under the terms of the Operating Agreement, or any agreement, instrument, or document issued pursuant thereto.

(s) **Additional Notices:** Borrower shall, in addition to, and without in any way limiting, the other requirements in this Agreement to provide certain notices to Bank, deliver to Bank, promptly upon any officer or manager or managing member of the Co-Managing Member having actual knowledge of the occurrence of any of the following events or circumstances, a written statement with respect thereto, signed by an authorized representative of Borrower, advising Bank of the occurrence of such event or circumstance and the steps, if any, being taken by Borrower with respect thereto:

(i) any Default known to Borrower or any Event of Default;
(ii) copies of any written notice of default or non-compliance provided by the Permanent Lender with respect to the Permanent Mortgage Loan Commitment and copies of any written notice of default or non-compliance provided by the Credit Agency with respect to the Low Income Housing Tax Credit;

(iii) copies of written notice of default or non-compliance received by Borrower with respect to any Subordinate Loan and/or the TIF Agreement;

(iv) any litigation or proceeding or contingent liability in which the amount involved is $75,000.00 or more, which is not covered by insurance, and which involves Borrower as a defendant or any other property of Borrower; and

(v) any other event or occasion which could reasonably be expected to cause a Material Adverse Change.

Notwithstanding the foregoing, if an Event of Default or any event, act or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default is cured within the applicable cure periods, then any unintentional failure to provide the notice that such event has occurred shall also be deemed cured.

(t) INDEMNIFICATION: BORROWER SHALL AND DOES HEREBY INDEMNIFY AND HOLD HARMLESS BANK, THE DIRECTORS, TRUSTEES, SUBSTITUTE TRUSTEES, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, HEIRS, REPRESENTATIVES, ATTORNEYS, SUCCESSORS AND ASSIGNS OF BANK, AND ANY PERSONS OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH BANK (INDIVIDUALLY REFERRED TO AS AN "INDEMNIFIED PERSON", AND COLLECTIVELY "INDEMNIFIED PERSONS"), FROM AND AGAINST, AND REIMBURSE THEM ON DEMAND FOR, ANY AND ALL INDEMNIFIED MATTERS (DEFINED BELOW). HOWEVER, SUCH INDEMNITIES AND THOSE SET FORTH BELOW SHALL NOT APPLY TO ANY INDEMNIFIED PERSON TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS SOLELY AND EXCLUSIVELY CAUSED BY OR ARISES OUT OF THE MATERIAL BREACH OF OR DEFAULT BY AN INDEMNIFIED PERSON OF ANY OF THE TERMS AND PROVISIONS OF THE LOAN DOCUMENTS, THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PERSON. ANY AMOUNT TO BE PAID UNDER THIS SECTION BY BORROWER TO AN INDEMNIFIED PERSON SHALL BE A DEMAND OBLIGATION OWING BY BORROWER, WHICH IF TO BE PAID TO BANK BY BORROWER HEREBY PROMISES TO PAY TO BANK, AS PART OF THE OBLIGATIONS, EVEN IF IN EXCESS OF THE LOAN AMOUNT, AND SECURED BY THE LOAN DOCUMENTS. NOTHING IN THIS SECTION, ELSEWHERE IN THIS AGREEMENT, OR IN ANY OTHER LOAN DOCUMENT
SHALL LIMIT OR IMPAIR ANY RIGHTS OR REMEDIES OF BANK, OR ANY OTHER INDEMNIFIED PERSON, INCLUDING WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION OR INDEMNIFICATION, AGAINST BORROWER OR ANY OTHER PERSON UNDER ANY OTHER PROVISION OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, ANY OTHER AGREEMENT, OR ANY APPLICABLE REQUIREMENT OF LAW. AS USED HEREIN, THE TERM "INDEMNIFIED MATTERS" MEANS ANY AND ALL CLAIMS, DEMANDS, LIABILITIES (EXCLUDING STRICT LIABILITY), DAMAGES (EXCLUDING CONSEQUENTIAL DAMAGES), CAUSES OF ACTION, JUDGMENTS, PENALTIES, FINES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS AND OTHER PROFESSIONAL CONSULTANTS AND EXPERTS, AND OF THE INVESTIGATION AND DEFENSE OF ANY CLAIM, WHETHER OR NOT SUCH CLAIM IS ULTIMATELY DEFEATED, AND THE SETTLEMENT OF ANY CLAIM OR JUDGMENT INCLUDING ALL VALUE PAID OR GIVEN IN SETTLEMENT) OF EVERY KIND, KNOWN OR UNKNOWN, FORESEEABLE OR UNFORESEEABLE, WHICH MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR PAID BY BANK OR ANY INDEMNIFIED PERSON AT ANY TIME AND FROM TIME TO TIME ON OR BEFORE THE RELEASE DATE (DEFINED BELOW), WHENEVER IMPOSED, ASSERTED, OR INCURRED, BECAUSE OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING OUT OF ANY TRANSACTION, ACT, OMISSION, EVENT, OR CIRCUMSTANCE IN ANY WAY CONNECTED WITH THE PREMISES, THE IMPROVEMENTS AND THE CITY INFRASTRUCTURE IMPROVEMENTS OR THE LAND OR WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, INCLUDING DISBURSEMENT OF THE LOAN PROCEEDS (AND ANY TAX CONSEQUENCE RESULTING THEREFROM), THE CONDITION OF THE LAND AND THE IMPROVEMENTS AND THE CITY INFRASTRUCTURE IMPROVEMENTS, ANY BODILY INJURY OR DEATH OR PROPERTY DAMAGE OCCURRING IN OR UPON THE LAND OR THE IMPROVEMENTS AND THE CITY INFRASTRUCTURE IMPROVEMENTS THROUGH ANY CAUSE WHATSOEVER AT ANY TIME ON OR BEFORE THE RELEASE DATE (DEFINED BELOW) AND ANY CLAIM UNDER OR WITH RESPECT TO ANY LEASE (BUT EXCLUDING ANY LOSSES, DAMAGES, COSTS OR EXPENSES SUFFERED, INCURRED OR PAID BY BANK IN CONNECTION WITH FAILURE OF THE BORROWER OR ANY OTHER PERSON TO PAY OR PERFORM THE LOAN; PROVIDED THAT ANY LOSS, CLAIM, OR CAUSE OF ACTION RESULTING SOLELY AND EXCLUSIVELY FROM ANY INDEMNIFIED PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SHALL NOT BE AN INDEMNIFIED MATTER FOR PURPOSES HEREOF). THE TERM "RELEASE DATE" AS USED HEREIN MEANS THE EARLIER OF: (i) THE DATE ON WHICH THE OBLIGATIONS HAVE BEEN FULLY AND FINALLY PAID AND PERFORMED IN FULL, OR (ii) THE DATE ON WHICH THE LIEN CREATED UNDER THE CONSTRUCTION MORTGAGE IS FULLY AND FINALLY FORECLOSED OR A CONVEYANCE BY DEED IN LIEU OF SUCH FORECLOSURE IS FULLY AND FINALLY EFFECTIVE AND
POSSESSION OF THE PREMISES HAS BEEN GIVEN TO THE PURCHASER OR GRANTEE FREE OF OCCUPANCY AND CLAIMS TO OCCUPANCY BY BORROWER AND BORROWER’S HEIRS, DEVISEES, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS PROVIDED, THAT IF SUCH PAYMENT, PERFORMANCE, RELEASE, FORECLOSURE, OR CONVEYANCE IS CHALLENGED, IN BANKRUPTCY PROCEEDINGS OR OTHERWISE, THE RELEASE DATE SHALL BE DEEMED NOT TO HAVE OCCURRED UNTIL SUCH CHALLENGE IS REJECTED, DISMISSED, OR WITHDRAWN WITH PREJUDICE. THE INDEMNITIES IN THIS SECTION SHALL BE SOLELY FOR EVENTS OCCURRING PRIOR TO THE RELEASE DATE, SHALL NOT TERMINATE UPON THE RELEASE DATE OR UPON THE RELEASE, FORECLOSURE, OR OTHER TERMINATION OF ANY LOAN DOCUMENT, AND SHALL SURVIVE THE RELEASE DATE, FORECLOSURE OF THE CONSTRUCTION MORTGAGE OR CONVEYANCE IN LIEU OF FORECLOSURE, THE PAYMENT AND PERFORMANCE OF THE OBLIGATIONS, THE DISCHARGE AND RELEASE OF THE LOAN DOCUMENTS, ANY BANKRUPTCY OR OTHER DEBTOR RELIEF PROCEEDING, AND ANY OTHER EVENT WHATSOEVER. THE TERMS OF THIS SECTION ARE CUMULATIVE WITH, AND NOT LIMITED BY, THE TERMS AND PROVISIONS OF THE CONSTRUCTION MORTGAGE.

(u) **Appraisal:** Bank shall have the right to order one new Appraisal of the Premises after the Closing Date, unless any additional Appraisal is ordered during the continuation of an Event of Default or is required by applicable law, regulation or otherwise. Each Appraisal is subject to review and approval by Bank. Borrower agrees upon demand to reasonably pay to Bank the reasonable cost and expense for such Appraisals and a reasonable fee for Bank’s review of each Appraisal.

(v) **Operation:** The Borrower shall operate the Premises (or cause the Premises to be operated) in a good and workmanlike manner and in accordance with all applicable Requirements of Law and will pay all fees or charges in connection therewith. In particular, the Affordable Units will be operated as a "qualified residential rental project" within the meaning of Section 42(d) of the Internal Revenue Code with all or a portion of the units to be "rent-restricted" and set aside for "low income tenants" in accordance with Section 42(d)(1)(B) of the Internal Revenue Code in a manner which ensures receipt and maintenance by the Premises of a Low Income Housing Tax Credit pursuant to Section 42 of the Internal Revenue Code. Without limitation to the foregoing, Borrower shall fully comply with the terms and provisions of the Tax Credit Allocation, the Permanent Supportive Housing Agreement and the LURA and the rules and policies established by the Credit Agency in connection with the foregoing, the HAP Commitment, the HAP Contract (once executed), and the Permanent Mortgage Loan Commitment.
(w) Management Agreement. On or before the Closing Date, Bank shall have received and approved a fully executed copy of the management agreement for the Premises.

(x) Expenses of Bank. Without limiting the terms of this Agreement or any of the other Loan Documents, to the extent not prohibited by applicable law, except as otherwise provided in the Loan Documents, in addition to the expenses of Bank's construction consultant provided for in Section 6.7, Borrower will pay all reasonable costs and expenses and reimburse Bank for any and all reasonable expenditures of every character reasonably incurred or expended from time to time, regardless of whether a Default or Event of Default shall have occurred, in connection with (i) the preparation, negotiation, and filing of any and all Loan Documents, (ii) Bank's evaluating, monitoring, and administering the planned construction, development, and operation of the Improvements, and (iii) Bank's creating, perfecting or realizing upon Bank's security interest in and liens on the Premises and in the Improvements and the City Infrastructure Improvements, and all reasonable costs and expenses relating to Bank's exercising any of its rights and remedies under the Loan Documents or at law, including, without limitation, all filing fees, taxes (other than taxes levied on the income of Bank), reasonable brokerage fees and commissions (provided that the fees and commissions are those of Borrower's agent), title review and abstract fees, Uniform Commercial Code search fees, other reasonable fees and expenses incident to title searches, reports and security interests, escrow fees, reasonable attorneys' fees and legal expenses, court costs, reasonable fees and expenses incurred in connection with any complete or partial liquidation of such property, and all reasonable fees and expenses for any professional service relating to such property or any operations conducted in connection with it; provided, that no right or option granted by Borrower or Bank or otherwise arising pursuant to any provision of this Agreement or any other Loan Document shall be deemed to impose or admit a duty on Bank to supervise, monitor, or control any aspect of the character or condition of the Premises or any operations conducted in connection with it for the benefit of Borrower or any other person other than Bank. Borrower shall pay all reasonable costs and expenses of complying with this subsection and the Loan Documents, whether or not such costs and expenses are included in the Budget. Borrower's obligations under this subsection shall survive the foreclosure of the Mortgage or conveyance in lieu of foreclosure, any bankruptcy proceeding, and any other event whatsoever.

(y) Restrictive Agreements: If requested by Bank, Borrower shall provide Bank with a certification that the Premises is and will remain in ongoing compliance with the LURA and any other applicable restrictive covenants or regulatory agreement that enforces affordability restrictions, and shall thereafter annually provide Bank with a certification that the Premises is in ongoing compliance with the applicable restrictions.

(z) Stored Materials.
(i) Bank shall have the right to approve or disapprove specifically, in its sole and reasonable judgment, all disbursements for any materials to be used for the construction of the Improvements and the City Infrastructure Improvements and not to be immediately incorporated into and made a part of the Improvements and the City Infrastructure Improvements ("Stored Materials"). Without limiting Bank’s approval rights as set forth in the preceding sentence, Bank will not approve disbursements for Stored Materials until Borrower complies with the conditions set forth in subsection (ii) below.

(ii) In addition to the requirements of Sections 6.1, 6.2, and 6.3, as a condition precedent to Borrower’s request for a disbursement of Capital Contributions from the Capital Contribution Account (to the extent on deposit with Bank) or an advance of the Construction Note for Stored Materials (if and to the extent applicable), Borrower shall supply Bank, as requested by Bank (v) evidence reasonably satisfactory to Bank that the Stored Materials are included in the coverage of the insurance policies required by Section 4.1(d); (w) evidence reasonably satisfactory to Bank from the seller or fabricator of the Stored Materials that, upon payment, ownership thereof will vest in Borrower free of any liens or claims of third parties; (x) all Stored Materials are incorporated into the Improvements and the City Infrastructure Improvements as planned within one hundred eighty (180) days after the purchase of the particular Stored Materials, (y) the total amount aggregate value of Stored Materials purchased by or on behalf of Borrower at any one time stored offsite with respect to the Improvements and the City Infrastructure Improvements does not exceed $300,000.00; and (z)(A) evidence reasonably satisfactory to Bank that the Stored Materials are reasonably satisfactorily stored on the Land to protect against theft or damage (which shall include, without limitation, maintaining a security guard or an approved security system), or (B) if the Stored Materials are not stored on the Land, (1) evidence reasonably satisfactory to Bank that the Stored Materials are stored in a bonded warehouse or storage yard reasonably approved by Bank, and the warehouse or yard has been notified that Bank has a security interest in the subject Stored Materials, and (2) Bank shall have received from Borrower the original warehouse receipt. With Bank’s prior written approval, Stored Materials may be stored in the yard or warehouse of the seller or fabricator, subject to satisfaction of conditions (z)(B)(1) and (2) in this subsection (y)(ii), and provided further that Bank receives reasonably satisfactory evidence that the Stored Materials are protected against theft or damage, have been suitably identified as belonging to Borrower for use in the Premises, and that such seller or fabricator has been notified of the security interest of Bank therein.

(aa) Contest of Certain Claims. Notwithstanding the terms of the Construction Mortgage or any other Loan Document, Borrower may, to the extent
and in the manner permitted by applicable law, contest the payment of any claim for payment by a Contractor or subcontractor, or any tax, assessment, or other governmental charge against the Land. The failure of Borrower to pay such contested claim pending such contest shall not be or become a Default or Event of Default if (i) Borrower has notified Bank of Borrower's intent to contest such payment at least seven (7) days prior to commencing the contest; (ii) Borrower has made any cash deposit with Bank or payment under protest, or posted security, as and to the extent required by applicable law; (iii) Borrower, or a third party on behalf of Borrower, has furnished to Bank a cash deposit reasonably satisfactory to Bank, or an indemnity or payment and performance Bond reasonably satisfactory to Bank with a surety reasonably satisfactory to Bank, in an amount reasonably satisfactory to Bank (or in the statutory amount, in the case of bond authorized by statute), to assure payment of the matters under contest and to prevent any sale or forfeiture of any part of the Land or the Improvements and the City Infrastructure Improvements, and (iv) in the case of a claim for work which does or could result in a lien against the Land or the Improvements and the City Infrastructure Improvements, Borrower has provided (x) to the extent required by Bank and available under applicable law, a Bond which under applicable law releases the lien from the Land and the Improvements (and caused it to be Bonded), and (y) such security, assurances and other items, if any, as the title insurer may require to insure around the lien; (v) Borrower diligently and in good faith contests the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of any part of the Land and the Improvements to satisfy the same; (vi) Borrower promptly upon final determination thereof pays the amount of any such claim so determined, together with all costs, interest, and penalties payable in connection therewith; (vii) the failure to pay the claim does not constitute a default under any other deed of trust, mortgage, or security interest covering or affecting any part of the Land or the Improvements entered into by Borrower with a Person other than Bank and does not subject Bank to any civil or criminal liability or to any damages or expense; and (viii) the aggregate amount of all claims being contested shall not exceed the lesser of (y) five percent (5%) of the amount of the Construction Loan or (z) any amounts retained by Bank in accordance with the terms and provisions of this Agreement. Notwithstanding the forgoing, Borrower shall promptly upon request of Bank pay (and if Borrower shall fail so to do, Bank may, but shall not be required to, pay or cause to be discharged or Bonded against) any such claim notwithstanding such contest if, in the reasonable opinion of Bank, the Land or the Improvements are in imminent jeopardy or in immediate danger of being forfeited or foreclosed. Bank may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Bank, the entitlement of such claimant is established.

(bb) Construction Account. Borrower agrees to maintain the Construction Account as a special account with Bank into which the proceeds from the Capital Contribution Account and proceeds of the Construction Note
(but no other funds, except for deposits of additional equity described in Section 4.1(g) above which are disbursed to Borrower pursuant to the terms of this Agreement) shall be deposited pursuant to the terms of this Agreement and against which checks shall be drawn by Borrower (or its designee) only for payment of all costs and expenses incident to and associated with the Budget.

(cc) Sales and Use Taxes. If Bank reasonably determines, based upon any duly issued ruling, law, opinion, or regulation (or as the result of the withdrawal of any previously issued ruling, law, opinion, or regulation), that Contractor (or its subcontractors, if applicable) is not exempt from state sales and use taxes, in such event, if Contractor has not paid such taxes, at the written request of Bank, Borrower shall create and maintain a reserve or other account in a manner satisfactory to Bank in an amount at least equal to the aggregate sales and use taxes that Contractor did not pay with respect to the development of the Premises because Contractor took the position it was exempt from such sales and use taxes. Borrower agrees Bank has not represented to Borrower or to any other Person, whether sales and use taxes are due with respect to the Premises. Borrower has and does hereby agree to indemnify and hold Bank harmless from any loss, claims, or causes of action arising as a result of the failure of Borrower or Contractor to pay any such sales and use taxes.

(dd) Disposal of Impacted Soil. If impacted soil is encountered during redevelopment of the Premises, it shall be handled by Borrower in accordance with all applicable Requirements of Law and otherwise in strict accordance with the recommendations provided in the Soil and Groundwater Management Plan dated July 13, 2018, prepared by Terracon Consultants, Inc. for the Borrower (Terracon Project No. 95175087.2) (the “Soil Management Plan”) and the applicable waste manifests and other reports to be provided pursuant to the Soil Management Plan, each of which shall be delivered to Bank prior to the date hereof and may be relied upon by the Bank.

(ee) Water Wells. Without limiting any other term of this Agreement or any other Loan Documents, water wells, if any, located on the Premises shall be used for irrigation and monitoring or abandoned by Borrower in accordance with all applicable Requirements of Law.

(ff) Asbestos Containing Materials. Any suspect asbestos containing materials ("ACM") on the Premises shall be managed during maintenance, remodeling and demolition activities and in accordance with all applicable Requirements of Law. If any ACM sampling or abatement activities are conducted on the Premises, copies of all reports shall be submitted to Bank's Environmental Risk Management Department for review.

(gg) Debris and Above-Ground Storage Tanks. All debris, drums, containers and above-ground storage tanks on the Premises shall be disposed
by Borrower at an offsite facility in accordance with all applicable Requirements of Law.

(hh) **Credit Agency.** The Premises will contain each unit amenity, design item, standard of construction, or similar item listed in the low income housing tax credit application approved by Credit Agency unless otherwise consented to by the Bank and Credit Agency.

(ii) **Loan to Value.** If at any time, the Bank's most recent Appraisal shows that: the amount of the Construction Loan will exceed eighty percent (80%) of the appraised value of the Premises (on an as completed and stabilized basis giving effect to the contributory value of the Low-Income Housing Tax Credit), the Borrower shall make a deposit as security for the Construction Loan in the amount of excess, which amount shall be available to pay the Construction Loan down to the amount of the Permanent Mortgage Loan.

(jj) **Affordable Restrictions.** Borrower shall operate the Affordable Units in accordance with federal affordability restrictions under Section 42 of the Internal Revenue Code and other applicable Requirements of Law. Borrower shall at times comply with the LURA.

(kk) **Lead Containing Material.** Borrower shall use no materials containing lead in violation of quantities permitted under applicable Environmental Laws (as defined in the Environmental Indemnity Agreement) in the construction of the Improvements and the City Infrastructure Improvements.

(ll) **Mold.** During any construction of the Premises, if applicable, all identified mold contamination shall be remediated and all roof leaks shall be repaired and water damaged wall and ceiling materials shall be replaced.

(mm) **PCB.** During any construction of the Premises, if applicable, all light ballasts that are not labeled "No PCB" will be replaced with ballasts that are labeled "No PCB."

(nn) **Equity Funding.** Investor Member has disclosed to Bank the upper tier funding source of the Capital Contributions will initially be under a warehouse line of credit, and then upon completion of a planned syndication to a fund managed by the Investor Sponsor (the "Hunt Fund"), the upper tier funding source will be owners owning in the aggregate not less than 75% of the ownership interests (both directly or indirectly) in the Hunt Fund either Financial Institutions or are Investment Grade (Borrower shall notify Bank of the occurrence of such syndication and provide evidence the ownership of the upper tier is in compliance with the foregoing). If requested by Bank prior to the end of a particular calendar year, within 60 days after the end of that calendar year ending after such syndication, the Investor Member shall provide to Bank an annual certification that since the syndication of and transfer to the Hunt Fund (or the
most recent annual certification as the case may be) stating there has been no change in more than 25% of the ownership interest in the Hunt Fund or if there has been a change in more than 25% of the ownership interest in the Hunt Fund since the syndication (or the most recent annual certification as the case may be), the Investor Member shall certify to Bank in writing that partners owning in the aggregate not less than 75% of the ownership interests in the Hunt Fund are themselves (or such partner’s ultimate parent) Financial Institutions or Investment Grade. All information received in connection with the foregoing shall be kept confidential by Bank, unless required to be disclosed by applicable law and/or banking regulations. For purposes hereof, “Investment Grade” is an entity rated as BBB or better rated by S&P or similar rating agency or otherwise approved by Bank in writing, which approval shall not be unreasonably withheld or delayed (it is specifically agreed that, notwithstanding the foregoing, for purposes of this Agreement, Bank and any affiliate of Bank or any investment company used by Bank to invest in the Hunt Fund is considered to be investment grade).

(oo) Derivative Documents. If Borrower purchases from Bank any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time in connection with the Construction Loan, Borrower shall, upon receipt from Bank, execute promptly all documents evidencing such transaction, including without limitation, the ISDA Master Agreement, the Schedule to the ISDA Master Agreement and the ISDA Confirmation.

(pp) Project Account. Borrower shall maintain Bank as its principal depository bank for project accounts related to the Premises

(qq) Payment and Performance Bond. The Borrower shall request that the surety under the Payment and Performance Bond pay the proceeds of such Payment and Performance Bond directly to Bank should any of the following events occur: (i) Contractor shall be in default under the Construction Contract or any subcontract or sub-subcontract, (ii) Contractor shall have failed to satisfactorily complete its work as required under the Construction Contract, or (iii) Contractor shall have failed to pay any laborer, subcontractor, supplier or materialman for labor and material required for performance of the Construction Contract. Bank hereby agrees to apply the proceeds of the Payment and Performance Bond in the following order: (i) first, to satisfy any lien which has been filed against the Premises or the Improvements in violation of this Agreement; and (ii) second, any remaining proceeds shall be used by Bank in order to complete construction of the Improvements in accordance with the provisions of this Agreement.

(rr) Septic Systems. If septic systems or water wells are encountered during construction activities of the Improvements, the Borrower shall provide the
Bank with documentation that the well(s) and/or septic system(s) were removed or abandoned in accordance with local, state and federal regulations.

(ss) **HAP Contract.** As soon as reasonable practical after the issuance of the HAP Contract, Borrower shall promptly provide Bank a copy of HAP Contract and an original Consent to Assignment of the HAP Contract executed by HUD or the contract administrator thereunder (or, in the alternative, an addendum to HAP Contract shall be attached evidencing HUD’s consent to the collateral assignment of HAP Contract from Borrower to Bank).

(tt) **Subordinate Loans.** Borrower shall provide to Bank copies of the Subordinate Loan Documents promptly after the closing of the Subordinate Loans, together with an original counterpart of each Intercreditor Agreement executed by the FWHFC and the City, as applicable (or such other parties required by Bank), relating to the each, respective Subordinate Loan, on a form acceptable to Bank.

(uu) **TIF Agreement.** Borrower shall timely and fully comply with the terms and provisions of the TIF Agreement. As soon as realistically practical, Borrower shall advise Bank in writing if the Borrower has reason to believe (i) the aggregate amount to be paid to Borrower under the terms of the TIF Agreement will be less than $2,600,000.00, or (ii) the payments to be made under the TIF Agreement will be reduced.

(vv) **Permanent Supportive Housing Agreement.** Borrower shall timely and fully comply with the terms and provisions of the Permanent Supportive Housing Agreement.

4.2 **Assignment of Plans.** As additional security for the payment of the Construction Note and other Obligations, Borrower hereby transfers and assigns, and grants a security interest, to Bank all of Borrower’s rights and interest in and to the Plans and all design contracts (collectively, referred to in this Section as the “Plans”) and hereby represents and warrants to and agrees with Bank as follows:

(a) To Borrower’s knowledge, the Plans delivered to Bank are a complete and accurate description of the Plans. No approval of the Plans is required by any other Person except such approvals of any Governmental Authority, the TIF, FWHFC, the City, the Investor Member, Freddie Mac, and the Permanent Lender, all of which shall have been provided prior to the Closing Date. No approval of the Plans is required by another Person under the Permanent Mortgage Loan Commitment, the Forward Commitment, the TIF Agreement, the Subordinate Loan Documents, the Operating Agreement, or otherwise.

(b) To Borrower’s knowledge, the Plans are complete and adequate for the construction of the Improvements and there have been no modifications...
thereof, except as permitted under Section 4.1(c) hereof. The Plans shall not be
modified in any material respect without the prior written consent of Bank (except
for change orders permitted under this Agreement, including, without limitation,
under Section 4.1(c) hereof), which such consent shall not be unreasonably
withheld, conditioned, or delayed.

(c) Bank may use the Plans for any purpose related to the
Improvements, including, but not limited to, inspections of construction and the
completion of the Improvements.

(d) Bank’s acceptance of this assignment shall not constitute approval
of the Plans by Bank. Notwithstanding anything herein to the contrary, Bank has
no liability or obligation whatsoever in connection with the Plans and no
responsibility for the adequacy thereof or for the construction of the
Improvements contemplated by the Plans. Bank has no duty to inspect the
Improvements, and, if Bank should inspect the Improvements, Bank shall have
no liability or obligation to Borrower arising out of such inspection. No such
inspection nor any failure by Bank to make objections after any such inspection
shall constitute a representation by Bank that the Improvements are in
accordance with the Plans nor shall any such matter constitute a waiver of
Bank’s right thereafter to insist that the Improvements be Substantially
Completed in substantial accordance with the Plans.

(e) This assignment shall inure to the benefit of Bank, its successors,
and assigns, including, without limitation, any purchaser upon foreclosure of the
Construction Mortgage or any receiver in possession of the Land that assumes
Bank’s rights and obligations under this Agreement.

4.3 Assignment of Construction Contract. As additional security for the
payment of the Construction Note and other Obligations, Borrower hereby transfers and
assigns, and grants a security interest, to Bank all of Borrower’s rights and interest, but
not its liability for any breach, in, under, and to the Construction Contract (as hereafter
defined), upon the following terms and conditions:

(a) To its knowledge, Borrower represents and warrants that the copy
of each original construction contract (collectively with all other original contracts
relating to the construction of the Improvements and the City Infrastructure
Improvements, collectively, the “Construction Contract”, whether one or more)
it has furnished or will furnish to Bank is and shall be a true and complete copy
thereof and that Borrower’s interest therein is not subject to any claim, setoff, or
encumbrance, other than the security interests granted to the Bank and the
Permitted Encumbrances.

(b) NEITHER THIS ASSIGNMENT NOR ANY ACTION BY BANK
(INCLUDING BUT NOT LIMITED TO APPROVAL OF THE PLANS BY BANK)
SHALL CONSTITUTE AN ASSUMPTION BY BANK OF ANY OBLIGATION
UNDER ANY CONSTRUCTION CONTRACT, AND BORROWER SHALL CONTINUE TO BE LIABLE FOR ALL OBLIGATIONS OF BORROWER THEREUNDER, BORROWER HEREBY AGREEING TO PERFORM ALL OF ITS OBLIGATIONS UNDER THE CONSTRUCTION CONTRACT. BORROWER INDEMNIFIES AND HOLDS BANK HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM, BUT NOT SOLELY AND EXCLUSIVELY AS A RESULT OF BANK'S OR ANY INDEMNIFIED PERSON (OR ANY INDEMNIFIED PERSON'S INVITEES, EMPLOYEES OR AGENTS) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(c) During the continuation of an Event of Default, Bank shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower such action as Bank may at any time reasonably determine to be reasonably necessary or advisable to cure any default under any Construction Contract or to protect the rights of Borrower or Bank thereunder. Bank shall incur no liability if any action so taken by it or on its behalf shall prove to be inadequate or invalid, and Borrower agrees to hold Bank free and harmless against and from any loss, cost, liability or expense (including, but not limited to, reasonable attorneys' fees and expenses) incurred by or on behalf of Bank in connection with any such action, other than solely and exclusively as a result of Bank's (which shall include agents, employees and invitees of Bank and the Indemnified Persons) fraud, gross negligence or willful misconduct.

(d) Subject to the applicable terms and limitations set forth in the Loan Documents, Borrower hereby irrevocably constitutes and appoints Bank as Borrower's attorney-in-fact, in Borrower's name or in Bank's name to, during the continuance of an Event of Default, enforce all rights of Borrower under any Construction Contract.

(e) Unless an Event of Default exists, Borrower shall have the right to exercise its rights as owner under any Construction Contract, provided that except as otherwise expressly set out herein or in any of the other Loan Documents, Borrower shall not cancel or amend in any material respect any Construction Contract (except for change orders permitted hereunder) or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Bank, which such consent shall not be unreasonably withheld, conditioned or delayed.

(f) This assignment shall inure to the benefit of Bank, its successors and assigns, including any purchaser upon foreclosure of the Construction Mortgage, any receiver in possession of the Premises, and any corporation formed by or on behalf of Bank which assumes Bank's rights and obligations under this Agreement.
V – NEGATIVE COVENANTS

5.1 Negative Covenants. Except as otherwise expressly permitted by this Agreement or any other Loan Document, until full payment and performance of the Construction Note and all other Obligations of Borrower, and the expiration of Bank’s funding commitments hereunder, Borrower shall not, without the prior written consent of Bank (and without limiting any requirement of any other Loan Document), which consent will not be unreasonably delayed, withheld, or conditioned:

(a) Transfer of Assets. Sell, lease, assign, or otherwise dispose of or transfer any assets, except for Approved Leases and leases for laundry facilities, cable television electronic data transmission, telephone, internet and security and other basic service providers, or if done in the normal course of its business or as otherwise permitted by the Loan Documents.

(b) Off-Site Storage. Except as otherwise specifically permitted hereunder, store or permit any materials to be used for the construction of the Improvements and the City Infrastructure Improvements to be stored off the Land except those materials purchased by Borrower prior to the Closing Date to meet the requirements of the Tax Credit Allocation and those stored in accordance with Section 4.1(y)(ii)(z)(B), or permit any materials to be stored on the Land not in a manner satisfactory to Bank (all such items shall be specified in a request for advance as “stored materials” and not “work in place”).

(c) No Amendments. Without the consent of the Lender as provided in the lead-in to this Section 5.1, amend, restate, modify, cancel, or permit to be terminated, the Operating Agreement (provided, without limiting and subject to any other terms or conditions of this Agreement or the Loan Documents, that the Operating Agreement may be amended without the necessity of prior Bank consent if the amendment does not amend or otherwise affect, directly or indirectly, the timing, amount, or conditions of and to the payment of the Capital Contributions). Further, without the prior written consent of Bank, Borrower shall not amend, restate, modify, cancel, or permit to be terminated the Permanent Loan Commitment or the Subordinate Loan Documents (once executed). Notwithstanding anything to the contrary contained in the Loan Documents, amendments to the Operating Agreement to effectuate a Permitted Transfer shall not require the prior consent of Lender.

(d) No Other Debt. Incur, create, assume, or permit to exist any Debt, except:

(i) the Obligations;

(ii) all existing loans and borrowings by Borrower as reflected in the Financial Statements; and all renewals, extensions, modifications and rearrangements thereof;
(iii) liabilities, direct or contingent, of Borrower to the extent that such liabilities existed on the date of this Agreement and continue to exist and are reflected in the Financial Statements or have been disclosed to Bank in writing and approved by Bank prior to the date of this Agreement;

(iv) indebtedness evidenced by the Delivery Assurance Note required by the Permanent Mortgage Loan Commitment;

(v) endorsements of negotiable instruments for collection or deposit in the ordinary course of business;

(vi) each Subordinate Loan, to the extent subordinated to the Construction Loan on terms satisfactory to Bank;

(vii) obligations from time to time incurred in the ordinary course of business, other than for borrowed money;

(viii) Debt contemplated by the Operating Agreement (to the extent subordinated to the Bank in a manner satisfactory to Bank);

(ix) taxes, assessments, or other government charges which are not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted in accordance with the conditions set forth herein for contesting such charges; and

(x) Debt to be paid in connection with the closing of the Construction Loan and from the Initial Capital Contribution (including, without limitation, any pre-development loan made prior to the Closing Date by any Person to Borrower).

(e) **No Loan, Advances, or Investments.** Make or permit to remain outstanding any loans or advances to or investments in any Person except that the foregoing restrictions shall not apply to the following:

(i) loans, advances, or investments the material details of which have been set forth in the Financial Statements, or which have been otherwise disclosed to and approved by Bank in writing prior to the date of this Agreement;

(ii) certificates of deposit or interest bearing accounts of banks or savings and loan associations insured by an agency of the United States; and

(iii) securities issued and/or guaranteed by the United States of America, the State of Texas, any other state of the United States, or any agency, unit, instrumentality or subdivision thereof.
(f) **No Mortgages.**

(i) **Create, incur, assume, or permit to exist any mortgage, pledge, security interest, lien, or similar encumbrance on any of Borrower's assets, including, without limitation, any of the Premises (to the extent owned by Borrower), except as specifically disclosed in the Financial Statements, (ii) acquire or agree to acquire assets under any conditional sale agreement or title retention contract, or (iii) sell and leaseback any assets, except that the foregoing restrictions shall not apply to:

1. Liens for taxes, assessments and other governmental charges not yet due unless any such taxes, assessments and/or other governmental charges are being contested in accordance with Section 4.1(z);

2. Liens of vendors, carriers, warehousemen, landlords, mechanics, laborers, and materialmen arising by law in the ordinary course of business for sums not yet due or being contested in good faith as provided in this Agreement, or Bonded around or reserve shall have been made therefor as fully required by this Agreement;

3. Pledges or deposits in connection with or to secure worker's compensation, unemployment insurance, pensions or other employee benefits;

4. Mortgages, pledges, security interests, liens, encumbrances, landlord's liens, or title retention contracts existing as of the date of this Agreement and disclosed to Bank in writing and approved by Bank before the date hereof;

5. Liens and/or security interests required by this Agreement and the other Loan Documents;

6. Liens securing the Subordinate Loans (but only to the extent subordinated to the Construction Mortgage on terms satisfactory to Bank);

7. Liens granted and created in and by the Delivery Assurance Note required under the Permanent Mortgage Loan Commitment (to the extent subordinate to the Construction Mortgage in a manner satisfactory to the Bank);

8. Permitted Encumbrances; and
(9) liens contemplated by the Operating Agreement, if and to the extent made subordinate to Bank as may be required by Bank.

(g) Utilities. Except as permitted by Section 5.1(f), Borrower shall not permit any Person (other than tenants under Approved Leases) to obtain any right to its utility services necessary for the normal and customary operation of the Premises, including, without limitation, water and sewer taps, nor shall Borrower permit to expire any of its rights to utility services or commitments for capacity necessary for the normal and customary operation of the Premises, including, without limitation, water and sewer taps.

(h) No Assignment. Except as otherwise specifically provided in the Loan Documents, Borrower shall not assign, transfer, or encumber its rights or Obligations under any Loan Document or any proceeds of the Loan.

(i) Borrower's Existence. Borrower shall not dissolve or liquidate or merge with or be consolidated into any other entity or modify or amend the Operating Agreement with respect to the timing and amount of the payment of the Capital Contribution (except for the amendment and restatement of the Operating Agreement on or about the date hereof, any amendment to the Operating Agreement as permitted pursuant to Section 5.1(c) and Section 5.1(l), Transfers permitted by Section 5.1(l) and changes in the identity of the Co-Managing Member or Investor Member in accordance with the provisions of the Operating Agreement to the extent permitted by Section 5.1(l)).

(j) Payment of Development Fees, Contractor Fees, and Lease Commissions. Except as permitted by Sections 2.6 and 2.7, Borrower shall not permit any development and developer overhead fees, contractor profit or fees, or lease commissions to be disbursed (pursuant to the draw schedule approved by Bank or otherwise) to Borrower, any Guarantor, or any other party (other than budgeted fees to be paid to the management company during lease-up).

(k) No Use For Operating Reserves. No portion of the Capital Contributions or the Construction Note shall be used by Borrower to fund operating reserves (except in accordance with the Budget, the associated draw schedule approved by Bank, the Operating Agreement and this Agreement).

(l) Transfer of the Premises or Interest in the Borrower.

(1) Except as hereinafter provided in this Section 5.1(l) and as permitted by Section 4.1(mm), the following Transfers shall be prohibited: (i) Transfer all or any part of the Premises or any interest in the Premises; (ii) Transfer of Control in the Borrower; (iii) Transfer of Control in any entity which owns, directly or indirectly through one or more intermediate entities, the Borrower; (iv) a Transfer of all or any part of an
Individual Guarantor's ownership interest in the Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in the Borrower (other than a Transfer of an aggregate beneficial ownership interest in the Borrower of forty-nine percent (49%) or less of such Individual Guarantor's original ownership interest in the Borrower and which does not otherwise result in a Transfer of an Individual Guarantor's Control in such intermediate entities or in the Borrower); (v) if the (A) Transfer of Control in an Entity Guarantor or (B) Transfer of Control in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling interest in an Entity Guarantor; (vi) if the Borrower or Guarantor is a trust, the termination or revocation of such trust (unless the trust is terminated as a result of a death of an individual trustor, in which event Bank must be notified and such Borrower or an Entity Guarantor must be replaced with an individual or entity acceptable to Bank, in accordance with the provisions of Subsection (3) below, within ninety (90) days of such death) provided, however, that a one percent (1.0%) transfer fee will not be charged; (vii) the merger, dissolution, liquidation or consolidation of (A) the Borrower, (B) an Entity Guarantor, or (C) any legal entity that Controls the Borrower or an Entity Guarantor that is an entity; (viii) a conversion of the Borrower from one type of legal entity into another type of legal entity (including the conversion of a Co-Managing Membership interest into a limited partnership interest and the conversion of a limited partnership interest into a membership interest), whether or not there is a Transfer, if such conversion results in a change in the assets, liabilities, legal rights or obligations of the Borrower (or of a Guarantor or the Co-Managing Member of the Borrower, as applicable) by operation of law or otherwise; and (ix) Transfer the economic benefits or right to cash flows attributable to the ownership interest in the Borrower separate from the Transfer or the underlying ownership interest, unless the Transfer of the underlying ownership interest would otherwise not be prohibited by this Agreement.

(2) Notwithstanding the provisions of Section 5.1(1)(1) above to the contrary, and only in any event to the extent the Transfer is permitted by the Permanent Mortgage Loan Commitment, the following Transfers will be permitted (each a "Permitted Transfer"):

(i) a Transfer to which the Bank has consented or otherwise expressly permitted in this Agreement or other Loan Documents;

(ii) prior to the full and final payment of the Construction Loan, a Transfer which satisfies the following subparagraphs A and B: (A) that satisfies the requirements of Section 4.1(mm) and is either: (y) by the Investor Member of all or a portion of its ownership interest in the Borrower directly or indirectly only to another limited
partnership or limited liability company which has, as its Co-
Managing Member, manager or managing member, the Investor
Sponsor or an Affiliate of the Investor Sponsor (or such Fund, if
applicable) or (z) by a partner or member of the Investor Member of
its partnership or membership interest in the Investor Member or of
a Fund, as applicable, provided that, immediately after the Transfer,
the Co-Managing Member or managing member of the Investor
Member is the Investor Sponsor or an Affiliate of the Investor
Sponsor and (B) the Bank has received advance written notice of
the Transfer (which notice shall include the identity of the transferee
and its owners) and the Bank shall have received any other
information with respect to the Transfer as reasonably requested by
the Bank.

(iii) provided the Bank has received information with
respect to the Transfer in advance thereof, including the identity of
the substitute Co-Managing Member or managing member and any
other information reasonably requested by the Bank, the removal of
the Co-Managing Member of Borrower for cause as set forth under
the Operating Agreement so long as any substitute Co-Managing
Member is a single purpose Affiliate of the Investor Sponsor;

(iv) a Transfer that occurs by devise, descent or by
operation of law upon the death of a natural person;

(v) the grant of leasehold interest in an individual dwelling
unit for a term of two (2) years or less not containing an option to
purchase;

(vi) a Transfer of obsolete or worn out personal property
or fixtures that are contemporaneously replaced by items of equal
or better function and quality, which are free of liens,
encumbrances and security interests other than those created by
the Loan Documents otherwise consented to by the Bank;

(vii) the grant of an easement, servitude or restrictive
covenant in the ordinary course of business or if otherwise provided
that the easement, servitude or restrictive covenant will not
materially and adversely affect the operation or value of the
Premises or the Bank's interest in the Premises;

(viii) the creation of a tax lien or mechanic's lien or
judgment lien against the Premises which is Bonded, released of
record or otherwise remediated to the Bank's satisfaction within
thirty (30) days of the date of creation, unless contested as
provided herein;
(ix) the execution, delivery and recordation of a purchase option and/or right of first refusal by and between the Borrower and the Co-Managing Member or its Affiliate, provided that the same is subject, subordinate and inferior to the liens and security interests of the Loan Documents and that the exercise of any rights thereunder shall be subject to the Loan Documents;

(x) Transfers between and among Guarantors;

(xi) Transfers of assets by a Guarantor on an arms-length basis;

(xii) the execution of guarantees by a Guarantor in addition to the Guaranty;

(xiii) Transfers of ownership interests in an Entity Guarantor among the existing owners of an Entity Guarantor;

(xiv) Transfer relating to the pledge by the Investor Member of its interest in Borrower as collateral under its warehouse line of credit (to the extent such line of credit has been disclosed to the Bank prior to the Closing Date or otherwise approved by Bank in writing);

(xv) Transfer as a result of condemnation or casualty; and

(xvi) The dedication of Sandberry Drive as a public right-of-way upon recordation of the plat of the Land as contemplated on the Closing Date.

(3) The Bank will consent to a Transfer that would otherwise violate this Section 5.1(I) conditioned on the satisfaction of each of the following requirements prior to Transfer: (i) the submission to Bank of all information required by Bank to make the determination required by this Section 5.1(I), (ii) no Event of Default shall have occurred and is continuing, (iii) [intentionally omitted], (iv) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between Bank and the transferee and the organization of the transferee) customarily applied by Bank at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Bank in exchange for such additional conditions as Bank may require and in the case of a proposed Transfer by the Investor Member of 49% or more of its original ownership interest in Borrower, all of its capital contributions have been made, and the transferee is a Financial Institution.
or Publicly Held Corporation with a rating of BBB- by Standard & Poor’s or Baa1 by Moody’s Investor Service, Inc., (v) the Premises at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Bank at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Bank in exchange for such additional conditions as Bank may require, (vi) if the transferee or any other Person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Bank of an assumption agreement (including, if applicable, the acknowledgment of each Individual Guarantor with respect to any exceptions to non-recourse guaranty) acceptable to Bank and that, among other things, requires the transferee to perform all of the obligations of the transferor or such Person set forth in the Loan Document, and may require that the transferee comply with any provisions of the Construction Mortgage or any other Loan Document which previously may have been waived by Bank, (vii) if a guaranty has been executed and delivered in connection with the Construction Note, or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Bank to execute and deliver to Bank a substitute guaranty in form and substance acceptable to Bank, (viii) Bank has received all of the following: (A) except as expressly provided herein otherwise where no such fee is payable, a non-refundable Transfer Fee and Review Fee provided, however, no Transfer Fee or Review Fee will be charged for any Permitted Transfer and (B) the Borrower's reimbursement of all Bank's reasonable out-of-pocket costs (including reasonable attorney's fees) incurred in reviewing the Transfer request. However, no Transfer Fee or Review Fee will be charged if the Co-Managing Member has been removed for cause or for Transfers by the Investor Member, and (ix) the Borrower has agreed to the Bank's (and the Permanent Lender's) conditions to approve such Transfer (and to cause the Permanent Mortgage Loan Commitment to remain in full force and effect), which may include, but are not limited to: (A) providing additional collateral, guarantees or other credit support to mitigate any risk concerning the proposed transferee or the performance or condition of the Premises and (B) amending the Loan Documents to delete any specifically negotiated terms or provisions previously granted for the exclusive benefit of the transferor and/or modify (or require if not in place) and covenants contained in the Loan Documents which may be personal to the transferor or otherwise not capable of being complied with by the transferee.

(m) Hazardous Materials. Borrower shall not use or knowingly permit any other party to use any Hazardous Materials on the Premises, except such materials as are incidental to a tenant's tenancy, construction of the Improvements and the City Infrastructure Improvements, or to Borrower's normal
course of business, maintenance, and repairs and which are handled in compliance with all applicable environmental laws.

(n) Property Management and Service Contracts. Borrower shall not change the management company managing the operation of the Premises except to the extent required upon occurrence of default under the terms of the related Management Agreement, or materially change any material term or provision of any management agreement relating to the Premises without Bank's written consent which will not be unreasonably withheld or delayed. Borrower shall not enter into any management agreement or service contract in connection with the Premises (other than for the provision of telephone, cable television, internet, security, electronic data transmission and coin operated laundry services) which is not terminable by Borrower (or its successors) without cause, or with not more than 30 days' notice without Bank's consent, which shall not be unreasonably withheld, conditioned or delayed.

(c) Management of Borrower. Except as otherwise provided in this Agreement, Borrower shall not permit any change in the management of Borrower (or of any managing member of Borrower), except to the extent that any of the foregoing occur as a result of or in accordance with the terms of the Operating Agreement, Section 5.1(i), Section 5.1(l), or the change has been approved by Bank (which approval will not be unreasonably withheld, delayed, or conditioned).

(p) No Change In Basic Business. Borrower shall not permit its basic business operations, as contemplated on the Closing Date to materially change or cease.

(q) Government Regulation. Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Bank from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower's identity as may be requested by Bank at any time to enable Bank to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

(r) Distributions to Members. Prior to the Substantial Completion of the Improvements, except as expressly permitted by the terms of this Agreement, Borrower shall not make any distributions or advances to its members without the written consent of Bank except to pay fees, including without limitation developer fees, as permitted to be paid by this Agreement and any asset management fees to the Investor Member as described in the Operating Agreement.
(s) **Specially Designated Nationals.** Neither the Borrower nor any of its respective officers, managers or principal employees is on the list of Specially Designated Nationals and Blocked Persons issued by the Office of Foreign Assets Control of the U.S. Department of Treasury.

(t) **Use of Proceeds.** The Borrower will not request any borrowing under the Construction Loan, and the Borrower shall not use, and shall procure that its subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any borrowing under the Construction Loan (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transactions would be prohibited by Sanctions if conducted by a corporation incorporated in the United States, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

5.2 **Single Purpose Entity.** Without limiting any of the foregoing, but in addition thereto, Borrower covenants and agrees that it has not and shall not, nor has its Co-Managing Member and its Co-Managing Member shall not:

(A) engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Premises, and activities incidental thereto;

(B) acquire or own any material asset other than (i) the Premises, and (ii) such incidental Personal Property as may be necessary for the operation of the Premises;

(C) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Bank's consent, which consent will not be unreasonably delayed, withheld, or conditioned;

(D) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Bank, amend or modify (to the extent prohibited in Section 5.1(i)), terminate Borrower's organizational documents;

(E) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person without the consent of Bank, which consent will not be unreasonably delayed, withheld, or conditioned;
(F) commingle its assets with the assets of any of its partner(s), members, shareholders, Affiliates, or of any other Person or transfer any assets to any such Person other than distributions on account of equity interests in the Borrower permitted hereunder and properly accounted for;

(G) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Construction Loan and as described in Section 5.1, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Premises in such amounts as are normal and reasonable under the circumstances, provided that such operational and trade debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time five percent (5%) of the outstanding Construction Loan;

(H) allow any Person to pay its debts and liabilities (except a Guarantor) or fail to pay its debts and liabilities solely from its own assets;

(I) fail to maintain its records, books of account and bank accounts separate and apart from those of the shareholders, partners, members, principals and Affiliates of Borrower, the Affiliates of a shareholder, partner or member of Borrower, and any other Person fail to prepare and maintain its own financial statements in accordance with the method of accounting upon which the Borrower's federal tax returns are based, and susceptible to audit, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Premises is actually owned by the Borrower;

(J) other than the development agreement entered into in connection with the development of the Improvements, enter into any contract or agreement with any shareholder, partner, member, principal or Affiliate of Borrower, any Guarantor or any shareholder, partner, member, principal or Affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any shareholder, partner, member, principal or Affiliate of Borrower or Guarantor, or any shareholder, partner, member, principal or Affiliate thereof;

(K) seek dissolution or winding up, in whole or in part;

(L) fail to correct any known misunderstandings regarding the separate identity of Borrower;

(M) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of the Borrower (except for a Guarantor);
(N) make any loans or advances to any third party, including any shareholder, partner member, principal or Affiliate of Borrower, or any shareholder, partner, member, principal or Affiliate thereof;

(O) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks;

(P) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any shareholder, partner, member, principal or Affiliate of Borrower, or any shareholder, partner, member, principal or Affiliate thereof);

(Q) fail to allocate fairly and reasonably among Borrower and any third party (including, without limitation, any Guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

(R) allow any Person to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations;

(S) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(T) file a voluntary petition or otherwise initiate proceedings to have the Borrower or any general partner, manager or managing member of Borrower adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Borrower or any general partner, manager or managing member of Borrower, or file a petition seeking or consenting to reorganization or relief of the Borrower or any general partner, manager or managing member of Borrower as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Borrower or any general partner, manager or managing member of Borrower; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequester, custodian, liquidator (or other similar official) of the Borrower or any general partner, manager or managing member of Borrower or of all or any substantial part of the properties and assets of the Borrower or any general partner, manager or managing member of Borrower, or make any general assignment for the benefit of creditors of the Borrower or any general partner, manager or managing member of Borrower, or admit in writing the inability to the Borrower or any general partner, manager or managing member of Borrower to pay its debts generally as they become due or declare or effect a
moratorium on the Borrower or any general partner, manager or managing member of Borrower debt or take any action in furtherance of any such action;

(U) share any common logo with or hold itself out as or be considered as a department or division of (i) any shareholder, partner, principal, member or Affiliate of Borrower, (ii) any Affiliate of a shareholder, partner, principal, member or Affiliate of Borrower, or (iii) any other Person or allow any Person to identify the Borrower as a department or division of that Person; or

(V) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Borrower or the creditors of any other Person.

VI – CONDITIONS TO LOAN

6.1 Conditions to Closing of the Construction Loan. Bank shall be under no obligation to disburse any Capital Contribution from the Capital Contribution Account, or disburse any deposit of the Subordinate Loans, or advance any portion of the Construction Loan, unless and until each of the following conditions precedent shall have been (i) fully and completely satisfied, with proof thereof being furnished in form and sufficiency as may be reasonably required by Bank, or (ii) waived by Bank in writing:

(a) Bank shall be furnished with and shall have approved fully executed counterparts, as appropriate, of the following:

(1) the Loan Documents;

(2) copies of all instruments and documents evidencing and pertaining to the deferred developer fee which shall have been subordinated to Bank in a manner acceptable to Bank;

(3) evidence that the Borrower has obtained a binding and enforceable federal award of a Low Income Housing Tax Credit approval for the Premises (subject to the conditions therein contained) in an amount sufficient enough to allow for the development of the Premises, as provided herein, and that such allocation has not been rescinded, repealed, cancelled, or otherwise suspended, and that the Investor Member will contribute (as required by this Agreement) capital to Borrower, in an amount not less than $12,898,710.00, subject to the terms and conditions of the Operating Agreement and Exhibit “H” (subject to finalization), in exchange for the receipt of such Low Income Housing Tax Credit;
(4) the Initial Capital Contribution shall have been deposited with Bank in the Capital Contribution Account to pay budgeted items (or Bank shall have been provided evidence that any portion of the Initial Capital Contribution not deposited in the Capital Contribution Account has been used to pay budgeted items in a manner satisfactory to Bank);

(5) all fees due to Bank under Section 2.5 shall have been paid;

(6) reimbursement for all of Bank's reasonable legal fees and other costs and expenses incurred by Bank in connection with the Construction Loan and the other transactions described herein;

(7) the Payment and Performance Bond;

(8) the HAP Commitment;

(9) a current title commitment to insure the lien granted in the Construction Mortgage (which shall otherwise satisfy the requirements of Exhibit "L"), issued by a company acceptable to Bank, evidencing that there are no liens or other similar encumbrances existing against the Premises, other than in favor of the Bank and the Permitted Encumbrances, and liens to be paid in connection with the closing and as otherwise consented to by Bank, together with the payment of a premium required to issue a loan policy of title insurance in connection therewith, in the aggregate amount of the Construction Note, and all endorsements thereto as required by Bank and otherwise satisfying the requirements of Title Insurance on Exhibit "L". Bank shall have also received and approved all cross easement agreements relating to the Premises, if any;

(10) an opinion of counsel to Borrower and Guarantors, which, among other things, provides that the Loan Documents are authorized and duly executed and constitute binding and enforceable obligations of Borrower and Guarantors (including that each Guarantor has received adequate legal consideration for its and their delivery of a Guaranty), subject to any exceptions, limitations and assumptions as may be acceptable to the Bank;

(11) (x) a copy of the Operating Agreement (and all modifications and amendments thereto), and all guaranties issued pursuant thereto, (y) a copy of the filed Certificate of
Formation for Borrower and such other evidence of Borrower's and the Co-Managing Member's (and its constituent entities, if any) existence and good standing as may be required by Bank, and (z) copies of the Hunt Backstop Guaranty and all development agreements, management agreements, investment agreements, deficit funding facility agreements, equity notes, purchase options, and other documents and agreements referenced in the Operating Agreement, and all modifications and amendments thereto, or otherwise required in connection therewith by the Investor Member.

(12) evidence of the authority of Borrower, the Co-Managing Member, and the Co-Managing Member's president or sole and/or Co-Managing Member, and Guarantors to enter into the transactions described herein.

(13) an Affidavit of No Liens in the form of Exhibit "C" attached hereto.

(14) a copy of the fully executed Permanent Mortgage Loan Commitment, together with a fully executed counterpart of the Tri-Party Agreement.

(15) the Forward Commitment (and rate lock shall have occurred thereunder in a manner satisfactory to Bank), and the organizational documents of the Contractor and each Entity Guarantor (and all financial information of the Co-Managing Member, together with any and all modifications thereof as of the date hereof).

(16) the certificate of organization, articles of organization, and regulations (operating agreement, if applicable) of the Co-Managing Member and the Guarantors, and a certificate of good standing as of the date hereof from the Texas Secretary of State's office, and the Texas Comptroller of Public Accounts related to the payment of franchise taxes, resolutions (with secretary's certificate), Secretary's Certificate of Incumbency, and all other documents required by Bank to evidence the Co-Managing Member and its constituents and their representatives are empowered and duly authorized to enter into the transactions described herein.

(17) the Co-Managing Member's president or sole and/or Co-Managing Member, and Guarantors to enter into the transactions described herein.
agreements evidenced by the Loan Documents executed by each of them;

(19) if available and only to the extent reasonably required by Bank, a narrative report prepared by a licensed soil consultant regarding the soil conditions of the Land, which shall include results of the test borings and recommendations concerning soil bearing pressures, foundations, excavations, fill, and compaction, and evidence the proposed drainage of the Premises is adequate and that the foundation designed for the Improvements is adequate for the existing conditions;

(20) evidence of all fire, hazard, general and excess liability, flood (if applicable), builder’s risk, and workman’s compensation insurance required under Section 4.1(d) and all other insurance as required by Bank and the other Loan Documents;

(21) proof (such as “will issue letters”) in form and substance satisfactory to Bank that the required permits, building and otherwise, and authorizations from all appropriate Governmental Authorities necessary or required in connection with the construction of the Improvements and the City Infrastructure Improvements have been obtained, or will be obtained when they become necessary for the development of the Improvements and City Infrastructure Improvements, together with copies of all other required Governmental Permits (if a “will issue” letter is accepted, it shall be in compliance with all Bank requirements with respect thereto, including, provisions of evidence of the issuance of the applicable permit within the time required by Bank);

(22) a current survey of the Premises (which shall indicate what part, if any, of the Premises is located in the 100-year flood plain based on a current flood map and shall otherwise satisfy the requirements of Exhibit “J” attached hereto);

(23) a pro-forma operating statement for the Premises and evidence of market conditions for the use of the Premises (including review and approval of the feasibility of the 110 units and review and approval that projected NOI will support the Loan);
(24) an Appraisal of the Premises, reflecting the market value of the Premises and will include for the Affordable Units the valuation of the Low Income Housing Tax Credit awarded to the Premises (on an as-completed, rent restricted (with respect to the Affordable Units), stabilized basis) to be an amount which satisfies Section 4.1(hh) above;

(25) a Phase I Environmental Audit, performed by an independent third party acceptable to Bank, and approved by all applicable departments of the Bank;

(26) a final and complete set of the Plans with all necessary regulatory approvals evidenced thereon, as well as the signatures of Borrower, the Contractor, and the Architect, and reviewed by a review architect satisfactory to Bank. The review of the Plans by Bank's review architect shall include an evaluation of the adequacy of the scope of the proposed work;

(27) the proposed plat to be filed in the plat records for the issuance of building permits for the Improvements upon the completion of the City Infrastructure Improvements (including the new sanitary line), executed by all parties other than the City (and evidence the plat has been approved by the City and is being held pending completion of the City Infrastructure Improvements);

(28) Borrower shall have opened and maintained the Construction Account and the Capital Contribution Account;

(29) the Financial Statements (as required by Bank);

(30) the final Budget, and the final total cost breakdown (prepared on AIA document G703 and itemizing those line items to be funded from Capital Contributions and those line items to be funded from the Construction Loan), construction schedule, and draw schedule, together with a third party plan and cost review performed by a Person approved by Bank, which, among other things, shall verify the adequacy of the Budget;

(31) if and to the extent required by Bank, reasonable evidence that there will be sufficient parking for the intended use of the Premises as in accordance with all applicable Requirements of Law;
(32) the final Budget, pro forma operating statements, and a verification of market conditions for use;

(33) evidence that the Land comprises one or more separate tax parcels;

(34) the form of lease to be used for leases of units in the Premises after the Closing Date;

(35) the interest rate of the Permanent Mortgage Loan shall have been rate locked in a manner acceptable to Bank;

(36) the TIF Agreement (and an amendment thereto extending the date for commencement of the Improvements as required by the TIF Agreement to a date satisfactory to Bank) and the anticipated timing of funding of the reimbursements thereunder;

(37) a copy of the fully executed Permanent Supportive Housing Agreement;

(38) a copy of the fully executed Delivery Assurance Note and the Delivery Assurance Mortgage;

(39) a complete list of costs for the Improvements and the City Infrastructure Improvements, enumerated on AIA document G703, to include all hard (direct) costs and all anticipated soft (indirect) costs. The cost breakdown should clearly indicate those line items to be funded by Capital Contributions, the Construction Loan, the Subordinate Loans, and the TIF, and the estimated timing of each such funding;

(40) a projected schedule of (i) construction progress (which schedule provides that the Premises will be Placed in Service as such term is used by and when required by the Credit Agency for maintaining the Low-Income Housing Tax Credit), (ii) timing of amounts to be funded from Capital Contributions, and (iii) the timing of disbursements of the Construction Loan and each Subordinate Loan;

(41) an executed copy of each Construction Contract for the Improvements and the City Infrastructure Improvements, which contracts shall comply in all respects to the final approved Plans and shall set forth a "fixed price" or "guaranteed maximum price." The Improvements Construction Contract and the Improvements Primary
Subcontract for the Improvements and the City Infrastructure Improvements Construction Contract for the City Infrastructure Improvements shall be subject to the reasonable approval by Bank. The Contractor shall submit, for Bank's review and approval, a "Contractor's Qualification Statement" on AIA document A305. The general contract shall, by its terms or by separate instrument, inure to the benefit of Bank as well as Borrower. The assignment in Section 4.3 shall be acknowledged in writing by the Contractor in a manner reasonably satisfactory to Bank and shall provide for the subordination of all statutory and contractual liens and claims of the Contractor against the Premises. If required by Bank, Bank shall also have received copies of all major subcontracts (deemed to be subcontracts providing services or supplies of 5% or more of the respective Construction Contract with the Contractor under which it is performing its labor and/or delivering its materials) and a complete list with names and addresses of all subcontractors providing labor and/or materials to the Improvements and the City Infrastructure Improvements. Bank acknowledges that certain subcontracts may not be awarded prior to closing the Construction Loan, in which case Borrower shall submit an amended list of subcontracts as and when awarded (and copies of any additional major subcontracts);

(42) an executed copy of the City Infrastructure Improvements Construction Contract, together with a report on the status of completing the work required by such contract and the source for payment of amounts owing by Borrower under that contract;

(43) an executed copy of the architectural contract, which contract shall, with the Architect, be subject to reasonable approval by Bank. The contract shall, by its terms or by separate instrument, be assignable to Bank and inure to the benefit of Bank pursuant to the terms of that instrument, as well as Borrower. The assignment in Section 4.2 shall be acknowledged in writing by the Architect in a manner reasonably satisfactory to Bank and shall provide for the subordination of all statutory and contractual liens and claims of Architect against the Premises. Bank shall require that the Architect perform regular progress inspections and certify on AIA form G702 each disbursement request for quantity and quality of work in place and compliance with the approved Plans;
the identity and experience of the management company, together with all management contracts, development agreements, operating agreements, franchise agreements, or other material contractual arrangements affecting the operation of the Premises. If required by Bank, the assignment of such contracts and arrangements provided for in the Construction Mortgage and the other Loan Documents shall be acknowledged by the contracting third parties;

(45) the account covered by and described in the Collateral Assignment of Account shall have been opened at Bank and shall have an opening balance of at least $500,000.00;

(46) reasonable evidence in the form of letters from the appropriate provider or from the project engineer, that public water, sanitary and storm sewer, electricity, gas, and other required utilities are available to the Premises or will be available prior to the need for such utilities at the Premises (as clearly identified in said letters) and in quantities sufficient for the successful operation of the Premises. Borrower shall also provide Bank with evidence that all utility lines will enter the Premises through adjoining public streets or, if passing through adjoining private land, do so in accordance with recorded public or private easements reasonably satisfactory in form and content to Bank;

(47) reasonable evidence that (a) the Premises and all planned Improvements and the City Infrastructure Improvements and intended uses will fully comply in all material respects with all applicable deed restrictions, laws, regulations, and zoning requirements; and (b) reasonable evidence there are no pending proceedings, either administrative, legislative, or judicial, which would in any manner adversely affect that status of zoning with respect to the Premises or any part thereof;

(48) if and to the extent required by Bank, a marketing plan and marketing budget for the Premises;

(49) certificates of a reporting service reasonably acceptable to Bank, reflecting the results of a search of the central and local Uniform Commercial Code records made not earlier than thirty (30) days prior to the date hereof, showing no filings against Borrower or any of the collateral for the Loan except those, if any, approved by Bank or to be paid in connection with the closing;
(50) the development agreement with respect to the Premises;

(51) a plan and cost review (and the resolution of any items raised in that report);

(52) evidence that the City's budgeted upsizing reimbursement in the amount of $134,355.00 has been (or will be) paid and applied in a manner satisfactory to Bank;

(53) the CFA, City Infrastructure Improvements Construction Contract (and related Architect Agreement), the City Infrastructure Improvements Escrow Agreement (and Bank shall be prepared to fully fund each City Infrastructure Improvements Escrow Account on or in connection with the Closing Date), and all consents related thereto as may be required by the Bank;

(54) such regulatory/grant agreements, restrictive covenants, and other information, documents, and certificates as Bank or the title company may reasonably request in connection with the transactions contemplated in this Agreement (including without limitation, the items listed in Exhibit "I"); and

(55) evidence of the closing of the Subordinate Loans (and copies of all documents, commitments, awards, instruments, and agreements then in effect securing, evidencing and pertaining to the Subordinate Loans, together with each Intercreditor Agreement) and that there is no default existing thereunder or with respect thereto.

(b) The Construction Mortgage, all financing statements, and all other documents and agreements required by Bank shall have been recorded or filed in the manner required by Bank;

(c) No Default or Event of Default is then continuing; and

(d) Each of the foregoing shall have been fully satisfied, deferred, or waived in writing by Bank no later than the Closing Date (except as otherwise provided for above).

6.2 Advances During Construction Phase. Each of the following conditions shall be fully and completely satisfied in all material respects, or waived in writing by Bank, at the time of each request by Borrower after the Closing Date under Section 6.3 for a disbursement from the Capital Contribution Account, of any deposits of the Subordinate Loans, or of an advance under the Construction Note:
(a) Bank shall have received a Request for Advance pursuant to Section 6.3(a) (executed by Borrower);

(b) Bank shall have been furnished with, and approved, fully executed counterparts, as appropriate, of a Waiver of Lien to Date, in the form of Exhibit "D" attached hereto (on the appropriate form), or such other form which substantially satisfies the requirements of HB 1456 as adopted by the Texas legislature and effective as of January 1, 2012, from the Contractor and each of the subcontractors who were paid by Borrower or the Contractor with the proceeds from the immediately preceding requested advance (as itemized in the request for disbursement for that advance submitted pursuant to Section 6.3(a) hereof) or who were paid otherwise by Borrower during the preceding thirty (30) days for work in connection with construction of the Improvements and the City Infrastructure Improvements;

(c) Borrower shall have fully and completely satisfied all of the conditions set out in Section 6.1 (compliance with same being continuing conditions for all advances hereunder), regardless if a particular condition or covenant had been waived by Bank in whole or in part in connection with the closing of the Construction Loan or a prior advance;

(d) Prior to the first disbursement or advance for hard costs pertaining to work done on the Land from the Capital Contribution Account or under the Construction Note after the Closing Date, a copy of a filed Affidavit of Commencement, in the form of Exhibit "F", as filed with the County Clerk of Tarrant County, Texas, and otherwise satisfying the requirements of the Texas Property Code (which shall evidence that commencement of construction of the Improvements and the City Infrastructure Improvements on the Land began after the date the Construction Mortgage was recorded);

(e) If the request is made for an advance of the Construction Loan, the amount of the requested advance, when added to all previous advances of the Construction Loan, shall not exceed the amount of the Construction Loan;

(f) All of Borrower's representations and warranties made in this Agreement shall be true and correct in all material respects as of the date of each advance other than representations and warranties made as to a specific date;

(g) No Default or Event of Default shall have occurred and be continuing;

(h) Except as specifically permitted by the terms of the Loan Documents, no mechanic's or materialman's lien claim or other encumbrance shall have been filed and be in effect against the Land or the Improvements and
the City Infrastructure Improvements that has either not been Bonded or money escrowed, in a manner reasonably satisfactory to Bank;

(i) With respect to any advance or disbursement for hard costs, Bank shall have received an AIA Document G-702 and G-703 (1992 Edition), completed by the Contractor and certified by the Architect (if required by Bank);

(j) With respect to any advance for soft costs (including contingencies), all vouchers, invoices, and other evidence reasonably required by Bank;

(k) Borrower shall have delivered to Bank and its construction consultant, for their approval, reasonable evidence (which, if required by Bank, shall include a report of an inspection by its construction consultant) that (i) construction is proceeding in a manner to assure Substantial Completion of the Improvements by the Bank's Required Completion Date; (ii) the amount theretofore invested by Borrower in the Premises, together with the funds remaining to be paid from the Capital Contribution, the Subordinate Loans, the Construction Note, and from any other sources approved by Bank under this Agreement for the development of the Improvements and the City Infrastructure Improvements, are adequate to meet all costs incurred and to be incurred in connection with the construction of the Improvements and the City Infrastructure Improvements (excluding developer fee); and (iii) that construction of the Improvements and the City Infrastructure Improvements has been substantially in accordance with the Plans and in accordance with the Loan Documents, which shall include without limitation, any other due diligence with respect to the Premises reasonably required by Bank's construction consultant, and Bank shall have received and approved all third party inspection and other reports required by Bank with respect to the advance;

(l) Bank shall have received, at Borrower's cost and expense, a satisfactory "downdate endorsement" and all other endorsements if or as required by Bank to its loan title policy in connection with the advance;

(m) Borrower shall have complied with Sections 4.1(c) and 4.1(h) and the other terms and covenants of this Agreement;

(n) If and to the extent reasonably required by Bank, prior to the pouring of a slab and upon completion of that slab, Borrower shall have delivered a current survey evidencing the intended and actual location of the slab, showing no encroachment. If and to the extent required by Bank, Borrower shall have delivered a slab survey, if the proceeds of the advance are for, among other things, costs associated with the slab to the Improvements and the City Infrastructure Improvements, showing, among other things, no encroachments on or over any boundary line, easement, setback line, or other restricted area.
The survey must be dated, signed, and stamped by a surveyor licensed by the State of Texas;

(o) The Improvements and the City Infrastructure Improvements shall not have been damaged by fire or other casualty or, in such event, to the extent permitted under the terms and provisions of this Agreement and the Construction Mortgage, the Improvements and the City Infrastructure Improvements shall have been fully repaired and restored, or be in the process of being fully repaired and restored, to the state of completion achieved immediately before the casualty;

(p) No Material Adverse Change is then existing;

(q) No Default or Event of Default is then existing;

(r) All requirements of Section 6.3 shall be fully and completely satisfied with respect to the requested advance;

(s) Borrower shall have delivered to Bank such other information, documents, schedules, affidavits, statements, invoices, bills and other supporting documentation and material reasonably required by Bank to verify the progress of construction, or otherwise reasonably required by Bank to substantiate any of the matters necessary to qualify for the advance;

(t) Bank shall have received evidence that, to the extent required by a Governmental Authority to be then paid, all utility or reservation fees have been paid; and

(u) Evidence that all work requiring inspection by any Governmental Authority having or claiming jurisdiction has been duly inspected and approved by such authority and by any rating or inspection organization, bureau, association or office having or claiming jurisdiction.

6.3 Disbursement Procedures and Requirements. Subject to the terms of Sections 2.1(c), 6.1 and 6.2, Bank agrees to make periodic disbursements from the Capital Contribution Account, make disbursements of any deposits of the Subordinate Loans, and advances under the Construction Note to pay for budgeted items in accordance with this Agreement (each of which shall be net of Retainage) pursuant to the following procedures and requirements:

(a) Borrower or Borrower's Agent to Request Disbursements shall complete, sign and deliver to Bank a written request for advance (referred to herein as a "Request for Advance or a "request for disbursement") in the form of Exhibit "E" (or such form as may be approved by Bank). Bank may require that such requests be signed by the Architect and the Contractor;
(b) Bank shall have received evidence that (i) the Investor Member has approved all hard costs requested to be funded under the Request for Advance as required by the Operating Agreement (provided that if Bank approves a particular Request for Advance based on the finding of the Bank's construction consultant's report relating to that Request for Advance no approval by the Investor Member before funding those hard costs shall be required), and (ii) that Request for Advance shall have been supported by such receipts, invoices and supporting documents as may be required by Bank;

(c) Each Request for Advance shall be funded and deposited in the Construction Account, first from deposits of the Subordinate Loans (if any), then from deposits in the Capital Contribution Account (if any), and then from advances under the Construction Note within ten (10) Business Days after the date of satisfaction of Sections 6.1 and 6.2, with respect to that disbursement or advance. Borrower shall not submit more than one Request for Advance of deposits (if any) of the Subordinate Loans, of deposits of the Capital Contribution Account or of an advance under the Construction Note (as applicable) in any calendar month. Unless Bank shall otherwise agree, disbursements of any deposits of Subordinate Loans, disbursements from the Capital Contribution Account, or advances under the Construction Note shall not be made more frequently than monthly. Bank may fund less than the amount requested if the Bank (based upon the findings of Bank’s construction consultant’s report and the materials provided to Bank pursuant to Sections 6.1, 6.2 and 6.3), in its sole and reasonable discretion, disagrees or objects to a portion of the amounts requested by Borrower in any Request for Advance. If Bank funds less than the amount requested by Borrower, at the written request of Borrower, Bank will provide the applicable inspection report by the construction consultant for that request or other reason for not funding the full amount;

(d) Each Request for Advance shall include a request for any expenses for which Bank is to be reimbursed pursuant to the terms of the Loan Documents (including, without limitation, reasonable inspection fees of the construction consultant), and a request for amounts to be advanced to pay interest on and under the Construction Loan; and

(e) Disbursements for any deposits of the Subordinate Loans, disbursements from the Capital Contribution Account and Construction Note advances shall be made, at the option of Bank, to one or more of the following: Borrower (into the Construction Account or by such other means as acceptable to Bank and Borrower); with prior notice from Bank to Borrower, the Contractor (by joint check or payable to Contractor); to Bank to pay amounts due to it; provided Borrower has received and approved such amounts, or if and only if, an Event of Default has occurred.
and is continuing, or with prior notice from Bank to Borrower to any subcontractor, materialman, or other supplier providing labor, services or materials in connection with the Improvements and the City Infrastructure Improvements (by check or otherwise). The execution of this Agreement by Borrower constitutes an irrevocable direction and authorization for Bank to so disburse the proceeds of the Capital Contribution Account, and advances under the Construction Note. Bank may rely on requests for disbursements made by each Agent to Request Disbursements (whether or not joined in by the Investor Member or any other Person).

6.4 **Delivery of Requests for Payments.** Notwithstanding anything herein to the contrary, copies of all requests for payment made by the Contractor (or any of its subcontractors) to Borrower (and all materials submitted in connection with the request) shall be promptly submitted to Bank (even if the requested payment, in whole or in part, is not to be paid with amounts on deposit in the Capital Contribution Account, any deposits of the Subordinate Loans, or the proceeds of the Construction Note).

6.5 **Obligation for Further Disbursements.** No disbursement made hereunder of any deposits of the Subordinate Loans, of any deposit in the Capital Contribution Account, or of any advance under the Construction Note shall constitute a waiver of any condition precedent to the obligation of Bank to make any further disbursement from any deposits of the Subordinate Loans, from the Capital Contribution Account or any advance under the Construction Note, or preclude Bank from thereafter declaring the failure of Borrower to satisfy such condition precedent (after satisfaction of any applicable requirements of grace, notice, or both) to be an Event of Default. At Bank's sole option, any such condition precedent may be waived by Bank, in whole or in part, at any time. All conditions precedent to Bank's obligations to make disbursements are imposed solely for the benefit of Bank, and no other party may require any such condition precedent or be entitled to assume that Bank will refuse to make any disbursement in the absence of strict compliance with such condition precedent.

6.6 **Conditions to Final Disbursement for Retainage.** Except as otherwise expressly provided in this Agreement, the amounts on deposit in the Capital Contribution Account and advances of the Construction Note for payment of budgeted items are to be disbursed by Bank subject to a holdback in an amount equal to the sum of the Retainage. Subject to the further terms hereof, Bank shall not be obligated to make the final advance of the amounts on deposit in the Capital Contribution Account, deposits of the Subordinate Loans, or any advances under the Construction Note under this Agreement to pay Retainage (to the extent then being withheld under the terms of this Agreement) until all of the following conditions have been fully satisfied (with proof thereof being furnished in form and sufficiency reasonably acceptable to Bank) or waived in writing by Bank:

(a) Forty-one (41) days have elapsed after the later of (i) "completion" of the Improvements and the City Infrastructure Improvements, as defined in and required by Section 53.106 of the Texas Property Code, or (ii) the date of
completion as set forth in an Affidavit and Certificate of Completion (the "Affidavit of Completion"), filed with the county clerk of the county where the Land is located, executed by Borrower and the Contractor, and Architect (if and to the extent required by Bank) in the form of Exhibit "G" (or a certificate or affidavit in such other form which complies with Section 53.106 of the Texas Property Code and is otherwise acceptable to Bank), or (iii) the date Borrower has otherwise fully and completely satisfied the requirements of Section 53.106 of the Texas Property Code, including, without limitation, providing a copy of any such affidavit to all parties, and within the time periods, required by such Section 53.106.

(b) Bank shall be furnished with, and shall have approved, fully executed counterparts, as appropriate, of the following:

(i) Evidence that all applicable Requirements of Law have been satisfied in all material respects, including, without limitation, (v) receipt by Borrower of all necessary Governmental Permits and other licenses, certificates, and permits with respect to the completion, use, occupancy, and operation of the Improvements and the City Infrastructure Improvements, together with evidence reasonably satisfactory to Bank that such licenses, certificates, and permits are in full force and effect and have not been revoked, canceled, or modified, it being specifically agreed that Bank shall have received a certified copy of the final Certificate of Occupancy (as applicable, or if not applicable, such other evidence of completion that is reasonably required by Bank), issued by the requisite municipal authority, evidencing the ability to legally occupy the Premises, which must be unqualified and unconditional, (w) such evidence as Bank may reasonably request that Borrower is in compliance with the requirements of the Forward Commitment, the Permanent Mortgage Loan Commitment relating to the funding of the Permanent Mortgage Loan, (x) such evidence as Bank may request that Borrower is in compliance with the requirements of the Permanent Mortgage Loan Commitment and the Forward Commitment relating to the funding of the Permanent Mortgage Loan and in compliance with the requirements of the Subordinate Loan Documents (and each is in full force and effect), (y) such evidence as Bank may reasonably request that Borrower is in compliance in all material respects with the requirements of the LURA (to the extent it has been executed and filed of record with the County Clerk of Tarrant County, Texas) and that the Investor Member has not issued a notice of event of default under the Operating Agreement or otherwise informed the Co-Managing Member in writing that the Co-Managing Member is in breach of the Operating Agreement, and (z) such evidence as Bank may reasonably request to show that the Improvements and their use comply fully with any and all applicable zoning (if any), subdivision, building, and environmental requirements (such evidence shall include, without limitation, material to establish that the number of parking spaces available on the Land is
sufficient to comply with all codes and ordinances then applicable, or other appropriate Governmental Authority, and that all fire systems in the Improvements and the City Infrastructure Improvements are installed, operational, and sufficient to comply with such codes and ordinances of the appropriate Governmental Authority);

(ii) If required by Bank, an as-built survey, approved by Bank and satisfying the requirements of Exhibit "J", showing the location of the Improvements and the City Infrastructure Improvements and showing no encroachment by any of the Improvements and the City Infrastructure Improvements upon any boundary line, easement, building setback line, or other restricted area, and shall reflect there is public access and shall contain flood plain disclosures (Bank in any event shall have received and approved a flood plain determination with respect to the Land). The survey must be dated, signed, and stamped by a surveyor certified in Texas;

(iii) An Affidavit of Completion, in the form of Exhibit “G”, executed by Borrower, Architect, and Contractor (or a certificate or affidavit in such other form which complies with Section 53.106 of the Texas Property Code and is otherwise reasonably acceptable to Bank), and filed with the county clerk of the county in which the Land is located;

(iv) An affidavit of bills paid, in a form reasonably acceptable to Bank, executed by Contractor, Architect, and such other Persons who have supplied materials or labor as Bank may require to satisfy itself that the Improvements and the City Infrastructure Improvements (and all other Improvements and the City Infrastructure Improvements to the Land completed through the date of any such affidavit) have been substantially completed lien-free and that the costs of all materials furnished and labor performed in connection with such construction have been paid in full subject to Retainage (or Bonded around by a Bond issued by a company satisfactory to Bank and in an amount and on a form reasonably satisfactory to Bank);

(v) A punch-list of any work to be completed and evidence there are sufficient sources of funds to pay such items;

(vi) A fully executed (by Borrower, Architect, and Contractor) AIA Form G706 (Contractor’s Affidavit of Payment of Debts) AIA Form G704, and, concurrently with the payment of Retainage, AIA Form G706a (Contractor’s Affidavit of Release of Liens) and full and complete releases of lien from each subcontractor of and supplier to the Contractor with respect to work performed and/or materials supplied at the Premises;
(vii) If and to the extent required by Bank, a complete inventory of the furnishings, fixtures, and equipment owned or leased by Borrower and used in the operation of the Improvements and the City Infrastructure Improvements, with leased items, if any, designated as such;

(viii) Evidence of continuing insurance coverage in accordance with Section 4.1(d);

(ix) Such endorsements to Bank's loan title insurance policy as Bank may reasonably request;

(x) Such releases and waivers of lien as Bank may reasonably request;

(xi) If required by Bank, a complete set of "as-built" plans and specifications, certified as accurate in all material respects by the Contractor;

(xii) The construction consultant and the Architect and/or the engineer shall have certified to Bank that construction has been completed in a good and workmanlike manner, in accordance with applicable requirements of all Governmental Authorities and substantially in accordance with the plans and specifications;

(xiii) Near Southside, Inc., as the TIF administrator under and for purposes of the TIF Agreement, shall have confirmed the Improvements and the City Infrastructure Improvements (and other items constituting the Project under and for purposes of the TIF Agreement) have been completed for purpose of the TIF Agreement;

(xiv) Such other evidence or information concerning completion as Bank shall reasonably request (including evidence all Completion Documentation under and as defined in the Operating Agreement has then been provided and accepted for purposes of the Operating Agreement).

(c) All representations and warranties made by Borrower in this Agreement shall be true and correct in all material respects as of the date of an advance or disbursement to be made under this Section 6.6 (other than representations and warranties made as to a specific date).

(d) No Default or Event of Default shall have occurred and be continuing.

(e) Each of the foregoing conditions listed in this Section 6.6 shall have been fully satisfied or waived in writing by Bank on or before Bank's Required Completion Date.
6.7 **Construction Consultant.** Bank shall rely upon the services of a
construction consultant used by the Investor Member in order to monitor the progress of
the development of the Improvements and the City Infrastructure Improvements as
provided for in this Agreement (in such event, Bank may, at its option, require a
satisfactory report from such construction consultant, confirming, among other things, all
requests for reimbursement for labor and services to the Premises have in fact been so
provided, as a condition precedent for a disbursement of any deposits of the
Subordinate Loans, a disbursement from the Capital Contribution Account or for an
advance under the Construction Note). Borrower shall pay directly to the construction
consultant, within ten (10) days after written request therefor, an inspection fee of a
maximum of $2,200.00 (except that the fee for the initial inspection and the review of
the Plans shall be $8,000 plus direct expenses and the fee for the final inspection and
final report shall be $2,750.00 plus direct expenses). Borrower shall pay Bank $75.00
for each additional copy of an inspection report requested by Borrower. Borrower shall
cooperate with the construction consultant and shall cause Contractor, each
subcontractor, and the employees of each of them to reasonably cooperate with the
construction consultant and, upon request, shall furnish the construction consultant
whatever the construction consultant may reasonably consider necessary or useful in
connection with the performance of the construction consultant’s duties. Without limiting
the generality of the foregoing, Borrower shall furnish or cause to be furnished upon
request such items as working details, plans and specifications and details thereof,
samples of materials, licenses, permits, certificates of public authorities, and copies of
the contracts between Borrower and Contractor.

6.8 **No Liability For Tax Consequences.** Bank shall not be responsible or
liable in any way for any tax consequences to any Person resulting from advances
authorized or made by Bank in accordance with the terms of this Agreement.

6.9 **Consent to Sharing of Information.** Notwithstanding anything herein to
the contrary, Borrower acknowledges and consents to the Bank providing information
(including without limitation, certain of the information provided pursuant to Sections 6.1,
6.2, 6.3, and 6.6), to other Persons, including to the Credit Agency, the Investor
Member, FWHFC, the City, the TIF, the Permanent Lender, and to Bank’s construction
consultant described in Section 6.7 above (or to any potential participant or investor in
the Construction Loan).

**VII – DEFAULTS AND REMEDIES**

7.1 **Events of Default.** Each of the following shall constitute an Event of
Default under this Agreement:

(a) **Monetary Default.** The failure to pay any fee or payment under
this Agreement, the Construction Note, any of the other Obligations, or any of the
other Loan Documents, which is not paid within ten (10) days after it is due;
(b) **Non-Monetary Default.** A default by Borrower or a Guarantor in the due observance or performance of any of their respective obligations under this Agreement and the other Loan Documents, which is not fully cured by or on behalf of Borrower, a Guarantor or the Investor Member (or any of their Affiliates, successors or permitted assigns) within thirty (30) days after written notice thereof is provided to Borrower, each Guarantor and the Investor Member by Bank; provided that the foregoing notice and opportunity to cure in this subsection (b) will not be required for monetary defaults covered by Section 7.1(a) or for any other Event of Default specifically enumerated in another subsection of this Section 7.1 (the occurrence of any such event and the continuation beyond the expiration of all applicable notice, cure or grace period shall in and of itself constitute an Event of Default). It is agreed that any Affiliate of the Special Member or the Investor Member may cure a Default for and on behalf of the Investor Member or the Special Member;

(c) **Misrepresentations.** Any representation or warranty made by Borrower or any Guarantor in any of the Loan Documents proves to have been untrue when made in any material adverse respect or any Financial Statements or certificate of Borrower or any Guarantor or furnished or made to the Bank as an inducement for Bank agreeing to enter in to this Agreement, or in accordance with the terms of this Agreement, proves to have been untrue in any material respect as of the date the facts therein set forth were stated or certified (provided that if the foregoing Event of Default relates to a Guarantor, no Event of Default shall occur if Guarantor is replaced with a substitute Guarantor satisfactory to Bank in Bank’s reasonable determination within said 30-day period);

(d) **Other Defaults.** A default (which means all applicable notice and cure periods have expired) by Borrower or any Guarantor (whether as principal or guarantor or other surety) in its payment or performance of the Subordinate Loan Documents, or of the loan evidenced by the Delivery Assurance Note or under the TIF Agreement or any other bond, debenture, note or other evidence of indebtedness, in excess of $250,000.00, or under any credit agreement, loan agreement, indenture, promissory note, or similar agreement or instrument executed in connection with any of the foregoing, which is not cured or waived within any applicable notice or grace period (provided that if the foregoing Event of Default relates to a Guarantor, no Event of Default shall occur if Guarantor is replaced with a substitute Guarantor satisfactory to Bank in Bank’s reasonable determination within 60 days after notice of the Event of Default is provided to Borrower);

(e) **Failure to Comply with Requirements of Law.** Failure of the construction or development of the Improvements and the City Infrastructure Improvements or any materials for which an advance has been requested to comply in any material adverse respect with any Requirement of Law and such
failure shall not have been fully cured within sixty (60) days after written notice thereof is delivered by Bank to Borrower;

(f) **Swap Agreement.** The occurrence and continuation of any default, event of default, or other similar condition or event (however described with respect to a Swap Agreement) which is not fully cured within any applicable cure or grace period;

(g) **Failure to Satisfy Conditions to Closing.** Borrower shall be unable to fully satisfy any of the conditions listed in Section 6.1 (in a timely manner), and such condition(s) was not waived by Bank in writing, even if Bank has agreed to close the transaction evidenced by this Agreement and has made any advances of the Construction Loan; or disbursements of the Capital Contribution from the Capital Contribution Account (unless Bank has agreed to waive any such condition in writing and such failure is not fully and completely cured within thirty (30) days after written notice thereof is provided by Bank to Borrower);

(h) **Failure to Satisfy Conditions to Advance.** In connection with any request made under Section 6.2 for an advance of proceeds of the Construction Note and a disbursement from the Capital Contribution Account, Borrower shall be unable to fully satisfy any of the conditions to the advance listed in this Agreement, and such failure is not either waived in writing by Bank or fully and completely cured within thirty (30) days after written notice thereof is delivered by Bank to Borrower, or the failure of Borrower to satisfy the conditions listed in Section 6.2(t) are not satisfied within one hundred twenty (120) days after the Closing Date;

(i) **Completion.** Each of the conditions precedent listed in Section 6.6 are not fully satisfied or waived by Bank on or before the Bank’s Required Completion Date and in accordance with all Requirements of Law (including all requirements for ensuring the preservation of the Low-Income Housing Tax Credit);

(j) **Permanent Mortgage Loan Commitment.** (i) Failure by Borrower to comply with terms and requirements of the Permanent Mortgage Loan Commitment and the Guide, the Guidelines, or any other requirements, now or hereafter existing, of Freddie Mac and the Permanent Lender relating to the construction and use of the Premises (including that the Premises remain at all times available for a Low-Income Housing Tax Credit), if such failure is not remedied within any applicable notice or grace provision set forth in the Permanent Mortgage Loan Commitment, (ii) the expiration, cancellation, termination or unenforceability of the Permanent Mortgage Loan Commitment, or (iii) the modification or amendment to the Permanent Mortgage Loan Commitment without the prior written consent of Bank, or (iv) any receiver or bankruptcy trustee having jurisdiction over Borrower and/or the Premises shall
reject or otherwise determine it will not perform under and with respect to the Forward Commitment;

(k) **Bank Determination.** A reasonable determination by Bank (or its construction consultant) that the development and construction of the Improvements cannot be Substantially Completed by the Bank's Required Completion Date and in accordance with all Requirements of Law (including all requirements for ensuring the preservation of the Low-Income Housing Tax Credit) and such failure is not fully cured within thirty (30) days after written notice thereof is provided by Bank to Borrower;

(l) **Equity.** Failure of the Investor Member to make any scheduled installment of the Capital Contribution as and when required to do so under the Operating Agreement, or (ii) any material reduction (other than as a result of the application of standard tax credit adjustment provisions in the Operating Agreement) in the amount of the Capital Contribution or the amount of any installment of the Capital Contribution, or any change to the conditions to the funding of the Capital Contribution or any installment thereof (other than as a result of a waiver of any such conditions), or any change in the timing of the funding of the Capital Contribution, which are not consented to by Bank in writing, unless the amount of the reduction is made by the Co-Managing Member as an equity contribution in a manner satisfactory to Bank or the amount of the reduction is otherwise made available in the manner satisfactory to Bank or the reduction does not affect the amount of the scheduled Capital Contributions listed in Exhibit "H" which are to be applied to budgeted items or the Construction Note;

(m) **Liquidation or Dissolution.** Borrower, a Guarantor, Hunt, or the Investor Member shall dissolve or liquidate, or Borrower or Co-Managing Member or Contractor shall merge with or be consolidated into any other entity, modify or amend its organizational documents (except as otherwise may be permitted under the Loan Documents, including, without limitation, Section 5.1(i) hereof), or fail to remain in good standing in the State of Texas, without the prior written consent of Bank; and such situation is not remedied within thirty (30) days after written notice thereof is delivered by Bank to Borrower, it being agreed by Bank that (1) if the situation giving rise to the Default involves the Co-Managing Member or a Guarantor, that situation may be remedied by replacing, as applicable, the Co-Managing Member or a Guarantor or Contractor with a substitution acceptable to Bank within such thirty (30)-day cure period (with respect to the Co-Managing Member, Bank will condition its acceptance of a substitution on the approval of the substitution by the Investor Member), or (2) if the foregoing Event of Default relates to Freddie Mac, no Event of Default shall occur if Freddie Mac is replaced with another permanent lending source acceptable to Bank on terms acceptable to Bank within such thirty (30) day period;
(n) **Death or Legal Incapacity.** The death or legal incapacity of an Individual Guarantor and the failure of Borrower to provide Bank with a replacement Guarantor acceptable to Bank within thirty (30) days after the occurrence of any such death or legal incapacity, or event;

(o) **Failure to Observe Construction Contract.** Failure of Borrower or Contractor to perform, observe, or comply in any material respect with any of the material terms, covenants, conditions, or provisions of any applicable Construction Contract within ten (10) Business Days after written notice thereof is delivered by Bank to Borrower; provided, however, that in the case of such a failure by Contractor, if Borrower is diligently and in good faith pursuing all appropriate remedies under the pertinent Construction Contract relating to such Contractor's failure thereunder and Contractor remedies such failure or Borrower terminates the Construction Contract in good faith within thirty (30) Business Days after the occurrence of such failure, then Borrower shall not be deemed to be in default under this Agreement if another Contractor reasonably satisfactory to Bank is selected by Borrower and placed under contract with Borrower within sixty (60) days after terminating said defaulting Contractor and such substitute Contractor promptly proceeds to fully cure the defaulting Contractor's default and to construct the Improvements and the City Infrastructure Improvements in substantial accordance with the Budget and the Plans, in a diligent manner and in accordance with this Agreement;

(p) **Uninsured Casualties.** If any act or occurrence of any kind or nature (including any casualty) for which insurance required hereunder or under the other Loan Documents was not obtained (or was not obtainable) shall result in material damage to or material loss or material destruction of a material portion of the Improvements and the City Infrastructure Improvements, and such loss or damage is not fully repaired or replaced within ninety (90) days after such occurrence;

(q) **Voluntary Filings.** Borrower, any Guarantor, Hunt, Freddie Mac, or the Investor Member shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of it or all or a substantial part of its assets, (ii) file a voluntary petition commencing a bankruptcy or other insolvency proceeding, (iii) make a general assignment of all or a material part of Borrower's assets for the benefit of creditors, (iv) be unable, or admit in writing its inability, to pay its debts generally as they become due, or (v) file an answer admitting the material allegations of a petition filed against it in a bankruptcy or other insolvency proceeding (provided that (1) if the foregoing Event of Default relates to a Guarantor, no Event of Default shall occur if that Guarantor is replaced with a substitute Guarantor satisfactory to Bank in Bank's reasonable determination within sixty (60) days after any such filing, or (2) if the foregoing Event of Default relates to Freddie Mac, no Event of Default shall occur if Freddie Mac is replaced with another permanent lending source acceptable to Bank on terms acceptable to Bank within sixty (60) days;
(r) **Involuntary Filings.** An order, judgment, or decree shall be entered against Borrower, any Guarantor, Hunt, Freddie Mac, or the Investor Member by any court of competent jurisdiction or by any other duly authorized authority, on the petition of a creditor or otherwise, granting relief in a bankruptcy or other insolvency proceeding or approving a petition seeking reorganization or an arrangement of its debts or appointing a receiver, trustee, conservator, custodian or liquidator of it or all or any substantial part of its assets and such order, judgment or decree shall not be dismissed or stayed within sixty (60) days (provided (1) that if the foregoing Event of Default relates to a Guarantor, no Event of Default shall occur if that Guarantor is replaced with a substitute Guarantor satisfactory to Bank in Bank's reasonable determination within sixty (60) days after any such filing, or (2) if the foregoing Event of Default relates to Freddie Mac, no Event of Default shall occur if Freddie Mac is replaced with another permanent lending source acceptable to Bank on terms acceptable to Bank within sixty (60) days;

(s) **Levy.** The levy against any significant portion of the property of Borrower or any Guarantor or any execution, garnishment, attachment, sequestration, or other writ or similar proceeding which is not permanently dismissed or discharged within sixty (60) days after the levy or proceeding (provided that if the foregoing Event of Default relates to Guarantor, no Event of Default shall occur if Guarantor is replaced with a substitute Guarantor satisfactory to Bank in Bank's reasonable determination within sixty (60)-day period);

(t) **Work Stoppage.** The failure to comply with the terms and provisions of Section 4.1(b).

(u) **Judgments.** A final and non-appealable order, judgment or decree, which is uninsured in an amount in excess of $250,000.00, shall be entered against Borrower or a Guarantor, and such order, judgment or decree shall not be paid, reserved or Bonded for Bank (in each case in a manner acceptable to Bank), dismissed or stayed within sixty (60) days after entering of such order, judgement, or decree (provided that if the foregoing Event of Default relates to Guarantor, no Event of Default shall occur if that Guarantor is replaced with a substitute Guarantor satisfactory to Bank in Bank's reasonable determination within said sixty (60) day period);

(v) **Challenges.** Borrower, a Guarantor, Hunt, the Investor Member, or their representatives and Affiliates shall challenge or contest in any action, suit, or proceeding the validity or enforceability of this Agreement or any of the other Loan Documents, the legality or enforceability of any of the Obligations or the perfection or priority of any lien or security interests granted to Bank;

(w) **Fraudulent Activities.** Borrower or a Guarantor shall have (i) concealed, removed, or diverted, or permitted to be concealed, removed or
diverted, any part of its property, with intent to hinder, delay or defraud its creditors or any of them; (ii) made or suffered a transfer of any of its property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or (iii) shall have suffered or permitted, while insolvent, any creditor to obtain a lien upon any of their respective property through legal proceedings or otherwise which is not vacated within sixty (60) days from the date thereof;

(x) **Lien Priority.** The liens and/or security interests granted in any Loan Document shall not constitute a first and prior lien and/or security interest upon the collateral described therein, subject only to the Permitted Exceptions or otherwise permitted by this Agreement or any of the other Loan Documents, and such circumstances are not fully cured in a manner reasonably acceptable to Bank within 30 days after written notice thereof is delivered by Bank to Borrower;

(y) **Failure to Satisfy Development Requirements.** Failure by any Person to comply with the terms and requirements of the HAP Commitment, the HAP Contract (to the extent it is then executed) or any other requirements of the Authority or HUD relating to the HAP Commitment or the HAP Contract (to the extent it is then executed), or the modification, amendment, cancellation, or termination of the HAP Commitment or the HAP Contract (after being executed);

(z) **Low Income Housing Tax Credit.** A reasonable determination by the Credit Agency that Borrower has failed to satisfy the applicable Requirements of Law for obtaining and maintaining the Low Income Housing Tax Credit for the Premises, and all applicable notice and cure periods have expired; and/or

(aa) **Failure to Make Liquidity Contribution.** The failure of Hunt to timely pay Bank under and with respect to the Hunt Backstop Guaranty in its capacity as "Construction Lender" thereunder.

(bb) **CFA.** A draw by the City of the Security Funds from a City Infrastructure Improvements Escrow Account pursuant to Section 6 of a City Infrastructure Improvements Escrow Agreement as a result of the failure by Borrower to perform under a CFA.

Without limiting the foregoing, (A) Borrower agrees that Bank will determine whether a substitute Guarantor is satisfactory based on a variety of factors, including without limitation, financial capacity of the proposed replacement, experience of the proposed replacement in developing low income housing projects, and the reputation and general background of the proposed replacement, and (B) Borrower agrees that Bank will determine whether an alternative permanent lending source is satisfactory based on a variety of factors, including, without limitation, financial capacity and whether or not such alternative permanent lending source is known in the affordable housing industry as a provider of permanent financing.
7.2 **Termination of Obligations.** Any obligation of Bank to make an advance of the Construction Loan or make any other funding under this Agreement and the other Loan Documents shall immediately and automatically cease and terminate during the existence of a Default or an Event of Default unless and until Bank shall reinstate the same by agreeing to fund a Request for Advance in writing, which in connection with any such reinstatement Bank agrees to provide at Borrower's request and expense a written confirmation that the particular Default or Event of Default has been cured in a timely manner or in a manner otherwise satisfactory to Bank (provided that notwithstanding the foregoing, during the existence of an Event of Default, any and all other obligations of Bank shall terminate).

7.3 **Rights and Remedies.** During the continuation of an Event of Default, Bank may, at its option, do any one or more of the following:

(a) **Acceleration.** To the extent permitted by applicable law, Bank, at its option and without any notice of intent to accelerate, notice of acceleration, or other notice or demand, may declare the entire principal amount of the Construction Note then outstanding and the interest accrued thereon immediately due and payable, and the said entire principal, interest and all other amounts owing thereunder shall thereupon become immediately due and payable without presentment, demand, protest, notice of protest or other notice of default or dishonor of any kind, all of which are hereby expressly waived by Borrower.

(b) **Additional Rights.** Bank shall have, in addition to the rights and remedies given it in this Agreement and the other Loan Documents (including, without limitation, the foreclosure of the Construction Mortgage), all of the rights and remedies allowed by all applicable ordinances, statutes, rules, regulations, orders, injunctions, writs or decrees of any governmental or political subdivision or agency thereof, or any court or similar entity established by any such subdivision or agency.

(c) **Enter on Premises.** At the risk, reasonable cost, and expense of Borrower: (i) enter upon and take possession of the Premises and the materials and equipment owned or leased by Borrower being used in the development of the Improvements and the City Infrastructure Improvements; (ii) take such action as Bank shall in its reasonable judgment deem appropriate to protect the Premises; and (iii) take such action as Bank shall in its reasonable judgment deem appropriate to continue construction of the Improvements and the City Infrastructure Improvements with such changes therein as Bank may elect to make. If Bank shall elect to continue construction, Bank may: (v) assume or reject any construction or other contracts made by Borrower in connection with the construction or operation of the Improvements and the City Infrastructure Improvements; (w) engage or employ contractors, subcontractors, architects, engineers and others for the construction of the Improvements and the City Infrastructure Improvements; (x) pay, settle or compromise existing or future bills or claims relating to the development of the Improvements and the City Infrastructure Improvements.
Infrastructure Improvements or the Premises or affecting title thereto; (y) take or refrain from taking such other action (including, without limitation, discontinuing construction), in its name or in the name of Borrower, as Bank in its reasonable judgment may determine; and (z) enforce the right to payment of Capital Contributions under the Operating Agreement (to the extent enforceable under applicable Requirements of Law). All reasonable costs and expenses incurred by Bank in taking and protecting the Premises and in constructing the Improvements and the City Infrastructure Improvements shall be paid by Borrower to Bank upon demand, with interest at the rate provided in the Construction Note from the date of disbursement to the date of payment to Bank, and the payment of such sums shall be secured by the Construction Mortgage and the other Loan Documents. Bank shall have no obligation to take any of the foregoing actions, and if Bank should do so, it shall have no liability to Borrower or Guarantors for the sufficiency of any such actions or otherwise, provided such actions are taken in a commercially reasonable manner, as determined by a court of competent jurisdiction.

(d) Low-Income Housing Tax Credit. The parties hereby acknowledge and agree that the Low Income Housing Tax Credit is an inseparable benefit of ownership of the Premises which is transferred with the transfer of ownership of the Premises and that the Low-Income Housing Tax Credit may not be transferred or assigned by Bank separately from its security interest in the Premises nor by Borrower and its members to any other Person separately from the Borrower's and its members' ownership of the Premises. In the event that the Bank (or its designee) obtains title to and ownership of the Premises through foreclosure, deed in lieu of foreclosure, or otherwise, the Borrower (or the Investor Member) shall have no right to claim the Low-Income Housing Tax Credit which is generated by the Premises from and after the date on which the Bank (or its designee) obtains title to and ownership of the Premises.

(e) Curative Action. Bank may (but is not in any way obligated) for and on behalf of the Co-Managing Member of Borrower as its duly authorized attorney in fact to cure any default or event of default under the Operating Agreement if and to the extent that default or event of default relates to the development of the Premises and not to the Co-Managing Member itself (such as a bankruptcy of the Co-Managing Member).

(f) Bank Offset. As further security for the Construction Note, the Obligations, and all other indebtedness which may at any time be owing by Borrower to the holder of the Construction Note, whether such obligations and indebtedness are incurred directly or acquired from third parties by Bank or any other holder of the Construction Note, Borrower grants to Bank or any other holder of the Construction Note a lien, security interest, and contractual right of setoff in and to the Construction Account and the Capital Contribution Account and all other deposits (general or special, time or demand) of Borrower now or at
any time hereafter held or received by or in transit to or coming within the custody or control of Bank or any other holder of the Construction Note, including without limitation, all certificates of deposit and other accounts, irrespective of whether such certificates or accounts have matured and whether the exercise of such right of setoff results in loss of interest or other penalty under the terms of the certificate or agreement. Bank or any holder hereof shall have a first lien and security interest on all deposits and other sums at any time credited by or due from Bank or any holder the Construction Note to Borrower as collateral security for the payment of the Construction Note, and Bank or other holder hereof, at its option and after acceleration of the maturity of the Construction Note, howsoever said maturity may be brought about, may without notice and without any liability, hold all or any part of any such deposits or other sums until all sums owing on the Construction Note and all other indebtedness owing by Borrower to the holder of the Construction Note have been paid in full and all other obligations have been performed in full and/or apply or set off all or any part of any such deposits or other sums credited by or due from Bank or any holder of the Construction Note to or against any sums due on the Construction Note in any manner and in any order or preference which Bank or other holder hereof, at its sole discretion, chooses. The parties acknowledge and agree that each of the deposits is a "deposit account" within the meaning of 9-104 of the UCC. The parties further acknowledge and agree that Texas constitutes the "bank’s jurisdiction" with respect to the perfection, the effect of perfection or non-perfection, and the priority of a security interest in a deposit account maintained at a bank under 9-304(b)(1) of the UCC. The Bank shall at all times have "control" of the accounts and all assets now or hereafter credited thereto within the meaning of Section 9-106 of the UCC or Section 9-104(a) of the UCC for purposes of maintaining its first and prior perfected security interest therein. The foregoing rights of Bank are in addition to and cumulative of all other rights and remedies (including, without limitation, the liens, security interests and rights of setoff) which Bank may have.

(g) Other Rights. In addition to the other rights and remedies available to Bank, upon discovery by Bank of any material deviations from the Plans not otherwise expressly permitted by the terms of this Agreement, or of any material defective or unworkmanlike labor or materials being used in the construction of the Improvements and the City Infrastructure Improvements, Bank may immediately order stoppage of construction and demand that any unsatisfactory work be replaced and that the condition be corrected, whether or not any unsatisfactory work has already been incorporated into the Improvements and the City Infrastructure Improvements. After issuance of such an order in writing, the condition shall be corrected within thirty (30) days from the date of stoppage by Bank, subject to Excusable Delays. Bank shall have the right to withhold all further advances of the Construction Loan until the condition is corrected and no other work shall be done on the Improvements and the City Infrastructure Improvements without the prior written consent of Bank, which
consent shall not be unreasonably withheld, conditioned, or delayed, unless, and until, such condition has been fully corrected.

7.4 **Due on Sale.** Except as expressly permitted by the Loan Documents, including without limitation, Section 5.1(d), (f), (g), or (l), and except for Approved Leases, and except as a result of pledges or transfers of interests in the non-Co-Managing Members of Borrower otherwise expressly permitted by the Loan Documents, or except as a result of a partial condemnation, if Borrower shall sell, convey, encumber, assign or transfer all or part of its interest in the Premises or any interest therein without the prior written consent of Bank, Bank may, at Bank’s option, without (unless expressly required by the terms of the Loan Documents) demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration of or other notice, or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner on the Construction Note and other Obligations, declare the Construction Note and other monetary Obligations to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment or transfer, and upon such declaration the entire unpaid balance of the Construction Note and other Obligations shall be immediately due and payable.

7.5 **Notice and Cure Rights of Investor Member.** Notwithstanding anything to the contrary contained herein, the Bank agrees to accept performance on the part of the Investor Member, and any of their Affiliates as though the same had been performed by the Borrower under any of the Loan Documents. The Bank will allow the Investor Member and their Affiliates ten (10) days after giving the Investor Member notice to cure a monetary default under the Loan Documents (other than the payment due at maturity) and except as to the Borrower’s filing of a voluntary bankruptcy petition, up to thirty (30) days after giving the Investor Member notice to cure of any non-monetary default under the Loan Documents, provided, however, that in the event of a non-monetary default that is not susceptible to being cured within such thirty (30) day period, the Bank will allow the party offering cure an additional period of up to sixty (60) days to cure such default, provided that the cure of such default has commenced and the person offering the cure is continuously proceeding to cure such default through the end of the sixty (60) day period. If the Investor Member or any of their Affiliates makes any such payment or otherwise offers cure of a default, the Bank will accept or reject such action as curing such default on the same basis as if payment or cure were made directly by the Borrower. The foregoing cure periods provided to the Investor Member shall run simultaneously with any cure period provided to Borrower under Section 7.1.

**VIII – MISCELLANEOUS**

8.1 **Bank Approvals.** The Construction Contract and all surveys, appraisals, insurance policies, form leases, plans and specifications, legal opinions, requests for disbursement, and other Loan Documents and items required for the Construction Loan shall be reasonably satisfactory to Bank in all material respects (Bank may, at its option, condition any such approval on the approval by the Investor Member, the TIF, FWHFC, the City, and/or the Credit Agency, if and to the extent such parties also must approve
of these items pursuant to the documents evidencing and/or governing each of their respective sources of funding to the Borrower).

8.2 **No Third Party Beneficiaries.** Except for the notice and cure rights provided to certain Persons in this Agreement, this Agreement is for the sole protection and benefit of Bank and Borrower, and no other Person shall have any right as a third party beneficiary hereunder or any right to bring an action hereon or claim the proceeds of the Construction Loan or the equity contributed hereunder, except with regard to the Guarantors' and the Investor Member's right to receive notices and effect cures pursuant to the terms of this Agreement.

8.3 **No Waiver.** No failure on the part of Bank to exercise any right, option, privilege, or remedy available to Bank shall operate as a waiver thereof, nor shall any single or partial exercise or waiver of any such right, option, privilege, or remedy preclude any other or further exercise thereof to its fullest extent or the exercise of any other right, option, privilege, or remedy.

8.4 **Notices.** Notices, requests, demands and other communications which any party is required or may desire to give to any other party under any provision of this Agreement and the other Loan Documents must be in writing and delivered to the other party at the address set forth in the first paragraph of this Agreement (or to such other address as any party may designate by written notice to the other party), with a copy to John Shackelford, Shackelford, Bowen, McKinley & Norton, LLP, 9201 N. Central Expressway, 4th Floor, Dallas, TX 75231, and to Shutts & Bowen LLP, 200 S. Biscayne Blvd., Suite 4100, Miami, Florida 33131, Attention: Robert Cheng. Each such notice, request, demand or other communication shall be deemed given or made as follows: If sent by mail, upon the earlier of the date of receipt or five (5) days after deposit in the U.S. Mail, first class postage prepaid and by certified mail, return receipt requested; and if sent by any other means, upon delivery. Copies of all notices provided by Bank to Borrower under this Agreement shall be simultaneously provided to the Investor Member at 15910 Ventura Boulevard, Suite 1100, Encino, CA, 91436, Attention: Jeffrey N. Weiss, with a copy to Ballard Spahr LLP, 1735 Market Street, 51st Floor, Philadelphia, Pennsylvania 19103, Attention: Jere Thompson (Borrower and Bank agree that the Investor Member is authorized, on behalf of Borrower, to cure any Default or Event of Default).

Any notice under the Construction Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 8.4.

8.5 **Transfer of Rights.** Borrower shall not assign or otherwise transfer this Agreement or the Loan Documents, in whole or in part, without the prior written consent of Bank. Bank may create and sell participation interests in the Construction Loan or otherwise assign or transfer this Agreement and the Loan Documents, in whole or in part, as provided for in Section 8.23, at any time and in the event of an assignment or
transfer by Bank, the term "Bank" shall include any such assignee or transferee to the extent of the interest assigned or transferred. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors, personal representatives, and assigns.

8.6 **Severability.** The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision herein, and the invalidity or unenforceability of any provision of any Loan Document to any person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

8.7 **Advertising.** Bank shall have the right at its sole cost and expense, to erect one or more signs on the Premises advertising its financing of the Improvements and the City Infrastructure Improvements, provided that the same complies with all Requirements of Law.

8.8 **GOVERNING LAW.** EXCEPT AS SPECIFICALLY PROVIDED FOR IN ANY OTHER LOAN DOCUMENT, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUSIVE OF ITS CONFLICT AND CHOICE OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS, THE UNDERSIGNED HEREBY AGREE THAT THE STATE AND FEDERAL COURTS LOCATED IN TARRANT COUNTY, TEXAS SHALL HAVE EXCLUSIVE JURISDICTION AND VENUE WITH RESPECT TO ALL ACTIONS BROUGHT BY OR AGAINST ANY PARTY UNDER OR PURSUANT TO THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS, THE UNDERSIGNED HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND TO SERVICE OF PROCESS, EFFECTIVE UPON RECEIPT BY PERSONAL SERVICE, OVERNIGHT EXPRESS DELIVERY, SIGNATURE REQUESTED UPON DELIVERY, OR REGISTERED OR CERTIFIED MAIL. TO THE EXTENT OF ANY INCONSISTENCY BETWEEN THIS SECTION AND A LIKE PROVISION IN ANY OTHER LOAN DOCUMENT, THIS SECTION SHALL GOVERN AND CONTROL.

8.9 **Other Advances.** Borrower and Bank acknowledge and agree that in the future, Borrower may apply for and Bank may agree to fund additional loans to Borrower. Borrower and Bank agree that all existing and hereafter created loans and other advances from Bank, or any of its predecessors or successors in interest, to Borrower, whether or not such loans are particularly described in this Agreement, as may be amended from time to time, shall constitute Obligations for purposes of this Agreement and shall be subject to the terms, provisions, covenants, and agreements set forth in this Agreement (except that the Construction Mortgage shall only secure the Obligations therein described). Nothing herein shall constitute an offer or commitment by Bank to make any such additional loan.
8.10 No Duty or Special Relationship. Borrower acknowledges that Bank has no duty to Borrower with respect to the loan transactions set forth in this Agreement except as expressly provided for in this Agreement and the other Loan Documents, and acknowledge that no fiduciary, trust, or other special relationship exists between Bank and Borrower.

8.11 Other Remedies Not Required. Subject to the terms of the Loan Documents, Borrower may be required to pay the Construction Note in full without the assistance of any other party, or any collateral or security for the Construction Note. Except as specifically required by applicable law, Bank shall not be required to mitigate damages, file suit, or take any action to foreclose, proceed against or exhaust any collateral or security in order to enforce payment of the Construction Note.

8.12 No Control by Bank. BORROWER AGREES AND ACKNOWLEDGES THAT ALL OF THE COVENANTS AND AGREEMENTS PROVIDED FOR AND MADE BY BORROWER IN THIS AGREEMENT AND IN THE OTHER LOAN DOCUMENTS ARE THE RESULT OF EXTENSIVE AND ARMS-LENGTH NEGOTIATIONS BETWEEN BORROWER AND BANK. BANK’S RIGHTS AND REMEDIES PROVIDED FOR IN THIS AGREEMENT AND IN THE OTHER LOAN DOCUMENTS ARE INTENDED TO PROVIDE BANK WITH A RIGHT TO OVERSEE BORROWER’S ACTIVITIES AS THEY RELATE TO THE LOAN TRANSACTIONS PROVIDED FOR IN THIS AGREEMENT, WHICH RIGHT IS BASED ON BANK’S VESTED INTEREST IN BORROWER’S ABILITY TO PAY THE CONSTRUCTION NOTE AND PERFORM THE OTHER OBLIGATIONS. NONE OF THE COVENANTS OR OTHER PROVISIONS CONTAINED IN THIS AGREEMENT SHALL, OR SHALL BE DEEMED TO, GIVE BANK THE RIGHT OR POWER TO EXERCISE CONTROL OVER, OR OTHERWISE IMPAIR, THE DAY-TO-DAY AFFAIRS, OPERATIONS, AND MANAGEMENT OF BORROWER.

8.13 Construction Commitment Rendered. The obligations of Bank and Borrower, if any, under the Construction Commitment, as may have been extended, are fully and completely satisfied, replaced, and superseded by the execution and delivery of the Loan Documents.

8.14 No Partnership. Nothing herein is intended, nor shall it be deemed or construed as, to create a partnership, joint venture, or common interest in profits or income between Borrower and Bank, or to make Bank in any way responsible for the debts or losses of Borrower or with respect to the collateral described in the Loan Documents. Borrower and Bank disclaim any sharing of liabilities, losses, costs or expenses.

8.15 Release of Liens. The Construction Note may represent advancing credit indebtedness. Accordingly, regardless of whether the balance outstanding under the Construction Note or anything in any Loan Document to the contrary, the Construction Note and Loan Documents (and liens and security interests granted thereunder) shall continue in full force and effect until Bank shall execute a release thereof (which will be
provided upon the full and final payment of the Obligations and provided Bank has no funding commitments under this Agreement), except for those Loan Documents which are to be terminated by their express terms upon delivery of the Conversion Certificate by Bank.

8.16 **Renewal of Indebtedness.** All provisions of this Agreement relating to the Construction Note shall apply with equal force and effect to each and all promissory notes hereafter executed which in whole or in part represent a renewal, extension, or rearrangement of any part of the indebtedness originally represented by the Construction Note, or any of them, provided that nothing herein shall constitute a commitment or offer by Bank to such a renewal, extension or rearrangement.

8.17 **Counterparts.** This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one counterpart be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of the signature page of this Agreement by facsimile or electronic means shall be effective as delivery of a manually executed counterpart.

8.18 **Controlling Agreement.** Borrower and Bank intend to conform strictly to the applicable usury laws. All agreements between Bank and Borrower (or any other party liable with respect to any indebtedness under this Agreement and the other Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest contracted for, charged, or received under the Construction Note otherwise exceeds the Maximum Rate. If, from any possible development of any document, interest would otherwise be payable to Bank in excess of the Maximum Rate, any such construction shall be subject to the provisions of this Section and such document shall be automatically reformed and the interest payable to Bank shall be automatically reduced to the Maximum Rate, without the necessity of execution of any amendment or new document. If Bank shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Rate, an amount equal to the amount which would have been excessive interest shall at the option of Bank, be refunded to Borrower or applied to the reduction of the principal amount owing hereunder in the inverse order of its maturity and not to the payment of interest. The right to accelerate maturity of the Construction Note or any other indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Bank does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Bank shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the
amount of interest on account of such indebtedness does not exceed the Maximum
Rate.

8.19 **NO ORAL AGREEMENT.** THIS WRITTEN LOAN AGREEMENT 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 OF THE
PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

8.20 **JURY WAIVER.** EACH PARTY HERETO HEREBY WAIVES, TO THE
FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE
TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY
ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS
CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY
OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO
REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS
REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY
WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE
FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER
PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY,
AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS
SECTION.

8.21 **Bank Consent.** Whenever Bank is required under this Agreement or any
of the other Loan Documents to provide its consent or approval, or render its
determination, judgment, satisfaction, or decision, such consent, approval,
determination, judgment, satisfaction, or decision (or the denial of such consent,
approval, determination, judgment, satisfaction, or decision, as the case may be) shall
not be unreasonably withheld or conditioned and shall be given within a reasonable time
after its receipt of the request therefor (if a request therefor is required by the terms of
the Loan Documents), taking into consideration the circumstances of the request.

8.22 **Governing Documents.** Except as otherwise expressly provided, all
irreconcilable inconsistencies or conflicts between the terms of this Agreement with the
terms of any other Loan Document shall be governed and controlled by the terms of this
Agreement.

8.23 **Participations.** Borrower acknowledges and agrees that Bank may
provide any information Bank may have about Borrower or about any matter relating to
this Agreement to Bank, its parent, its subsidiaries, its Affiliates or their successors, or
to any one or more purchasers or potential purchasers of a Note. Borrower agrees that
Bank may at any time sell, assign or transfer one or more interests or participations in
all or any part of its rights or obligations in the Construction Note to any one or more
purchasers whether or not related to Bank. Borrower authorizes Bank to disseminate
any information it has pertaining to the Construction Loan to JPMorgan Chase and Co.,
or any of its subsidiaries or Affiliates or their successors, or to any one or more
purchasers or potential purchasers of the Construction Loan, including, without limitation, credit information on Borrower, any of its principals, or any other party liable, directly or indirectly for the Construction Note, to any such assignee or participant or prospective assignee or participant. Borrower shall execute, acknowledge, and deliver any and all instruments reasonably requested by Bank to satisfy such assignee or participant that the Construction Loan is outstanding in accordance with the terms and provisions of the Construction Note and the Loan Documents. Subject to all applicable Requirements of Law relating to confidentiality, the Borrower agrees that the Bank may provide any information the Bank may have about the Borrower or about any matter relating to the Construction Loan to prospective participants of the Loan.

8.24 Placement of Restrictive Covenants. Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, Borrower shall be permitted to execute any restrictive covenants or restrictions which Borrower is required to enter into by the Credit Agency for issuance of Form 8609 with respect to the Premises if and to the extent Borrower has notified Bank thereof in writing prior to Borrower's execution thereof, including, without limitation, the LURA. All such documents described in this Section 8.24 are herein collectively called the "Restriction and Easement Documents". Once Bank confirms that such Restriction and Easement Documents are in the form promulgated by the Credit Agency (and approved by Bank), Bank shall subordinate its liens and security interests with respect to the Premises (including without limitation, the lien and security interest created by the Construction Mortgage) to such Restriction and Easement Document in a manner reasonably acceptable to Bank, the Credit Agency, and their respective counsel. Such subordination shall provide that Bank is subject to the limitations on evictions, termination of tenancy, and increase in rents for the three (3) year period following the acquisition of the Premises by Bank or its successors or assigns by foreclosure (or instrument in lieu of foreclosure), as set forth in Section 42(h)(6)(E)(ii) of the Internal Revenue Code, as amended.

8.25 No Offset. All payments due by Borrower to Bank under the Loan Documents are to be made by the Borrower without offset or other reduction.

8.26 Recognition. Borrower has been advised by Bank to seek the advice of an attorney and an accountant in connection with the commercial loan evidenced by the Construction Note; and Borrower has had the opportunity to seek the advice of an attorney and accountant of Borrower's choice in connection with the commercial loan evidenced by the Construction Note.

8.27 Increased Costs. If, after the Closing Date, any law, regulation or change in any law or regulation or in the interpretation thereof, or any ruling, decree, judgment, guideline, directive or recommendation (whether or not having the force of law) by any regulatory body, court, central bank or any administrative or Governmental Authority charged or claiming to be charged with the administration thereof (including, without limitation, a request or requirement which affects the manner in which the Bank allocates capital resources to its commitments including its obligations hereunder) shall
either (a) impose upon, modify, require, make or deem applicable to the Bank or any of its Affiliates, subsidiaries or participants any reserve requirement, special deposit requirement, insurance assessment or similar requirement against or affecting the Construction Loan, or (b) subject the Bank or any of its Affiliates, subsidiaries or participants to any tax, charge, fee, deduction or withholding of any kind whatsoever in connection with the Construction Loan, or change the basis of taxation of the Bank or any of its Affiliates, subsidiaries or participants (other than a change in the rate of tax payable by the Bank or any of its Affiliates, subsidiaries or participants based on the overall net income of the Bank or such other Person), or (c) impose any condition upon or cause in any manner the addition of any supplement to or increase of any kind to the Bank's or an Affiliate's, subsidiary's or participant's capital or cost base for issuing or owning a participation in the Construction Loan, which results in an increase in the capital requirement supporting the Construction Loan, or (d) impose upon, modify, require, make or deem applicable to the Bank or any of its Affiliates, subsidiaries or participants any capital requirement, increased capital requirement or similar requirement, such as the deeming of the Construction Loan to be an asset held by the Bank or any of its Affiliates, subsidiaries or participants for capital adequacy calculation or other purposes (including, without limitation, a request or requirement which affects the manner in which the Bank or any participant allocates capital resources to its commitments including its obligations hereunder or under the Construction Loan), if any, and the result of any events referred to in (a), (b), (c) or (d) above shall apply only to the Premises, and shall be to increase the costs in any way to the Bank or any Affiliate, subsidiary or participant of issuing, maintaining or participating in the Construction Loan, or reduce the amounts payable by Borrower hereunder or reduce the rate of return on capital, as a consequence of the issuing, maintaining or participating in the Construction Loan to a level below that which the Bank, its Affiliates, subsidiaries or participants could have achieved but for such events; then and in such event Borrower shall, promptly upon receipt of written notice to Borrower by the Bank of such increased costs and/or decreased benefits, pay within thirty (30) days of demand therefor to the Bank all such additional amounts which, in the Bank's or participant's sole good faith calculation as allocated to the Construction Loan shall be sufficient to compensate it for all such increased costs and/or decreased benefits, all as certified by the Bank or such participants in said written notice to Borrower. Such certification shall be accompanied by information concerning the calculation of such increased costs and/or decreased benefits and shall be conclusive and binding on the parties hereto, absent manifest error. In determining such amount, the Bank or any participant may use any reasonable averaging or attribution methods.

8.28 **Business Loans.** Borrower warrants and represents to Bank, and to all other holders of any debt evidenced by the Construction Note, that the Construction Loan is and shall be for business, commercial, investment or other similar purpose and not primarily for personal, family, household or agricultural use, as such terms are used in Chapter One of the Texas Credit Code. Borrower does not expect to occupy any property covered by the Construction Mortgage.
8.29 **USA Patriot Act Notification.** The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each Person that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual, Bank will ask for Borrower's name, taxpayer identification number, residential address, date of birth, and other information that will allow Bank to identify Borrower, and, if Borrower is not an individual, Bank will ask for Borrower's name, taxpayer identification number, business address, and other information that will allow Bank to identify Borrower. Bank may also ask, if Borrower is an individual, to see Borrower's driver's license or other identifying documents, and, if Borrower is not an individual, to see Borrower's legal organizational documents or other identifying documents.

Without limiting the foregoing, Bank hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Bank to identify the Borrower in accordance with the Act.

8.30 **WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER THE BANK NOR THE BORROWER SHALL ASSERT, AND EACH HEREBY WAIVES, ANY CLAIM AGAINST THE OTHER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

8.31 **Swap Agreements.** All Swap Agreements, if any, between Borrower and Bank or any Affiliate of Bank are independent agreements governed by the written provisions of said Swap Agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of the Loan Documents, except as otherwise expressly provided in said written Swap Agreements, and any payoff statement from Bank relating to the Construction Loan shall not apply to said Swap Agreements. A default or event of
default under a Swap Agreement shall be an Event of Default and an Event of Default shall be an event of default under any Swap Agreement.

8.32 Publicity. The Borrower hereby authorizes Bank and its Affiliates, without further notice or consent, to use the Borrower's and its Affiliates' names, logos, and photographs related to the Premises in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, Bank also may discuss at a high level the types of services and solutions Bank has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies Bank in writing in accordance with the notice provisions set forth herein that such authorization is revoked.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
In witness whereof, the parties have duly executed this Agreement under seal as of the day and year first above written.

"BORROWER"

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By:

Lisa M. Stephens,
President
"BANK"

JPMORGAN CHASE BANK, N.A.

By: [Signature]

Olivio C. Occhaa, Authorized Officer
EXHIBIT "A"

INDIVIDUALS REQUESTING DISBURSEMENTS

Lisa Stephens
Megan Lasch
# EXHIBIT "B"

## BUDGET

### Mistletoe Station

**Sources**
- Deferred Developer Fee: 2,599,446
- LIHTC Equity: 12,988,714
- Permanent 1st Mortgage: 8,390,000
- TIF Reimbursement: 2,608,000
- FW HFC: 750,000
- FW HOME: 10,960,000
- City Reimbursement Costs: 134,355
- Rate Lock Deposit: 186,000

**TOTAL:** 28,594,815

### Uses
- Acquisition: 2,476,935
- CPA Runway: 490,722
- Construction Contract - Main: 12,275,300
- Other Environmental: 100,000
- CPA Maker: 3,513,800
- Addendum - Maker (CPA Work): 5,80,200
- Construction Contingency @ 5.0%: 840,042
- JPMC Construction Loan Interest: 1,809,127
- JPMC Construction Loan Fee @ 0.75%: 167,815
- JPMC Closing Costs & Legal Fees: 30,000
- JPMC Plan & Cost Review - Inspections: 3,580
- Other Inspections: 258,000
- PDL Other: 30,099
- HFC Loan Interest: 32,800
- Perm Loan Fee: 23,000
- Perm Closing Costs & Legal: 56,800
- Perm Rate Lock Deposit: 160,000
- Appraisal: 2,700
- Market Study-Financial Study: 8,000
- Equity DD & Legal: 65,000
- Impact Fees: 35,000
- Environmental & Due diligence: 67,000
- Architectural Fees: 340,000
- Survey Engineering Fees: 340,000
- Green Consultant: 55,000
- Building Permit Fees & Utility Connection Fees: 84,500
- Accounting: Cost Cen: 56,400
- Permanent Property Insurance: 23,000
- Taxes During Construction: 124,401
- Real Estate Attorney/other legal fees/local counsel: 260,000
- Title & Mortgage Recording Fees: 100,000
- LIHTC Fees: 64,810
- Builders Risk, OL, Comp Ops Inv: 277,000
- F&P Bond: 193,400
- Housing Consultant: 200,000
- Advertising Marketing: 75,000
- Encumbrance Contingency: 185,000
- Other (Int Decs. FFE): 100,000
- FWHF Fee: 84,179
- Soft Cost Contingency @ 1.67 %: 118,939
- Operating Reserve 1st Year Reserve: 540,000
- Developer Fee: 2,527,585

**TOTAL:** 28,594,815
EXHIBIT "C"

AFFIDAVIT OF NO LIENS

BEFORE ME, a Notary Public, on this ___ day of ____________, 2018, personally came and appeared the undersigned, in her individual capacity, who, after being by me duly sworn and deposed, stated as follows:

1. The undersigned Lisa M. Stephens is the President of Saigebrook Mistletoe, LLC, a Texas limited liability company, the co-managing member of Mistletoe Station, LLC, a Texas limited liability company ("Borrower").

2. Reference is made to the loans to be made to Borrower by JPMORGAN CHASE BANK, N.A. ("Bank") in accordance with the terms and provisions of the Credit Support and Funding Agreement (the "Loan Agreement"), of even date herewith, by and between Borrower and Bank, which are to be secured by, among other things, the tract of land (the "Land") located in Tarrant County, Texas, which is described by metes and bounds on the attached Exhibit "A".

3. Except for any work previously disclosed in writing by Borrower to Bank prior to the date hereof, as of the date of this Affidavit, to the knowledge of the Borrower, all labor and services performed on or with respect to the Land (and all buildings located thereon) prior to the date hereof, have been paid and performed in full, and Borrower has obtained a lien waiver from and on behalf of all contractors and other entities who have performed all such work.

4. This Affidavit is executed by Borrower with the express knowledge and understanding that the representations made herein are made for the purpose of inducing Bank to advance the funds pursuant to the terms of the Loan Agreement, and that but for this Affidavit, the Bank would not advance such funds.
EXECUTED as of the date first above written.

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By: ______________________
Lisa M. Stephens,
President

STATE OF TEXAS  §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of ____________, 2018, by Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, on behalf of said limited liability company, managing member of MISTLETOE STATION, LLC, a Texas limited liability company.

_____________________
Notary Public, State of Texas

After Recording Return To:

Debbie Spencer
JPMorgan Chase Bank, N.A.
201 N. Central Avenue
14th Floor
Phoenix, Arizona 85004-0073
EXHIBIT "D"

WAIVER OF LIEN TO DATE

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project

Job No.

On receipt by the signer of this document of a check from __________________ (maker of check) in the sum of $__________ payable to __________________ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of __________________ (owner) located at __________________ (location) to the following extent: __________________ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to __________________ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date ____________________

(Company name)

By ____________________ (Signature)

____________________ (Title)

STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on this ______ day of __________________ (name), __________________ (job title) of __________________ (company name),____________________, 20____, by __________________ (notary public, state of Texas).
CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project ____________________________

Job No. ____________________________

On receipt by the signer of this document of a check from ________________ (maker of check) in the sum of $_________ payable to ________________ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute relating to claim or payment rights for persons in the signer's position that the signer has on the property of ________________ (owner) located at ________________ (location) to the following extent: ________________ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to ________________ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date ________________

__________________________________________ (Company name)

By ______________________________________ (Signature)

__________________________________________ (Title)

STATE OF TEXAS

COUNTY OF ____________

This instrument was acknowledged before me on this ___ day of __________, 20 __ by

__________________________________________ (name),

__________________________________________ (company name),

JOB TITLE OF ________________

NOTARY PUBLIC, STATE OF TEXAS
NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project ____________________________

Job No. ____________________________

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to __________________ (person with whom signer contracted) on the property of __________________ (owner) located at __________________ (location) to the following extent: __________________ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date ____________________________

______________________________ (Company name)

By ____________________________ (Signature)

______________________________ (Title)

STATE OF TEXAS  §
COUNTY OF __________________  §

This instrument was acknowledged before me on this ______ day of ______, 20 _______, by __________________ (name), ___________________ (job title) of __________________ (company name).

______________________________ (Notary Public, State of Texas)
NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project __________________________

Job No. __________________________

The signer of this document has been paid and has received a progress payment in the sum of $_________ for all labor, services, equipment, or materials furnished to the property or to ____________________ (person with whom signer contracted) on the property of ____________________ (owner) located at ____________________ (location) to the following extent:

The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to ____________________ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date ____________________________

______________________________ (Company name)

By ______________________________ (Signature)

______________________________ (Title)

STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on this day of ________, 20____, by ____________________ (name), ____________________ (job title) of ____________________ (company name).

______________________________ (Notary Public, State of Texas)

HOU 408830322v19

D-2
EXHIBIT "F"

AFFIDAVIT OF COMMENCEMENT

THE STATE OF TEXAS §

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, co-managing member of Mistletoe Station, LLC ("Owner"), and __________________________ of __________________________ ("Original Contractor"), known to me to be the persons whose names are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows (in their capacities set forth below and not individually):

1. The Owner is the owner of the real property (the "Land") situated in Tarrant County, Texas, more particularly described in Exhibit "A", attached hereto and made a part hereof for all purposes, on which building and other related Improvements (the "Improvements") are being constructed.

The address of Owner is:

MISTLETOE STATION, LLC
5501-A Balcones Drive, #302
Austin, TX 78731

The address of Original Contractor is:

FORT WORTH HOUSING FINANCE CORPORATION

The name and address of any other original contractor, presently known, after reasonable inquiry, to the Affiants, to the Owner or to the Original Contractor, that is furnishing, or will furnish, labor, service, or materials, for the construction of the Improvements and the City Infrastructure Improvements, and the nature of such labor, service or materials, is as follows:

__________________________________________

__________________________________________

__________________________________________

F-1
Work on the Improvements (including the first delivery of materials and equipment to the Land in connection with the Improvements and the City Infrastructure Improvements) actually commenced on ____________, 20__ at ____ o'clock __m.

This affidavit has been jointly made by Owner and Original Contractor by and through an authorized representative of each, the same being the undersigned Affiants. This affidavit may be executed in identical counterparts, each of which shall be deemed an original, and all of which, collectively, shall constitute one affidavit.

EXECUTED this ___________ day of _________________, 20__.

AFFIANTS:

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By: __________________________

Lisa M. Stephens,
President

FORT WORTH HOUSING FINANCE CORPORATION

By: __________________________

Name: __________________________
Title: __________________________
STATE OF TEXAS §

COUNTY OF ______ §

This instrument was acknowledged before me on the _____ day of ____________, 2018, by Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, on behalf of said limited liability company, managing member of MISTLETOE STATION, LLC, a Texas limited liability company.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF ______ §

This instrument was acknowledged before me on ________, 2018, by ____________________, ___________________________________ of FORT WORTH HOUSING FINANCE CORPORATION, a Texas housing finance corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

My Commission Expires: ___________________________

Printed Name

After Recording Return To:

Terri Stigler
JPMorgan Chase Bank, N.A.
700 N. Pearl Street, 13th Floor
Mail Code TX1-2625
Dallas, Texas 75201
EXHIBIT "G"

AFFIDAVIT AND CERTIFICATE OF COMPLETION

THE STATE OF TEXAS §

COUNTY OF TARRANT §

BEFORE US, the undersigned authorities, on this day personally appeared ______________________ of Architects Collaborative, Inc. ("Architect"), ________________ of Fort Worth Housing Finance Corporation ("Original Contractor"), and Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, co-managing member of MISTLETOE STATION, LLC, a Texas limited liability company ("Owner"), known by us to be the persons whose names are subscribed below, and who, being by first duly sworn, did on their oath state and certify as follows (on behalf of Architect, Owner and Original Contractor, respectively, and not individually), unless such statements and certifications are otherwise expressly limited below:

1. Owner, whose address is 5501-A Balcones Drive, #302, Austin, Texas 78731, is the owner of the real property situated in Tarrant County, Texas, more particularly described on Exhibit "A", on which real property certain Improvements (herein so called) were constructed and furnished under the original contract with the Original Contractor, whose address is ______________________ (the Land and the Improvements are collectively referred to as the "Premises").

2. The Improvements under the original contract between the Owner and the Original Contractor (including all on-site and off-site Improvements and the City Infrastructure Improvements) have been completed on ____________ , ____________ in substantial accordance in all material respects with the approved Plans and Specifications listed on the attached Exhibit "B".

3. After reasonable investigation, to the best of Owner's and Original Contractor's respective knowledge, (a) the Premises complies with all applicable restrictive covenants, building codes, permit requirements, and all other applicable laws, ordinances, codes, rules and regulations and (b) no hazardous or toxic substances or materials, as defined under any state, local or federal law have been used on-site in constructing the Improvements (or incorporated into the Premises, other than in compliance with applicable law.

4. Owner states and certifies that all utility services for the proper operation of the Improvements for its intended purpose are connected in accordance with the approved Plans and Specifications at the Premises, including water supply, storm and sanitary sewer facilities and gas (if the Plans and Specifications require the
Improvements to be served by gas), electricity and telephone facilities (in the case of Owner, this statement being made to the best of Owner’s current actual knowledge).

5. After reasonable investigation, to the best of Owner’s knowledge, the condition of the soil of the Premises complies with the requirement of the approved Plans and Specifications (in the case of Owner, this statement being made to the best of Owner’s current actual knowledge).

6. The Improvements are ready for immediate occupancy (in the case of Owner, this statement being made to the best of Owner’s knowledge).

7. Owner does hereby additionally state and certify as follows:

8. (a) Design and as built conditions for the Premises are such that no drainage or surface or other water other than normal surface drainage will drain across or rest upon either the Premises or land of others; and

(b) None of the Improvements creates or will create an encroachment over, across or upon any of the Premises boundary lines, building lines, setbacks, rights-of-way or easements, and no buildings or other Improvements on adjoining land create such an encroachment.

(c) Owner did and does hereby additionally state and certify as follows: All roads and rights-of-way necessary for the utilization of the Premises for its intended purposes have been completed or acquired.

9. ANY SUBCONTRACTOR OR OTHER LIEN CLAIMANT MAY NOT HAVE A LIEN ON RETAINED FUNDS UNLESS THE CLAIMANT FILES AN AFFIDAVIT CLAIMING A LIEN NO LATER THAN THE 30TH DAY AFTER THE DATE OF COMPLETION.

A CLAIMANT MAY NOT HAVE A LIEN ON RETAINED FUNDS UNLESS THE CLAIMANT FILES AN AFFIDAVIT CLAIMING A LIEN NOT LATER THAN THE 10TH DAY AFTER THE DATE THE WORK UNDER THE ORIGINAL CONTRACT IS COMPLETED.
AFFIANT "ARCHITECT":

Architects Collaborative, Inc.

By: ____________________________________________
Name: __________________________________________
Title: __________________________________________

SUBSCRIBED AND SWORN BEFORE ME, on this ___ day of ____________, 20__ by ____________________________.

____________________________________________________
Notary Public, State of Texas

AFFIANT "ORIGINAL CONTRACTOR":

Fort Worth Housing Finance Corporation

By: ____________________________________________
Name: __________________________________________
Title: __________________________________________

SUBSCRIBED AND SWORN BEFORE ME, on this ___ day of ____________, 20__ by ____________________________.

____________________________________________________
Notary Public, State of __________________________
AFFIANT "OWNER":

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By: __________________________
    Lisa M. Stephens,
    President

STATE OF TEXAS

COUNTY OF ____

This instrument was acknowledged before me on the ____ day of ___________, 2018, by Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, on behalf of said limited liability company, managing member of MISTLETOE STATION, LLC, a Texas limited liability company.

Notary Public, State of Texas

After Recording Return To:

Terri Stigler
JPMorgan Chase Bank, N.A.
700 N. Pearl Street, 13th Floor
Mail Code TX1-2625
Dallas, Texas 75201
### EXHIBIT "H"

**INVESTOR CAPITAL CONTRIBUTION SCHEDULE**

<table>
<thead>
<tr>
<th>INSTALLMENT</th>
<th>EVENT (^1)</th>
<th>AMOUNT(^2)</th>
<th>PURPOSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Investment Closing</td>
<td>$1,289,871</td>
<td>Pay costs of closing, then pay Investor Member for its due diligence costs in the anticipated amount of $65,000, then pay predevelopment loan, and then to pay budgeted costs of construction</td>
</tr>
<tr>
<td>2</td>
<td>March 1, 2019</td>
<td>$644,936</td>
<td>Pay budgeted costs of construction</td>
</tr>
<tr>
<td>3</td>
<td>Completion</td>
<td>$8,309,161</td>
<td>Pay budgeted costs of Construction, then pay Construction Note</td>
</tr>
<tr>
<td>4</td>
<td>Conversion</td>
<td>$2,579,742</td>
<td>Pay Construction Note in full, then fund operating reserves as provided in the Operating Agreement, and pay budgeted developer fees as provided in the Operating Agreement</td>
</tr>
<tr>
<td>5</td>
<td>Form 8809</td>
<td>$75,000</td>
<td>Pay Developer Fee</td>
</tr>
<tr>
<td>TOTAL CONTRIBUTION</td>
<td></td>
<td>$12,898,710</td>
<td></td>
</tr>
</tbody>
</table>

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1. As further provided in the Operating Agreement  
2. Subject to adjustment pursuant to the terms, conditions, and adjustors of the Operating Agreement
EXHIBIT "I"

ADDITIONAL ITEMS TO BE DELIVERED

A. PREMISES DEVELOPMENT ITEMS

1. Census Tract
2. Market Study or any market survey data prepared by borrower (Appraisal if available)
3. Pro forma operating statement and history if applicable (2 years)
4. Site Plan, Floor Plan/Unit Configuration with dimensions, and Elevations
5. Preliminary Budget & Cost Breakdown and Projected Draw Schedule (including calculation of interest payable)
6. Sources and Uses of Funds
7. Tax Credit Application/Proposal (if applicable)
8. Development timing assumptions including equity closing, loan closing, construction completion, qualified occupancy, projected lease-up schedule and estimated date of permanent loan funding.

B. FINANCIAL & REFERENCE INFORMATION

BORROWER:

1. Organizational structure of Borrower
2. Current Financial Statement to include cash flow, contingent liabilities
3. 2 years historical financial statements
4. Projected cash flow for one year
5. Tax ID Number or Social Security Number

PRINCIPALS/GUARANTORS

1. Current Financial Statement to include cash flow, contingent liabilities & statement of real estate owned (signed)
2. 2 years historical financial statements
3. Projected cash flow for one year
4. Current ongoing projects plus any future contemplated projects (need future projects only)
5. Status of current projects
6. Tax ID Number or Social Security Number

C. CONTRACTOR
1. Profile including past projects
2. Current financial statements, to include cash flow, contingent liabilities of statement of real estate owned (signed)

D. PROPERTY MANAGER
1. Property Management Agreement including marketing plan
2. Samples of property management reports and tenant leases
3. History of state and federal audits on projects under management

E. NONPROFIT INVOLVEMENT (IF APPLICABLE)
1. Resume of nonprofit partner
2. Description of previous and future project involvement
3. IRS Determination letter
4. Financial Statements
EXHIBIT "J"

MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS

I. Field Note Description. The Survey shall contain a certified metes and bounds description complying with the following: (i) the beginning point shall be established by a monument located at the beginning point, or by reference to a nearby monument; (ii) the sides of the Land shall be described by giving the distances and bearings of each; (iii) the distances, bearings, and angles shall be taken from an instrument survey by a registered professional engineer or registered professional land surveyor; (iv) curved sides shall be described by data including: length of arc, central angle, radius of circle for the arc and chord distance, and bearing; (v) the description shall be a single perimeter description of the entire Land. If and as instructed, there shall also be a separate metes and bounds description of one or more constituent tracts out of the Land; (vi) the description shall include a reference to all streets, alleys, and other rights of way that abut the Land, and the width of all rights of way mentioned shall be given the first time these rights of way are referred to; (vii) for each boundary line abutting a street, road, alley or other means of access, the description must, in calling the boundary line, state that the boundary line and the right of way line are the same; (viii) if the Land has been recorded on a map or plat as part of an abstract or subdivision, reference to such recording data shall be made; and (ix) the total acreage and square footage of the Land shall be certified.

II. Lot and Block Description. If the Land consists of one or more complete lots or blocks included within a properly established recorded subdivision or addition, then a lot and block description will be an acceptable substitute for a metes and bounds description, provided that the lot and block description must completely and properly identify the name or designation of the recorded subdivision or addition and give the recording information therefor.

III. Map or Plat. The Survey shall also contain a certified map or plat clearly showing the following: (i) the Land; (ii) the relation of the point of beginning of the Land to the monument from which it is fixed; (iii) all easements, streets, roads, alleys and rights of way on or abutting the Land, showing recording information therefor by volume and page; (iv) if the Land has been recorded on a map or plat as part of an abstract or subdivision, all survey lines must be shown, and all lot and block lines (with distances and bearings) and numbers, must be shown; (v) the established building setback lines, if any, including those by restrictive covenant, recorded plat and zoning ordinance (identifying the source in each case, by volume and page reference if applicable); (vi) all easements appurtenant to said Land, with recording information by volume and page; (vii) the boundary lines of the street or streets abutting the Land and the width of said streets and the width of the rights of way therefor; (viii) the distance from the nearest intersecting street or road to the Land; (ix) all structures and Improvements on the Land.
(with designation and dimensions of each party wall, if any) with horizontal lengths of all sides and the relation thereof by distances to (a) all boundary lines of the Land, (b) easements, (c) established building lines and (d) street lines; (x) the types of materials comprising the exterior walls and roofs of all buildings; (xi) all street addresses of Improvements on the Land; (xii) all curb cuts, driveways, fences, sidewalks, stoops and landscaping; (xiii) the number of stories of all multi story structures; (xiv) the location, type and size of all utility lines as they service the Land and Improvements (sewer, water, gas, electric and telephone); (xv) all encroachments and protrusions, if any, from or upon the Land or any Improvements thereon or upon any easement, building setback line or other restricted area, with exact measurements; (xvi) all parking and paved areas, including the number of vehicles that may be parked; (xvii) all distances, angles and other calls contained in the legal description; (xviii) the location, type and size of all monuments, and as to each monument, indication whether it was found or placed by the surveyor; (xix) the boundaries of any flood hazard area or flood plain area in which any part of the Land lies, with the map number, date and source (Governmental Authority) of each flood map shown; (xx) all surface water bodies or courses; (xxi) the date of any revisions subsequent to the initial survey prepared pursuant to these requirements; (xxii) a legend explaining the meaning of all symbols used on the plat; and (xxiii) the scale of all distances and dimensions on the plat.

IV. Certification. To (name of insured, if known), JPMorgan Chase Bank, N.A., and its successors and/or assigns, (name of insurer, if known), (names of others as negotiated with the client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1-4, 7(a), 7(b), 7(c), 8, 9, 11 and 16 of Table A thereof. The field work was completed on __________.

Date of Plat or Map: _______ (Surveyor's signature, printed name and seal with Registration/License Number).
EXHIBIT "K"

COPY OF TAX CREDIT ALLOCATION

2017 Carryover Allocation Agreement

2017 CARRYOVER ALLOCATION AGREEMENT

(The Owner named below must be the actual ownership entity, itself, not a General Partner or an Affiliate)

<table>
<thead>
<tr>
<th>Development Name:</th>
<th>Mistletoe Station (the &quot;Development&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TDHCA #:</td>
<td>17259</td>
</tr>
</tbody>
</table>

| Development Address or Description of Location: | 1916 Mistletoe Blvd. |
| City:   | County:   | State: TX |
| Fort Worth | Tarrant | ZIP: 76104 |

<table>
<thead>
<tr>
<th>Development Type:</th>
<th>New Construction</th>
</tr>
</thead>
</table>

| Building Identification Numbers (BINs) Reserved for this Development: | TX-17-25901 through TX-17-25999 |

The Texas Department of Housing and Community Affairs (the "Department") hereby issues this Carryover Allocation of 2017 tax credit authority in the annual amount of $1,500,000 pursuant to Section 42(b)(1)(E) or (F) of the Internal Revenue Code of 1986, as amended (the "Code"). The allocation is subject to the terms and conditions stated in the Commitment Notice and Carryover Allocation Manual and all the representations and undertakings set forth in the Application on which the allocation is based, the material and uncured (or uncurable) violation of any of which may be cause for the cancellation of this Carryover Allocation. Action to cancel this Carryover Allocation may be subject to appeal to the Department's Governing Board.

MISTLETOE STATION, LLC, a Texas limited liability company, (the "Owner") hereby certifies that each building for which this allocation in being made does or will meet the requirements of Section 42(b)(1)(E)(ii) of the Code (for a project which includes more than one building) and Treasury Regulation 1.42-6. The Owner hereby certifies that no later than the date that is one year after the effective date of the Carryover Allocation, the Owner will have incurred expenditures amounting to more than 10% of $20,466,704, which is the Owner's reasonably expected basis in the Development for purposes of Treasury Regulation 1.42-6. The effective date of the Allocation is the date this Carryover Allocation Agreement is executed by the Department. For the purpose of meeting the requirements of the 2017 Qualified Allocation Plan and Uniform Multifamily Rules (10 TAC Chapters 11 and 10), the Owner agrees that documentation of expenditures comprising more than 10% of said reasonably expected basis will be submitted to the Department by July 1, 2018, or such later date as is allowed by the Department pursuant to a written extension.

The Owner understands and agrees that this allocation is subject to fulfilling the requirements of the Construction Status Report as set forth in the 2017 Uniform Multifamily Rules, §10.402(h). The

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1. For multiple sites, reference "Exhibit A" and attach a list of addresses or descriptions of the locations as the exhibit.
2. The Development Type must be new construction, rehabilitation, or acquisition/rehabilitation, only. Determine the appropriate carryover classification in consultation with your attorney or CPA.
3. The figure entered here should be consistent with the figure reflected in the 2017 HTC Commitment Notice.
4. The Development Owner must be legally formed and able to enter into contracts or the carryover allocation is not valid. DO NOT use the name of a General Partner, Affiliate, or any name other than the name of the organization that is the actual Development Owner.
5. The allocation must be justified by the amount of the reasonably expected basis.
6. Treasury Regulation 1.42-8(a)(2)(i) refers to a 6-month period that does not reflect the Code's current one-year period for meeting the 10%-of-basis requirement.
Owner agrees to submit promptly to the Department a copy of each inspection report conducted by the lender(s) and/or equity investor as the reports become available.

The Owner hereby certifies that each building for which this allocation is made will be placed in service no later than December 31, 2019, and such placement in service shall meet the requirements of the Internal Revenue Service. In the event that placement in service is achieved with fewer than 100% of the tax credit units being available for occupancy, the Development Owner shall, on or before January 15, 2020, notify the Department in writing (to the joint attention of the Director of Multifamily Compliance and the Director of Asset Management) of the number of units that were available for occupancy in each building at the placement in service deadline, and of the data on which the Development Owner proposes to begin claiming credits. The Declaration (as defined below) on the property shall begin on the first day of January in the calendar year in which the Development owner begins to claim credits, but in the intervening period between the placement in service deadline and the commencement of the Declaration, the Department shall have the right to monitor the property and enforce representations made to obtain a tax credit award. Upon completion of the Development or any building therein, the Department may undertake, at the expense of the Owner, such inspection(s) and/or financial audit(s) as it deems desirable in order to verify that the Development was constructed or rehabilitated according to the representations contained in the Application and that reported expenditures were actually incurred. The Department also may require that additional work be done if necessary to meet Uniform Physical Condition Standards or other deficiencies noted in the inspection.

All owners that receive a 2017 Carryover Allocation must request issuance of IRS Forms 8609 upon the filing of cost certification documentation as required by the Department’s Post Award Activities Manual, as in effect at the time of filing. The documentation must be filed no later than January 15, following the first year of the credit period. The anticipated first year of the credit period is 2019.

The Owner hereby agrees and acknowledges that all requirements stated in the Post Award Activities Manual for receiving IRS Forms 8609 must be met to the satisfaction of the Department before such forms will be issued with respect to the Development. The Owner hereby further agrees and acknowledges that all conditions, restrictions, and obligations in addition to those applicable under Section 42 of the Code, which the Owner undertook in applying for this Carryover Allocation, are incorporated herein and to the extent appropriate, will be reflected in a Land Use Restriction Agreement (the “LURA”) with respect to the Development. Such LURA will also incorporate provisions requiring compliance with the Internal Revenue Code and with Chapter 2306, Texas Government Code (the “Act”), and the rules of the Department including but not limited to requirements for: annual reporting and periodic inspections; payments of the fees, charges and expenses of the Department in connection with its monitoring and compliance activities under the Code and the Act; management, operating, maintenance and repair standards for the Development; tenant selection and income certification; limitations on rents, charges, and fees payable by tenants; and development cost controls and management selection. The Owner hereby acknowledges that any rule or requirement applicable to the Development Owner, Application, award, or allocation and any representation made in the Application, as may be amended from time to time, or other materials provided to the Department in connection with the Application may be included in the LURA and the Development Owner agrees (i) to execute such LURA in substantially similar form to that provided, subject to such modifications as may be required by the Department, in its reasonable discretion, in order to reflect changes in federal or state law, and policy or program requirements, and (ii) to abide by all the terms and conditions contained in the Declaration. Any failure to comply with the terms of any such conditions, restrictions, or obligations prior to
issuance of IRS Forms 8609 with respect to the Development may be cause for cancellation or modification of this Carryover Allocation by the Department and such other action as the Department determines to be appropriate.

The Owner hereby acknowledges that it has thoroughly reviewed and agrees to abide by all terms and conditions stated in the Qualified Allocation Plan and Uniform Multifamily Rules, Commitment Notice, and 2017 Carryover Allocation Procedures Manual. The Owner hereby agrees to the return of any unused credit authority at the time of final allocation should the Department determine that a reduction in the credit amount is appropriate in accordance with the Department’s rules and under Section 42(m)(2).

Applicable Percentage Election for Acquisition Credits

☐ The Owner hereby irrevocably elects, pursuant to Section 42(b)(1)(A)(ii) of the Code, to fix the applicable credit percentage for the Development as the percentage prescribed by the Secretary of the Treasury for the month in which this Carryover Allocation Agreement was executed by BOTH the Owner and the Department. The Department and the Owner acknowledge that this Carryover Allocation constitutes an agreement binding upon the Department, the Owner, and all successors in interest to the Owner as owners of the Development, subject to compliance by the Owner with the requirements of Section 42 of the Code and the requirements of the Department. Owners are advised to review IRS notice 2008-106 and subsequent changes in law related to the applicable credit percentage.

Eligible Basis Boost

☐ The Department has determined that the Development is not receiving an allocation of credit dollar amount in excess of the amount required for its financial feasibility, and has further determined that the development is eligible for an increase in the eligible basis of the development by up to 30% (a “Basis Boost”) as authorized and permitted by Section 42(d)(5)(B) of the Code, and 10 TAC §11.4(c).

Nonprofit Set-Aside

☐ If this box is checked, this Carryover Allocation is being made pursuant to the Department’s set-aside of credit authority for “qualified nonprofit organizations” within the meaning of Section 42(h)(5)(C) of the Code. Throughout the Compliance Period applicable to the Development under the Code and the Declaration, such a qualified nonprofit organization shall own an interest in the Development, have “control” of the Development pursuant to 10 TAC §11.5(1), and materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Development. The qualified nonprofit organization designated to meet such obligation with respect to the Development is ______. As of the date hereof, and based solely on representations, covenants, and warranties of the Owner and other information previously submitted to the Department by the Owner, the Department has determined such nonprofit organization not to be “affiliated with or controlled by a for-profit organization” for purposes of Section 42(h)(5)(C)(ii) of the Code. In the event that any such representations, covenants, warranties and/or information is determined to have been false, materially misstated or materially misleading when made, or if subsequent events render such representations, covenants, warranties and information false or misleading in any material way, then the Department, at its option, may determine the issue of control with respect to Section 42(h)(5)(C)(ii) of the Code, and such

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1 Section 42(b)(2)(B) fixes the applicable credit percentage of new construction and rehabilitation at 9%.
determination shall be grounds for cancellation of this Carryover Allocation and any and all such other action as the Department may deem appropriate.

Any other transfer of the allocation will be subject to approval by the Department at its discretion and in accordance with 10 TAC §10.406. The Owner hereby agrees and acknowledges that it will request prior written approval from the Executive Director of the Department in writing for any intended transfer of the Development or change in actual control of the Development for which this Carryover Allocation is made prior to such transfer or change in control. Further, any purchaser that intends to acquire the Development with respect to this allocation and to make use of this Carryover Allocation will be required to request approval from the Department of the intended acquisition of the Development and to supply the Department with any documentation which it may require, in its sole discretion. Pursuant to §10.406(e) new members may be added to the ownership structure prior to issuance of the §8609(a), but parties may not exit the ownership structure without Board approval. The approval of any such transfer by the Department does not constitute a representation to the effect that such transfer is permissible under the Code or without adverse consequences hereunder.

The Owner agrees that it will inform and seek the Department’s approval for any changes in the number of units, unit mix, unit sizes, design changes or any other material changes to the Development prior to making the changes in accordance with 10 TAC §10.405(a). Unapproved changes may result in the reduction or loss of credits or in the cancellation of this Carryover Allocation. The Owner hereby agrees that the Owner and management company will attend at least five hours of fair housing training on management and leasing issues, and the Architect or Engineer will attend at least five hours of training on fair housing design within two years prior to the deadline for submitting 10% Test documentation.

In issuing this Carryover Allocation, the Department has relied upon the information submitted to it by the Owner. This allocation is conditioned upon satisfying all requirements set forth herein, in the Code and in the Department’s Rules, including demonstrating the financial feasibility and long-term viability of the Development. In light of the amount allocated to the Development, Owner may propose changes to Development configuration consistent with the allocation amount, which the Department, in a manner consistent with Tex. Gov’t Code, §2306.6712, may accept, reject or approve with modifications with respect thereto. If Owners or Affiliates are found to be in violation of any rule regarding the Application or any rule regarding actions performed prior or subsequent to submission of the Application, specifically including actions that would have resulted in the ineligibility of the Owner or Affiliate to participate in the Application process, this Carryover Allocation may be cancelled by the Department in accordance with the applicable rule or statute. The Department makes no representations concerning or guaranteeing the Owner’s eligibility to receive the credit stated herein; such determination rests with the Internal Revenue Service based upon the actions and determinations of the Owner in light of all applicable laws, regulations and rulings.

The Owner expressly acknowledges that this Carryover Allocation is subject to downward adjustment in accordance with the Department’s rules in connection with the Department’s review required by Internal Revenue Code §42(m)(2).
Under penalty of perjury, I certify that individually and on behalf of the Owner, on whose behalf I represent and warrant I am authorized to act, the information and the statements in this Carryover Allocation Agreement are true and accurate.

[Intentionally Left Blank]
EXECUTED to be effective as of the last date written below.

DEVELOPMENT OWNER:

MISTLETOE STATION, LLC, a Texas limited liability company

By: Lisa M. Stephens, President.

Owner's Federal Taxpayer or Employer Identification Number (TIN or EIN): 61-1855865

Owner Address: 421 West 3rd St., Ste. 1504

City: Austin State: TX ZIP: 78701

Email: lisa@saigebrook.com Phone: 352.213.8700 Ext. NA

Email: mjcarpen@gmail.com Phone: 512.789.1295 Ext. NA

THE STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Lisa M. Stephens, known to me to be President of MISTLETOE STATION, LLC, a Texas limited liability company, the limited liability company that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of said limited liability company, and that she executed the same as the act of such limited liability company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21st day of November, 2017.

(Seal)

KATHERINE E. JOHNSON
Notary Public, State of Texas

DO NOT use the taxpayer identification number of a General Partner, Affiliate or any organization or Person other than the organization that is the Development Owner.
Acknowledged, agreed, and accepted:

DEPARTMENT:

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

By: [Signature]
Margaret L. Holloway, Director of Multifamily Finance
221 E. 11th Street, Austin, Texas 78701
Department Taxpayer Identification Number: 74-2610542

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Margaret L. Holloway, duly authorized representative of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, on behalf of such agency.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19th day of December, 2017.

(Seal)

[Notary Public, State of Texas]
EXHIBIT "L"

TITLE INSURANCE REQUIREMENTS

A current commitment for title insurance covering the subject property issued by a title insurance company acceptable to Bank, addressed to Bank for the amount of the Construction Note, which must:

a. Show record title to be vested in Borrower; or, if not then vested in Borrower, show how title is vested and require that title be vested in Borrower prior to closing;

b. Contain a legal description of the subject property, which description must be identical with the description of the subject property included in the survey mentioned below.

c. Include such endorsements (available in Texas) as may be requested by Bank which may include the following:

   • comprehensive (extended coverage) endorsement
   • contiguity endorsement
   • gap endorsement
   • mechanics lien endorsement
   • variable rate endorsement
   • environmental protection lien endorsement
   • creditors' rights endorsement (if available)
   • survey endorsement
   • improvement endorsement
   • access endorsement
   • zoning endorsement
   • patent endorsement
   • water rights endorsement
   • endorsements relating to affirmative coverage for any encroachments, protrusions or other title defects
   • multiple indebtedness mortgage endorsement

d. Show as an exception only ad valorem taxes and assessments by any taxing authority for the year in which the Construction Loan is closed and subsequent years; and

e. List and identify by reference to the volume and page where recorded all easements, rights-of-way and other instruments or matters affecting title to the subject property.
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.

CONSTRUCTION DEED OF TRUST, ABSOLUTE ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

THE STATE OF TEXAS

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COUNTY OF TARRANT

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THIS CONSTRUCTION DEED OF TRUST, ABSOLUTE ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Deed of Trust") is made by MISTLETOE STATION, LLC, a Texas limited liability company, organized under the laws of the State of Texas, file number 802794224 ("Mortgagor"), to Randall Durant, of Tarrant County, Texas, as Trustee ("Trustee"), for the benefit of JPMORGAN CHASE BANK, N.A., a national banking association ("Mortgagee").

For $10 and other consideration, the receipt and sufficiency of which are hereby acknowledged, subject to the Permitted Encumbrances, Mortgagor grants to Trustee the Mortgaged Property (defined below) in trust, to secure the payment of the Debt (defined below), and grants a security interest in, pledges and assigns to Mortgagee, all Collateral (defined below) owned by Mortgagor or in which Mortgagor has rights or the power to transfer rights and all Collateral in which Mortgagor later acquires ownership, other rights or the power to transfer rights, to secure payment of the Debt. As additional consideration, Mortgagor collaterally assigns to Mortgagee the Rents (defined below) as security for the Debt. The conveyance of the Mortgaged Property is subject to the Permitted Encumbrances (defined below). Mortgagor agrees as follows:

1. Definitions. In addition to the terms defined elsewhere in this Deed of Trust, the following terms should have the meanings assigned to each of them:

(a) "Collateral" means all property described in the definition of Mortgaged Property, to the extent it is personal property under applicable law, and all proceeds thereof and of any other Mortgaged Property, including but not limited to all interest, dividends, cash, instruments and other personal property now or hereafter received, receivable or otherwise distributed in connection with the sale, lease, license, exchange or other disposition of any of the Mortgaged Property, together with all books and other records of Mortgagor relating thereto.

(b) "Debt" means all obligations under and with respect to the Credit Support and Funding Agreement dated of even date herewith (as
may be modified, amended, restated, and supplemented, the “Loan Agreement”) between Mortgagor and Mortgagee, including, without limitation (1) the indebtedness evidenced by that certain Advance Promissory Note dated of even date herewith in the maximum principal amount of Twenty-Two Million Two Hundred Eighty-Two Thousand and No/100 Dollars ($22,282,000.00) (the “Note”) to evidence a future advance loan in the maximum principal amount of $22,282,000.00; (2) all amounts for which Mortgagor may become obligated to Mortgagee pursuant to this Deed of Trust; (3) any and all obligations, contingent or otherwise, whether now existing or hereafter arising, under or in connection with a Swap Agreement (as defined in the Loan Agreement); (4) all reimbursement obligations of Mortgagor to Mortgagee under and with respect to the Bank Letter of Credit (as that term is defined in the Loan Agreement); and (5) all obligations of Mortgagor under any other documents from time to time evidencing, securing or relating to the debt evidenced by the Loan Agreement and the Note (collectively, including the Loan Agreement and the Note, the “Loan Documents”). Debt includes all extensions, renewals and modifications of the Note, whether or not evidenced by a new promissory note or other instrument or other record.

(c) “Mortgaged Property”

(1) A tract or parcel of land located in Fort Worth, Tarrant County, Texas described in Exhibit "A" (the "Land"), and including (i) all of Mortgagor's interest in the bed of any stream, creek, or waterway or any street, road, right-of-way or easement, open or proposed, on or adjacent to the Land; (ii) all of Mortgagor's interest in any strips and gores between the Land and any abutting properties; and (iii) all rights of ingress and egress, and all other present or future easements and rights appurtenant to, serving or benefiting the Land;

(2) All improvements of every type now or later located on the Land (the "Improvements");

(3) All equipment and all materials and other goods of every type now or later situated upon the Land and (i) intended to be incorporated into the Improvements or (ii) that are or become fixtures related to the Land or the Improvements;

(4) All other goods of every type, including inventory, equipment, farm equipment and farm products now owned or later acquired by Mortgagor and now or later situated on the Land or in
the Improvements and that facilitate the use or occupancy of the Improvements; and

(5) All of Mortgagor's rights in the following:

(i) All present and future contracts between Mortgagor and any original contractor (as defined in Texas Property Code Chapter 53) or any other person relating to construction or improvement (including furnishing materials or supplies for construction or improvement) of any Mortgaged Property;

(ii) All present and future plans, specifications and drawings prepared by any architect or engineer relating to the Mortgaged Property, and all present and future agreements between Mortgagor and any person relating to the provision of architectural, engineering or other design services relating to the Mortgaged Property;

(iii) Any commitment of any lender or investor other than Mortgagee to finance or invest in Mortgagor's interest in any of the Mortgaged Property;

(iv) Any completion, performance, payment or other bond relating to any of the Mortgaged Property or any contract for construction on the Mortgaged Property;

(v) All existing and future subleases entered into by Mortgagor as lessor (whether written or oral) of any of the Mortgaged Property (the "Leases"), maintenance and other contracts relating to the Land or the Improvements, all tenant deposits under any Leases, all licenses, permits, certificates, accounts, instruments, documents, letter of credit rights, letters of credit, moneys, investment property, deposit accounts, general intangibles (including trade names and symbols used in connection with the Land or the Improvements), supporting obligations, wastewater, fresh water and other utility capacity and facilities available to or allocated to the Land or the Improvements, and all other present or future rights and privileges relating to the Land or the Improvements;

(vi) To the extent Mortgagor has rights therein, all water and water rights, timber, crops, and mineral interests pertaining to the Land;
(vii) All rights (but not obligations) under any contracts relating to Mortgagor’s interest in the Land and the Improvements (including, without limitation, sales contracts and purchase options and all management agreements, development agreements, cable television agreements, laundry contracts, maintenance contracts, and other service contracts);

(viii) All letter of credit rights, investment property, environmental site assessments and soils tests, and general intangibles (including, without limitation, trademarks, tradenames and symbols) arising from or by virtue of any transactions related to Mortgagor’s interest in the Land and the Improvements or personal property;

(ix) All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Land and the Improvements (including, without limitation, any form of reservation for utility capacity that may be granted by any governmental subdivision);

(x) All proceeds arising from or by virtue of the sale, lease or other disposition of the fee interest in the Land, the Improvements, or the Personal Property;

(xi) All proceeds (including premium refunds) of each policy of insurance relating to Mortgagor’s interest in the Land or the Improvements; and

(xii) All proceeds from the taking of any of the Land, the Improvements, or any rights appurtenant thereto by right of eminent domain or by private or other purchase in lieu thereof, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law;

(6) If and to the extent permitted and enforceable by applicable law, all right, title, and interest of Mortgagor in and to any Low-Income Housing Tax Credit (as that term is used in Section 42 of the Internal Revenue Code of 1986, as amended) relating to the Mortgaged Property and the use thereof;

(7) All right, title and interest in all development fees due on or with respect to the Mortgaged Property;
(8) All supporting obligations relating to any of the Mortgaged Property;

(9) All Mortgagor’s rights (but not its obligations) under any documents, contract rights, accounts, permanent loan and other commitments, construction contracts, engineering contracts, and architectural and design agreements, environmental site assessments and soils tests, and general intangibles (including, without limitation, trademarks, trade names and symbols) arising from or by virtue of any transactions related to the Land, the Improvements or Personal Property;

(10) Other interests of every kind and character that Mortgagor now has or at any time hereafter acquires in and to the Land, Improvements, and Personal Property described herein, including rights of ingress and egress and all reversionary rights or interests of Mortgagor with respect to such property.; and

(11) All of Mortgagor’s right, title, and interest in and to the Community Facilities Agreement entered into by Mortgagor with the City of Fort Worth, and all of Mortgagor’s right to escrowed funds in connection therewith, to the extent assignable.

(d) “Permitted Encumbrances” means the liens, easements and encumbrances to title described on Exhibit "B", to the extent each is valid, subsisting and affects title to the Mortgaged Property.

(e) “Rents” means all rent, royalties, bonuses, issues, profits, and other revenue, benefits, or income from the Mortgaged Property, including all rent and other income under all existing or future Leases.

(f) All terms used herein shall have the same definitions herein as specified in the Uniform Commercial Code as enacted in the State of Texas and as the same may be amended from time to time (the “UCC”) unless otherwise defined herein.

2. Mortgagor’s Representations and Agreements.

(a) Taxes and Other Impositions. Mortgagor will pay all taxes, assessments, standby fees, homeowners’ or condominium association assessments and other impositions (collectively, “Impositions”) levied or
assessed against any of the Mortgaged Property by any governmental authority or any other person, before the Impositions become delinquent, and Mortgagor will provide receipts of all Impositions payments to Mortgagee promptly upon request. If Mortgagor fails to do so, Mortgagee may pay them, together with all costs and penalties thereon, at Mortgagor's expense; provided, however, that Mortgagor may contest in good faith in accordance with the terms and conditions of the Loan Agreement, in lieu of paying such taxes and assessments as they become due and payable, by appropriate proceedings, the validity thereof (to the extent and as provided for in the Loan Agreement). Pending such contest, Mortgagor shall not be deemed in default hereunder because of such nonpayment if, prior to delinquency of the asserted tax or assessment, Mortgagor furnishes Mortgagee an indemnity bond secured by a deposit in cash or other security acceptable to Mortgagee, or with a surety acceptable to Mortgagee, in the amount of the tax or assessment being contested by Mortgagor plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, conditioned that such tax or assessment, with interest, cost and penalties, be paid as herein stipulated, and if Mortgagor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, on or before the date such judgment becomes final; provided that in any event the tax, assessment, penalties, interest and costs shall be paid prior to the date on which any writ or order is issued under which the Mortgaged Property may be sold in satisfaction thereof. Any irreconcilable inconsistency between this Section 2(a) and the Loan Agreement shall be governed by the Loan Agreement.

(b) Insurance. Mortgagor shall, at its sole cost and expense, obtain and maintain (a) title insurance (in the form of a commitment, binder or policy as Mortgagee may require), and (b) insurance required by the terms of the Loan Agreement. Mortgagor shall deliver the policies of insurance to Mortgagee promptly as issued; and, if Mortgagor fails to do so, Mortgagee, at its option, may procure such insurance at Mortgagor's expense. All renewal and substitute policies of insurance shall be delivered at the office of the Mortgagee, premiums paid, at least thirty (30) days before termination of policies theretofore delivered to Mortgagee. In case of loss, the proceeds of the insurance policies shall be collected and applied as set forth in Section 2(o) below. If any loss shall occur at any time when an Event of Default is then continuing, Mortgagee shall be entitled to the benefit of all insurance held by or for any Mortgagor, to the same extent as if it had been made payable to Mortgagee, and upon foreclosure hereunder, Mortgagee shall become the owner thereof.

(c) Deposits. Mortgagor will, if requested by Mortgagee (which request shall only be made during the continuance of an Event of Default), deposit with Mortgagee each month an amount equal to (i) 1/12 of the annual premiums for all insurance required under this Deed of Trust, and (ii) 1/12 of the annual Impositions to become due in connection with the
Mortgaged Property, as estimated by Mortgagee. At least 15 days before any impositions would become delinquent or any insurance premium is due, Mortgagor will deliver to Mortgagee a statement showing the amount of impositions or premium due and the party or governmental authority to which the amount is payable. If funds on deposit with Mortgagee are insufficient to make all payments due, Mortgagor will deposit with Mortgagee the amount of any deficiency. Mortgagee will hold deposited funds on behalf of Mortgagor for payment of impositions and insurance, but if an "Event of Default" then exists, Mortgagee may apply deposited funds to payment of the Debt.

(d) **Maintenance of Property.** Mortgagor will maintain the Mortgaged Property in good condition, subject to ordinary wear and tear. If the Mortgaged Property is damaged by any cause, Mortgagor will promptly restore the Mortgaged Property to substantially its condition prior to such damage. Mortgagor will not allow any material part of the Mortgaged Property to be torn down, removed or materially altered after completion of construction without Mortgagee's prior written consent, not to be unreasonably withheld, conditioned or delayed. All insurance proceeds will be paid to Mortgagor and Mortgagor may use any available insurance or condemnation proceeds for the restoration to the extent permitted by this Deed of Trust and the Loan Agreement (provided, if an Event of Default is continuing, Mortgagee shall have the option as it determines, in its sole discretion, to apply the proceeds to the Debt instead of using for restoration).

(e) **Title to Property.** Subject to the Permitted Encumbrances, Mortgagor will warrant and defend Trustee's title to and Mortgagee's security interest in the Mortgaged Property against any person who claims any of it. No person owns any lien or other interest in the Mortgaged Property except the lien and security interest created by this Deed of Trust, other liens and security interests for the benefit of Mortgagee, Permitted Encumbrances, tenant leases which are Approved Leases under and as defined in the Loan Agreement, and the statutory lien for taxes not yet due. No person other than Mortgagee owns any interest in the Rents. No lien document or financing statement affecting any Mortgaged Property or the Rents, other than lien documents and financing statements in favor of Mortgagee and the Permitted Encumbrances, is on file in any public office. If any person claims any interest or encumbrance, except for Permitted Encumbrances and tenant leases which are Approved Leases under the Loan Agreement, Mortgagor will promptly remove any such adverse claim, lien or encumbrance from the Mortgaged Property or the Rents. Mortgagor will give Mortgagee prompt notice of an assertion by any person of any interest or encumbrance affecting, or any legal proceeding affecting, any part of the Mortgaged Property or the Rents. Mortgagor will take any action Mortgagee reasonably requires to protect, assure or enforce the lien and security interest of
this Deed of Trust and the assignment of the Rents. This paragraph will survive termination or foreclosure of this Deed of Trust.

(f) Books and Records. Mortgagor will maintain accurate and complete books and other records regarding the Mortgaged Property, including finances, leases and the physical condition of the Mortgaged Property. All financial accounting records will be maintained consistent with generally accepted accounting principles, consistently applied.

(g) Inspection. Subject to the terms of the Approved Leases under and as defined in the Loan Agreement, in addition to and without limiting the terms of the Loan Agreement, upon three days prior written notice to Mortgagor (no notice will be required during the continuance of an Event of Default), Mortgagor will (i) permit Mortgagee at all reasonable times to go upon, examine and inspect the Mortgaged Property, including making appraisals and environmental assessments, (ii) furnish all information Mortgagee reasonably requests relating to the development and operation of the Mortgaged Property, (iii) permit Mortgagee to make copies of such information, and (iv) if Mortgagee reasonably believes Hazardous Materials to be present on the Mortgaged Property, permit Mortgagee to perform environmental assessments of the Mortgaged Property and in connection therewith to take away samples of air, building materials, soil and water.

(h) Homestead. Mortgagor represents that at the time of execution and delivery of this Deed of Trust, no part of the Mortgaged Property is any part of Mortgagor’s homestead.

(i) INDEMNITY. IN ADDITION TO AND WITHOUT IN ANY WAY LIMITING THE TERMS AND PROVISIONS OF THE LOAN AGREEMENT, MORTGAGOR SHALL, AT ITS SOLE COST AND EXPENSE, PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES (AS DEFINED BELOW) FROM AND AGAINST ANY AND ALL REASONABLE CLAIMS, SUITS, LIABILITIES (EXCLUDING STRICT LIABILITIES), ACTIONS, PROCEEDINGS, OBLIGATIONS, DEBTS, DAMAGES (EXCLUDING CONSEQUENTIAL DAMAGES), LOSSES, COSTS, EXPENSES, FINES, PENALTIES, CHARGES, FEES, JUDGMENTS, AWARDS, AMOUNTS PAID IN SETTLEMENT, PUNITIVE DAMAGES, OF WHATSOEVER KIND OR NATURE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES AND OTHER COSTS OF DEFENSE) (THE “LOSSES”) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES AND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO ANY ONE OR MORE OF THE FOLLOWING: (I) OWNERSHIP OF THIS DEED OF TRUST, THE MORTGAGED PROPERTY OR ANY INTEREST THEREIN OR RECEIPT OF ANY RENTS; (II) ANY AMENDMENT TO, OR RESTRUCTURING OF, THE DEBT, THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT; (III) ANY AND ALL LAWFUL
ACTION THAT MAY BE TAKEN BY MORTGAGEE IN CONNECTION WITH
THE ENFORCEMENT OF THE PROVISIONS OF THIS DEED OF TRUST, THE
NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, WHETHER OR NOT
SUITE IS FILED IN CONNECTION WITH SAME, OR IN CONNECTION WITH
MORTGAGOR, ANY GUARANTOR AND/OR ANY MEMBER, PARTNER,
JAMES VENTURER OR SHAREHOLDER THEREOF BECOMING A PARTY TO
A VOLUNTARY OR INVOLUNTARY FEDERAL OR STATE BANKRUPTCY,
INSOLVENCY OR SIMILAR PROCEEDING; (IV) ANY ACCIDENT, INJURY TO
OR DEATH OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY
OCCURRING IN, ON OR ABOUT THE MORTGAGED PROPERTY OR ANY
PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT
PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (V)
ANY USE, NONUSE OR CONDITION IN, ON OR ABOUT THE MORTGAGED
PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS,
CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS,
STREETS OR WAYS; (VI) ANY FAILURE ON THE PART OF MORTGAGOR
TO PERFORM OR BE IN COMPLIANCE WITH ANY OF THE TERMS OF THIS
DEED OF TRUST; (VII) PERFORMANCE OF ANY LABOR OR SERVICES OR
THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN
RESPECT OF THE MORTGAGED PROPERTY OR ANY PART THEREOF;
(VIII) THE FAILURE OF ANY PERSON TO FILE TIMELY WITH THE
INTERNAL REVENUE SERVICE AN ACCURATE FORM 1099-B, STATEMENT
FOR RECIPIENTS OF PROCEEDS FROM REAL ESTATE, BROKER AND
BARTER EXCHANGE TRANSACTIONS, WHICH MAY BE REQUIRED IN
CONNECTION WITH THIS DEED OF TRUST, OR TO SUPPLY A COPY
THEREOF IN A TIMELY FASHION TO THE RECIPIENT OF THE PROCEEDS
OF THE TRANSACTION IN CONNECTION WITH WHICH THIS DEED OF
TRUST IS MADE; (IX) ANY FAILURE OF THE MORTGAGED PROPERTY OR
ANY USE THEREOF TO BE IN COMPLIANCE WITH ANY APPLICABLE
LAWS (AS DEFINED IN SECTION 4 HEREOF); (X) THE ENFORCEMENT BY
ANY INDEMNIFIED PARTY OF THE PROVISIONS OF THIS SECTION 2(I); (XI)
ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE
ASSERTED AGAINST MORTGAGEE (OTHER THAN BY ANY INDEMNIFIED
PARTY) BY REASON OF ANY ALLEGED OBLIGATIONS OR
UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF
THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY LEASE;
(XII) THE PAYMENT OF ANY COMMISSION, CHARGE OR BROKERAGE FEE
TO ANYONE WHICH MAY BE PAYABLE IN CONNECTION WITH THE
FUNDING OF THE DEBT EVIDENCED BY THE NOTE AND SECURED BY
THIS DEED OF TRUST OR ANY OTHER DEBT; OR (XIII) ANY
MISREPRESENTATION MADE BY MORTGAGOR IN THIS DEED OF TRUST
OR ANY OTHER LOAN DOCUMENT. NOTWITHSTANDING THE
FOREGOING, MORTGAGOR SHALL NOT BE LIABLE TO ANY INDEMNIFIED
PARTY FOR THAT PORTION OF ANY LOSS ARISING SOLELY AS THE
RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN
INDEMNIFIED PARTY (OR ANY PARTY ACTING ON BEHALF OF AN INDEMNIFIED PARTY) OR ARISES IN CONNECTION WITH AN ACTION OR INACTION THAT OCCURS AFTER MORTGAGOR NO LONGER OWNS THE LAND AND THE IMPROVEMENTS. ANY AMOUNTS PAYABLE TO MORTGAGEE BY REASON OF THE APPLICATION OF THIS SECTION 2(I) SHALL BECOME IMMEDIATELY DUE AND PAYABLE UPON DEMAND AND SHALL BEAR INTEREST AT THE RATE PROVIDED IN THE NOTE FOR PAST DUE AMOUNTS FROM THE DATE OF DEMAND TO THE DATE OF PAYMENT. FOR PURPOSES OF THIS SECTION 2(I), THE TERM “INDEMNIFIED PARTIES” MEANS MORTGAGEE AND ANY PERSON OR ENTITY WHO IS OR WILL HAVE BEEN INVOLVED IN THE ORIGINATION OF THE DEBT, ANY PERSON OR ENTITY WHO IS OR WILL HAVE BEEN INVOLVED IN THE SERVICING OF THE DEBT, ANY PERSON OR ENTITY IN WHOSE NAME THE ENCUMBRANCES AND SECURITY INTERESTS CREATED BY THIS DEED OF TRUST IS OR WILL HAVE BEEN RECORDED, PERSONS AND ENTITIES WHO MAY HOLD OR ACQUIRE OR WILL HAVE HELD A FULL OR PARTIAL INTEREST IN THE DEBT AS WELL AS THE RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS, SERVANTS, REPRESENTATIVES, AFFILIATES, SUBSIDIARIES, PARTICIPANTS, SUCCESSORS AND ASSIGNS OF ANY AND ALL OF THE FOREGOING (INCLUDING BUT NOT LIMITED TO ANY OTHER PERSON OR ENTITY WHO HOLDS OR ACQUIRES OR WILL HAVE HELD A PARTICIPATION OR OTHER FULL OR PARTIAL INTEREST IN THE DEBT OR THE MORTGAGED PROPERTY, WHETHER DURING THE TERM OF THE LOAN EVIDENCED BY THE NOTE OR AS A PART OF OR FOLLOWING A FORECLOSURE OF THIS DEED OF TRUST AND INCLUDING, BUT NOT LIMITED TO, ANY SUCCESSORS BY MERGER, CONSOLIDATION OR ACQUISITION OF ALL OR A SUBSTANTIAL PORTION OF MORTGAGEE’S ASSETS AND BUSINESS). THIS SECTION WILL SURVIVE THE TERMINATION OR FORECLOSURE OF THIS DEED OF TRUST.

(j) Additional Representations and Agreements Relating to Leases and Rents.

(i) (A) All existing Leases are valid, unmodified and in full force and effect, (B) no Rents have been discounted, set off or compromised, and Mortgagor is not aware of any facts which might result in discount, set off or compromise of any Rents (except as may be part of Mortgagor’s initial leasing-up of the Improvements, but in no event in a manner which would impair Mortgagor achieving stabilization requirements of its permanent lender), (C) Mortgagor has not received from any tenant any funds or deposits that are not reflected in the current books and records of Mortgagor reviewed by Mortgagee, and (D) to Mortgagor’s knowledge, no
lessee is in default under any Lease. To Mortgagor's knowledge, no lessor default exists under any Lease.

(ii) Mortgagor will not execute any Lease except in accordance with the Loan Agreement. Mortgagor will enforce the obligations of all lessees under all Leases. Except as provided for in the Loan Agreement, Mortgagor will not amend, renew, terminate, or surrender, or waive or release the obligations of any lessee under, any Lease without the prior written approval of Mortgagee, except in connection with Mortgagor's customary business practice as contemplated on the date of this Deed of Trust.

(iii) Mortgagor will not collect any Rents more than one month in advance of the time earned other than Rent collected and held as a security deposit in the normal course of business and pursuant to the form of Lease approved by Mortgagee ("Early Rent Payments"). Mortgagee's collateral assignment under Section 7 does not extend to Early Rent Payments, and if Mortgagor receives any Early Rent Payments, unless Mortgagee shall otherwise request that the Early Rent Payments be paid to Mortgagee to be applied against the Debt, Mortgagor shall hold such Early Rent Payments as security for the Debt.

(iv) Mortgagor will perform all of its obligations under the Leases in accordance with accepted industry standards in McAllen, Texas. Mortgagor will promptly execute and, if requested, record any additional assignment documents requested by Mortgagee in connection with any Leases in effect at the time of such request (including Leases in effect on the date of this Deed of Trust). Mortgagor will give Mortgagee prompt notice of any default by any party to a Lease alleged by any lessee or sublessee (except for in connection residential leases).

(v) Any property manager of the Mortgaged Property is the agent of Mortgagor for purposes of this Deed of Trust, and therefore any property manager must comply with all requirements imposed on Mortgagor by this Deed of Trust.

(k) Mortgagee's Rights. If Mortgagor fails to perform any obligation under this Deed of Trust beyond any applicable notice and cure period, Mortgagee may perform, but Mortgagee's performance will not waive Mortgagor's default. Without limiting the generality of the foregoing, if at any time Mortgagor has not made available to Mortgagee written evidence that all insurance required hereunder is in full force and effect, Mortgagee shall have the right, without notice to Mortgagor or any other party to take such action as
Mortgagee deems necessary to protect its interest in the Mortgaged Property, including without limitation, the obtaining of such insurance coverage as Mortgagee in its sole discretion deems appropriate. If Mortgagee secures required insurance, Mortgagee may secure the insurance only in its own name and may insure only its interest in the Mortgaged Property.

(l) Mortgagor's Location and Name. The address set forth in Section 17 of this Deed of Trust is Mortgagor's place of business. Mortgagor's name as set forth above in this Deed of Trust is its correct name as indicated on the public record of Mortgagor's jurisdiction of organization which shows Mortgagor to have been organized. Mortgagor has properly filed of record in the appropriate filing offices all those trade names and has delivered to Mortgagee a list of all of Mortgagor's assumed or trade names. Mortgagor will promptly notify Mortgagee of any change in Mortgagor's location, name, identity, organizational structure as a limited liability company or jurisdiction of organization.

(m) Utility Capacity. Mortgagor shall not transfer, sell, assign or convey, either in whole or in part, other than to Mortgagee, any capacity for utilities which may be available to the Mortgaged Property. Mortgagor acknowledges that without the availability of utilities to the Mortgaged Property the value of the collateral would be significantly diminished and that the credit being extended under the Debt is based upon such availability.

(n) Flood Plain. Except as disclosed to Mortgagee in writing prior to the date of this Deed of Trust, neither the Mortgaged Property nor any part thereof is located within an area that has been designated or identified as an area having special flood hazards or flood prone characteristics by the Secretary of Housing and Urban Development, the Federal Emergency Management Agency, or by such other official or agency as shall from time to time be authorized by federal or state law to make such designation pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as such Acts may, from time to time, be amended and in effect, or pursuant to any other national or state program of flood insurance (the "Flood Plain"), or in the alternative, if any of the Improvements are situated on any portion of the Land that does lie within the Flood Plain, (a) Mortgagor will immediately notify Mortgagee in writing and (b) Mortgagor will maintain at all times during the existence of the Debt flood insurance with respect to the Mortgaged Property in amounts not less than the maximum limit of insurance coverage then available with respect to the Mortgaged Property pursuant to any and all national and state flood insurance programs then in effect or the amount of the Debt, whichever is less, and cause all insurance so carried to be made payable to Mortgagee pursuant to a standard mortgagee clause, without contribution, and cause all such policies to be delivered to Mortgagee as required by Section 2(b) hereof.
(o) **Collection and Application of Insurance and Condemnation Proceeds.** Mortgagor assigns to Mortgagee, all amounts received by Mortgagor or Mortgagee as proceeds of insurance and proceeds of condemnation proceedings as additional security for the Debt. Mortgagor will promptly give Mortgagee notice of any material damage to or condemnation proceeding affecting the Mortgaged Property. After prior notice to Mortgagor (which notice will only be provided if no Event of Default is then continuing), Mortgagee may file or prosecute (or both) any insurance or condemnation claim. After prior notice to Mortgagor (which notice will only be provided if no Event of Default is then continuing), Mortgagee may collect and give receipts for any money payable under any insurance policy by reason of loss of or damage to the Improvements. After prior notice to Mortgagor (which notice will only be provided if no Event of Default is then continuing), Mortgagee may settle or compromise, on any terms and for any reasonable amount it selects, the liability of any insurance company or companies on any policy, and execute and deliver releases and discharges of liability binding Mortgagor and Mortgagee. After prior notice to Mortgagor (which notice will only be provided if no Event of Default is then continuing), Mortgagee may collect and give receipts for any money payable to Mortgagor because of condemnation proceedings affecting any Mortgaged Property. Mortgagor RELEASES Mortgagee from any liability in connection with any settlement or compromise of any insurance or condemnation claim, except that portion of liability resulting solely and exclusively from Mortgagee's (or any Indemnified Party's) own gross negligence or intentional misconduct, and in accordance with the foregoing, Mortgagee shall apply all insurance or condemnation proceeds, first to Mortgagee's expenses in connection with the insurance or condemnation claim, and second, if an Event of Default is continuing or if the conditions of clause (ii) are not otherwise satisfied, (i) to the Debt in any order Mortgagee selects, or (ii) to the repair or improvement of the Mortgaged Property in any manner Mortgagee selects, applying the remaining money, if any, after completion of repairs or improvement required for restoration of damage to the Mortgaged Property, to the Debt in any order Mortgagee selects; provided that if no Event of Default is then continuing and the proceeds of the policies and any additional sums provided by Mortgagor (including deferral of development fees) are enough to rebuild and restore the Improvements in a manner and time frame acceptable to Mortgagee, Mortgagor may request from Mortgagee and Mortgagee shall make to Mortgagor (subject to all requirements set forth in this Deed of Trust and otherwise in the same manner as payments are made on the Note under the Loan Agreement), payments of the proceeds of the policies, net of all retainage requirements of applicable laws, to rebuild and restore the Improvements on a lien free basis. If any loss shall occur at any time during the occurrence of an Event of Default, Mortgagee shall be entitled to the benefit of all insurance held by or for Mortgagor, to the same extent as if it had been made payable to Mortgagee. Notwithstanding any contrary provision of this Deed of Trust or any other Loan Document, Mortgagee shall apply insurance or condemnation proceeds only to restoration, reconstruction, or repair of the
Mortgaged Property to substantially the condition preceding the casualty or condemnation, or to a lesser condition approved by Mortgagee in its reasonable discretion (any of them, "Restoration") but only if that Restoration is feasible as hereinafter provided. Restoration shall be deemed feasible if all of the following conditions are met: (i) Mortgagor is not in breach or default of any provisions of this Deed of Trust or any other Loan Document; (ii) Mortgagee reasonably determines that there will be sufficient funds for Restoration (whether from insurance proceeds, a condemnation award or settlement, or other funds that may be provided by Mortgagor or other lenders); (iii) Mortgagor determines that Restoration will be completed prior to the maturity date of the Loan and the restoration will put the Mortgaged Property in the condition preceding the applicable casualty or condemnation; and (iv) Mortgagee determines that the operating income of the Mortgaged Property following Restoration will be sufficient to meet all obligations to the Mortgagee under this Deed of Trust and other Loan Documents. If the Restoration is not feasible, the proceeds of the casualty or condemnation shall be applied to the Debt. Mortgagee shall pay to Mortgagor payments of the proceeds of the policies (net of all retainage requirements of applicable laws) to so rebuild and restore the Improvements on a lien free basis. If any loss shall occur at any time during the occurrence of an Event of Default, Mortgagee shall be entitled to the benefit of all insurance held by or for any Mortgagor, to the same extent as if it had been made payable to Mortgagee.

3. [RESERVED].

4. Compliance with Laws. Mortgagor shall promptly comply in all material respects with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Mortgaged Property, or the use thereof ("Applicable Laws"). Mortgagor shall from time to time, upon Mortgagee's request, provide Mortgagee with evidence satisfactory to Mortgagee that the Mortgaged Property and the use thereof comply in all material respects with all Applicable Laws or are exempt from compliance with Applicable Laws. Mortgagor shall give prompt notice to Mortgagee of the receipt by Mortgagor of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

5. Advances and Attorneys' Fees. Mortgagor will pay, or reimburse Mortgagee for, all reasonable costs and expenses of every character incurred from time to time in connection with this Deed of Trust and the Debt, including costs and expenses incurred (a) for mortgage or recording taxes, (b) to satisfy any obligation of Mortgagor under this Deed of Trust or to protect the Mortgaged Property, (c) in connection with the evaluation, monitoring or administration of the Debt or the Mortgaged Property (whether or not an Event of Default has occurred), and (d) in connection with the exercise of Mortgagee’s rights and remedies. Costs and expenses
include reasonable fees and expenses of outside counsel and other outside professionals and charges imposed for the services of attorneys and other professionals employed by Mortgagee or its affiliates. Any amount owing under this Section will be due and payable on demand and will bear interest from the date of expenditure by Mortgagee until paid at the rate provided in the applicable Note for past due principal.

6. **Events of Default; Acceleration; Appointment of Receiver.** Each of the following events is called an "Event of Default":

   (a) Any "Event of Default," under and as defined in the Loan Agreement occurs;

   (b) At any time that Mortgagee's security interests and liens granted hereunder are not prior to all other security interests, liens or other interests in the Mortgaged Property except Permitted Encumbrances, items permitted by the terms of the Loan Agreement, and junior service contracts related to the operation of the Improvements to the extent such service contracts may be terminated with no more than 30 days notice;

   (c) Mortgagor fails to comply with or becomes subject to any administrative or judicial proceeding under any federal, state or local hazardous waste or environmental law, asset forfeiture or similar law which may result in the forfeiture of property, or other law where non-compliance may have a significant effect on the Mortgaged Property or on Mortgagor's ability to pay any Debt and such proceeding is not dismissed within 60 days after its commencement;

   (d) Mortgagee determines, based on information available to it, that there is a defect in Mortgagor's title to any of the Mortgaged Property which is not a Permitted Encumbrance, or any person (including Mortgagor) alleges that (i) a lien or encumbrance exists on any Mortgaged Property equal or superior to the lien of this Deed of Trust, other than Permitted Encumbrances and other liens expressly permitted under the terms of the Loan Documents, or (ii) the lien of this Deed of Trust is subject to a homestead claim or other claim, and in any such case Mortgagor fails, within 30 days after written demand by Mortgagee, to correct such title defect or to remove or bond around it in a manner satisfactory to Mortgagee, said lien, encumbrance, homestead claim or other claim, or a writ of execution is levied against the interest of Mortgagor in the Mortgaged Property; and

   (e) Mortgagor sells, transfers, pledges, encumbers, grants a security interest in, or otherwise disposes of all or any part of or interest in the Land or the Improvements (including the granting of any easement) other than Permitted Encumbrances or a Permitted Transfer or as otherwise approved in writing by Mortgagee or expressly authorized under the Loan Agreement, or if the title to all or any of the Mortgaged Property (other than items of personalty that have become obsolete or worn beyond practical use and that have been replaced by
adequate substitutes owned by Mortgagor and having a value equal to or greater than the replaced items when new and other than Approved Leases under and as defined in the Loan Agreement) becomes vested in any party other than Mortgagor, whether by operation of law or otherwise. Mortgagee may consent to any action under this paragraph in its reasonable discretion, and if it consents it may impose any reasonable requirements for consent that it wishes (provided that in the case of consenting to the granting of easements, the Mortgagee may not unreasonably withhold its consent). Notwithstanding the foregoing, it is agreed that a taking that arises pursuant to a condemnation, to the extent that such condemnation occurs in accordance with this Deed of Trust, shall not require the consent of Mortgagee as that in such case, without limiting the other provisions of this Deed of Trust, Mortgagee's consent shall be deemed to have been given. Notwithstanding the foregoing or anything to the contrary in this Deed of Trust, Mortgagor and its members or beneficial owners may transfer its or their ownership interest and other interests to the extent permitted by the Loan Agreement and the Operating Agreement (under and as defined in the Loan Agreement).

If any Event of Default occurs and is continuing, Mortgagee may, without demand, presentment or notice of any kind (including notice of default, notice of intent to accelerate the maturity of the Debt, or notice of actual acceleration, all of which Mortgagor waives, except as specifically required by the terms of this Deed of Trust and the Loan Agreement, all of which Mortgagor waives), declare all of the Debt immediately due and payable, and may request that Trustee exercise any of Trustee's remedies under this Deed of Trust. In addition, if an Event of Default occurs and is continuing, Trustee will be entitled as a matter of right to the appointment of a receiver or receivers of the Mortgaged Property, and of all its rent and other income. Notwithstanding the appointment of any receiver, Trustee will be entitled to the possession and control of any cash or instruments that this Deed of Trust requires Mortgagor to deliver or pay to Trustee. If an Event of Default occurs and is continuing, Mortgagee may demand that Mortgagor surrender possession of the Mortgaged Property to Mortgagee. If Mortgagee takes possession of the Mortgaged Property, Mortgagee will not be liable to Mortgagor for any rental of the Mortgaged Property, nor for any failure to rent or inadequacy of rental of the Mortgaged Property, nor for any damage to or waste of the Mortgaged Property, WHETHER OR NOT DUE TO MORTGAGEE'S NEGLIGENCE, except as a result of the gross negligence or willful misconduct of Mortgagee and/or any other Indemnified Party. Mortgagee shall, notwithstanding anything to the contrary herein or in any of the other Loan Documents, have no right or claim to the low income housing tax credits allocated to the Land and Improvements unless and until Mortgagee shall foreclose on the Mortgaged Property or accept a deed in lieu of foreclosure.

7. Terms of Assignment of Rents; Collection and Application of Rents. The transfer and assignment of the Rents provided for in this Deed of Trust is irrevocable. Mortgagee grants to Mortgagor a limited license (the "License") to possess and use the Leases and the Rents. If an Event of Default occurs, the License will automatically
terminate. Thereafter, Mortgagee will have the absolute and continuing right (but not the obligation) to collect, demand, sue for, recover, receive and give receipts for any Rent. Mortgagee has no responsibility to exercise diligence in collecting Rents. After deducting the expenses of collection, Mortgagee will apply the net proceeds of collection as a credit upon any portion of the Debt selected by Mortgagee, whether or not that portion of the Debt is due and payable. If an Event of Default occurs and is continuing, Mortgagor authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to Mortgagee, and any lessee’s obligation to Mortgagor will be absolutely discharged to the extent of its payment to Mortgagee. If Mortgagor receives any Rents after the termination of Mortgagor’s lease, Mortgagor will hold the Rents in trust for Mortgagee and promptly pay them to Mortgagee. After the termination of Mortgagor’s license, Mortgagor will keep Rents segregated from all other funds. Mortgagee is not required to give any credit against the Debt for the assignment of Rents until Rents are actually paid to Mortgagee. Mortgagor’s obligations to Mortgagee will be discharged only to the extent that net Rents are received by Mortgagee and not disbursed to Mortgagor or paid by Mortgagee for expenses relating to the Land and Improvements. The assignment of rents will not cause Mortgagee to be a mortgagee-in-possession. If the License is terminated, Mortgagee’s possession of the Rents will not act as a waiver of any default by Mortgagor or as an affirmation of any Lease by Mortgagee if Mortgagee later becomes the purchaser of the Mortgaged Property at any foreclosure sale. Mortgagee may at its option subordinate the lien of this Deed of Trust to any Lease. The assignment of rents will terminate upon termination of this Deed of Trust. If the Mortgaged Property is sold pursuant to the terms of this Deed of Trust, the assignment of rents will terminate and the purchaser of the Mortgaged Property will have the right to all Rents free of the assignment. Notwithstanding anything in the foregoing to the contrary or any other provision hereof or in any of the Loan Documents to the contrary, all provisions related to the assignment of rents are subject to the terms, provisions, and conditions of the Texas Assignment of Rents Act (“TARA”), as codified in Tex. Prop. Code, Chapter 64, as the same may be amended, modified or supplemented from time to time. To the extent that specific terms and requirements of this Deed of Trust or any other Loan Document, including the Loan Agreement, 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 Deed of Trust 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 Deed of Trust or the other Loan Documents shall not otherwise be impaired or superseded thereby and shall remain in full force and effect.

8. **Trustee’s Sale.**

(a) If an Event of Default occurs and is continuing, Trustee will, at the request of Mortgagee, sell all or any part of the Mortgaged Property as an entirety or in parcels, by one sale or by several sales held at one time or at different times, all as
Trustee in Trustee's discretion elects. The sale will be made in accordance with Texas Property Code Section 51.002 or any successor statute. If the Land is situated in more than one county, then required notices will be given in both or all of such counties, the Mortgaged Property may be sold in either or any such county, and such notices shall designate the county where the Mortgaged Property will be sold. The affidavit of any person having knowledge of the facts to the effect that required notices were posted, filed or mailed will be prima facie evidence of the facts recited in the affidavit. The Trustee’s deed at any such sale will be with general warranty, and Mortgagor will warrant and forever defend the title of the purchaser or purchasers, subject to the Permitted Encumbrances (if then applicable). Mortgagee may be the purchaser at any sale made hereunder, and credit the sale price against the Debt. Any deed so executed by Trustee will be prima facie proof of all factual matters stated in it. The purchaser or purchasers named in any such deed, and all persons subsequently dealing with the property purported to be thereby conveyed, will be fully protected in relying upon the truthfulness of factual matters stated in the deed. After any Trustee’s sale, Mortgagor will surrender immediate possession and control of the property purchased to the purchaser. If Mortgagor fails to surrender possession, Mortgagor will be a tenant at will.

(b) Mortgagee may at any time before the sale direct Trustee to abandon the sale, and may at any time thereafter direct Trustee to again commence foreclosure. Whether or not foreclosure is commenced by Trustee, Mortgagee may at any time after an Event of Default occurs and is continuing, institute suit for collection of all or any part of the Debt or foreclosure of the lien of this Deed of Trust or both. If Mortgagee institutes suit for collection of the Debt and foreclosure of the lien of this Deed of Trust, Mortgagee may at any time before the entry of final judgment dismiss the same, and require Trustee to sell the Mortgaged Property in accordance with the provisions of this Deed of Trust. No single sale or series of sales under this Deed of Trust or by judicial foreclosure will extinguish the lien or exhaust the power of sale under this Deed of Trust except with respect to the items of property sold.

(c) Trustee will apply the proceeds of sale, first to the payment of all expenses of the sale, second to the payment of the Debt in any order Mortgagee chooses and third the balance, if any, to any person who is entitled to it. This paragraph does not give any right, remedy or claim to any holder of any obligation or lien, other than Mortgagee.

(d) If at any foreclosure sale of the Mortgaged Property, the Mortgagee bids on the Mortgaged Property and the bid is credited by Mortgagee to the applicable Note, the bid will be applied to the balance of the applicable Note.

9. **Alternative Procedures under UCC.** In addition to all other rights and remedies granted in this Deed of Trust, after an Event of Default occurs and is continuing, Mortgagee will have all rights and remedies of a secured party after default under the UCC and other applicable law, including without limitation, the right to take possession of the Collateral, and for that purpose Mortgagee may enter upon the Mortgaged Property and lawfully remove any Collateral. Mortgagee may require
Mortgagor to assemble the Collateral and make it available to Mortgagee at a reasonably convenient place Mortgagee designates. Mortgagee may provide a copy of this Deed of Trust to any account debtor or other person liable on or having any interest in any Collateral. Except for the reasonable safe custody of any Collateral in its possession and accounting for moneys actually received by it and except as expressly provided in the UCC, Mortgagee will have no duty as to any Collateral, including any duty to preserve rights against prior parties. Mortgagee is not required to take possession of any Collateral prior to any sale, or to have any Collateral present at any sale. Mortgagee may sell part of the Collateral without waiving its right to proceed against the remaining Collateral. If any sale is not completed or is defective in the opinion of Mortgagee, Mortgagee may make a subsequent sale of the same Collateral. Any bill of sale or other record evidencing any foreclosure sale will be prima facie evidence of the factual matters recorded therein. If a sale of Collateral is conducted in conformity with customary practices of banks disposing of similar property, the sale will be deemed commercially reasonable, but Mortgagee will have no obligation to advertise or to sell Collateral on credit. However, if Mortgagee sells any of the Collateral upon credit, Mortgagor will be credited only with payments actually made by the purchaser, received by Mortgagee and applied to the indebtedness of the purchaser with respect to the sale. In the event the purchaser fails to pay for the Collateral, Mortgagee may resell the Collateral and Mortgagor shall be credited with the proceeds of the sale. In addition, Mortgagor waives any and all rights that Mortgagor may have to a judicial hearing in advance of the enforcement of any of Mortgagee's rights hereunder, including without limitation, its rights following an Event of Default to take immediate possession of the Collateral and to exercise its rights with respect thereto. By exercising its rights, Mortgagee will not become liable for, and Mortgagor will not be released from, any of Mortgagor's duties or obligations under any accounts, general intangibles or Leases included in the Collateral. All remedies in this Deed of Trust are cumulative of any and all other legal, equitable or contractual remedies available to Mortgagee and any such remedies may be exercised simultaneously or in any order as determined by Mortgagee. Mortgagor irrevocably appoints Mortgagee as its attorney-in-fact to do all things Mortgagor is required to do under this Deed of Trust. This appointment is coupled with an interest and shall survive the death or disability of Mortgagor; provided however, this appointment shall not be effective until the occurrence and during the continuance of any Event of Default.

10. Standards for Exercising Remedies. To the extent that applicable law imposes duties on Mortgagee to exercise remedies in a commercially reasonable manner, Mortgagor acknowledges and agrees that it is not commercially unreasonable for Mortgagee (a) to fail to incur expenses reasonably deemed significant by Mortgagee to prepare any Collateral for disposition or otherwise to complete raw material for work-in-process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of the Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to remove liens on or any adverse claims against the Collateral, (d) to
exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as Mortgagor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure Mortgagor against risks of loss, collection or disposition of Collateral or to provide Mortgagor a guaranteed return from the collection or disposition of Collateral, (l) to the extent deemed appropriate by Mortgagor, to obtain the services of brokers, investment bankers, consultants and other professionals (including Mortgagor and its affiliates) to assist Mortgagor in the collection or disposition of any of the Collateral or (m) to comply with any applicable state or federal law requirement in connection with the disposition or collection of the Collateral. Mortgagor acknowledges that this Section is intended to provide non-exhaustive indications of what actions or omissions by Mortgagor would not be commercially unreasonable in Mortgagor’s exercise of remedies against the Collateral and that other actions or omissions by Mortgagor shall not be deemed commercially unreasonable solely by not being included in this Section. Without limitation upon the foregoing, nothing contained in this Section shall be construed to grant any rights to Mortgagor or to impose any duties upon Mortgagor that would not have been granted or imposed by this Deed of Trust or by applicable law in the absence of this Section.

11. Change of Trustee. Trustee may be removed at any time with or without cause, at the option of Mortgagor, by written declaration of removal executed by Mortgagor; without any notice to or demand upon Trustee, Mortgagor or any other person. If at any time Trustee is removed, dies or refuses, fails or is unable to act as Trustee, Mortgagor may appoint any person as successor Trustee hereunder, without any formality other than a written declaration of appointment executed by Mortgagor. Immediately upon appointment, the successor Trustee so appointed automatically will be vested with all the estate and title in the Mortgaged Property, and with all of the rights, powers, privileges, authority, options and discretions, and charged with all of the duties and liabilities, vested in or imposed upon Trustee by this instrument, and any conveyance executed by any successor Trustee will have the same effect and validity as if executed by the Trustee named in this Deed of Trust.

12. INDEMNIFICATION OF TRUSTEE. EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TRUSTEE SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION OR ERROR OF JUDGMENT. TRUSTEE MAY RELY ON ANY DOCUMENT BELIEVED BY HIM IN GOOD FAITH TO BE GENUINE. ALL MONEY RECEIVED BY TRUSTEE SHALL, UNTIL USED OR APPLIED AS HEREIN
PROVIDED, BE HELD IN TRUST, BUT NEED NOT BE SEGREGATED (EXCEPT TO
THE EXTENT REQUIRED BY LAW), AND TRUSTEE SHALL NOT BE LIABLE FOR
INTEREST THEREON. MORTGAGOR HEREBY INDEMNIFIES TRUSTEE AGAINST
ALL LIABILITY AND REASONABLE EXPENSES THAT HE MAY INCUR IN THE
PERFORMANCE OF HIS DUTIES HEREUNDER, EXCEPT TO THE EXTENT THE
SAME RESULTS FROM TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL
MISCONDUCT.

13. Fair Market Value for Calculating Deficiencies. If Mortgagee sues
Mortgagor or any other party obligated on the Debt or any guarantor of any Debt to
collect any deficiency owing after foreclosure of the Mortgaged Property, "fair market
value" of the Mortgaged Property under Sections 51.003, 51.004, and 51.005 of the
Texas Property Code (as amended from time to time) (the "Deficiency Statutes") will
be determined as follows:

(a) Any valuation of the Mortgaged Property will be based on "as is"
condition on the foreclosure date, 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.

(b) Any valuation will assume that the foreclosure purchaser desires
resale of the Mortgaged Property for cash promptly (but no later than twelve
months) following the foreclosure sale.

(c) All reasonable closing costs customarily borne by the seller in a
commercial real estate transaction, including brokerage commissions, title
insurance, a survey of the Mortgaged Property, tax prorations, attorney's fees,
and marketing costs, will be deducted from the gross fair market value of the
Mortgaged Property.

(d) Any valuation will further discount the gross fair market value of the
Mortgaged Property to account for any estimated holding costs associated with
maintaining the Mortgaged Property pending sale, including utilities expenses,
property management fees, taxes and assessments, and other maintenance
expenses.

(e) 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 who have at least five 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.

14. All Security Cumulative; Subrogation; Waiver of Marshaling. The
execution of this Deed of Trust does not impair any other security for the payment of
any Debt. Mortgagee may take additional security for any Debt in the future without
altering or impairing the lien of this Deed of Trust. Mortgagee may release any
Mortgaged Property or any other security for the Debt without altering or impairing the
lien of this Deed of Trust as to the Mortgaged Property not released. All present and
future security will be cumulative. Mortgagee is subrogated to all rights, liens or
interests in any of the Mortgaged Property securing the payment of any obligation
satisfied or paid off out of the proceeds of the loans evidenced by the Note. Mortgagor
waives any right of marshaling of assets or sale in reverse order of alienation, and all
present or future appraisal rights and equity of redemption rights.

15. Limitations on Amount of Interest. Mortgagor and Mortgagee intend to
conform strictly to applicable usury laws. Therefore, the total amount of interest (as
defined under applicable law) contracted for, charged or collected under the Debt or this
Deed of Trust will never exceed the highest amount permitted by applicable law. If
Mortgagee contracts for, charges or receives any excess interest, it will be deemed a
mistake. Any unlawful contract or charge will be automatically reformed to conform to
applicable law, and if Mortgagee has received excess interest, Mortgagee will either
refund the excess to Mortgagor or credit the excess on the unpaid amounts owing under
the Debt or this Deed of Trust. All amounts constituting interest will be spread
throughout the full term of the Debt in determining whether interest exceeds lawful
amounts.

16. Financing Statement; Mortgagor's Covenants; Further Assurances. This
Deed of Trust covers, among other Collateral, goods that are or are to become fixtures
related to the Land and the Improvements. This Deed of Trust is to be filed in the real
property records as a fixture filing, and may be filed as an initial financing statement in
any other place which is necessary or desirable to perfect the security interests granted
herein. The secured party is Mortgagee and the mailing address of the secured party is
set forth in Section 17. The debtor is Mortgagor and the mailing address of the debtor is
set forth in Section 17. The first paragraph of this Deed of Trust indicates whether
Mortgagor is an individual or an organization and if Mortgagor is an organization, its
jurisdiction of organization and organizational identification number, if any. Mortgagor is
the record owner of the Mortgaged Property. Mortgagee may file this Deed of Trust, or
any financing statements or amendments thereto or other record wherever Mortgagee
believes necessary or appropriate to perfect the security interests granted herein, including
but not limited to any official filing office, or in any other recording or registration system.
The financing statement or other record may (a) indicate the Collateral as being of an
equal or lesser scope or with greater detail than set forth in this Deed of Trust and (b)
contain any other information required by the UCC or other law regarding the notification
of a security interest, lien, assignment or other right to direct disposition, for the sufficiency of
the filing office's or other registrar's acceptance of any financing statement or amendments
thereto or other record including (i) if Mortgagor is an organization, the type of organization
and any organization identification number issued to Mortgagor and (ii) in the case of a
financing statement filed as a fixture filing, a sufficient description of real property to which
the Collateral relates. Mortgagor ratifies its authorization for Mortgagee's filing of any
financing statements covering the Collateral in any jurisdiction on or after the date
hereof. A photographic or other reproduction of this Deed of Trust or any financing
statement relating to this Deed of Trust will be sufficient as a financing statement. Mortgagor will take any reasonable action requested by Mortgagee to establish and maintain control by Mortgagee of any Collateral consisting of deposit accounts, letter of credit rights and investment property and to create, attach, perfect, protect, assure the first priority of and to enforce the liens and security interests granted hereunder.

17. Notices. Except as otherwise provided, any notice, request or demand under this Deed of Trust must be in writing and will be sufficient if either delivered personally or deposited in the United States mail in a postpaid envelope addressed to the mailing address set forth below. A party may designate a different address by notice given in compliance with this Section. Any notice to Mortgagee must be sent or delivered to the officer named below or to another officer designated for receipt of such notices by Mortgagee. The names and mailing addresses of Mortgagor and Mortgagee are as follows:

**Mortgagor:**

Mistletoe Station, LLC  
5501-A Balcones Drive, #302  
Austin, TX 78731

With a copy to:

**Investor Limited Partner:**

c/o Hunt Capital Partners, LLC  
15910 Ventura Blvd., Suite 1100  
Encino, California 91436  
Attention: Jeffrey N. Weiss

And to:

Ballard Spahr LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103  
Attention: Jere Thompson

**Mortgagee:**

JPMorgan Chase Bank, N.A.  
2200 Ross Avenue, Floor 9  
Dallas, Texas 75201  
Attention: Olivia Ochoa  
(TX1-2951)

18. Additional Agreements. This Deed of Trust benefits the successors, assigns and legal representatives of Trustee and Mortgagee and binds any successors or transferees of Mortgagor (however, this provision does not permit Mortgagor to transfer the Mortgaged Property). Each reference to Mortgagor, Trustee or Mortgagee includes their respective successors, assigns and legal representatives. No modification or waiver of this Deed of Trust will be effective unless in writing and signed by Mortgagee. Mortgagee may waive any default without waiving any other prior or subsequent default. Mortgagee’s failure to exercise or delay in exercising any rights
under this Deed of Trust will not operate as a waiver of those rights. If any provision of this Deed of Trust is unenforceable or invalid, that provision will not affect the enforceability or validity of any other provision. If the application of any provision of this Deed of Trust to any person or circumstance is illegal or unenforceable, that application will not affect the legality or enforceability of the provision as to any other person or circumstance. If more than one person executes this Deed of Trust as Mortgagor, their obligations under this Deed of Trust are joint and several.

19. **Rules of Construction.** The section headings or captions in this instrument are for convenience and are not a part of this Deed of Trust for any purpose. Any action permitted to Mortgagee may be taken by any authorized officer, employee or agent of Mortgagee, or any attorney, accountant, environmental consultant or other advisor or professional retained by Mortgagee. Use of the term "including" does not imply any limitation on (but may expand) the antecedent reference. Unless the context clearly requires otherwise, the term "may" does not imply any obligation to act. Any reference to exhibits or schedules means the exhibits or schedules to this Deed of Trust, which are fully incorporated by reference into this Deed of Trust. Any reference to a particular document includes all modifications, supplements, replacements, renewals or extensions of that document, but this rule of construction does not authorize amendment of any document without Mortgagee's consent.

20. **Waivers.** Mortgagor waives all suretyship defenses that may lawfully be waived, including but not limited to notice of acceptance of this Deed of Trust, notice of the incurrence, acquisition or subordination of any Debt, credit extended, collateral received or delivered or other action taken in reliance on this Deed of Trust, notices and all other demands and notices of any description. With respect to both Debt and the Mortgaged Property, Mortgagor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect Mortgagee's security interest or lien in any of the Mortgaged Property, to the addition or release of any person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as Mortgagee may deem advisable. To the extent not prohibited by applicable law, Mortgagor further waives (i) diligence and promptness in preserving liability of any person on the Debt, and in collecting or bringing suit to collect the Debt; (ii) all rights, if any, of Mortgagor under Rule 31, Texas Rules of Civil Procedure, or Chapter 43 of the Texas Civil Practice and Remedies Code, or Section 17.001 of the Texas Civil Practice and Remedies Code; (iii) to the extent Mortgagor is subject to the Texas Business Organizations Code ("TBOC"), compliance by Mortgagee with Section 152.306(b) of TBOC; (iv) notice of extensions, renewals, modifications, rearrangements and substitutions of the Debt; and (v) failure to pay any of the Debt as it matures, any other default, Event of Default, and adverse change in any obligor's or any Mortgagor's financial condition, release or substitution of collateral, subordination of Mortgagee's rights in any collateral, and every other notice of every kind. Nothing in this Deed of Trust is intended to waive or vary the rights and duties of Mortgagee or the rights and duties of Mortgagor or any obligor in violation of Section 9.602 of the UCC.
21. **Construction Mortgage.** This Deed of Trust is a "construction mortgage" under Section 9.334(h) of the UCC and Section 2A.309 of the Texas Business and Commerce Code to the extent that it secures an obligation incurred for the construction of the Improvements.

22. **Governing Law.** This Deed of Trust shall be governed by Texas law, without giving effect to choice of law provisions. Jurisdiction and venue shall be Tarrant County, Texas.

23. **No Oral Agreements.** THIS WRITTEN AGREEMENT 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 BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

24. **Limitation of Pledge.** Notwithstanding anything herein to the contrary, Mortgagee agrees that the conveyance, pledge, assignment and security interest in and to the low income housing tax credit associated with the Land and Improvements (as set forth in subsection 6 of the definition of Mortgaged Property) shall not be effective or enforceable unless and until Mortgagee (or its successor or assigns, including without limitation any purchaser at foreclosure) acquires title to the Land and Improvements by foreclosure or deed in lieu of foreclosure, or otherwise.

25. **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS DEED OF TRUST BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

26. **Waiver of Special Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MORTGAGOR AND MORTGAGEE SHALL NOT ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST THE OTHER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS DEED OF TRUST OR ANY DEED OF TRUST OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS,
THE LOAN EVIDENCED BY THE NOTE OR THE USE OF THE PROCEEDS THEREOF.

27. EXTENDED USE AGREEMENT. Mortgagee agrees that the lien of this Instrument 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 Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(e) of the Internal Revenue Code.

Mortgagor has executed this Deed of Trust on the date set forth in the acknowledgment below to be effective as of August 30, 2018.
Mortgagor certification for all Non-individuals: Mortgagor certifies that it is organized under the laws of the State of Texas.

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By: [Signature]
Lisa M. Stephens,
President

STATE OF TEXAS

COUNTY OF Harris

This instrument was acknowledged before me on the 21st day of August, 2018, by Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, on behalf of said limited liability company, managing member of MISTLETOE STATION, LLC, a Texas limited liability company.

[Signature]
Notary Public, State of Texas

Exhibit A - Description of Land
Exhibit B - Permitted Encumbrances

SIGNATURE PAGE TO DEED OF TRUST
Mortgagee is executing this Deed of Trust solely to acknowledge its agreement to the Jury Waiver above, the notice given under Section 26.02 of the Texas Business and Commerce Code and to comply with the waiver requirement of TBOC. Mortgagee's failure to execute or authenticate this Deed of Trust will not invalidate this Deed of Trust.

JPMORGAN CHASE BANK, N.A.

By: [Signature]

Olivio C. Ochoa, Authorized Officer

THE STATE OF TEXAS

COUNTY OF Dallas

This instrument was acknowledged before me on the 20th day of August, 2018, by Olivio C. Ochoa, as Authorized Officer of JPMORGAN CHASE BANK, N.A., a national banking association, on behalf of said banking association.

[Signature]

NOTARY PUBLIC, State of Texas

Return to:

JPMorgan Chase Bank, N.A.
712 Main Street
Floor: 06
Houston, TX 77002

SIGNATURE PAGE TO DEED OF TRUST

HOU 408832219
EXHIBIT "A"

TRACT I:

LOT 1-R1, BLOCK 3R, OF FRISCO ADDITION, TO THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED UNDER COUNTY CLERK'S FILE NO. D212125731, REAL PROPERTY RECORDS, TARRANT COUNTY, TEXAS.

ALSO KNOWN AS

TRACT I:

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being a part of that tract of land described as Tract 1 in Special Warranty Deed to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207136848 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), being all of Lot 1-R1 of Lots 1-R1 and 1-R2, Block 3R, Frisco Addition, an addition to the City of Fort Worth, Tarrant County, Texas, as recorded in County Clerk's Document No. D212125731 O.R.T.C.T., being a part of Beckham Place (variable width right-of-way) and being more particularly described as follows:

BEGINNING at the northeast corner of said Lot 1-R1, from which a 1/2-inch found iron rod with plastic cap stamped "AREA SURVEYING" bears North 48 degrees 50 minutes 32 seconds East, a distance of 0.25 feet, and being on the south right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 00 degrees 42 minutes 24 seconds East, a distance of 203.93 feet to a 5/8-inch found iron rod for the southeast corner of said Lot 1-R1, being on the north right-of-way line of Mistletoe Boulevard (a variable width right-of-way);

THENCE North 89 degrees 22 minutes 55 seconds West, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the south end of a corner clip of said Lot 1-R-1 at a distance of 212.37 feet, and continuing for a total a distance of 222.37 feet to a 3/4-inch found iron rod for corner at the intersection of the projected said north right-of-way line and the projected east right-of-way line of said Beckham Place;

THENCE North 06 degrees 51 minutes 00 seconds West, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the north end of a corner clip of said Lot 1-R-1 at a distance of 10.00 feet, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the south end of a corner clip of said Lot 1-R-1 at a distance of 48.06 feet, and continuing for a total distance of 58.06 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the north end of a corner clip of said Lot 1-R-1 at a distance of 10.00 feet, and continuing for a total distance of 268.55 feet to the POINT OF BEGINNING AND CONTAINING 29,702 square feet or 0.6819 acres of land, more or less.
TRACT II:

DESCRIPTION FOR A PART OF BLOCK B OF MISTLETOE HEIGHTS, AN ADDITION IN THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS, AS SAID BLOCK APPEARS UPON THE MAP RECORDED IN VOLUME 388, PAGE 5 OF THE TARRANT COUNTY DEED RECORDS AND EMBRACING A PORTION OF THE TRACT DESCRIBED IN THE DEED TO L. E. TREZEVANT RECORDED IN VOLUME 1929, PAGE 240 OF SAID DEED RECORDS, AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT AN AXLE FOUND FOR THE SOUTHEAST CORNER OF SAID BLOCK B IN THE NORTH LINE OF BECKHAM PLACE AND BEING THE SOUTHWEST CORNER OF LOT 6 OF TREZEVANT SUBDIVISION, SAID AXLE BEING THE SOUTHEAST CORNER OF SAID TREZEVANT TRACT;

THENENCE SOUTH 59 DEGREES 33 MINUTES 00 SECONDS WEST, ALONG THE SOUTH LINE OF SAID TREZEVANT TRACT AND THE SAID NORTH LINE OF BECKHAM PLACE, 129.99 FEET TO A ¾" IRON PIN FOUND FOR THE SOUTHERLY SOUTHEAST CORNER OF THE TRACT DESCRIBED IN THE DEED TO HELEN J. WILLIAMS, RECORDED IN VOLUME 5619, PAGE 93 OF THE SAID DEED RECORDS;

THENENCE NORTH 11 DEGREES 22 MINUTES 00 SECONDS WEST, ALONG THE SOUTHERLY EAST LINE OF SAID WILLIAMS TRACT 164.10 FEET TO A ½" IRON PIN SET WITH CAP MARKED, "AREA SURVEYING" FOR CORNER;

THENENCE NORTH 83 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG A NORTHERLY SOUTH LINE OF SAID WILLIAMS TRACT, 82.64 FEET TO A ½" IRON PIN SET WITH CAP MARKED, "AREA SURVEYING" FOR THE NORTHERLY SOUTHEAST CORNER OF SAID WILLIAMS TRACT;

THENENCE NORTH 03 DEGREES 57 MINUTES 00 SECONDS WEST, ALONG AN EAST LINE OF SAID WILLIAMS TRACT, 16.77 FEET TO A ½" IRON PIN SET WITH CAP MARKED, "AREA SURVEYING" FOR THE MOST SOUTHERLY SOUTHWEST CORNER OF LOT 1, BLOCK B-R, MISTLETOE HEIGHTS, ACCORDING TO PLAT RECORDED IN VOLUME 388-160, PAGE 1, PLAT RECORDS, TARRANT COUNTY, TEXAS;

THENENCE NORTH 86 DEGREES 05 MINUTES 23 SECONDS EAST, ALONG THE SOUTH LINE OF SAID LOT 1, 54.56 FEET TO A ¾ INCH IRON PIN FOUND FOR THE NORTHWEST CORNER OF LOT 7 OF TREZEVANT SUBDIVISION;

THENENCE SOUTH 04 DEGREES 07 MINUTES 19 SECONDS EAST, ALONG THE EAST LINE SAID TREZEVANT TRACT AND THE WEST LINE OF TREZEVANT SUBDIVISION, 124.61 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.424 OF AN ACRE OF LAND.
ALSO KNOWN AS:

TRACT II:

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207307960 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being more particularly described as follows:

BEGINNING at a found axle for the southeast corner of said 0.424 acre tract, being on the north right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 59 degrees 40 minutes 50 seconds West, along said north right-of-way line, a distance of 129.99 feet to a 3/4-inch found iron rod for the common southeast corner of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 O.R.T.C.T. and the southwest corner of said 0.424 acre tract;

THENCE North 11 degrees 14 minutes 10 seconds West, departing said north right-of-way line, a distance of 164.21 feet to the common northwest corner of said 0.424 acre tract of land and an ell corner of said All Saints tract;

THENCE North 83 degrees 59 minutes 50 seconds East, a distance of 82.91 feet to a common ell corner of said All Saints tract and said called 0.424 acre tract of land;

THENCE North 03 degrees 50 minutes 10 seconds West, a distance of 16.58 feet to a 5/8-Inch found iron rod for an ell corner of said 0.424 acre tract of land, the most southerly southwest corner of Lot 1 in Block B-R of Mistletoe Heights as recorded in Volume 388-160, Page 1 in the Plat Records of Tarrant County, Texas, and being on the east line of said All Saints tract;

THENCE North 86 degrees 13 minutes 12 seconds East, a distance of 54.54 feet to a 5/8-inch found iron rod for the northeast corner of said called 0.424 acre tract of land, and being on the south line of said Lot 1;

THENCE South 03 degrees 53 minutes 11 seconds East, a distance of 124.54 feet to the POINT OF BEGINNING AND CONTAINING 18,495 square feet or 0.4246 acres of land, more or less.

TRACT III:

BEING A PART OF BLOCK "B" OF MISTLETOE HEIGHTS ADDITION TO THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 388, PAGE 5, DEED RECORDS
OF TARRANT COUNTY, TEXAS, SAID PART OF BLOCK "B" BEING DESCRIBED BY METES AND BOUNDS' AS FOLLOWS:


THENCE NORTH 6 DEGREES 08 MINUTES WEST, ALONG SAID BLOCK LINE AND RIGHT-OF-WAY LINE, 402.2 FEET TO AN IRON;

THENCE NORTH 83 DEGREES 52 MINUTES EAST 98 FEET TO AN IRON;

THENCE SOUTH 6 DEGREES 08 MINUTES EAST 45 FEET TO AN IRON;

THENCE NORTH 83 DEGREES 52 MINUTES EAST 110-7/10 FEET TO AN IRON;

THENCE SOUTH 3 DEGREES 57 MINUTES EAST 132-1/10 FEET TO AN IRON;

THENCE SOUTH 83 DEGREES 52 MINUTES WEST 82-6/10 FEET TO AN IRON;

THENCE SOUTH 11 DEGREES 22 MINUTES EAST 164-4/10 FEET TO AN IRON IN THE SOUTH LINE OF SAID BLOCK B;

THENCE SOUTH 59 DEGREES 33 MINUTES WEST, ALONG SAID SOUTH LINE OF BLOCK B, 149-3/10 FEET TO THE PLACE OF BEGINNING.

ALSO KNOWN AS:

TRACT III:

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch found iron rod with plastic cap stamped "FULTON SURVEYING" for the common northwest corner of said All Saints tract, the most westerly southwest corner of Lot 1 in Block B-R of Mistletoe Heights as recorded in Volume 388-160, Page 1 in the Plat Records of Tarrant County, Texas, and being on the east line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);
THENCE North 84 degrees 06 minutes 47 seconds East, along the common line between said All Saints tract and said Lot 1; a distance of 98.08 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for a common ell corner of said All Saints tract and said Lot 1;

THENCE South 06 degrees 21 minutes 44 seconds East, continuing along said common line, a distance of 44.82 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for a common ell corner of said All Saints tract and said Lot 1;

THENCE North 84 degrees 04 minutes 15 seconds East, continuing along said common line, a distance of 110.60 feet to a 5/8-inch found iron rod for the northeast corner of said All Saints tract and an ell corner of said Lot 1;

THENCE South 03 degrees 50 minutes 10 seconds East, along the east line of said All Saints tract, passing a 5/8-inch found iron rod for the most southerly southwest corner of said Lot 1, and an ell corner of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207307960 O.R.T.C.T. at a distance of 115.35 feet and continuing for a total distance of 131.94 feet to a point for a common ell corner of said All Saints tract and said called 0.424 acre tract of land;

THENCE South 83 degrees 59 minutes 50 seconds West, departing said east line, a distance of 82.91 feet to the common northwest corner of said 0.424 acre tract of land and an ell corner of said All Saints tract;

THENCE South 11 degrees 14 minutes 10 seconds East, a distance of 164.21 feet to a 3/4-inch found iron rod for the common southeast corner of said All Saints tract, the southwest corner of said 0.424 acre tract, and being on the north right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 59 degrees 40 minutes 50 seconds West, departing said east line and along said north right-of-way line, a distance of 149.29 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner on said east right-of-way line;

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right-of-way line and along said east right-of-way line, a distance of 402.00 feet to the POINT OF BEGINNING AND CONTAINING 56,858 square feet or 1.3053 acres of land, more or less.

TRACT IV:

Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being a portion of Beckham Place (a 60 foot right of way) as recorded in the Fort Worth Original Town, an addition to the City of Fort Worth (no recording information found) also shown on plat of Lots 1&2, Block 3-A Frisco Addition, as recorded in 388-173, Page 11 Plat Records Tarrant County Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T. and the south right of way line being described in Residue of Beckham Place vacated by Ordinance No. 9104, being all of that called 0.4304 acre tract of land
described in City of Fort Worth Ordinance No. 23278-06-2018 Vacating and Extinguishing a portion of Beckham Place, and being more particularly described below:

BEGINNING at a 1/2-inch found iron with cap stamped GRANT ENG RPLS 4151 being at the intersection of the north right of way line of Beckham Place (variable width right-of-way) and the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way), and being the southwest corner of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth Inc., recorded in Volume 10876, Page 1719 Official Records Tarrant County Texas (O.R.T.C.T.);

THENCE North 59 degrees 40 minutes 50 seconds East, along the north right of way line of said Beckham Place, passing at a distance of 149.29 feet, a 3/4-inch iron rod for the southeast corner of said All Saints tract and being the southwest corner of 1700 Mistletoe Partners, Ltd., recorded in Document No. D207307960 O.R.T.C.T., and continuing for a total distance of 255.74 feet to a point for corner;

THENCE South 00 degrees 42 minutes 24 seconds East, over and across said Beckham Place, a distance of 70.58 feet to a point for corner being on the south right of way line of said Beckham Place;

THENCE South 57 degrees 36 minutes 24 seconds West, along said south right of way line, a distance of 198.04 feet to a point for corner at the point of intersection of said south right of way line and the east right of way line of said Beckham Place same being the east line of said City of Fort Worth tract;

THENCE South 06 degrees 51 minutes 00 seconds East, along said east right of way line, a distance of 58.06 feet to a point for corner being at the intersection of said east right of way line and the north right of way line of Mistletoe Boulevard (a variable width right of way);

THENCE North 89 degrees 22 minutes 55 seconds West, over and across said Beckham Place, a distance of 50.32 feet to a point for corner being on the east right of way line of said Burlington Northern Santa Fe Railroad;

THENCE North 06 degrees 00 minutes 10 seconds West, along said east right of way line, passing at a distance of 27.87 feet, the northwest corner of said City of Fort Worth tract, and continuing for a total distance of 105.25 feet to the POINT OF BEGINNING AND CONTAINING 18,744 square feet or 0.4303 acres of land, more or less.

LESS AND EXCEPT:

Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T. and being more particularly described below:

BEGINNING at a 3/4-inch found iron rod for the southeast corner of said City of Fort Worth tract, being on the north right of way line of Mistletoe Boulevard (a variable width right of way);
THENCE North 89 degrees 22 minutes 55 seconds West, along said north right of way line, a distance of 50.32 feet to a point for corner at the intersection of said north right of way line with the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way); THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right of way line and along said east right of way line, a distance of 27.87 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, departing said east right of way line, a distance of 54.84 feet to a point for corner; THENCE South 06 degrees 51 minutes 00 seconds East, a distance of 58.06 feet to the POINT OF BEGINNING AND CONTAINING 2,133 square feet or 0.0490 acres of land, more or less.

TRACT V:

Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T. and being part of that called 0.4304 acre tract of land described in City of Fort Worth Ordinance No. 23278-06-2018 Vacating and Extinguishing a portion of Beckham Place and being more particularly described below:

BEGINNING at a 3/4-inch found iron rod for the southeast corner of said City of Fort Worth tract, being on the north right of way line of Mistletoe Boulevard (a variable width right of way);

THENCE North 89 degrees 22 minutes 55 seconds West, along said north right of way line, a distance of 50.32 feet to a point for corner at the intersection of said north right of way line with the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way); THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right of way line and along said east right of way line, a distance of 27.87 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, departing said east right of way line, a distance of 54.84 feet to a point for corner; THENCE South 06 degrees 51 minutes 00 seconds East, a distance of 58.06 feet to the POINT OF BEGINNING AND CONTAINING 2,133 square feet or 0.0490 acres of land, more or less.

TRACTS I, II, III, IV AND V ALSO KNOWN AS:

PLAT DESCRIPTION:

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that tract of land described as Tract 1 in Special Warranty Deed to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207136848 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being all of Lot 1-R1 of Lots 1-R1 and 1-R2, Block 3R, Frisco Addition, an addition to the City of Fort Worth, Tarrant County, Texas, as recorded in County Clerk's Document No. D212125731 O.R.T.C.T., and being all of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 O.R.T.C.T.,
and being all of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207307960 O.R.T.C.T., and being more particularly described as follows:

BEGINNING at a 5/8-inch found iron rod for the southeast corner of said Lot 1-R1, being on the north right-of-way line of Mistletoe Boulevard (a variable width right-of-way);

THENCE North 89 degrees 22 minutes 55 seconds West, along said north line, a distance of 272.69 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") for corner on the east line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north line and along said east line, a distance of 507.25 feet to a 1/2-inch found iron rod with plastic cap stamped "FULTON SURVEYING" for the northwest corner of said All Saints tract;

THENCE North 84 degrees 06 minutes 47 seconds East, departing said east line and along the north line of said All Saints tract, a distance of 98.08 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner;

THENCE South 06 degrees 21 minutes 44 seconds East, continuing along said north line, a distance of 44.82 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner;

THENCE North 84 degrees 04 minutes 15 seconds East, continuing along said north line, a distance of 110.60 feet to a 5/8-inch found iron rod for the northeast corner of said All Saints tract;

THENCE South 03 degrees 50 minutes 10 seconds East, departing said north line and along the east line of said All Saints tract, a distance of 115.35 feet to a 5/8-inch found iron rod for ell corner on the north line of said 0.424 acre tract;

THENCE North 86 degrees 13 minutes 12 seconds East, departing said east line and along said north line, a distance of 54.54 feet to a 5/8-inch found iron rod for the northeast corner of said 0.424 acre tract;

THENCE South 03 degrees 53 minutes 11 seconds East, departing said north line and along the east line of said 0.424 acre tract, a distance of 124.54 feet to a found axle for the southeast corner of said 0.424 acre tract, being on the north right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 59 degrees 40 minutes 50 seconds West, departing said east line and along said north line, a distance of 23.54 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 00 degrees 42 minutes 24 seconds East, departing said north line, a distance of 70.58 feet to a 1/2-inch set iron rod with cap for corner on the south right-of-way line of said Beckham Place;
THENCE North 57 degrees 36 minutes 24 seconds East, along said south line, a distance of 70.51 feet to a point for the northeast corner of said Lot 1-R1, from which a 1/2-inch found iron rod with plastic cap stamped "AREA SURVEYING" bears North 48 degrees 50 minutes 32 seconds East, a distance of 0.25 feet;

THENCE South 00 degrees 42 minutes 24 seconds East, departing said south line and along the east line of said Lot 1-R1, a distance of 203.93 feet to the POINT OF BEGINNING AND CONTAINING 123,799 square feet or 2.842 acres of land, more or less.
EXHIBIT "B"

(PERMITTED EXCEPTIONS)

This conveyance is made and accepted subject to the following Permitted Encumbrances:

1. Shortages in area.

2. Standby fees, taxes and assessments by any taxing authority for the year 2018, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code.

3. The following matters and all terms of the documents creating or offering evidence of the matters:

   a. Any covenants, conditions or restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such covenants, conditions or restrictions violate 42 USC 3604 {c}. Recorded in Volume 388-173, Page 11 and Cabinet B, Slide 2241, of the Deed Records, and County Clerk’s File No. D212125731.

   b. Easement as shown on the recorded plat and dedication:
      Purpose: Utility Easement
      Location: 5 feet in width along the Northerly and westerly property lines

      (Affects Tract I)

   c. Easement as shown on the recorded plat and dedication:
      Purpose: Utility Easement
      Location: 10 feet in width along the Southerly property line

      (Affects Tract I)
d. Easement as shown on the recorded plat and dedication:
   Purpose: Sanitary Sewer Easement
   Location: 35 feet in width running North and South through the Westerly portion of the property

   (Affects Tract 1)

e. Easement as shown on the recorded plat and dedication:
   Purpose: Drainage Easements
   Location: 27 feet 6 inches and 34 feet in width through the Northwesterly and Westerly portions of the property

   (Affects Tract 1)

f. Easement as shown on the recorded plat and dedication:
   Purpose: Public Open Space Easement/Restriction
   Location: 10 feet in width along the Northwesterly and Southwesterly cut back corners

   (Affects Tract 1)

g. Easement as shown on the recorded plat and dedication:
   Purpose: ROW Dedication
   Location: Northwesterly and Southwesterly corners

   (Affects Tract 1)

h. Easement:
   To: Texas Electric Service Company
   Purpose: Distribution Easement and Right-of-Way

   (Affects Tract 11)

i. Terms, Conditions, and Stipulations in the Agreement by and between:
   Parties: R. Price Hulsey and City of Fort Worth
   Recorded: October 11, 1984 in Volume 7977, Page 806, of the Deed records, of Tarrant County, Texas.
   Type: Covenant and Agreement regarding Storm Drain

   (Affects Tract 1)
j. Easement: City of Fort Worth
   To: 
   Recorded: April 16, 1992 in Volume 10612, Page 1477, of the Deed records, of Tarrant County, Texas.
   Purpose: Sanitary Sewer Easement
   Location: along the Westerly Northwest portion of the property
   (Affects Tract II)

k. Sanitary Sewer Lines referenced in Volume 09721, Page 1514 and County Clerk’s File No. D2117317961, of the Official Records, Tarrant County, Texas.
   (Affects Tract II)

l. Mineral and/or royalty interest:
   Recorded: April 20, 2007 in County Clerk’s File No. D207136848, of the Official records, of Tarrant County, Texas.
   Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.
   Waiver of Surface Rights contained therein.
   (Affects Tract I)

m. Mineral and/or royalty interest with waiver of surface rights:
   Recorded: August 29, 2017 in County Clerk’s File No. D217317961, of the Official records, of Tarrant County, Texas.
   Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.
   (Affects Tract II)

n. Oil, Gas and Mineral Lease, and all terms, conditions and stipulations therein:
   Recorded: October 14, 2017 in County Clerk’s File No. D217354966, and as affected by County Clerk’s File No. D211187357, of the Official records, of Tarrant County, Texas.
   Lessor: R. Price Hulsey aka Price Hulsey
   Lessee: Four Sevens Energy Co., LLC
   Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.
   (Affects Tract I)
o. Oil, Gas and Mineral Lease, and all terms, conditions and stipulations therein:
   Recorded: December 03, 2009 in County Clerk’s File No. D209315968, and as affected by County
   Clerk’s File No. D201187357, of the Official records, of Tarrant County, Texas.
   Lessor: Fort Worth C & R, Inc.
   Lessee: XTO Energy Inc.
   Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.
   (Affects Tract II)

p. Oil, Gas and Mineral Lease, and all terms, conditions and stipulations therein:
   Recorded: June 01, 2011 in County Clerk’s File No. D210128178, of the Official records, of Tarrant
   County, Texas.
   Lessor: Fort Worth C and R, Inc.
   Lessee: XTO Energy Inc.
   Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.
   (Affects Tract II)

q. Easement:
   To: Texas Electric Service Company
   Recorded: February 03, 1959 in Volume 3288, Page 619, of the Deed Records, of Tarrant County, Texas.
   Purpose: Distribution Easement and Right-of-Way
   (Affects Tract III)

r. Easement:
   To: City of Fort Worth
   Recorded: April 20, 1992 in Volume 10737, Page 1243, of the Official records, of Tarrant County, Texas.
   Purpose: Sanitary Sewer Easement
   Location: as depicted therein
   (Affects Tract III)

s. Sewer Lines referenced in Volume 5619, Page 93, of the Deed Records and Volume 10876, Page
   1719, of the Official Records, Tarrant County, Texas.
   (Affects Tract III)
t. Easement: City of Fort Worth
To: City of Fort Worth
Recorded: December 04, 1998 in County Clerk's File No. D199046006, of the Official records, of Tarrant County, Texas.
Purpose: Permanent Utility Easement
Location: as depicted therein

(Affects Tract III)

U. Memorandum of Oil, Gas and Mineral Lease, and all terms, conditions and stipulations therein:
Recorded: January 06, 2010 in County Clerk's File No. D211078000 and affected by County Clerk's File No. D2110987357, of the Official Public Records, Tarrant County, Texas.
Lessor: Baylor All Saints Medical Center
Lessee: XTO Energy Inc.

Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.

(Affects Tract III)

V. Rights, if any, of third parties with respect to any and all utilities in place within Beckham Place (abandoned roadway and easement), including but not limited to those set forth in Fort Worth City Ordinance No. 23278-06-2018.

(Affects Tract IV and V)


Section 811 Project Rental Assistance ("PRA") Program Supplement Packet Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application # 19276 & 19295 & 19288
Existing Development Name Mistletoe Station

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Request letter to JP Morgan Chase submitted Feb. 18, 2018

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 18, 2019

Mr. Olivio Ochoa
JP Morgan Chase Bank
Community Development Real Estate
2200 Ross Avenue, Floor 9
Dallas, TX 75201

Re: 811 Units – Mistletoe Station

Dear Olivio:

Per the 2019 TDHCA Qualified Allocation Plan, we are hereby submitting a request for your consideration to add an additional ten 811 program units at Mistletoe Station, in Fort Worth, Texas.

Under the Credit Support and Funding Agreement for Mistletoe Station, the Borrower has an obligation to not allow any new liens or encumbrances other than the Permitted Encumbrances. The addition of 811 units would require a new Extended Use Agreement be recorded and as such, this requires the lender’s consent. Mistletoe Station already has ten 811 units as was contemplated during underwriting in addition to 5% supportive housing units as required by the City of Fort Worth. An additional ten units would result in more than 20% of the property being 811 and/or supportive housing tenants.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 352-213-8700.

Sincerely,

Lisa M. Stephens
President
Saigebrook Development, LLC
iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from JP Morgan Chase denying the request to add 811 units.

**ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.**
February 21, 2019

Texas Department of Community Affairs (TDHCA)
Attn: Spencer Duran, Section 811 PRAC Program Manager
221 E. 11th Street
Austin, Texas 78701

RE: #17259 Mistletoe Station – additional 811 units

Dear Mr. Duran:

As the construction debt provider in Mistletoe Station, LLC, we have reviewed your request to enter into a Section 811 contract to provide additional Section 811 units in the Mistletoe Station project in Fort Worth. Chase cannot approve the addition of Section 811 units for this property at this time due to the original underwriting and legal documentation did not take into account the addition of Section 811 units for this apartment complex.

Should you need any further assistance, please feel free to contact me with any questions at (214) 965-2678 or via e-mail at olivio.c.ochoa@chase.com

Sincerely,
JPMORGAN CHASE BANK, N.A.

Olivio C. Ochoa
Authorized Officer
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

Introduction

The purpose of this Packet is to formalize the process by which an Applicant establishes its lack of legal authority to commit Section 811 PRA Program Units in a Development as described pursuant to 10 TAC §11.9(c)(6)(A) of the Qualified Allocation Plan (“QAP”).

This Packet is required only if all of the following conditions are true:

1) An Applicant is selecting points under Tenant Populations with Special Housing Needs pursuant to 10 TAC §11.9(c)(6) AND

2) An Applicant is seeking to establish its lack of legal authority where an Applicant or Affiliate Owns or Controls an Existing Development that otherwise meets the criteria established by 10 TAC §11.9(c)(6)(B) of the QAP.

One Packet must be submitted for each Existing Development for which the Applicant or Affiliate is seeking a determination that the needed legal authority is lacking and that the Development can be excluded from consideration.

Instructions: Complete the Questionnaire on page 2 of this packet, then complete the fields on each of the subsequent form cover pages, and attach the denoted documentation for each item behind each included cover pages. Submit each Packet, including Attachments in PDF format and include bookmarks for each item. The Packet must be saved and uploaded as one standalone file to the Serv-U folder associated with each 2019 Multifamily Application.

This Packet and all supporting documentation must be uploaded to the Department’s Serv-U system at the same time as, but as a separate document from, the Application. Refer to the Multifamily Programs Procedures Manual posted at http://www.tdhca.state.tx.us/multifamily/applyforfunds.htm for an explanation of the process to set-up a Serv-U Account if needed.

Questions about this Packet may be submitted to Spencer Duran: spencer.duran@tdhca.state.tx.us
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

Questionnaire

2019 Uniform Multifamily Application #19276 & 19295 & 19288

1) Selecting Points under 10 TAC §11.9(c)(6)?
☐ No – STOP. PACKET SUBMISSION NOT NEEDED
☒ Yes – CONTINUE TO QUESTION 2

2) To obtain Points under 10 TAC §11.9(c)(6), Applicants must first attempt to meet the requirements in §11.9(c)(6)(B).

Does the Applicant Own or Control and Existing Development that appears on the List of Qualified Existing Developments?
☐ No – STOP. PACKET SUBMISSION NOT NEEDED
☒ Yes – CONTINUE TO QUESTION 3

3) Is the Applicant seeking to establish its lack of legal authority where an Applicant Owns or Controls an Existing Development that appears on the List of Qualified Existing Developments?
☐ No - STOP. PACKET SUBMISSION NOT NEEDED
☒ Yes – CONTINUE TO QUESTION 4

4) Can the Applicant provide all three of the following items listed under §11.9(c)(6)(A)(i)-(iii)?
☐ No - STOP. PACKET SUBMISSION NOT NEEDED
☒ Yes – CONTINUE TO COVER PAGES

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement);

(ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program); AND

(iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party identified in (ii) that they are denying an Existing Development from participation).
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

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Questions about this Packet may be submitted to Spencer Duran: spencer.duran@tdhca.state.tx.us
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet

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(ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program); AND

(iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party identified in (ii) that they are denying an Existing Development from participation).
Under paragraphs 6.01(a) and 6.01(b), Megan Lasch as the Managing Member does not have any control to act on behalf of the partnership nor make any decisions that are binding on the partnership. As such, we do not believe Art at Bratton's Edge should qualify as an existing eligible 811 development under Ms. Lasch. However, we are also providing the requisite request and denial letters from the lender and investor in the event TDHCA determines under the 2019 QAP that Ms. Lasch is under an obligation to do so.
AMENDED AND RESTATED

OPERATING AGREEMENT

of

ART AT BRATTON'S EDGE, LLC

(a Florida limited liability company)

Dated as of July 1, 2015
AMENDED AND RESTATED
OPERATING AGREEMENT

ART AT BRATTON’S EDGE, LLC
(a Florida limited liability company)

THIS AMENDED AND RESTATED OPERATING AGREEMENT of Art at Bratton’s Edge, LLC, a Florida limited liability company (the “Company”), is made and entered into as of July 1, 2015, by and among Wolfpack Bratton’s, LLC, a Florida limited liability company, as Administrative Member, O-SDA Bratton’s, LLC, a Texas limited liability company, as Managing Member, Louis Wolfson III as the Withdrawing Member, Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, as the Investor Member, and a to-be-designated entity as the Special Member.

WHEREAS, the Company was formed as a Florida limited liability company pursuant to Articles of Organization that were filed with the Filing Office on August 21, 2014, and pursuant to an Operating Agreement dated August 21, 2014 (collectively, the “Original Operating Agreement”); and

WHEREAS, the Withdrawing Member has agreed to withdraw as a Member from the Company, and the Investor Member, in exchange for its Capital Contributions, is to be admitted to the Company, all as of the Admission Date; and

WHEREAS, the parties hereto desire to enter into this Amended and Restated Operating Agreement to provide for, among other things, (i) the continuation of the Company, as reconstituted, (ii) the withdrawal of the Withdrawing Member as a Member, (iii) the admission of the Investor Member to the Company and (iv) a restatement of the rights, obligations and duties of the Members to each other and to the Company; and

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the parties hereto agree that the Original Operating Agreement is hereby amended and restated and shall be replaced in its entirety by this Amended and Restated Operating Agreement, which is stated in its entirety as follows:

ARTICLE 1

NAME AND BUSINESS

Section 1.01. Name; Formation; Filings.

1.01(a) The name of the Company is Art at Bratton’s Edge, LLC.

1.01(b) The Administrative Member shall from time to time take all actions as are necessary or appropriate to: (i) effectuate and permit the continuation of the
Company as a limited liability company under the laws of the State, (ii) enable the Company to do business in the State and in the State of Texas, and (iii) protect the limited liability of the Members under the laws and regulations of the State and in the State of Texas, including the preparation and filing of any certificate, document or instrument of the Company as may be required under the laws and regulations of the State and the State of Texas. The Members shall execute such certificates, documents and instruments and take such other action as may be necessary to enable the Administrative Member to fulfill its responsibilities under this Section 1.01(b).

Section 1.02. Place of Business.

1.02(a) The principal office of the Company in the State, wherein there shall be maintained those records required by the Uniform Act to be kept by the Company, shall be located at 421 W. 3rd Street, #1504, Austin, Texas 78701, or at such place or places as the Administrative Member may determine. The Administrative Member shall at all times maintain a principal office in the State.

1.02(b) The registered agent of the Company in the State for service of process is Corporation Company of Miami, 201 South Biscayne Boulevard, Suite 1500 (GJC), Miami, FL 33131.

Section 1.03. Names and Addresses of Members. The names and addresses of the Managing Member, the Administrative Member and the Investor Member are set forth in Exhibit H attached hereto and made a part hereof.

Section 1.04. Purposes. The purposes of the Company are to acquire, finance, own, construct, rehabilitate, maintain, improve, operate, lease and, if appropriate or desirable, sell or otherwise dispose of the Apartment Complex in a manner consistent with the requirements of Section 42 of the Code. The Company shall engage in no other business or activity.

Section 1.05. Term and Dissolution. The duration of the Company shall be perpetual, except that the Company shall be dissolved and its assets liquidated upon:

1.05(a)(i) A sale or other disposition of all or substantially all of the assets of the Company;

1.05(a)(ii) The Withdrawal of a Member of the Company, if the Company has not been continued pursuant to Section 10.02;

1.05(a)(iii) An election to dissolve the Company made in writing by the Administrative Member with the Consent of the Investor Member; or

1.05(a)(iv) An occurrence of any other event which results in a dissolution of the Company pursuant to the Uniform Act.

1.05(b) Upon dissolution of the Company, the Administrative Member (or for purposes of this paragraph, its trustees, receivers or successors) shall cause the cancellation of the Certificate, liquidate the Company Assets in a manner consistent with
Section 4.03 and apply and distribute the proceeds thereof in accordance with Section 4.03. Notwithstanding the foregoing, if, during the liquidation, the Administrative Member shall reasonably determine that an immediate sale of all of the Company Assets would be impermissible, impractical or would cause undue loss to the Members, the Administrative Member may either (i) defer liquidation of, and withhold from distribution for a reasonable time, any assets of the Company, except those necessary to satisfy Company debts and obligations, or (ii) with the Consent of the Investor Member, distribute Company Assets to the Members in kind.

Section 1.06. Title to Apartment Complex. Legal title to the Land and Apartment Complex shall, at all times the Company is in existence, be in the name of the Company, and no Member, individually, shall have any ownership interest in the Apartment Complex.

ARTICLE 2
DEFINITIONS

Section 2.01. Meanings. Capitalized terms used in this Agreement shall have the meanings specified in this Section 2.01. Certain additional defined terms are set forth elsewhere in this Agreement. For purposes of this Agreement:

“Accountants” means CohnReznick LLP, Novogradac & Company LLP, or, subject to compliance with Section 6.10(i), any other firm or firms of independent certified public accountants as may be engaged by the Administrative Member, with the Consent of the Investor Member, on behalf of the Company from time to time.

“Accountants’ Determination” means a determination by the Accountants concerning the amount of Credits allocable to the Investor Member during the entire Credit Period and/or during any one or more Company Taxable Years during the Credit Period, as reflected in a final version of any Company Tax Return prepared by the Accountants or by a written notice or other communication from the Accountants to the Managing Member or the Investor Member.

“Actual Aggregate Credit Amount” means the aggregate amount of Credits that, as a result of an Accountants’ Determination or a Final Determination, is determined to be allocable to the Investor Member during the Credit Period (or any taxable period therein) after taking into account all prior adjustments required to be made pursuant to the provisions of Section 3.05.

“Additional Adjuster Contribution” shall have the meaning set forth in Section 3.05(b)(ii).

“Additional Adjuster Distribution” shall have the meaning set forth in Section 3.05(b)(ii).

“Adjuster Contributions” means Credit Adjuster Contributions, Additional Adjuster Contributions, Current Adjuster Contributions and Timing Adjuster Contributions.
“Adjuster Distributions” means Credit Adjuster Distributions, Additional Adjuster Distributions, Current Adjuster Distributions and Timing Adjuster Distributions.

“Administrative Member” means Wolfpack Bratton’s, LLC, a Florida limited liability company.

“Admission Date” means the date as set forth in Section 14.11.

“Affiliate” means, as to any Member, any Person that: (i) directly or indirectly controls or is controlled by (such as any partnership or limited liability company in which the Member, directly or indirectly, serves as a general partner or managing member, respectively) or is under common control with the specified Member; (ii) is an officer or director of, commissioner of, partner in, member of or trustee of, or serves in a similar capacity with respect to, the specified Member or of which the specified Member is an officer, director, member, partner or trustee, or with respect to which the specified Member serves in a similar capacity; or (iii) is the beneficial owner, directly or indirectly, of 10% or more of any class of equity securities of the specified Member or of which the specified Member is directly or indirectly the owner of 10% or more of any class of equity securities. The term “control” (including the term “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The parties acknowledge that a limited partnership or limited liability company as to which an Affiliate of Wells Fargo Bank, National Association serves as a general partner or a manager or managing member, respectively, and holds an interest of not less than 0.01% shall be deemed an Affiliate of the Investor Member.

“Affiliate Contract” means the Development Agreement, the Incentive Management Fee Agreement, and the Purchase Option Agreement (Investor Member Interests).

“After-Tax Basis” means with respect to any payment or distribution to be received by a Person (or, in the case of a pass-through entity, the partners or members of such Person), the amount of such payment or distribution supplemented by a further payment or payments so that, after deducting from such total payments or distributions the amount of all Taxes (net of any current credits, deductions or other tax benefits arising from the payment by such Person (or such Person’s partners or members) of any amount, including Taxes, for which the payment to be received is made) imposed currently on such Person by the Service or any other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment received. For the purposes of this definition, and for purposes of any payment to be made to a Person (or such Person’s partners or members) on an After-Tax Basis, it shall be assumed that federal, state and local taxes are payable at the highest combined marginal federal and state statutory income tax rate (taking into account the deductibility of state income taxes for federal income tax purposes) applicable to corporations in the year such payment or distribution is made.
“Agency” means Texas Department of Housing and Community Affairs, or any successor thereto in its capacity as the agency responsible for administering the Credit program of the State of Texas.

“Agreement” means this Amended and Restated Operating Agreement, including all Exhibits and Schedules hereto, as amended from time to time in accordance with the terms of Section 14.03.

“Annual Credit Amount” means, with respect to any Company Taxable Year during the Credit Period, the amount of Credits allocable to the Investor Member during such Company Taxable Year.

“Apartment Complex” means the to-be-constructed residential building apartment complex comprised of four (4) 2- and 3- story garden-style apartment buildings with 76 total apartment units and a community room facility known as Art at Bratton’s Edge located on approximately 5.048 acres of land in Austin, Texas (the legal description of which is set forth in Exhibit E) (the “Land”), and ancillary and appurtenant facilities and all furnishings, equipment, land, real property and personal property used in connection with the operation thereof.

“Applicable Federal Rate” means the applicable federal rate for an obligation or a debt instrument as determined under Code Section 1274(d).

“Approved Loan Amount” shall have the meaning set forth in Section 5.04 of this Agreement.

“Architect” means 5G Studio Collaborative, LLC.

“Architect’s Agreement” means the agreement between the Company and Architect dated November 26, 2014 for the performance of architectural services in connection with the construction of the Apartment Complex, with such changes as the Investor Member shall reasonably require, all in form and substance reasonably satisfactory to Investor Member.

“Architect’s Certificate” means each of the AIA form of certificate executed by the Architect and Administrative Member and the certificate in the form of Exhibit J issued by the Architect to the Investor Member in connection with each Capital Contribution Request.

“Asset Management Fee” means the fee payable by the Company to the Investor Member, commencing with respect to calendar year 2018, pursuant to the Asset Management Fee Agreement in the annual, cumulative amount of $8,500, increasing 3% per year thereafter, payable, in arrears at the end of each calendar year from available Cash Flow or Net Proceeds as described in Article 4.

“Asset Management Fee Agreement” means the Asset Management Fee Agreement between the Company and the Investor Member providing for the payment of the Asset Management Fee.
“Best Knowledge” means, in the case of a specified Person: (i) actual knowledge and (ii) that knowledge that a prudent businessperson should have obtained in the management of his or her business affairs after making due inquiry and exercising due diligence with respect thereto. The knowledge (both actual and constructive) of any general partner, manager, managing member, director, officer or key employee of a Person that is not a natural person shall be deemed to be the knowledge of such Person.

“Budget” means a complete breakdown of direct/hard costs and indirect/soft costs for the Apartment Complex as approved by Investor Member.

“Building” means each building in the Apartment Complex.

“Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in Charlotte, North Carolina are authorized or required by law to close.

“Capital Account” shall, with respect to each Member, mean and refer to the separate “book” account for such Member to be established and maintained in all events in accordance with Section 704 of the Code and the Regulations thereunder.

(i) Except as otherwise set forth in Article 4 to the contrary, a Member’s Capital Account shall include generally, without limitation, the Capital Contribution of a Member (as of any particular date), (1) increased by the Member’s distributive share of Profits of the Company (including, if such date is not the close of the Company Accounting Year, the distributive share of Profits of the Company for the period from the close of the last Company Accounting Year to such date), and (2) decreased by the Member’s distributive share of Losses of the Company and distributions by the Company to such Member (including, if such date is not the close of the Company Accounting Year, the distributive share of Losses of the Company and distributions by the Company during the period from the close of the last Company Accounting Year to such date). For purposes of the foregoing, distributions of property to a Member shall result in a decrease in such Member’s Capital Account equal to the Gross Asset Value, as of the date of distribution, of such property (less the amount of indebtedness, if any, of the Company that is assumed by such Member and/or the amount of indebtedness, if any, to which such property is subject, as of the date of distribution, subject to the provisions of I.R.C. § 7701(g)) distributed by the Company to such Member.

(ii) In the event that the Capital Contribution of a Member consists of property having a fair market value in excess of its adjusted basis, or in the event the Gross Asset Values of Company Assets are adjusted under and pursuant to clause (ii) of the definition of Gross Asset Value, the Members’ Capital Accounts shall be adjusted thereafter in accordance with the provisions of § 1.704-1(b)(2)(iv)(g) of the Regulations with respect to allocations to the Members of Depreciation, gain or loss, as computed for book purposes, and not for tax purposes.
(iii) In the event that the provisions of § 1.704-1(b)(2)(iv) of the Regulations fail to provide guidance on how adjustments to the Capital Accounts of the Members should be made to reflect particular adjustments to Company capital on the books of the Company, then such Capital Account adjustments shall be made by the Tax Matters Member in its reasonable determination (after consultation with the Investor Member), with the review and concurrence of the Accountants and/or with the advice of the Special Tax Counsel, in a manner that (1) maintains equality between (A) the aggregate Capital Accounts of the Members and (B) the amount of Company capital reflected on the Company’s balance sheet, as computed for book purposes in accordance with § 1.704-1(b) of the Regulations, (2) is consistent with the underlying economic arrangement among the Members, and (3) is based, wherever practicable, on federal tax accounting principles.

“Capital Contribution” means the cash plus the Gross Asset Value (net of liabilities) of other property contributed to the Company by each Member. Any reference in this Agreement to the Capital Contribution of a then Member shall include any Capital Contribution previously made by any prior Member in respect of the Interest of such then Member.

“Capital Contribution Request” means a written Capital Contribution Request in the form attached hereto as Exhibit C.

“Capital Event” means any transaction the proceeds of which are not includable in Cash Flow, including without limitation, the sale or other disposition of all or any substantial part of the assets of the Company, or the refinancing of any Mortgage Loan, but excluding (i) loans to the Company (other than a refinancing of any Mortgage Loan) and (ii) Capital Contributions by the Members.

“Cash Flow” means, for any period of time, the total cash receipts of the Company from ordinary operations (i.e., excluding the proceeds of (A) capital transactions, (B) the Capital Contributions of the Members (other than Capital Contributions attributable to (1) any Credit Excess pursuant to Section 3.03(e), which Capital Contributions will be applied first to pay the Cost of Improvements for the improvements giving rise to such Credit Excess, and then shall be distributed as pursuant to Section 4.02(a) as if it were Cash Flow, and (2) a First Year Credit Excess and/or a Second Year Credit Excess pursuant to Sections 3.03(f) and (g), respectively, which Capital Contributions will be applied first to pay Developer Loan and then shall be distributed pursuant to Section 4.02(a) as if it were Cash Flow), and (C) the proceeds of any loans, other than Operating Deficit Loans), such as, but not limited to, Effective Gross Income plus any other funds (such as any reserves in excess of the amounts required to be established and maintained pursuant to this Agreement, when and to the extent the Administrative Member no longer regards such excess reserves as reasonably necessary in the efficient conduct of the business of the Company) deemed available for distribution and designated as Cash Flow by the Administrative Member, less (i) the total cash disbursements of the Company (such as, but not limited to, operating expenses, costs of repair or restoration of the Apartment Complex, property management fees (excluding
the Asset Management Fee and the Incentive Management Fee), financing fees or other requirements of any Lender and interest and principal repayments of any loans, other than Soft Debt Payments and other than with respect to loans from the Administrative Member or any Affiliate thereof (such as the Developer Loan and Operating Deficit Loans), less (ii) repayment of loans made by the Investor Member under Section 3.03(i), and less (iii) amounts paid in connection with the establishment or maintenance of reserves as required by Section 6.10.

“Certificate” means the Articles of Organization of the Company and any amendment thereto, as filed with the Filing Office in accordance with the Uniform Act.

“Change in Law” means an amendment to the Code or Treasury Regulations that is applicable to the Apartment Complex and that provides for the reduction or elimination of the Credit for qualified low-income housing projects (as defined in Code Section 42(g)(1)) or substantially changes the requirements for qualifying for the Credit in a manner that the Members reasonably agree cannot be satisfied by the Company.

“Closing Date” means the date of this Agreement, which is the date established by the Administrative Member for the admission of the Investor Member and the withdrawal of the Withdrawing Member.

“Code” or “I.R.C.” means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto. Reference herein to any Code section shall include any successor provision.

“Company” means Art at Bratton’s Edge, LLC, a Florida limited liability company.

“Company Accounting Year” means the accounting year of the Company, ending December 31 of each year.

“Company Assets” means, at any particular time, the Apartment Complex, Land and any other assets or property (tangible, intangible, choate or inchoate, fixed or contingent) of the Company.

“Company/Administrative Member Certificate” means a certification from the Administrative Member to the Investor Member in the form of Exhibit D.

“Company Items” shall have the meaning set forth in Section 4.04(i).

“Company Tax Return” means the United States Partnership Income Tax Return (Form 1065) for the Company, together with all Schedules K-1 included therein, and all state and local tax returns and other similar schedules required to be filed with respect to the operations of the Company.

“Company Taxable Year” shall mean the taxable year of the Company which shall be the Company Accounting Year or such other taxable period as may be required by the Code or Regulations.
“Compliance Period” shall have the meaning set forth in Section 42(i)(1) of the Code.

“Consent” means, and will be deemed to have been obtained, if the Investor Member (or the Special Member, as the case may be) shall have been notified in writing consistent with Section 14.02 by the Administrative Member or the Managing Member of any action either proposed to be taken or for which ratification is desired and if the Investor Member (or Special Member) shall have expressly consented in writing to such action. In the event that there is more than one Investor Member, Consent of the Investor Member shall be deemed to have been obtained if a majority in Interest of the Investor Members so consents in accordance with the preceding sentence; provided, however, that if pursuant to the Uniform Act, the consent of all Investor Members is required in a given context, then the term Consent of the Investor Member shall be deemed to require the consent of all Investor Members. The Investor Member (or Special Member, as applicable) agrees to use reasonable efforts to respond in writing within 15 Business Days of receipt of a notice from the Managing Member or the Administrative Member. In any action with respect to which the Consent of the Investor Member (or Special Member) is requested, the Company shall reimburse the Investor Member (or Special Member) for all attorneys’ fees, accountants’ fees and other expenses incurred by the Investor Member (or Special Member) in connection with the proposed matter, whether or not Consent is given. The reasonableness of such fees shall be determined by reference to similar transactions within the low-income housing tax credit investment industry.

“Construction Completion” means the date of receipt by the Investor Member of (a) a written certification from the Administrative Member stating that the achievement or substantial completion of all requirements relating to the lien-free construction of the Apartment Complex as set forth in the Project Documents has occurred, (b) a written certification from the Architect stating that all work to be performed by the Contractor with respect to the Apartment Complex is substantially complete and complies with all Laws including, without limitation, the Americans with Disabilities Act (U.S.C. 1201 et. seq.; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)) and the Fair Housing Act (42 U.S.C. 3601-19), as amended, and a written certification from the Contractor stating that it has complied with the Davis-Bacon Act (40 U.S.C. 276a et. seq.), as amended, if applicable, and (c) certificates or permits of occupancy for all units in the Apartment Complex; provided, however, that if such certificates or permits are of a temporary nature, “Construction Completion” shall not be deemed to have occurred unless (i) such certificates or permits permit occupancy of all of the units, (ii) the work remaining to be done is of a nature that would not impair the permanent occupancy of any of the units of the Apartment Complex on a full paying basis and (iii) the Company has made adequate provision to the reasonable satisfaction of the Investor Member for the payment and completion of all outstanding punch list items and any other work that remains to be performed.

“Construction Lender” means Community Bank of Texas, N.A.
“Construction Loan” means a construction loan to be made by the Construction Lender to the Company in the amount of $5,300,000, with a variable rate of interest equal to the Construction Lender’s prime rate, with a floor of 3.25%, and an initial term ending on the earlier of (i) January 1, 2018 (subject to one six-month extension), and (ii) Permanent Loan Closing.

“Contractor” means Pinroc Construction, LLC, a Florida limited liability company.

“Contractor’s Certificate” means each of the AIA form of certificate executed by Contractor and Administrative Member and the Contractor’s Certificate in the form of Exhibit I issued to the Investor Member in connection with each Capital Contribution Request.

“Cost Certification” means the final certification by the Accountants of the costs incurred in connection with the construction of the Apartment Complex, as submitted to and approved by the Agency.

“Costs of Improvements” means all direct and hard costs required to be expended by Company to comply with the requirements of this Agreement, including the reasonable cost of labor and materials actually expended or incurred by Company and incorporated in the Apartment Complex on the property, and the cost of furnishings, fixtures and equipment. The Cost of Improvements may also include certain indirect and soft costs, to be approved by Lender and the Investor Member, which may consist of the cost of permits, appraisals, soil testing, surveys and other professional fees and costs, tax credit application fees, construction fees, taxes, insurance, marketing costs, interest, financing and bonding fees and the Operating Reserve.

“County Loan” means a construction and permanent loan to be made by Travis County Housing Finance Corporation to the Company in the amount of $122,400, bearing compound interest at 3% per annum, requiring payments of interest only prior to Construction Completion, and, thereafter, requiring payments of principal and interest based on a 30-year amortization period, and having a maturity date that is coterminous with the First Mortgage Loan.

“Credit” means the low income housing tax credit allowable to the Company pursuant to Section 42 of the Code.

“Credit Adjuster Contribution” shall have the meaning set forth in Section 3.05(a).

“Credit Adjuster Distribution” shall have the meaning set forth in Section 3.05(a).

“Credit Determination Date” means the date on which the aggregate amount of Credits allocable to the Investor Member during the Credit Period is determined by the Accountants and the Administrative Member and is reflected in a Company Tax Return filed with the Service.
“Credit Excess” shall have the meaning set forth in Section 3.03(e).

“Credit Period” means the credit period as defined in Section 42(f)(1) of the Code and as applicable to the Apartment Complex, as well as any period after the end of such credit period during which Credits are available pursuant to Section 42(f)(2)(B) of the Code.

“Credit Shortfall” shall have the meaning set forth in Section 3.05(a).

“Credit Shortfall Adjustment Amount” shall have the meaning set forth in Section 3.05(a).

“Current Adjuster Contribution” shall have the meaning set forth in Section 3.05(b)(i).

“Current Adjuster Distribution” shall have the meaning set forth in Section 3.05(b)(i).

“Debt Service Coverage Ratio” means a specified percentage that shall be deemed to have occurred on the first day following a specified period of consecutive calendar months (or days) commencing on or after Construction Completion computed by dividing the Net Operating Income (as defined below) for each of the consecutive calendar months (or days) by all debt service payments required to be made during each of the consecutive calendar months (or days), exclusive of any Soft Debt Payments. For purposes of the foregoing, the amount of required debt service payments for a period shall exclude Soft Debt Payments and shall be computed on the assumption that permanent financing having the terms set forth in Section 5.04 is in effect and all other Mortgage Loans require Soft Debt Payments. A period of consecutive calendar months or days shall be determined by analyzing the specified period as a whole and not by applying the Debt Service Coverage Ratio test to individual months or days within the period. Net Operating Income shall be the excess of Effective Gross Income from normal operations over all operating cash requirements of the Apartment Complex properly allocable to such period of time on an annualized accrual basis (not including distributions or payments to Members or Affiliates out of Cash Flow or debt service requirements but including reserve requirements imposed by this Agreement or the Project Documents, real estate taxes and, on an annualized basis, all projected expenses (other than fees or expenses payable solely from Cash Flow) of the Apartment Complex, including those of a seasonal nature, that might reasonably be expected to be incurred on an unequal basis during the full annual period of operations). The determination of the Debt Service Coverage Ratio (and the components thereof) shall be performed and certified by the Accountants and shall be evidenced by a letter or certificate from such Accountants in form and substance reasonably satisfactory to the Investor Member.

“Depreciation” means, for purposes of maintaining Capital Accounts and not for purposes of calculating taxable income, for each Company Accounting Year or other period, with respect to Company Assets, an amount that bears the same ratio to the Gross Asset Values of Company Assets as the federal income tax depreciation, amortization, or
other cost recovery deductions for such Company Assets for such year or other period bears to the adjusted tax bases of such assets, appropriately adjusted for any adjustments to the tax basis of such assets that occur from time to time during such year or other period.

“Developer” means, collectively, Wolfpack Group, LLC, a Florida limited liability company, and O-SDA Industries, LLC, a Texas limited liability company.

“Developer Fee” means the fee payable to the Developer pursuant to Section 7.02 for services under the Development Agreement.

“Developer Loan” means the loan of the unpaid portion of the Developer Fee containing the terms and conditions specified in Section 7.02.

“Development Agreement” means the Development Agreement dated as of the date hereof between the Company and the Developer.

“Disposition” (including the verb form “Dispose” and the adjective form “Disposing”) means, as to a Member, the assignment, sale, transfer, exchange, pledge, hypothecation or other disposition of all or any part of such Member’s Interest.

“Effective Gross Income” means, for any period of time, all rental and other incidental income received (on a cash basis) by the Company, including, without limitation, any rent subsidies, to the extent available, forfeited deposits, rental loss insurance proceeds, application fees, late payments and proceeds from laundry facilities and vending machines.

“Eligible Basis” shall have the meaning set forth in Section 42(d) of the Code.

“Entity” means any general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative, association, limited liability company, the State, the State of Texas, or any agency or political subdivision of either of such states.

“Environmental Reports” means, collectively, the following documents with respect to property underlying the Apartment Complex, as amended or supplemented (i) that certain Phase I Environmental Site Assessment dated February 20, 2014, by D3G Dominium Due Diligence Group, (ii) that certain Phase I Environmental Site Assessment dated November 10, 2014, by D3G Dominium Due Diligence Group, (iii) that certain Geotechnical Engineering Report dated December 23, 2014, by Terracon Consultants, Inc., and (iv) that certain Phase I Environmental Site Assessment dated June 22, 2015, by D3G Dominium Due Diligence Group.

“Event of Bankruptcy” means, with respect to any Person: (i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in a case under the Federal bankruptcy laws, as now or hereafter constituted, or any other similar law, or the issuance of an order for the winding-up or liquidation of such Person’s affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days, or (ii) the commencement by such Person of a proceeding under any
reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or (iii) the commencement against such Person of any such proceeding that remains undismissed for a period of 60 days, or any act by such Person that indicates such Person’s consent to, approval of or acquiescence in any such proceeding or the appointment of any receiver of or trustee for such Person or of any substantial part of such Person’s property, or allows any such receivership or trusteeship to continue undischarged for a period of 60 days, or (iv) the taking of any action by such Person to authorize any of the foregoing, or (v) the making of an assignment for the benefit of creditors by such Person, or (vi) such Person files a petition in bankruptcy or petitions or applies to any tribunal for any receiver of such Person or for any substantial part of such Person’s property, or (vii) if either (a) any one or more judgments or orders against such Person with respect to a claim or claims involving in the aggregate liabilities exceeding $250,000, which judgments or orders are not covered in full by insurance or are not stayed, bonded, paid or discharged within 45 days after such judgment or order, or (b) any writ of attachment or execution or any similar process is (I) issued or levied against such Person’s property and (II) is not discharged or stayed within 45 days thereof.

“Extended Use Agreement” shall mean an agreement between the Agency and the Company pursuant to Section 42(h)(6) of the Code in which the Company agrees to maintain the Apartment Complex for occupants who meet the income requirements under Code Section 42(g) and to maintain the Apartment Complex as “rent-restricted” under Code Section 42(g) for a certain period of time set forth in the Extended Use Agreement, subject to certain exceptions set forth therein.

“Fifty Percent Construction Completion” or “50% Construction Completion” means completion of 50% of the construction of the entire Apartment Complex as certified by the Architect and the Inspector in a manner reasonably satisfactory to the Investor Member.

“Filing Office” means the Office of the Secretary of State of the State.

“Final Determination” means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction or government agency with regard to any tax or other issue affecting the Company, which decision, judgment, decree or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted), or (ii) the date on which the Service has entered into a binding agreement with the Company with respect to such issues or has reached a final administrative or judicial determination with respect to such issues which, whether by law or agreement, is not subject to appeal.

“First Mortgage Loan” means the first mortgage permanent loan from CommunityBank of Texas, N.A. to the Company in the approximate amount of $2,700,000 bearing interest at 4.75% per annum, having a 17-year term, and a 30-year amortization period.

“First Year Credit Excess” shall have the meaning set forth in Section 3.03(f).
“First Year Shortfall” shall have the meaning set forth in Section 3.05(b)(iv).

“General Contract” means the construction contract between the Company and Contractor dated May 12, 2015 for the construction of the Apartment Complex, as amended by that certain Rider to Construction Contract dated as of the Closing Date, as the same may be amended from time to time with the prior Consent of the Investor Limited Partner.

“Gross Asset Value” means the following, with respect to any Company Asset:

(i) The initial Gross Asset Value of any Company Asset at the time that it is contributed by a Member to the capital of the Company shall be an amount equal to the gross fair market value of such Company Asset (without regard to the provisions of I.R.C. Section 7701(g)), as determined by the contributing Member and the Company.

(ii) The Gross Asset Values of all Company Assets may be adjusted, as reasonably determined by the Administrative Member, to equal their respective fair market values taking Code Section 7701(g) into account (A) in connection with the contribution of money or other property (other than a de minimis amount) to the Company by a new or existing Member as consideration for an Interest in the Company or (B) in connection with the liquidation of the Company or the distribution by the Company of more than a de minimis amount of Company Assets or money to a retiring or continuing Member as consideration for an Interest in the Company or in any other circumstances set forth in § 1.704-1(b)(2)(iv)(f)(5) of the Regulations or in any successor regulations.

(iii) The Gross Asset Values of all Company Assets shall be adjusted, as reasonably determined by the Administrative Member, to equal the respective fair market values of the Company Assets upon the termination of the Company for federal income tax purposes pursuant to I.R.C. Section 708(b)(1)(B).

“Guarantor” means, jointly and severally, Wolfpack Group, LLC, a Florida limited liability company, Louis Wolfson III and any successors and assigns thereto as parties pursuant to the Guaranty.

“Guaranty” means the Guaranty executed by Guarantor for the benefit of the Investor Member.

“Historically Underutilized Business Guidelines” means the Historically Underutilized Business Guidelines for contracting with the State of Texas.

“Incentive Management Fee” means the management fee payable to the Administrative Member and the Managing Member from Cash Flow, pursuant to the Incentive Management Fee Agreement, as compensation for their efficient management of the Company and its assets in an amount that, when added to the fee paid to the Management Agent in such calendar year, does not exceed the lesser of (A) $40,000, or (B) a sum that equals 12% of the Company’s Effective Gross Income for such year.
“Incentive Management Fee Agreement” means the agreement of even date herewith by and among the Company, the Administrative Member and the Managing Member, relating to the payment of the Incentive Management Fee.

“Initial Aggregate Credit Amount” means the aggregate amount of Credits that is determined by the Accountants and the Administrative Member, on or before the Credit Determination Date, to be allocable to the Investor Member.

“Inspector” means RE Tech+, Inc., the Investor Member’s construction inspector.

“Installments” shall have the meaning set forth in Section 3.03(b).

“Interest” means the entire interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement and the obligations of such Member to comply with the terms of this Agreement.

“Investor Member” means Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, and any Person or Persons who, at the time of reference thereto, have been admitted as additional or successor Investor Members.

“Land” is defined within the definition of Apartment Complex.

“Laws” means any statute, rule, ordinance, regulation, order, judgment, award or decree of any governmental authority, including, but not limited to, ERISA, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Clean Air Act, the Occupational Safety and Health Act and the Americans with Disabilities Act of 1990, in each case, as amended.

“Lender” means any lender or its successors and assigns making a Mortgage Loan.

“Letter of Credit” means that certain Irrevocable Standby Letter of Credit, in the amount of $848,513 to be issued by The Northern Trust Company in favor of the Construction Lender, as beneficiary, in connection with the construction of the Apartment Complex.

“Letter of Credit Agreement” means that certain Letter of Credit Agreement dated as of June 29, 2015 by and among the Construction Lender, the Investor and the Company.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance (including, without limitation, any easement, right-of-way, zoning or similar restriction or title defect), lien (statutory or other) or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention
agreement, any financing lease having substantially the same economic effect as any of
the foregoing and the filing of any financing statement under the UCC or comparable law
of any jurisdiction).

“Major Subcontractors” means subcontractors for plumbing, electrical, site work,
structural and mechanical/HVAC, which subcontractors shall be reasonably satisfactory
to Investor Member.

“Management Agent” means Accolade Property Management, Inc., a Texas
corporation and/or any successor or assign who is selected by the Administrative
Member, with the Consent of the Investor Member, to provide management services with
respect to the Apartment Complex from time to time in accordance with Article 11
hereof.

“Management Agreement” means the Management Agreement between the
Company and the Management Agent, as approved by the Investor Member, in
connection with the management of the Apartment Complex.

“Managing Member” means O-SDA Bratton’s, LLC, a Texas limited liability
company.

“Materially Participate” shall have the meaning set forth in the Agency’s
qualified allocation plan.

“Member” means the Managing Member, Administrative Member, Investor
Member, Special Member and any Person or Persons who, at the time of reference
thereto, have been admitted as additional or successor Members, in each such Person’s
capacity as a Member of the Company. At any time when there is more than one
Member, the term “Member” or “Members” shall include, collectively, all such Persons,
unless the context clearly implies that such term only refers to one of them.

“Minimum Gain” means, with respect to each Member, the amount computed in
accordance with § 1.704-2(g) of the Regulations. The Company shall separately compute
each Member’s share of Minimum Gain attributable to partner nonrecourse debt pursuant
to § 1.704-2(i) of the Regulations.

“MM Sole Member” shall have the meaning set forth in Section 6.09(bb).

“Mortgage” means any mortgage or deed of trust securing a Mortgage Loan and
cumbering the Apartment Complex, as such indebtedness may be increased, decreased
or refinanced in accordance with this Agreement and the Project Documents. Where the
context permits, the term “Mortgage” shall include any mortgage, deed, deed of trust,
note, regulatory agreement, security agreement, assumption agreement or other
instrument executed in connection with a Mortgage Note which is binding on the
Company; and in case any Mortgage is replaced or supplemented by any subsequent
mortgage or mortgages, the “Mortgage” shall refer to any such subsequent mortgage or
mortgages.
“Mortgage Loan” means the Construction Loan, the First Mortgage Loan, the County Loan, and any other loan made to the Company with the Consent of the Investor Member that is evidenced by a Mortgage Note and secured by a Mortgage.

“Mortgage Note” means the promissory note executed or to be executed by the Company in favor of any Lender to evidence the indebtedness incurred by the Company in connection a Mortgage Loan.

“Net Operating Income” shall have the meaning set forth in the definition of Debt Service Coverage Ratio.

“Net Proceeds” means the difference between (A) the sum of (i) the gross proceeds from a Capital Event other than a refinancing; (ii) the excess proceeds from the refinancing of any loan on the Apartment Complex (that is, any refinancing proceeds not needed for the repayment of the loan refinanced); and (iii) the receipt of any proceeds from insurance settlements or other claims attributable to fire or other casualty, or from condemnation, sales or grants of easements, rights-of-way or the like in excess of those needed for repair, restoration or replacement of the damaged, destroyed or condemned property and (B) the payment of or due provision for (i) all liabilities to creditors of the Company (excluding, except in the event of the dissolution and liquidation of the Company, fees owed to the Administrative Member and loans to the Company from the Administrative Member or Affiliates thereof for any purpose, including, without limitation, Operating Deficit Loans) and (ii) necessary and customary expenses of such Capital Event or refinancing (other than, except in the event of the dissolution and liquidation of the Company, expenses payable to the Administrative Member or an Affiliate thereof).

“Ninety-Five Percent Construction Completion” or “95% Construction Completion” means completion of 95% of the construction of the entire Apartment Complex as certified by the Architect and the Inspector in a manner reasonably satisfactory to the Investor Member.

“Operating Deficit” shall mean the amount by which (i) the amount of funds available to the Company from Effective Gross Income of the Apartment Complex, together with other available cash and funds on hand of the Company, if any, for the relevant time period but excluding: (a) funds from Capital Contributions (except to the extent that Capital Contribution proceeds are specified in the Budget as available to fund initial working capital amounts), (b) the proceeds of any loans obtained by the Company (except for Operating Deficit Loans), (c) advance rent payments and (d) nonforfeited tenant deposits, is less than (ii) the amount necessary to meet all of the operating costs and expenses of any type due and payable for such time period incidental to the operation and business activities of the Company, including, without limitation, debt service payments due under the Mortgage Loans (other than Soft Debt Payments), taxes, insurance, costs of operations, maintenance, repairs, interest, management expenses, prepaid expenses and reserve funding and maintenance requirements set forth in Section 6.10, but excluding repayment of any loans from the Administrative Member or Affiliates thereof, distributions of Cash Flow (including the Asset Management Fee and the
“Operating Deficit Loan” means any loan or loans made to the Company pursuant to Section 6.12.

“Operating Reserve” shall have the meaning set forth in Section 6.10(p).

“Original Operating Agreement” means the Operating Agreement of the Company dated as of August 21, 2014.

“Permanent Loan Closing” means the date on which the Construction Loan has been repaid in full and the First Mortgage Loan is made (i) in accordance with the terms and conditions of the applicable Construction Loan and First Mortgage Loan documents, and (ii) as set forth in Section 5.04.

“Permitted Liens” means Liens for taxes, assessments or governmental charges not delinquent or being diligently contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with generally accepted accounting principles consistently applied are maintained on Company’s books, and Liens listed in the title insurance policy and title insurance commitment accepted by the Lender and Investor Member.

“Person” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such individual or Entity as the context may require.

“Plans” means the final signed and sealed plans and specifications for the construction of the Apartment Complex prepared by Architect and approved by Lender, Investor Member and any applicable governmental subdivision or agency, together with any change orders approved in accordance with this Agreement.

“Profits and Losses” means, subject to the adjustments in Sections 4.04 through 4.06, for each calendar year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with I.R.C. § 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to I.R.C. § 703(a)(1) shall be included in taxable income or loss), with the following adjustments to be made solely for purposes of maintaining Capital Accounts and not for determining taxable income or loss:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in I.R.C. § 705(a)(2)(B) or treated as I.R.C. § 705(a)(2)(B) expenditures pursuant to § 1.704-l(b)(2)(iv)(i) of the Regulations, and not otherwise taken into account in
computing Profits or Losses pursuant to this definition, shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company Asset is adjusted pursuant to clause (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as hypothetical gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value; and

(v) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account Depreciation for such calendar year or other period.

“Project Documents” means the Mortgage, the Mortgage Note, and other documents evidencing, securing, or relating to a Mortgage Loan, this Agreement, the Incentive Management Fee Agreement, the Asset Management Fee Agreement, the Development Agreement, the Guaranty, the Purchase Option Agreement, the Extended Use Agreement, the Management Agreement, the Letter of Credit, the Letter of Credit Agreement, the Reimbursement and Assignment Agreement, and any other documents related to the acquisition, development, construction, financing, operation or contemplated use of the Apartment Complex, as such documents may be amended from time to time in accordance with the terms of this Agreement.

“Projected Aggregate Credit Amount” means the aggregate amount of Credits projected to be allocated to the Investor Member during the Credit Period (or any taxable period therein). If, on or after the Credit Determination Date, the aggregate amount of Credits allocable to the Investor Member is determined to be different than $10,558,940, the term “Projected Aggregate Credit Amount,” as used herein, shall mean such revised aggregate amount, provided that any adjustments, payments, or distributions required under the provisions of this Agreement to be made on account of any such prior determination have in fact been made.

“Projected Annual Credit Amount” means, with respect to any Company Taxable Year during the Credit Period, the amount of Credits projected to be allocated to the Investor Member during such Company Taxable Year. It is currently anticipated that the Company will allocate Credit to the Investor Member as follows: (i) $31,056 in 2016, (ii) $869,560 in 2017, (iii) $1,055,894 in each of years 2018 through 2025; (iv) $1,024,838 in 2026; and (v) $186,334 in 2027. If, on or after the Credit Determination Date, the amount of Credits allocable to the Investor Member during any Company Taxable Year is determined to be different than as set forth above, the term “Projected Annual Credit Amount,” as used herein, shall mean such revised amount, provided that any adjustments, payments, or distributions required under the provisions of this Agreement to be made on
account of any such prior determination have in fact been made. If a Timing Adjuster Distribution is made pursuant to Section 3.05(b) for a First Year Shortfall or a Second Year Shortfall, the Projected Annual Credit Amount for 2026 or 2027, as applicable, shall be increased by the amount of Credit Shortfall deferred pursuant to Section 42(f)(2)(B) of the Code.

“Purchase Option Agreement” means the Purchase Option Agreement (Investor’s Member’s Interest) entered into between the Investor Member and the Administrative Member dated as of the Closing Date.

“Qualified Investments” means any of the following if and to the extent permitted by law: (i) direct obligations of or obligations the principal of and interest on which are guaranteed by the United States Government; or (ii) obligations of any agency or instrumentality of the United States Government backed by the full faith and credit of the United States; or (iii) demand and savings deposits at commercial banks and savings and loan associations, provided that the entire deposit is insured by the Federal Deposit Insurance Corporation (“FDIC”); or (iv) certificates of deposit issued by any state or national bank which has combined capital, surplus, and undivided profits of not less than $50,000,000, or any savings and loan institution having combined capital, surplus, and retained earnings of not less than $100,000,000, provided that all such investments are fully insured by the FDIC or fully secured by investments described in (i) or (ii); or (v) repurchase agreements or time deposits with banks or trust companies organized under the laws of the United States or any state or the District of Columbia having combined capital, surplus, and undivided profits of not less than $50,000,000 or any of its affiliates, provided that all such investments shall be fully insured by FDIC or fully secured by investments described in (i) or (ii) above which have a fair market value equal to 103% of the face amount of the repurchase agreement plus an amount equal to the amount by which the anticipated interest earnings under the arrangement exceed interest which would have been earned at a rate of 6% per year, provided that the party investing in any repurchase agreement shall receive a perfected security interest, whether by delivery or by registration on a book-entry account of a Federal Reserve Bank, in the underlying obligations subject to such repurchase agreement; or (vi) shares of registered investment management companies investing exclusively in the foregoing.

“Qualified Tenant” means a tenant (i) with income on the date of initial occupancy of such tenant’s unit not exceeding that permitted by the minimum set-aside test pursuant to Code Section 42(g)(1) who leases a low-income unit in the Apartment Complex under a lease having an original term of not less than six months at a rent which satisfies the rent restriction test under Code Section 42(g)(2) and (ii) complying with any other requirements imposed by the Project Documents.

“Regulations” means the Income Tax Regulations promulgated under the Code, as amended and in effect from time to time.

“Reimbursement and Assignment Agreement” means the agreement having such title entered into between the Company and the Developer as of the Closing Date.
“Removal Event” shall have the meaning set forth in Section 8.04(a).

“Replacement Reserve” means that certain replacement reserve of the Partnership established and maintained pursuant to Section 6.10(p)(i) hereof.

“Second Year Credit Excess” shall have the meaning set forth in Section 3.03(g).

“Second Year Shortfall” shall have the meaning set forth in Section 3.05(b)(v).

“Service” shall mean the Internal Revenue Service.

“Soft Debt Payments” means contingent payments under any Mortgage Loan that are payable only from available Cash Flow or similar measure of cash available to pay debt service.

“Special Allocations” shall have the meaning set forth in Section 4.04(i).

“Special Member” means the Person identified pursuant to Section 14.12 in its capacity as a Special Member of the Company.

“Special Tax Counsel” means Kutak Rock LLP, or such other law firm which shall be selected by the Administrative Member with the Consent of the Investor Member.

“State” means the State of Florida.

“Substituted Investor Member” means any Person who is admitted to the Company as a successor Investor Member pursuant to Section 9.01.

“Tax” or “Taxes” means any and all liabilities, losses, expenses and costs that are, or are in the nature of, taxes, fees or other governmental charges, including interest, penalties, fines and additions to tax imposed by the Service or any other taxing authority.

“Tax Matters Member” means Wolfpack Bratton’s, LLC, a Florida limited liability company, in its capacity as Administrative Member of the Company.

“Tenant Services” means those services to be provided to residents of the Apartment Complex pursuant to and in compliance with the Company’s application to the Agency for the Tax Credits.

“Timing Adjuster Contribution” shall have the meaning set forth in Section 3.05(b)(iv).

“Timing Adjuster Distribution” shall have the meaning set forth in Section 3.05(b)(iv).

“Title Insurer” means Stewart Title Guaranty Company.
“Title Policy” means the title policy provided to the Company from the Title Insurer.

“Uniform Act” means the Florida Limited Liability Company Act or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time as adopted by the State.

“Withdrawal” (including the verb form “Withdraw” and the adjective form “Withdrawing” or “Withdrawn”) means, as to a Managing Member or Administrative Member, the occurrence of death, adjudication of insanity or incompetence, Event of Bankruptcy, dissolution, liquidation, or voluntary or involuntary withdrawal or retirement from the Company for any reason, including whenever a Managing Member or Administrative Member may no longer continue as a Managing Member or Administrative Member, as applicable, by law or pursuant to any terms of this Agreement. Withdrawal shall also mean the sale, assignment, transfer or encumbrance (other than to a Lender) by a Managing Member or Administrative Member of its interest as a Managing Member or Administrative Member, as applicable. A Managing Member or Administrative Member which is a corporation, limited liability company or partnership shall be deemed to have sold, assigned, transferred or encumbered its interest as a Managing Member or Administrative Member, as applicable, in the event (as a result of one or more transactions) of any sale, assignment or other transfer (but specifically excluding any transfer occurring pursuant to the laws of descent and distribution) of a controlling interest in a corporate Managing Member or Administrative Member, as applicable, or of a controlling membership interest or manager interest in a Managing Member or Administrative Member, as applicable, that is a limited liability company or of a general partner interest in a Managing Member or Administrative Member, as applicable, which is a partnership. For purposes of this definition of Withdrawal, “controlling interest” shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. However, dissolution of any Managing Member or Administrative Member, as applicable, that is a general or limited partnership, or a limited liability company taxed as a partnership) shall not be deemed a Withdrawal unless there is a termination and winding up of the business of such partnership or limited liability company.

“Withdrawing Member” means Louis Wolfson III, who is hereby withdrawing as a Member from the Company simultaneously with the admission of the Investor Member.

Section 2.02. Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or persons may require. Words such as “herein,” “hereinafter,” “hereof,” “hereto” and “hereunder,” when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.
ARTICLE 3

CAPITAL

Section 3.01. Capital Contribution of Managing Member and Administrative Member. The Managing Member and the Administrative Member have contributed or will contribute in cash to the Company the Capital Contribution set forth in Exhibit H. Notwithstanding anything to the contrary in this or any prior agreement, the parties hereto agree and acknowledge that the amount reflected in Exhibit H represents the value of all property and other contributions by the Managing Member and the Administrative Member to the Company as of this date (assuming cash contributions have been made in accordance with the preceding sentence) and such amount shall represent the initial Capital Account of the Managing Member and the Administrative Member in the Company.

Section 3.02. Withdrawal of Withdrawing Member and Admission of Investor Member. As of the Admission Date of the Investor Member, the Withdrawing Member hereby withdraws from the Company as a Member and acknowledges that he no longer has any Interest in, or rights or claims against, the Company as a Member and that he has received a return of the balance of his Capital Account. The Investor Member is hereby admitted to the Company as a Investor Member as of the Admission Date and shall have the Interest specified on Exhibit H attached hereto. No Member shall have authority to admit additional Members without the Consent of the Investor Member.

Section 3.03. Capital Contribution of Investor Member. Notwithstanding anything to the contrary set forth in this Agreement including, without limitation, Sections 3.03 and 3.05, in no event shall the Investor Member be obligated to contribute to the Company capital contributions that exceed, in the aggregate, $11,691,891 (which is equal to (i) the anticipated $11,086,891 aggregate capital contribution of the Investor Member and (ii) the maximum aggregate increase in capital contributions of $605,000. The Investor Member shall not be obligated to make a Capital Contribution installment to the Company prior to the satisfactory completion, in the reasonable discretion of the Investor Member, of all of the conditions to such installment.

3.03(b) Investor Member. Subject to the terms and provisions of this Agreement, including without limitation, the provisions set forth in Exhibit A and the Schedules thereto, the Investor Member shall be obligated to make Capital Contributions to the Company in four (4) installments (the “Installments”), which Installments shall be due and payable by the Investor Members as follows:

3.03(b)(i) $3,880,412 (the “Initial Installment”) shall be disbursed on a “construction draw” basis and such construction draws shall commence pursuant to and upon receipt by the Investor Member of the items set forth on Schedule A hereto;
3.03(b)(ii) $3,880,412 (the “50% Construction Completion Installment”) shall be disbursed pursuant to and upon satisfaction of all of the items on Schedule A hereto;

3.03(b)(iii) $2,528,095 (the “95% Construction Completion Installment”) shall be disbursed pursuant to and upon satisfaction of all of the items on Schedule A hereto; and

3.03(b)(iv) $797,972 (the “Final Installment”) shall be disbursed pursuant to and upon satisfaction of all of the items on Schedule B hereto.

In no event shall any Installment become due until all of the conditions for all of the prior Installments shall have been satisfied and all of such prior Installments shall have become due. In no event shall the Investor Member be obligated to provide any Installment (other than the Initial Installment payable on the Closing Date) prior to its receipt of a Capital Contribution Request (in the form provided in Exhibit C hereto) and Company/Administrative Member Certification (in the form provided in Exhibit D hereto).

3.03(c) Disputes. If the Investor Member disputes that all or a portion of any Installment is due and payable in accordance with this Agreement, then, until there has been a finding or determination of such issue against the position of the Investor Member, the Investor Member shall not be required to make such Installment (or portion thereof) in dispute to the Company (and no default under Section 3.03 or 3.04 shall be deemed to occur unless and until the required payment, plus interest at 10% per annum, compounded annually, from the date of such determination was made, is not made within five (5) Business Days of such determination).

3.03(d) Suspension of Investor Member’s Obligations. From and after the date of the occurrence of an Event of Bankruptcy with respect to the Company, the Managing Member, the Administrative Member or any Guarantor, the obligation of the Investor Member to make any further Capital Contributions shall be suspended until such time as (i) the Event of Bankruptcy shall have been cured in a manner approved in writing by the Investor Member or (ii) a financially responsible party acceptable to the Investor Member shall have agreed to become the Managing Member, Administrative Member or Guarantor, as applicable, and to assume and to perform all of the duties and obligations of the bankrupt Managing Member, Administrative Member or Guarantor, as applicable, under this Agreement and the Project Documents (or, with respect to a new Guarantor, all duties and obligations under any applicable Guaranty).

3.03(e) Credit Excess. If at any time it is determined (based on receipt by the Investor Member of Form(s) 8609 and a written certification from both the Administrative Member and the Accountants) that the Actual Aggregate Credit Amount exceeds the Projected Aggregate Credit Amount (the amount of any such excess being hereinafter referred to as the “Credit Excess”), then there shall be an increase in the Investor Member’s Capital Contribution (payable upon satisfaction of the conditions and requirements described in this Section 3.03) in an amount equal to the lesser of (a)

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$500,000 or (b) the product of (i) the Credit Excess and (ii) 1.05. Any such increase in the Investor Member’s Capital Contribution shall be payable at the time of the Final Installment noted above or, if later, five Business Days after the Investor Member’s receipt of a Capital Contribution Request and Company/Administrative Member Certification; provided, however, no increased Capital Contribution shall be owed by the Investor Member pursuant to this paragraph unless the amount of such adjustment exceeds $10,000. The amount of increased Capital Contribution shall be used (i) to pay Costs of Improvements with respect to the improvements giving rise to such Credit Excess, and then (ii) shall be distributed pursuant to Section 4.02(a) as if it were Cash Flow.

3.03(f) First Year Credit Excess. If the Investor Member is allocated more than $31,056 of Credits by the Company in 2016 (other than to the extent attributable to any Credit Excess) (such difference being hereinafter referred to as the “First Year Credit Excess”), then there shall be an increase in the Investor Member’s Capital Contribution (payable upon the funding of the Final Installment), in an amount equal to the lesser of (a) $105,000, or (b) the product of (i) 1.05 and (ii) the difference between (A) the First Year Credit Excess, and (B) the present value as of December 31, 2016 of receiving an amount equal to the First Year Credit Excess on December 31, 2026. The foregoing present value calculations shall be made using a 6% discount rate. The amount of First Year Credit Excess shall be confirmed by the appropriate year’s Company information and tax returns, and the lease up schedule used in calculating the First Year Credit Excess shall be subject to confirmation by the Investor Member. Any Capital Contribution from the Investor Member payable pursuant to this Section 3.03(f) shall first be reduced by the amount of any outstanding obligation of any Administrative Member and/or Guarantor under this Agreement and/or the Guaranty, respectively, and then shall be added to the Final Installment. To the extent such funds are added to the Final Installment, such funds shall be applied first to the payment of the Developer Loan and then, only to the extent funds remain, in accordance with Section 4.02(a).

3.03(g) Second Year Credit Excess. If the Investor Member is allocated more than $869,560 of Credits by the Company in 2017 (other than to the extent attributable to any Credit Excess) (such difference being hereinafter referred to as the “Second Year Credit Excess”), then there shall be an increase in the Investor Member’s Capital Contribution (payable upon the funding of the Final Installment), in an amount equal to the lesser of (a) $105,000, or (b) the product of (i) 1.05 and (ii) the difference between (A) the Second Year Credit Excess, and (B) the present value as of December 31, 2017 of receiving an amount equal to the Second Year Credit Excess on December 31, 2027. The foregoing present value calculations shall be made using a 6% discount rate. The amount of Second Year Credit Excess shall be confirmed by the appropriate year’s Company information and tax returns, and the lease up schedule used in calculating the Second Year Credit Excess shall be subject to confirmation by the Investor Member. Any Capital Contribution from the Investor Member payable pursuant to this Section 3.03(g) shall first be reduced by the amount of any outstanding obligation of any Administrative Member and/or Guarantor under this Agreement and/or the Guaranty, respectively, and then shall be added to the Final Installment. To the extent such funds are added to the Final Installment, such funds shall be applied first to the
payment of the Developer Loan and then, only to the extent funds remain, in accordance with Section 4.02(a). Notwithstanding the foregoing, in no event shall the Investor Member be obligated to increase its Capital Contribution to the Company by more than $105,000, in the aggregate, as a result of a First Year Credit Excess and/or a Second Year Credit Excess.

3.03(h) Security Interest. Payments of the Capital Contribution Installments shall be secured by a security interest in the Investor Member’s Interest granted to the Company upon the admission of the Investor Member. The Company’s security interest in the Investor Member’s Interest may not be pledged or assigned by the Company to other than a Mortgage Lender with respect to the Apartment Complex. In connection with the grant to the Company by the Investor Member of a security interest in the Investor Member’s Interest, the Investor Member authorizes the Company to file a financing statement (the “Form UCC-1”) which describes the security interest of the secured party in the Investor Member’s Interest. The Form UCC-1 may be filed by the secured party in the state of formation of the Investor Member in order to perfect the interest of the secured party in the collateral and protect the secured party against claims asserted by third parties against the Investor Member.

3.03(i) No Obligatory Additional Capital Contributions. Except as provided in the Act or in Section 4.03, after its Capital Contribution shall be fully paid hereunder, no Investor Member shall be required to make any additional Capital Contribution to the Company or be liable for any debts, liabilities, contracts or obligations of the Company.

3.03(j) Option to Fund Member/Guarantor Defaults. Notwithstanding anything to the contrary herein, the Investor Member shall have the right, in its sole and absolute discretion, upon five (5) days written notice and opportunity to cure given to the Managing Member or Administrative Member, as applicable (unless failure to fund during such five day notice and cure period could adversely affect the Company as determined by the Investor Member in its reasonable discretion), to fund any failure by the Managing Member, the Administrative Member or the Guarantor to meet its obligations under this Agreement or the Guaranty or to fund any other debts, liabilities, contracts or obligations of the Company. Any such funding by the Investor Member shall (i) constitute a loan to the Company with interest at the rate of 10% per annum, compounded annually and repayable from Cash Flow or Net Proceeds (or liquidation proceeds) prior to any distributions or payments under Sections 4.02(a) or 4.02(b) and (ii) not constitute a waiver by the Investor Member of any of its rights or remedies under this Agreement, the Guaranty or any other agreement.

Section 3.04. Default. Investor Member Default. If the Investor Member does not pay an Installment when due and payable pursuant to Section 3.03, it will be deemed to be in default under this section and interest on any unpaid amount shall accrue, from the date on which such Installment was due and payable to the date on which such default is cured as provided below, at the lesser of (i) 10% per annum, compounded monthly, or (ii) the maximum interest rate permitted by law.
3.04(b) Notice of Default; Right to Cure. The Administrative Member shall promptly give notice of a default to the defaulting Investor Member. A default may be cured by payment to the Company of the Installment (and any accrued interest) due within 30 days of receipt of the notice of default.

3.04(c) Company’s Exercise of Rights. In the event that the defaulting Investor Member does not cure any default described in this Section 3.04, then the Company may, after providing to the defaulting Investor Member the notice of the default referred to in Section 3.04(b) and the cure period provided in Section 3.04(b) and any notice required by applicable law, exercise its rights with respect to the security interest granted in the defaulting Investor Member’s Interest and sell such Interest to a third party (including an existing Member) by public or private sale at whatever price and on whatever terms are commercially reasonable. Upon such sale of a defaulting Investor Member’s Interest, the Administrative Member may admit the purchaser of such Interest as a substituted Investor Member. Upon such an admission, the defaulting Investor Member shall cease to be an Investor Member but shall continue to be liable to the Company if and to the extent that the proceeds of sale of the defaulting Investor Member’s Interest are less than the sum of (i) the unpaid balance of all amounts due at whatever time from the defaulting Investor Member and (ii) all reasonable collection and sales expenses incurred by the Company or the Administrative Member, including fees and disbursements of counsel. If the proceeds of such sale exceed the amounts described in clauses (i) and (ii) of the immediately prior sentence, such excess shall be paid to the defaulting Investor Member.

Section 3.05. Credit Adjuster Distributions to the Investor Member.

3.05(a) Prior to Credit Determination Date. If at any time prior to the Credit Determination Date, but in no event prior to an Accountants’ Determination with respect to the year the Apartment Complex is placed in service, the Initial Aggregate Credit Amount is determined to be less than Projected Aggregate Credit Amount (the amount of such shortfall being referred to herein as a “Credit Shortfall”), the amount of any unpaid Installments of the Investor Member’s Capital Contributions shall be reduced by an amount equal to the product of (i) the Credit Shortfall and (ii) $1.05 (the “Credit Shortfall Adjustment Amount”), with any such reduction to be applied to the next succeeding Installments in the order they are due. If the amount of the Credit Shortfall Adjustment Amount exceeds the amount of the remaining Installments, the Administrative Member shall contribute the amount of such shortfall to the capital of the Company (any such Capital Contribution being referred to herein as a “Credit Adjuster Contribution”). The Company immediately shall distribute the proceeds of any such Credit Adjuster Contribution to the Investor Member (any such distribution being referred to herein as a “Credit Adjuster Distribution”). Any contributions or distributions required to be made pursuant to the provisions of this Section 3.05(a) shall be made within 10 calendar days following the earlier of (i) the date on which the Accountants deliver the final version of the Company’s Tax Return for the year of Construction Completion to the Administrative Member (ii) if applicable, a Final Determination relating to a shortfall in Eligible Basis that confirms the existence of a Credit Shortfall, or (iii) December 31, 2017. No contributions or distributions shall be
required to be made pursuant to the provisions of this Section 3.05(a) merely as a result of unanticipated delays by the Company in leasing Apartment Complex units to Qualified Tenants, provided, however, that any such delays in leasing could require Current Adjuster Contributions, Additional Adjuster Contributions and/or Timing Adjuster Contributions under Section 3.05(b) below, and this Section 3.05(a) shall apply only if the Initial Aggregate Credit Amount is determined to be less than the Projected Aggregate Credit Amount.

3.05(b) After Credit Determination Date.

3.05(b)(i) Current Adjusters. If at any time on or after the Credit Determination Date, (A) there is an Accountants’ Determination or a Final Determination that all or a portion of the Credits expected to be claimed with respect to such current Company Taxable Year and/or all or a portion of the Credits claimed with respect to a prior Company Taxable Year is disallowed or is subject to recapture pursuant to the provisions of Section 42(j) of the Code for a reason other than a transfer of the Investor Member’s Interest in the Company, or if the amount of any Credit allocated annually in 2016 through 2027 to the Investor Member in a given year is less than the Projected Annual Credit Amount for such year(s), the Administrative Member shall contribute to the capital of the Company within 10 calendar days following the earlier of the Accountants’ Determination or the Final Determination, as the case may be, an amount that, on an After-Tax Basis, is equal to the sum of (A) the amount of Credit that was disallowed, unavailable, or recaptured or allocated in an amount less than the Projected Annual Credit Amount with respect to the current Company Taxable Year and all prior Company Taxable Years, plus (B) the amount of any interest and penalties imposed by the Service solely as a result of the disallowance, unavailability, or recapture of Credit with respect to the Company (any such Capital Contribution being referred to herein as a “Current Adjuster Contribution”). The Company immediately shall distribute the proceeds of any such Current Adjuster Contribution to the Investor Member (any such distribution being referred to herein as a “Current Adjuster Distribution”).

3.05(b)(ii) Additional Adjusters. In the event of an Accountants’ Determination or Final Determination on or after the Credit Determination Date that the Actual Aggregate Credit Amount is less than the Projected Aggregate Credit Amount due to a shortfall or reduction in the Eligible Basis of the Apartment Complex and that the Credits allocable to the Investor Member also will be reduced or disallowed in all subsequent years of the Credit Period, the Administrative Member shall contribute an additional amount to the Company (i.e., in addition to the Current Adjuster Contribution made pursuant to the provisions of Section 3.05(b)(i)), within 10 calendar days following the earlier of the Accountants’ Determination or the Final Determination, as the case may be, on an After-Tax Basis equal to the product of (A) $1.05 multiplied by (B) an amount equal to the difference between the Projected Aggregate Credit Amount for all subsequent years of the Credit Period and the Actual Aggregate Credit Amount for all such subsequent years of the Credit Period as a result of such Final
Determination or Accountants’ Determination (any such Capital Contribution being referred to herein as an “Additional Adjuster Contribution”). The Company immediately shall distribute the proceeds of any such Additional Adjuster Contribution to the Investor Member (any such distribution being referred to herein as an “Additional Adjuster Distribution”).

3.05(b)(iii) Recapture or Disallowance Other Than Due to Shortfall in Eligible Basis. Notwithstanding the foregoing, in the event of an Accountants’ Determination or Final Determination that all or a portion of the Credits previously allocated to the Investor Member on a Company Tax Return is subject to recapture or disallowance for a reason other than a shortfall in Eligible Basis, only the Current Adjuster Distribution will be due in the year of such Accountants’ Determination or Final Determination (referred to herein as a “Determination Year”), and no Additional Adjuster Distribution with respect to future years of the Credit Period will be due and payable in the Determination Year; instead, the amount of Credits allocable to the Investor Member during each subsequent Company Taxable Year during the Credit Period shall be determined upon the close of each such subsequent Company Taxable Year and if, for any such subsequent Company Taxable Year, the Annual Credit Amount is determined to be less than the Projected Annual Credit Amount, the Administrative Member shall make a Current Adjuster Contribution to the Company within 10 calendar days following the earlier of the Accountants’ Determination or Final Determination in an amount that, on an After-Tax Basis, is equal to the amount by which the Annual Credit Amount for such subsequent Company Taxable Year is less than the Projected Annual Credit Amount, and the Company immediately shall make a corresponding Current Adjuster Distribution to Investor Member.

3.05(b)(iv) First Year Shortfall Adjuster. In addition to any adjustments or payments otherwise owed pursuant to Section 3.05, if the amount of Credit properly allocated in 2016 to the Investor Member is less than the Projected Annual Credit Amount for such year (the amount of such differential shall hereinafter be referred to as “First Year Shortfall”), then the Administrative Member shall make a Capital Contribution to the Company, (a “Timing Adjuster Contribution”), within 10 calendar days following the earlier of (i) the date on which the Accountants deliver the final version of the 2016 Company Tax Return to the Administrative Member or (ii) a Final Determination with respect to such First Year Shortfall, in an amount equal to, on an After-Tax Basis, the difference between (a) the First Year Shortfall and (b) the present value as of December 31, 2016 of receiving an amount equal to the First Year Shortfall on December 31, 2026, using an 6% discount rate, which the Company immediately shall distribute to the Investor Member, (a “Timing Adjuster Distribution”).

3.05(b)(v) Second Year Shortfall Adjuster. In addition to any adjustments or payments otherwise owed pursuant to Section 3.05, if the amount of Credit properly allocated in 2017 to the Investor Member is less than the
Projected Annual Credit Amount for such year (the amount of such differential shall hereinafter be referred to as ‘Second Year Shortfall’), then the Administrative Member shall make a Timing Adjuster Contribution within 10 calendar days following the earlier of (i) the date on which the Accountants deliver the final version of the 2017 Company Tax Return to the Administrative Member or (ii) a Final Determination with respect to such Second Year Shortfall, in an amount equal to, on an After-Tax Basis, the difference between (a) the Second Year Shortfall and (b) the present value as of December 31, 2017 of receiving an amount equal to the Second Year Shortfall on December 31, 2027, using an 6% discount rate, and the Company shall immediately make a Timing Adjuster Distribution to the Investor Member.

3.05(c) Recourse Obligations of Administrative Member. Any Adjuster Contribution required to be made by the Administrative Member pursuant to Section 3.05 shall constitute the recourse obligation of the Administrative Member. Adjuster Distributions that are solely attributable to a Change in Law shall be treated as current distributions of cash by the Company to the Investor Member in accordance with the provisions of Section 731 of the Code. To the extent that any Adjuster Contributions or Adjuster Distributions required to be made under Section 3.05 are not made when due, the unpaid amount thereof shall bear interest at a rate equal to the lesser of (i) 10% per annum, compounded annually, or (ii) the maximum interest rate permitted by law.

3.05(d) Reduction In Investor Member’s Capital Contributions. Without limiting the payment obligations set forth in this Section 3.05, the parties hereto agree and acknowledge that Adjuster Distributions owed to the Investor Member (or determined by the Accountants to likely be owed) will be satisfied first by reducing the next succeeding Capital Contributions of the Investor Member in satisfaction of such liability and then by an actual distribution funded by a cash contribution by the Administrative Member to the Company.

3.05(e) Limits on Liability. Notwithstanding anything to the contrary in this Agreement:

3.05(e)(i) the Administrative Member shall not be responsible for the Investor Member’s inability to fully utilize Credits allocated to it;

3.05(e)(ii) no Adjuster Contributions shall be owed pursuant to Section 3.05 (other than Section 3.05(b)(iv) and (v)) unless the amount of such payment, when combined with all prior Adjuster Contributions that, but for this sentence would have been required, exceeds $10,000;

3.05(e)(iii) the Administrative Member shall not be responsible for any recapture of Credits arising solely as a result of the Investor Member’s assignment or other Disposition of its Interest;

3.05(e)(iv) the Administrative Member shall have no obligation to make Adjuster Contributions with respect to any Company Taxable Year
following the fifth (5th) full year of property operations as to which the Investor Member has received copies of the Company’s tax returns; for purposes of this Section 3.05(e)(iv), the first year in which the Investor Member is allocated Credits in an amount not less than 99.99% of the Credits for which the Company is determined to be eligible based upon the final Cost Certification and Forms 8609 for each Building shall constitute the first full year of property operations; and

3.05(e)(v) any Adjuster Contribution the Administrative Member would be obligated to make but for the application of Section 3.05(e)(iv) shall hereinafter be referred to as an “Excess Adjuster Contribution”). The Administrative Member shall have the right, but not the obligation, to make Excess Adjuster Contributions. Notwithstanding anything to the contrary set forth in this Section 3.05, the Investor Member shall have grounds to automatically remove the Administrative Member from the Company if either (i) the Administrative Member fails to make an Excess Adjuster Contribution within 30 days after its receipt from the Investor Member of written notice that such Excess Adjuster Contribution exists, or (ii) the Company fails to make an Adjuster Distribution to the Investor Member with the proceeds of the Excess Adjuster Contribution within five days of its receipt of such Excess Adjuster Contribution.

3.05(f) In addition, notwithstanding anything to the contrary herein, to the extent any portion of an Adjuster Distribution owed to the Investor Member is solely attributable to a Change in Law, then such portion shall only be payable to the Investor Member from available Cash Flow pursuant to Section 4.02(a) or from Net Proceeds pursuant to Section 4.02(b). The Administrative Member shall be required to take reasonable steps, at the Investor Member’s expense, to attempt to minimize the adverse effect of any Change In Law to ensure the continued availability of the Credits and the Members’ eligibility therefor.

Section 3.06. No Interest on Capital Contribution; Return of Capital. Except as provided in Section 3.05, no Member shall be entitled to receive any interest on its Capital Contribution. Except as provided in Section 3.05 or as otherwise specifically provided elsewhere herein, no Member shall have the right to withdraw its Capital Contribution or to demand and receive property of the Company in return for its Capital Contribution, nor shall any Investor Member have any right to demand or receive property other than money upon dissolution and termination of the Company. Except as provided in Sections 3.05 and 6.05 or in the Guaranty, each Member shall look solely to the assets of the Company for all returns of capital and distributions and allocations of Profits or Losses and shall have no recourse therefor (upon dissolution or otherwise) against any other Member.

Section 3.07. No Third-party Beneficiary. None of the provisions of this Agreement, including, without limitation, Sections 3.04, 3.05 and 6.12, shall be construed as existing for the benefit of any creditor of the Company or for the benefit of any creditor of any of the Members, and no such provision shall be enforceable by a party not a signatory to this Agreement, except where granting of a security interest or pledge has been made by the Company.
Section 3.08. Investor Member Put Option. The Investor Member shall have the option to require the Administrative Member to purchase the Interests of the Investor Member and the Special Member at any time after the last expiring Compliance Period applicable to any Building, for consideration of $100, to be divided between the Investor Member and the Special Member as they shall agree.

ARTICLE 4

PROFITS AND LOSSES; DISTRIBUTIONS; CAPITAL ACCOUNTS

Section 4.01. Profits, Losses and Credits. Subject to Section 4.04, all Profits and Losses incurred or accrued from the Admission Date through the date of Construction Completion, or, if earlier, the date of placement in service of any residential unit in the Apartment Complex, other than those arising from a Capital Event, shall be allocated 0.01% to the Investor Member, 99.983% to the Administrative Member and 0.007% to the Managing Member. Subject to Section 4.04, all Profits, Losses and Credits incurred or accrued after Construction Completion is attained (or, if earlier, the date of placement in service of any residential unit in the Apartment Complex), other than those arising from a Capital Event, shall be allocated among the Members as follows:

As to Profits:

4.01(a)(i) First, to the Members until the amount allocated, and previously allocated, with respect to each Member under this Section 4.01(a)(i) equals the amount distributed, and previously distributed, with respect to such Member (in its capacity as a Member) pursuant to Section 4.02(a) and Section 4.02(b); and

4.01(a)(ii) Then, any remaining Profits shall be allocated 99.99% to Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

As to Losses:

4.01(a)(iii) Any Losses and Credits shall be allocated 99.99% to Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

4.01(b) Subject to Section 4.04, all Profits and Losses arising from a Capital Event shall be allocated among the Members as follows:

As to Profits:

4.01(b)(i) First, an amount of Profits shall be allocated to the Members who have negative Capital Account balances (prior to taking into account the Capital Event) in proportion to the amount of such balances until all such Capital Accounts shall have a zero balance;
4.01(b)(ii) Then, an amount of Profits shall be allocated to the Investor Member until its Capital Account is, on an After-Tax Basis, equal to the Taxes owed by the Investor Member with respect to its share of Profits allocated pursuant to Sections 4.01(b)(i); and

4.01(b)(iii) Then, thereafter, an amount of Profits shall be allocated to each of the Members until the positive balance in the Capital Account of each Member equals the amount of cash which would be distributed to such Member if such Profits were cash available to be distributed to such Member (in its capacity as a Member) in accordance with the provisions of Section 4.02(b).

As to Losses:

4.01(b)(iv) First, an amount of Losses equal to the aggregate positive balances (if any) in the Capital Accounts of all Members then having positive balance Capital Accounts shall be allocated to such Members in proportion to their positive Capital Account balances until all such Capital Accounts shall have a zero balance; provided, however, that if the amount of Losses to be allocated is less than the sum of the positive balances in the Capital Accounts of those Members having positive balances in their Capital Accounts, then such Losses shall be allocated first to any Administrative Member with a positive Capital Account until its Capital Account has a zero balance, with any remainder allocated to the Investor Member until its Capital Account has a zero balance; and

4.01(b)(v) Then, the balance of any such Losses shall be allocated 99.99% to the Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

4.01(b)(vi) Notwithstanding anything to the contrary in this Section 4.01(b), the allocation of Profits and Losses arising from a Capital Event (including allocations of gross profits and gross losses) shall, to the maximum extent allowable under the Code and the Regulations, be allocated among the Managing Member, the Administrative Member and the Investor Member so as to cause the Capital Account of each of them to equal the amount distributable to each of them under Section 4.02(b).

Section 4.02. Cash Distributions Prior to Dissolution.

4.02(a) Cash Flow. Subject to all applicable limitations and restrictions including those set forth in the documents governing the Construction Loan, from the Closing Date and for 30 months thereafter, 100% of Cash Flow shall be applied first to payment of the Developer Loan, and then shall be payable to the Administrative Member and the Managing Member, on a prorata basis, with 95% to the Administrative Member and 5% to the Managing Member, as an incentive leasing fee (provided, however, no such fee shall be payable in any event following Permanent Loan Closing); thereafter, subject to all applicable limitations and restrictions including those set forth in the documents governing the First Mortgage Loan, provided that all reserves have been
funded and maintained as required by Section 6.10, Cash Flow, if available with respect to any Company Accounting Year, shall be applied or distributed annually, within 60 days after the end of the Company Accounting Year (but in no event earlier than the filing of a Company Tax Return for such year),

4.02(a)(i) First, subsequent to the expiration of the period described in Section 3.05(e)(iv), Adjuster Distributions that would otherwise have been required to be made to the Investor Member but for the application of such Section 3.05(e)(iv) shall be payable to the Investor Member;

4.02(a)(ii) Then, to the Investor Member until the total amount received pursuant to this clause and Section 4.02(b)(ii) equals the amount of any Credit Adjuster Distributions, Current Adjuster Distributions, Additional Adjuster Distributions and Timing Adjuster Distributions payable under Section 3.05 that is solely attributable to a Change in Law, plus interest on such amount from the due date until paid pursuant to this clause at the rate of 10% per annum, compounded annually;

4.02(a)(iii) Then, for the distribution of Cash Flow for 2018 and each year thereafter, to the payment of the Asset Management Fee until the total amount of payments pursuant to this clause and Section 4.02(b)(iv) (including payments in all prior years) equals $8,500 per year or portion thereof and increasing 3% per year thereafter;

4.02(a)(iv) Then, to the payment of any amounts then owed with respect to the Developer Loan;

4.02(a)(v) Then, to the payment of any Operating Deficit Loans, with any such payments to be applied first to accrued but unpaid interest and then to principal;

4.02(a)(vi) Then, 10% of the remaining balance, if any, to the Investor Member;

4.02(a)(vii) Then, to the payment of the Incentive Management Fee due pursuant to Section 7.03; and

4.02(a)(viii) Then, the balance shall be distributed 95% to the Administrative Member, and 5% to the Managing Member.

4.02(b) Distributions of Net Proceeds. Prior to dissolution of the Company, if the Administrative Member shall determine from time to time that Net Proceeds are available for distribution from a Capital Event, such Net Proceeds shall be applied or distributed, subject to any restrictions imposed pursuant to a Mortgage Loan, as follows:
4.02(b)(i) First, to fund reserves for contingent liabilities to the extent deemed reasonable by the Administrative Member and Consented to by the Investor Member;

4.02(b)(ii) Then, to the Investor Member for the payment of amounts arising pursuant to Section 4.02(a)(i) and Section 4.02(a)(ii);

4.02(b)(iii) Then, to the payment of amounts then owed with respect to the Developer Loan;

4.02(b)(iv) Then, to the payment of amounts then owed for the current and accrued Asset Management Fees;

4.02(b)(v) Then, to the Investor Member in an amount equal to, on an After-Tax Basis, the Taxes (if any) owed by it as a result of the Capital Event pursuant to Sections 4.01(b)(i) and (ii);

4.02(b)(vi) Then, to the payment of any Operating Deficit Loans, with any such payments to be applied first to accrued but unpaid interest and then to principal; and

4.02(b)(vii) Then, the balance 85.5% to the Administrative Member, 4.5% to the Managing Member and 10% to the Investor Member.

4.02(c) **Special Adjuster Provisions.** If at any time the Administrative Member fails to make any Adjuster Contribution pursuant to Section 3.05 and/or the Company fails to make any Adjuster Distribution to the Investor Member when due in accordance with the provisions of Section 3.05, any Cash Flow or Net Proceeds otherwise distributable or payable to the Administrative Member or the Developer or any Affiliate of any of such Persons pursuant to the provisions of Sections 4.02(a) or 4.02(b) shall be distributed to the Investor Member and treated as having been (i) distributed or paid by the Company to the applicable Person, as the case may be, (ii) contributed to the Company by the Administrative Member (or other applicable Person in the name of and on behalf of the Administrative Member) as an Adjuster Contribution as appropriate, and (iii) distributed by the Company to the Investor Member as an Adjuster Distribution, as appropriate.

4.02(d) **Pending Removal Events.** Notwithstanding anything to the contrary set forth in this Agreement, the Company shall have no obligation to make a distribution to the Administrative Member or the Managing Member, or to pay any fee or other amount due the Administrative Member or the Managing Member or any Affiliate of either such Member, during the pendency of any Removal Event as to which the Administrative Member or Managing Member, as applicable, has received written notice from the Investor Member.

**Section 4.03. Termination Distributions.**
4.03(a) Upon dissolution and termination of the Company, after payment of, or adequate provision for, the debts and obligations of the Company, including fees and interest owed to the Members (including for this purpose the amounts, if any, owed pursuant to Section 4.02(a)(i), the payment of which pursuant to this Section shall not result in a charge to the recipient’s Capital Account and the parties hereto agree that such amounts shall be paid prior to the payment of any debts, obligations and/or fees owed to the Administrative Member or any Affiliate thereof), the remaining assets of the Company (or the proceeds of sales or other dispositions in liquidation of the Company Assets, as may be determined by the remaining or surviving Administrative Member) shall be distributed pro rata to the Members in accordance with their respective positive Capital Account balances after taking into account all Capital Account adjustments for the year. Upon the dissolution and termination of the Company, no Investor Member shall be obligated to restore any deficit balance in its Capital Account. The parties hereto agree that, upon giving written notice to the Administrative Member, the Investor Member shall have the right (exercisable in its sole discretion) at any time, to create a deficit restoration obligation as to itself, and/or to extend the years in which it may be obligated to restore any deficit balance in its Capital Account. Deficit Capital Account restoration payments shall be made by the end of such taxable year (or, if later, within 90 days after the date of such liquidation) and shall, upon liquidation of the Company, be paid, first, to recourse creditors of the Company and, thereafter, distributed to other Members in accordance with the positive balances in their Capital Accounts. Liquidation distributions shall be made by the end of the taxable year in which the liquidation occurs or, if later, within 90 days after the date of liquidation.

4.03(b) Notwithstanding anything to the contrary contained herein, any fee payments, loan repayments, return of capital or distributions otherwise payable or distributable to the Developer, the Administrative Member, or any Affiliate thereof under Section 4.02 and Section 4.03(a) shall be paid to the Investor Member to the extent of any unpaid Credit Adjuster Distributions, Current Adjuster Distributions, Additional Adjuster Distributions, and Timing Adjuster Distributions (including accrued interest thereon) under Section 3.05, and shall be treated as being first (i) paid or distributed to the Developer, the Administrative Member, or such Affiliate, as the case may be, (ii) contributed by the Administrative Member to the Company, (or by the Developer or such Affiliate in the name of and on behalf of the Administrative Member), and (iii) distributed by the Company to the Investor Member.

Section 4.04. Special Allocations. Notwithstanding anything to the contrary contained in this Agreement:

4.04(a) In the event that there is a net decrease in Company minimum gain (as defined in Regulation § 1.704-2(d)) during a fiscal year or period, all Members shall be allocated, before any other allocation is made of the Company Items for such year or period, items of income and gain for such year or period (and, if necessary, subsequent years) in the manner and to the extent required by Regulation § 1.704-2(f). The allocations contained in this Section 4.04(a) are intended to be a “minimum gain chargeback” within the meaning of Regulation § 1.704-2(f) and shall be interpreted consistently therewith.
4.04(b) Subject to the provisions of paragraph (a) of this Section 4.04, (i) any partner nonrecourse deduction (as defined in Regulation § 1.704-2(i)(2)) shall be allocated to the Members in the manner specified in Regulation § 1.704-2(i) and (ii) if there is a net decrease during a taxable year of the Company in the minimum gain attributable to partner nonrecourse debt, then items of Company income and gain for such year (and, if necessary, for subsequent years) shall be allocated to the Members in the manner and to the extent required by Regulation § 1.704-2(i)(4). Additionally, any nonrecourse deductions, (as such term is defined in Treasury Regulations Section 1.704-2(b)(1)), of the Company shall be allocated 99.99% to the Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

4.04(c) Subject to the provisions of paragraphs (a) and (b) of this Section 4.04, in the event that a Member unexpectedly receives any adjustments, allocations or distributions described in Regulation § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) as a result of which the negative Capital Account balance of the Member exceeds the sum of such Member’s share of minimum gain and the amount of its negative Capital Account that it has agreed to restore or is deemed to be obligated to restore pursuant to Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5), items of Company income and gain shall be specially allocated to such Member in the manner and to the extent required by such Regulation. This Section 4.04(c) is intended to be a “qualified income offset” within the meaning of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

4.04(d) 4.04(d)(i) If the balance in the Capital Account of a Member is less than zero, or will become less than zero as a result of such allocation, net loss shall be allocated to such Member only to the extent that (y) the sum of the Minimum Gain of such Member (determined in accordance with the provisions of § 1.704-2(g) of the Regulations) plus the amount of its negative Capital Account that such Member has agreed to restore exceeds (z) the deficit balance in the Capital Account of such Member (determined at the end of the Company Taxable Year to which the allocation relates).

4.04(d)(ii) Any net loss not allocable to a Member as a result of the application of Section 4.04(d)(i) shall be allocated to the Members with positive Capital Account balances in proportion to (and to the extent of) such positive balances and thereafter in accordance with their interests in the Company, excluding any additional Administrative Member or Managing Member admitted pursuant to Section 8.04.

4.04(d)(iii) If, during any year, the Company incurs a Loss in excess of the Loss anticipated for such year and such excess Loss arises from expenses paid or to be paid with the proceeds of Capital Contributions or Operating Deficit Loans from an Administrative Member, from withdrawals from reserves, or from amounts paid by a Guarantor pursuant to the Guaranty, then, at the end of each such year, the Investor Member’s Capital Account and allocable share of Minimum Gain at the end of each year from the date of calculation through the end of the Credit Period shall be calculated. If such calculation indicates that the Investor Member would have an adjusted Capital Account deficit in any such year
in the Credit Period in excess of the sum of the Investor Member’s share of Minimum Gain (determined in accordance with the provisions of Regulation § 1.704-2(g)) plus the amount of its negative Capital Account that the Investor Member has agreed to restore, then the portion of the Loss derived from the expenses described in the first sentence of this Section 4.04(d)(iii) (but not depreciation) shall be allocated to the Administrative Member to extent of the projected excess adjusted Capital Account deficit of the Investor Member; provided that the Administrative Member shall be specially allocated an amount of gross income (before Profits and Losses are computed under Section 4.01(a)) equal to the amount of any principal repayment in any year of an Operating Deficit Loan or any repayment or return of an Administrative Member Capital Contribution (but in no event shall the aggregate amount of gross income allocated pursuant to this clause exceed the aggregate amount of deductions or losses allocated to the Administrative Member under this Section 4.04(d)(iii).

4.04(e) In the event that, at any time or from time to time after the effective date of this Agreement, the Gross Asset Values of the Company Assets are adjusted in accordance with this Agreement, then, notwithstanding the provisions of Section 4.01(b), the Members’ allocable shares of depreciation, depletion, amortization and gain or loss, as computed for tax purposes, with respect to the Company property, must be determined so as to take into account the variation between the adjusted tax basis of the Company property and the book value, in the same manner as under I.R.C. § 704(c) and the applicable Regulations thereunder. Allocations pursuant to this paragraph (e) shall be solely for purposes of federal, state and local taxes and shall not affect or in any way be taken into account in computing a Member’s Capital Account.

4.04(f) If an Interest is transferred or assigned during a Company Accounting Year, that part of the tax incidents allocated pursuant to this Agreement with respect to the Interest so transferred shall, in the discretion of the Administrative Member (after consulting with the Investor Member), either (i) be based on segmentation of the taxable year between the transferor and the transferee using the interim closing of the books or any other reasonable method or (ii) be allocated between the transferor and the transferee in proportion to the number of days in such taxable year during which each owned such Interest, as disclosed on the Company’s books and records.

4.04(g) Any depreciation recapture recognized pursuant to I.R.C. Sections 1245 and 1250 and Credit recapture shall be allocated to the Members in the same proportions that the depreciation or cost recovery deductions and Credits giving rise to such recapture were allocated among such Members or their respective predecessors-in-interest. Any taxable income of the Company resulting from its receipt of debt forgiveness, donations, contributions, grants or subsidies shall be allocated entirely to the Administrative Member.

4.04(h) In the event that there is a determination that I.R.C. § 483 or I.R.C. § 1274 (both relating to imputed interest with respect to deferred payment sales of property) is applicable to any loans between the Company and a Member, or that any loan between a Member and the Company is subject to I.R.C. § 7872 (relating to imputed...
interest with respect to below-market interest rate loans), any income or deduction attributable to interest on such a loan (whether stated or unstated) shall be allocated solely to such Member.

4.04(i) It is the intent of the Members that each Member’s allocable share of income, gains, losses, deductions or credits (or items thereof) (“Company Items”) shall be allocated in accordance with this Article 4 to the fullest extent permitted by I.R.C. Sections 704(b) and 704(c). In order to preserve and protect the allocations provided for in this Article 4, without adversely affecting the amounts distributable upon termination of the Company, the Administrative Member, with the review and concurrence of the Company’s Accountants, is authorized and directed, in its reasonable judgment, to allocate Company Items arising in any year differently than otherwise provided for in this Article 4 if, and to the extent that, the allocations otherwise provided under this Article 4 would not be permissible under I.R.C. Sections 704(b) and/or 704(c). Any allocation made pursuant to this Section 4.04(i) shall be deemed to be a complete substitute for any allocation otherwise provided for in this Article 4, and no amendment of this Agreement or approval of any Member shall be required with respect thereto and each Member shall, for all purposes and in all respects, be deemed to have approved any such allocation. The allocations set forth in this Section 4.04 (the “Special Allocations”) are intended to comply with certain requirements of the Section 704 Regulations. The Special Allocations may not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Administrative Member is hereby authorized and directed to divide other allocations of income, gain, loss and deductions among the Members so as to prevent the Special Allocations from distorting the manner in which Company distributions will be divided among the Members on dissolution of the Company. In general, the Members anticipate that this will be accomplished by specially allocating items of income, gain, loss, and deduction among the Members so that the net amount of the Special Allocations and such special allocations to each such Member is zero. In the event that in any year a Special Allocation alters the allocation of tax items to the Members, to the extent possible, depreciation deductions shall nevertheless be allocated 99.99% to the Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

4.04(j) Notwithstanding anything to the contrary contained herein, the Managing Member and the Administrative Member, collectively, shall be allocated not less than 0.01% of each Company Item at all times during the existence of the Company. In the event that there is no allocation of a material Company Item to the Managing Member and/or the Administrative Member hereunder or if the amount of any material Company Item allocable to the Managing Member and the Administrative Member hereunder, collectively, shall not equal 0.01% of the aggregate amount allocable to all the Members without giving effect to this provision, then the amount of such Company Item(s) otherwise allocable to the Investor Member hereunder shall be correspondingly reduced in order to assure the Managing Member and the Administrative Member of their collective 0.01% share. Any such reduction shall be applied to reduce the shares of all classes of Investor Members in proportion to their respective Interests.
4.04(k) The Members agree that, except as otherwise determined by the Investor Member pursuant to this Section 4.04(k), the Members’ interests in Company profits for purposes of determining such Members’ shares of the excess nonrecourse liabilities of the Company under the Treasury Regulations § 1.752-3(a)(3) shall be determined by reference to the Members’ allocable share of Profits from a Capital Event under Section 4.01(b); provided, however, that the Members agree that, upon giving written notice to the Managing Member and the Administrative Member, the Investor Limited Partner shall have the right at any time to cause the Company to select an alternative method for allocating the excess nonrecourse liabilities of the Company under Treasury Regulation § 1.752-3(a)(3) if the Investor Member reasonably determines that such alternative method would (or could reasonably be expected to) avoid or mitigate any tax or economic detriment to the Investor Member or its affiliates (as a result of an actual or pending change in law, change in circumstances, or otherwise). Without limiting the foregoing, the Managing Member and the Administrative Member shall provide written notice to the Investor Member no later than 45 days following the close of any Company Taxable Year in which the Investor Member’s adjusted basis in its Interest is or is reasonably likely to be zero.

4.04(l) Except as otherwise provided in this Agreement, for tax purposes all items of income, gain, loss, deduction or credit shall be allocated to the Members in the same manner as are Profits and Losses.

Section 4.05. Section 704(c) Allocations. Income, gains, losses and deductions, as determined for income tax purposes, with respect to any Company Asset contributed by a Member to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Company Asset to the Company for federal income tax purposes and its initial Gross Asset Value in accordance with I.R.C. Section 704(c) and the Regulations thereunder.

Section 4.06. Miscellaneous Allocations.

4.06(a) If any Company expenditure treated as a deduction on its federal income tax return is disallowed as a deduction and treated as a distribution pursuant to Section 731(a) of the Code, there shall be a special allocation of gross income to the Member deemed to have received such distribution equal to the amount of such distribution.

4.06(b) Except as otherwise provided in this Article 4, Profits, Losses, Credits, gain and other tax items allocated to the Members shall be allocated among the Members in accordance with their relative Interests in the Company, as set forth in Exhibit H.

4.06(c) Except as otherwise set forth in this Agreement, any elections or other decisions relating to allocations under this Article 4 shall be made by the Administrative Member (in its reasonable discretion), with the review and concurrence of the Company’s Accountants, in such manner as reasonably reflects the purpose and intention of this Agreement.
ARTICLE 5

COMPANY BORROWINGS

Section 5.01. Authorization to the Administrative Member. Without otherwise limiting the right or authority of the Administrative Member under this Article 5 or Article 6 hereof, the Administrative Member is specifically authorized to execute on behalf of the Company all documents required by any Lender in connection with the construction, acquisition or financing of the Apartment Complex.

Section 5.02. Right To Mortgage.

5.02(a) The Company has obtained or will, subject to the requirements of this Agreement, obtain financing for the Apartment Complex from the Lender and will secure the same by execution and delivery of the Mortgage. The Project Documents (other than with respect to the Construction Loan and any loans provided by the Investor Member or an Affiliate thereof) shall provide that no Person, including, but not limited to, the Company, any party holding an Interest in the Company, or any of their Affiliates, shall have any personal liability for the payment of all or any part of such Mortgage Loans, except as set forth in the Project Documents in existence as of the date hereof.

5.02(b) Subject to the requirements of this Agreement, the Administrative Member is specifically authorized to execute such documents as it reasonably deems necessary in connection with the acquisition, improvement, operation, leasing and financing of the Apartment Complex, including, without limiting the generality of the foregoing, the Project Documents and any other document required by any Lender in connection therewith.

Section 5.03. Loans. All borrowings by the Company shall be subject to the terms of this Agreement and the Project Documents. To the extent borrowings are permitted, they may be made from any source, including any Member or an Affiliate thereof. All such loans will be nonrecourse except as provided in Section 5.02(a) unless the Consent of the Investor Member has been obtained.

Section 5.04. Loans Amounts. Notwithstanding anything to the contrary set forth in this Article 5 or elsewhere in this Agreement, except for a Mortgage Loan requiring Soft Debt Payments only, in no event may the Administrative Member cause the Company to enter into a Mortgage Loan, other than the Construction Loan, having a principal amount in excess of an Approved Loan Amount, or convert a Mortgage Loan to its permanent phase in an amount in excess of an Approved Loan Amount. The term “Approved Loan Amount” shall mean, with respect to the aggregate amount of the First Mortgage Loan and the County Loan, the lesser of (a) $2,822,400 or (b) a principal amount determined at Permanent Loan Closing that would result in an annualized Debt Service Coverage Ratio of not less than 1.15 to 1 with respect to each of the First Mortgage Loan and the County Loan, during each year of the Compliance Period based on the underwriting parameters set forth below. For purposes of this Section 5.04, any description of indebtedness or any other provisions of the definitions of Debt Service Coverage Ratio or Effective Gross Income that are inconsistent with the underwriting parameters set forth
below and/or this Section 5.04 in general shall be superseded by this Section 5.04. The underwriting parameters shall be as follows:

5.04(a) the First Mortgage Loan shall have constant monthly payments, an interest rate of no greater than 4.75%, a term of 17 years, and an amortization period of 30 years, and the County Loan shall, commencing on Construction Completion, have constant monthly payments, an interest rate of no greater than 3.00%; a term that is coterminous with the First Mortgage Loan and an amortization period of 30 years;

5.04(b) gross revenues will be calculated as follows:

5.04(b)(i) assuming revenues escalate 1% per year for the first 3 years and 2% per year thereafter;

5.04(b)(ii) based on actual rents received from tenants in occupancy under signed leases, (as calculated by the Accountants) after giving effect to any rent concessions by spreading the amount of such concessions evenly over the term of the lease;

5.04(b)(iii) assuming a vacancy loss equal to the greater of (a) 7.5% and (b) actual vacancy;

5.04(b)(iv) assuming other income to be the lesser of $12,987 per year or actual other income;

5.04(b)(v) rents for units having rental subsidies of any kind except project based subsidies (A) provided pursuant to a written agreement for the length of the Compliance Period (excluding renewals) and (B) not subject to appropriation risk, will be assumed to be the lesser of permissible rents under the subject subsidy and permissible rents under Section 42 of the Code (without giving effect to sums received pursuant to the subject subsidy);

5.04(c) Company expenses will be calculated:

5.04(c)(i) as being the greater of actual expenses or $5,567 per unit per year, (including Replacement Reserves of $300 per unit per year); and

5.04(c)(ii) to include all required periodic contributions to reserves required by this Agreement or by any Lender; and

5.04(c)(iii) to include a management fee of 5% of effective gross income;

5.04(c)(iv) assuming expenses escalate 3% per year.

5.04(d) All determinations as to Approved Loan Amounts shall be subject to the Consent of the Investor Member.
ARTICLE 6

RIGHTS, POWERS AND OBLIGATIONS OF MEMBERS

Section 6.01. Exercise of Management.

6.01(a)  The overall management and control of the business, assets and affairs of the Company shall be vested in the Administrative Member and, subject to the specific limitations and restrictions set forth in this Article 6 and in Article 7 hereof, the Administrative Member, in extension of and not in limitation of the powers given it by law, shall have full, exclusive and complete charge of the management of the business of the Company in accordance with its purposes stated in Section 1.04. No Investor Member shall take part in the management or control of the business of the Company or have authority to bind the Company except as expressly set forth herein.

6.01(b)  The Administrative Members (if at the time more than one Person constitutes the Administrative Member) shall act by vote of a majority in Interest of the Persons constituting the Administrative Members, except where otherwise specified herein.

6.01(c)  Notwithstanding the foregoing provisions of this Section 6.01, in accordance with the Agency’s qualified allocation plan, the Managing Member shall Materially Participate in the control, management and direction of the Company’s business.

Section 6.02. Powers.

6.02(a)  Subject to Article 5 and Section 6.03 and the other provisions of this Agreement, the Administrative Member shall have all authority, rights and powers generally conferred by law, including the authority, rights and powers of a managing member in a limited liability company, and shall have all the authority, rights and powers which it deems necessary or appropriate to effect the purposes of the Company, including, without limitation, the following:

6.02(a)(i)  To employ, contract and deal with, from time to time, any Persons, including any Member or Affiliate of a Member (subject to the requirements of Section 6.07), in connection with the management and operation of the Company business, on such terms as the Administrative Member shall reasonably determine (subject to the requirement that the Consent of the Investor Member must be obtained (a) for any contract in excess of $25,000 and (b) for any contract having a term in excess of 12 months);

6.02(a)(ii)  To acquire, by purchase or otherwise, and deal with such personal property as may be necessary, convenient or incidental to the accomplishment of the purposes of the Company;

6.02(a)(iii)  To bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the
Company (provided, however, that the Consent of the Investor Member shall be obtained prior to settlement of any claim or demand (A) which would affect the amount of Credits or Losses allocated or allocable to the Investor Member or (B) for which the liability of the Company or the Investor Member is in excess of $25,000);

6.02(a)(iv) To pay as a Company expense any and all reasonable costs or expenses associated with the formation, development, organization and operation of the Company;

6.02(a)(v) To deposit, withdraw, invest, pay, retain and distribute the Company’s funds in a manner consistent with the provisions of this Agreement;

6.02(a)(vi) To borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Company, and to secure the same by grant of security interests in assets of the Company;

6.02(a)(vii) Unless prohibited under applicable Laws, to require in any or all Company contracts that the Administrative Member and Investor Member shall not have any personal liability thereon but that the Person contracting with the Company shall look solely to the Company and its assets for satisfaction;

6.02(a)(viii) To enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the purposes of, the Company, so long as said activities and contracts may be lawfully carried on or performed by a limited liability company under the laws of the State; and

6.02(a)(ix) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing.

6.02(b) During the Compliance Period, the Administrative Member shall (i) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that not less than 68 residential rental units (not including any manager units) in the Apartment Complex will qualify as “low-income units” under Section 42(i)(3) of the Code; (ii) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that the Apartment Complex will qualify as a “qualified low-income housing project” under Section 42(g) of the Code; and (iii) make, or cause to be made, all certifications required by Section 42(l) of the Code.

6.02(c) In the event that a claim against the Company is made by the Service (a “Claim”) upon audit, the Tax Matters Member shall, within 10 days after receiving notice of such Claim, notify the Investor Member of the Claim (such notice being referred to as a “Claim Notice”). The Tax Matters Member shall promptly furnish to the Investor Member a copy of each notice or other communication received by the Tax Matters Member from the Service.
The Tax Matters Member shall not have the authority, without the Consent of the Investor Member, to do all or any of the following:

6.02(c)(i) to enter into a settlement agreement with the Service concerning the adjustment or readjustment of any Company Items or which purports to bind Members other than the Tax Matters Member;

6.02(c)(ii) to file a request for an administrative adjustment with the Service at any time or file a petition for judicial review with respect to the Company or the Apartment Complex;

6.02(c)(iii) to intervene in any action brought by any other Member for judicial review of a final judgment as contemplated in Section 6226(b) of the Code;

6.02(c)(iv) to initiate or settle any judicial review or action concerning the amount or character of any Company tax items; or

6.02(c)(v) to enter into an agreement extending the period of limitations for assessing or computing any tax liability against the Company as contemplated in Section 6229(b)(1)(B) of the Code.

The relationship of the Tax Matters Member to the Investor Member is that of a fiduciary, and the Tax Matters Member has a fiduciary obligation to perform its duties in such manner as will serve the best interests of the Company and the Investor Member.

The Company shall indemnify the Tax Matters Member from and against judgments, fines, amounts paid in settlement, and expenses (including attorneys’ fees) reasonably incurred in any civil, criminal or investigative proceeding in which it is involved or threatened to be involved by reason of being the Tax Matters Member, provided that the Tax Matters Member acted in good faith, within what is reasonably believed to be the scope of its authority and for a purpose which it reasonably believed to be in the best interests of the Company or the Members. The Tax Matters Member shall not be indemnified under this provision against any liability to the Company or its Members to any greater extent than the indemnification allowed by Section 6.06. The indemnification provided hereunder shall not be deemed to be exclusive of any other rights to which those indemnified may be entitled under any applicable statute, agreement, vote of the Members, or otherwise.

Section 6.03. Restrictions on Authority.

6.03(a) Notwithstanding any other provisions of this Agreement, neither the Managing Member nor the Administrative Member shall have authority to do any of the following:

6.03(a)(i) Do any act in violation of applicable Laws, the Project Documents or this Agreement;
6.03(a)(ii) Do any act required to have the Consent of the Investor Member prior to obtaining such Consent; or

6.03(a)(iii) Borrow from the Company or commingle Company funds with the funds of any other Person.

6.03(b) Neither the Managing Member nor the Administrative Member shall, without the Consent of the Investor Member (unless obtaining such Consent is inconsistent with the Act), have the authority to:

6.03(b)(i) Sell, exchange, pledge, transfer or otherwise dispose of, or except for Permitted Liens, grant or permit a Lien with respect to, all or any portion of the Apartment Complex (including any land owned by the Company) or all or substantially all of the assets of the Company or any of the Members’ Interests in the Company;

6.03(b)(ii) Accept the proceeds of a grant or other subsidy, or increase, decrease or modify the terms of or refinance or repay (other than in accordance with its scheduled term of amortization) any loan or Mortgage encumbering the Apartment Complex;

6.03(b)(iii) Admit an additional Member;

6.03(b)(iv) Following the completion of the construction of the Apartment Complex, construct any new capital improvement which substantially alters the Apartment Complex or its use, except (A) replacements, repairs and remodeling in the ordinary course of business or under emergency conditions, (B) construction or rehabilitation paid for from insurance proceeds or (C) any rehabilitation, repairs, remodeling or construction which is required by the Lender;

6.03(b)(v) Acquire any real property in the name of the Company in addition to the Apartment Complex (other than easements or similar rights necessary or convenient for the operation of the Apartment Complex);

6.03(b)(vi) Incur in the aggregate nonmortgage debt (other than Operating Deficit Loans) in excess of $25,000 or mortgage debt (other than the construction and permanent mortgage debt described in the Project Documents relating to the completion of the construction of the Apartment Complex);

6.03(b)(vii) Substantially change the nature of the Company’s business;

6.03(b)(viii) Voluntarily file, or consent to or acquiesce in the filing of a petition in bankruptcy with respect to the Company;

6.03(b)(ix) Modify or amend the Project Documents or this Agreement except in accordance with Section 14.03;
6.03(b)(x) Dissolve or wind up the Company;

6.03(b)(xi) Consolidate, merge or enter into any form of consolidation with or into any other entity; or permit any entity to consolidate, merge or enter into any form of consolidation with or into the Company;

6.03(b)(xii) Pledge or assign, other than to a Mortgage Lender with respect to the Apartment Complex, any of the Company’s rights with respect to all or any portion of the Capital Contribution of the Investor Member or the proceeds thereof;

6.03(b)(xiii) Guaranty the indebtedness of any Person;

6.03(b)(xiv) Fix the interest rate on any loan that has a floating interest rate; or

6.03(b)(xv) Institute or settle any claim in connection with any Letter of Credit.

6.03(c) Notwithstanding anything to the contrary set forth in Section 6.03(b), the Consent of the Investor Member shall not be required with respect to the following subsections of Section 6.03(b) at any time following the expiration of the Apartment Complex’s Compliance Period: 6.03(b)(i), (ii), (iv), (vi), (x), (xii), (xiv), and (xv).

6.03(d) The Administrative Member and the Managing Member acknowledge that their Affiliates are parties to the Affiliate Contracts. The Administrative Member and the Managing Member covenant to fully enforce the Affiliate Contracts on behalf of the Company. To avoid any conflict of interest in dealings between the Company and the other parties to the Affiliate Contracts, the Administrative Member and the Managing Member shall obtain the Consent of the Investor Member as a condition precedent to (i) amending any Affiliate Contract or (ii) taking any material action (or in determining not to act), with respect to any Affiliate Contract. The Administrative Member and the Managing Member hereby each indemnifies and holds harmless the Company and the Members against any and all late fees, delay damages, penalty interest, or other claims, damages, or liabilities brought by a party to an Affiliate Contract against the Company.

Section 6.04. Other Activities. The Administrative Member shall be required to devote only so much of its time as it reasonably deems necessary for the proper management of the Company business; additionally, the Managing Member shall at all times Materially Participate in the development and operation of the Apartment Complex. Affiliates of the Administrative Member and Affiliates of the Managing Member may engage or possess an interest, independently or with others, in other businesses or ventures (including limited partnerships and limited liability companies) of every nature and description, including, without limitation, serving as general partner of other partnerships which own, either directly or through interests in other partnerships, projects similar to or that compete with the Apartment Complex. Neither the Company nor any Member shall have any rights in or to such ventures or the income or profits
derived therefrom and nothing shall be construed to render them members in any such business ventures.

Section 6.05. Liability to Company and Investor Member and Indemnification of Investor Member and Company.

6.05(a) Except as otherwise provided in this Agreement, the Managing Member and the Administrative Member shall not be liable, responsible or accountable in damages or otherwise to the Investor Member or to the Company for any acts performed in good faith and within the scope of authority of the Managing Member or the Administrative Member, as applicable, pursuant to this Agreement, unless otherwise provided in this Agreement; provided, however, that the Managing Member and the Administrative Member shall be liable for (i) violations of laws, and for acts and/or omissions to the extent attributable to such Member’s fraud, willful misconduct or gross negligence, (ii) any breach of fiduciary duty, (iii) breach of such Member’s representations, warranties or obligations under this Agreement, and/or (iv) other matters that the Uniform Act provides are not able to be waived.

6.05(b) The Managing Member and the Administrative Member shall indemnify, defend and hold harmless the Members and the Company (and the Company shall indemnify, defend and hold harmless the Members) from and against any loss, liability, damage, cost or expense (including reasonable attorney’s fees) to the extent that (i) such Member’s acts and/or omissions constituted a violation of law, fraud, willful misconduct or gross negligence, (ii) such Member breached its fiduciary duty, (iii) such Member’s acts or omissions resulted in a violation or breach of any obligation under this Agreement; or (iv) such Member breached any of the representations or warranties set forth in Section 6.09 or the covenants set forth in Section 6.10, which breach had an adverse effect on the Company or on any Member.

6.05(c) The Administrative Member shall indemnify, defend and hold harmless the Investor Member and the Company (and the Company shall indemnify, defend and hold harmless the Investor Member) from and against any loss, liability, damage, cost or expense (including reasonable attorney’s fees) to the extent that any real property transfer tax, documentary stamp tax, intangibles tax or similar tax resulting from the Company’s acquisition of the Land, the development of the Apartment Complex, or Investor Member’s acquisition of its Interest, is not paid as required on the Closing Date.

6.05(d) The indemnification rights contained in this Section 6.05 (i) shall be the joint and several recourse obligations of the Managing Member and the Administrative Member, (ii) shall survive dissolution of the Company and withdrawal, removal, incompetence, bankruptcy or insolvency of a Managing Member or Administrative Member, (iii) shall be cumulative of, and in addition to, any and all rights, remedies and recourses to which the Investor Member shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity, and (iv) shall benefit the successors and assigns of the Investor Member.
6.05(e) All rights of the Investor Member to indemnification shall survive the dissolution of the Company, the transfer by such Investor Member of its Interest, and the insolvency, dissolution or bankruptcy of the Investor Member; provided, however, that a claim for indemnification hereunder must be made by or on behalf of the Person seeking such indemnification prior to the time any distribution in liquidation of the Company assets is made pursuant to Sections 1.05 and 4.03.

Section 6.06. Indemnification of Members.

6.06(a) The Company shall indemnify, defend and hold harmless the Administrative Member and the Managing Member from and against any loss, liability, damage, cost or expense (including reasonable attorney’s fees) arising out of or alleged to arise out of any demands, claims, suits, actions or proceedings against the Administrative Member or the Managing Member, in or as a result of or relating to its respective capacity, actions or omissions as Administrative Member or Managing Member of the Company, as applicable, or otherwise concerning the business or affairs of the Company; provided, however, that the acts or omissions of an Administrative Member or Managing Member shall not be indemnified hereunder as provided in the Act and also to the extent that the same resulted from fraud, willful misconduct, a violation of law, a breach of fiduciary duty or a breach of its obligations under this Agreement. This indemnification shall be made solely from the assets of the Company, and no Member shall be personally liable therefor.

6.06(b) The indemnification authorized by this Section 6.06 shall include, but not be limited to, payment for (i) reasonable attorneys’ fees or other expenses incurred in connection with settlement or in any finally adjudicated legal proceeding, and (ii) the removal of any Liens affecting any property of the indemnitee; provided, however, that the provision of attorneys’ fees or other expenses and costs shall not be operative if the legal action is initiated by a Investor Member of the Company. The indemnification rights contained in this Section 6.06 shall be limited to direct out-of-pocket loss or expense, and shall not include indirect loss or expense such as administrative or overhead expenses of the Administrative Member or the Managing Member or foregone opportunity costs. The Company shall not pay for any insurance covering liability of the Administrative Member or the Managing Member for actions or omissions for which indemnification is not permitted hereunder.

6.06(c) The indemnification rights contained in this Section 6.06 shall be cumulative of, and in addition to, any and all rights, remedies and recourses to which the Administrative Member or the Managing Member (in its capacity as Administrative Member or Managing Member, as applicable) shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity.

6.06(d) All rights of the Administrative Member and the Managing Member to indemnification shall survive the dissolution of the Company and the death, retirement, incompetency, insolvency, dissolution or bankruptcy of the Administrative Member or the Managing Member; provided, however, that a claim for indemnification hereunder must be made by or on behalf of the Person seeking such indemnification prior
to the time any distribution in liquidation of the Company Assets is made pursuant to Sections 1.05 and 4.03.

6.06(e) A Managing Member or Administrative Member shall not be indemnified for breach by such Member of the representations and warranties set out in Section 6.09 or the covenants set out in Section 6.10, and no funds shall be advanced or expended by the Company for defending against such a breach.

Section 6.07. Dealing With Affiliates. Except as otherwise provided in this Agreement, the Administrative Member may, for, in the name and on behalf of, the Company, enter into agreements or contracts for performance of services for the Company as an independent contractor with the Administrative Member or Affiliates thereof, and the Administrative Member may obligate the Company to pay compensation for and on account of any such services; provided, however, such compensation and services shall be on terms comparable to those obtainable from qualified third parties in an arm’s-length transaction. In no event, however, may the Company at any time have any employees.

Section 6.08. No Salary Payable to Members. Neither the Managing Member nor the Administrative Member shall be paid any salary or other compensation for serving as Managing Member or Administrative Member, as applicable. Notwithstanding the foregoing, the Managing Member and the Administrative Member shall be entitled to (a) the payment of certain fees for rendering services to the Company in capacities as other than a Managing Member or Administrative Member of the Company as provided in Article 7 and (b) reimbursement for other reasonable fees and expenses incurred on behalf of the Company, including costs of insurance, expenses incurred in connection with distributions to and communications with the Investor Member and the bookkeeping and clerical work necessary in maintaining relations with the Investor Member (including the costs and expenses incurred by the Administrative Member or its Affiliates in printing and mailing checks, statements and reports), and any other reasonable expenses which it may incur on behalf of the Company in connection with the Company business.

Section 6.09. Representations and Warranties. The Managing Member and the Administrative Member each hereby represents and warrants (and covenants, as applicable), as to itself, to the Investor Member and to the Company that the following are true and accurate as of the date hereof (or, as applicable, as of the date(s) on which the representations are restated as being true and accurate as required in Sections 3.03 or 9.02):

6.09(a) The Member has been duly organized, is validly existing and in good standing under the laws of the State (or, if different, its state of organization) and has all requisite power to be a Member and to perform its duties and obligations as contemplated by this Agreement and the Project Documents. The execution and delivery by such Member of this Agreement and the transactions contemplated hereby have been duly authorized by all necessary corporate or other action, and the consummation of any such transactions contemplated hereby with or on behalf of the Company does not constitute a breach or violation of, or a default under, the statutes, regulations, bylaws or other governing instruments of such Member or any agreement by which it or any of its
property is bound, nor a violation of any law, administrative regulation or court decree, any of which would have a material adverse effect on the Company.

6.09(b) The Company is a limited liability company, validly existing and in good standing under the laws of the State (and, if different, in the state of its organization), is authorized to transact business in the State and the State of Texas and has the requisite power to carry on its business, to enter into and perform under the Project Documents, and to carry out the transactions contemplated hereunder, and the Company has complied with all filing requirements necessary to preserve the limited liability of the Investor Member and the Special Member.

6.09(c) No Events of Bankruptcy (or events which, in the course of time, would result in an Event of Bankruptcy) has occurred with respect to such Member or any Guarantor (if such Guarantor is an Affiliate of such Member) (or, in the case of a Member or Guarantor that is a partnership or limited liability company, with respect to the general partner(s), managing member or manager(s) of such Member or Guarantor).

6.09(d) The Managing Member, the Administrative Member and the Developer are each accrual method taxpayers for federal income tax purposes. The books of the Company shall be kept on the accrual basis and the fiscal and tax years of the Company shall be the calendar year.

6.09(e) Except as disclosed in writing to the Investor Member, no litigation, action, investigation, or proceeding is pending or has occurred or, to the Best Knowledge of such Member, is threatened, against such Member, the Company or any Guarantor (or, in the case of a Member or Guarantor that is a partnership or limited liability company, with respect to the general partner(s), managing member or manager(s) of such Member or Guarantor). Furthermore, there is no indictment or threatened indictment of such Member or any Guarantor under any criminal statute, or commencement or threatened commencement of criminal or civil proceedings against such Member or any Guarantor (or, in the case of a Member or Guarantor that is a partnership or limited liability company, with respect to the general partner(s), managing member or manager(s) of such Member of Guarantor).

6.09(f) The Project Documents are in full force and effect (except to the extent fully performed in accordance with their respective terms) and no default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred thereunder.

6.09(g) The application for Credits filed by the Company with the Agency remains true and correct in all material respects and in conformance with the requirements of the Agency’s qualified allocation plan. The Company has received from the Agency a 2014 carryover allocation of Credit in the annual amount of at least $1,056,000, and the Projected Annual Credit Amount is expected as of the date of this Agreement to be allocated by the Company to the Investor Member. Furthermore, the Company’s basis in the Apartment Complex as of July 1, 2015 (the date set by the Agency for meeting the requirements of Code Section 42(h)(1)(E)) exceeded 10% of the
reasonably expected basis in the Apartment Complex as of **December 31, 2016** and the Administrative Member will cause the Apartment Complex to be placed in service, with all units in each building completed and ready for occupancy in accordance with the Company’s Carryover Allocation Agreement with the Agency, not later than **December 31, 2016**. The Accountants have prepared the certification with respect to satisfaction of the 10% test set forth in the preceding sentence and provided such certification (and documentation supporting the costs stated to have been incurred) to the Investor Member for its review and comment at least 10 calendar days before such certification was provided to the Agency. The Administrative Member shall, within 10 days of its receipt, provide to the Investor Member a copy of (i) the Carryover Allocation Agreement, the Extended Use Agreement and any Forms 8609 issued to the Company and (ii) any temporary or permanent certificates or permits of occupancy. In addition, the Apartment Complex is located in a “qualified census tract” or “difficult development area” as defined in Code Section 42(d)(5)(C), or is otherwise entitled to a 30% basis increase pursuant to the Agency’s rules or regulations.

6.09(h) Such Member has disclosed all material actions with respect to the Company taken by such Member prior to the date hereof.

6.09(i) A copy of all material documents relating to the Company and the Apartment Complex have been delivered to the Investor Member, including, without limitation, the timely delivery of all reports required under **Article 12**.

6.09(j) The Company has good and marketable title to the Apartment Complex free and clear of all material Liens, except for (A) those easements, reservations, restrictions or other matters that (i) would not materially adversely affect the Apartment Complex or its contemplated use or (ii) have been bonded against in such a manner as to preclude the holder of the Lien or claimant from having any recourse to the Company or the Company’s property, (B) Liens for taxes and assessments which are not yet due and payable, and (C) Permitted Liens.

6.09(k) There are no outstanding loans or advances (excluding, for this purpose, any loans pursuant to **Section 6.12** and development advances with respect to the Apartment Complex) from such Member or its Affiliates to the Company, and the Company has no unsatisfied obligation to make any payments of any kind to any Member or its Affiliates, except as set forth in **Article 7** hereof.

6.09(l) Such Member is not, to its Best Knowledge, in default in the observance or performance of any provision of this Agreement to be observed or performed by such Member.

6.09(m) To its Best Knowledge, no event has occurred which has caused, and such Member has not acted in any manner which will cause (i) the Company to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Company to fail to qualify as a limited liability company under the Uniform Act, or (iii) any Investor Member to be liable for Company obligations in excess of its agreed-to Capital Contributions.
6.09(n) The Land upon which the Apartment Complex is located is zoned in a manner that provides for operation of the Apartment Complex as a permitted use, and neither the Company nor such Member has received any notice of any violation with respect to the Apartment Complex of any law, rule, regulation, order or judgment of any governmental authority having jurisdiction over the Apartment Complex which would have a material adverse effect on the Apartment Complex or the use, operation or occupancy thereof.

6.09(o) The Apartment Complex will be constructed in a timely manner in conformity with the Project Documents. There is no violation by the Company or such Member of any zoning, environmental or similar regulation applicable to the Apartment Complex which could have a material adverse effect thereon, and the Company has complied with all applicable municipal and other laws, ordinances and regulations relating to such construction and use of the Apartment Complex and has obtained (or will obtain when necessary) all permits and licenses necessary for the construction, use, occupancy and operation of the Apartment Complex. All appropriate public roadways, public utilities, including sanitary and storm sewers, water, and electricity are or will be available and operating properly for each unit in the Apartment Complex at the time of the first occupancy of such unit.

6.09(p) There is and shall be no personal liability of the Investor Member for the repayment of the principal of or payment of interest on the Mortgage Loans during their respective terms.

6.09(q) Except as previously disclosed by such Member in writing to the Investor Member, neither the Company nor the Apartment Complex, to such Member’s Best Knowledge after reviewing the Environmental Reports, is in violation of Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Response, Compensation and Liability Act and Occupational Safety and Health Act or any other federal, state or local law relating to hazardous substances. Neither such Member nor the Company has received any notice from any governmental agency that the Company, Apartment Complex or land upon which it is located is in violation of any such law.

6.09(r) All payments and expenses required to be made or incurred to the date of this representation in order to complete construction of the Apartment Complex in conformity with the Project Documents, to fund any reserves hereunder or under any other Project Document and/or to satisfy all requirements under the Project Documents have been paid or incurred. In addition, no failure or refusal of a Lender or other party to make any advance under the Company’s loan documents has occurred and is continuing.

6.09(s) The Apartment Complex will contain eight (8) market rate units. The Apartment Complex will not contain any commercial areas.

6.09(t) The Company owns no property other than the Apartment Complex.
6.09(u) The Administrative Member owns no property other than its Interest in the Company. The Managing Member owns no property other than its Interest in the Company and its interest in other limited liability companies or limited partnerships.

6.09(v) None of the proceeds of the Mortgage Loans has been provided through the issuance of tax-exempt bonds.

6.09(w) All federal, state, or other municipal wetlands permits required for the development of the Apartment Complex have been issued.

6.09(x) The Investor Member will not be required to file a HUD Form 2530 or its equivalent for corporate investors, in connection with the acquisition of its Interest.

6.09(y) The Investor Member will not be required to pay a transfer tax in connection with its acquisition of its Interest. The Company has paid all transfer taxes due in connection with the acquisition of the Land, or will do so on the Closing Date.

6.09(z) The Construction Loan has closed.

6.09(aa) Each Mortgage Loan has a fixed maturity date that is prior to the anticipated economic life of the Apartment Complex and the Company will be able to repay each Mortgage Loan as it matures.

6.09(bb) O-SDA Industries, LLC, a Texas limited liability company, the sole member of the Managing Member (the “MM Sole Member”), is a “Historically Underutilized Business” as certified by the Texas Comptroller of Public Accounts, and complies, through its ownership interest, profits and developer fee interest, with all requirements for a Historically Underutilized Business, and shall Materially Participate in the development and operation of the Apartment Complex throughout the Compliance Period. The MM Sole Member has, or has caused the Company to, submit a certification from the Texas Comptroller of Public Accounts certifying that the MM Sole Member is a “Historically Underutilized Business” in accordance with the Historically Underutilized Business Guidelines and the qualified allocation plan applicable to the Credits for the Apartment Complex.

Section 6.10. Covenants Relating to the Apartment Complex and the Company. The Administrative Member shall have the following duties and obligations with respect to the Apartment Complex and the Company, and covenants that:

6.10(a) The Administrative Member shall cause the completion of the construction of the Apartment Complex substantially in accordance with the Plans approved by the Lender and the Investor Member and all requirements necessary to obtain the required certificates of occupancy for dwelling units, or cause the same to be completed, in a good and workmanlike manner, free and clear of all mechanics’, materialmen’s or similar Liens, and shall equip the Apartment Complex or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles.
of personal property, including refrigerators and ranges, and shall cause all necessary certificates of occupancy for all apartment units in the Apartment Complex to be obtained, all in accordance with the Project Documents. If the available debt, equity, rental income (provided that rental income may only be used for this purpose if and to the extent of Net Operating Income) or other proceeds are insufficient to (i) acquire and complete the construction of the Apartment Complex and satisfy all other Construction Completion obligations as provided in this Section 6.10(a), and (ii) provide for all other payments and expenses required to be made or incurred, including for this purpose the payment in full of (A) all change orders and Budget increases (regardless of amounts and regardless of whether they have been approved by the Lenders or the Investor Member), to the extent that available Company funds are insufficient to pay for such change orders or Budget increases and (B) the funding of any reserves required hereunder or under any other Project Document to be funded on or prior to the funding of the Final Installment, the Administrative Member shall be responsible for and obligated to pay such deficiency at the time such deficiency is determined, and any such payments shall be treated as a Capital Contribution to the Company. The Members shall determine such deficiency as soon after Construction Completion as reasonably possible. Notwithstanding the prior sentence, if the Administrative Member becomes obligated to make such a Capital Contribution, the Administrative Member first shall be entitled to use any due and currently payable (but unfunded) equity proceeds that were originally anticipated in the Budget to exclusively provide for the payment of the Developer Fee to pay such deficiency (which shall result in a like amount of payment deferral with respect to the Developer Fee) and second, shall be entitled to reimbursement for any such Capital Contribution made by the Administrative Member hereunder of up to (i) $300,000 from the proceeds of the 95% Construction Completion Installment, and (ii) $595,972 from the proceeds of the Final Installment otherwise intended to pay Developer Fee, if and when due and payable pursuant to this Agreement (which shall also result in a like amount of payment deferral with respect to the Developer Fee). The reimbursements referred to in the prior sentence shall be subject to the conditions precedent that the Investor Member shall have received evidence satisfactory to it that (i) the resulting increase in the Developer Loan will not jeopardize the Company’s ability to have a “reasonable expectation of payment” during the Compliance Period of that portion of the Developer Fee necessary for the Company to have sufficient eligible basis to allocate the Projected Aggregate Credit Amount to the Investor Member, (ii) the Administrative Member has made any payment to achieve any loan reduction necessary for Permanent Loan Closing, (iii) the Operating Reserve shall have been fully funded, and (iv) all Adjuster Distributions due to the Investor Member have been made, and such sums are not otherwise necessary to pay Costs of Improvements. If Construction Completion occurs without full utilization of the then available debt and equity proceeds (the parties hereto agree that such debt and equity proceeds shall be used to finance the construction of the Apartment Complex before any use of Net Operating Income for such purpose), any construction cost savings in the amount of such differential (or, if less, the amount of the budgeted construction contingency) shall be applied to the reduction of the outstanding balances of the First Mortgage Loan to the extent required by the lender of the First Mortgage Loan, or held in reserve and used, with the Consent of all Lenders and the Investor Member, for Apartment Complex amenities or other depreciable costs, provided,
however, if the Eligible Basis of the Apartment Complex equals an amount sufficient to generate the amount of Credits specified in Section 6.09(g), any construction cost savings may be used to pay the Developer Fee. Remaining proceeds made available because of construction cost savings may be used to pay down the principal balance of the First Mortgage Loan to the extent permitted by the lender of the First Mortgage Loan without penalty, or shall be deposited into the Replacement Reserve.

Prior to the date required by the First Mortgage Loan, the Company shall satisfy on a timely basis all conditions and requirements for Permanent Loan Closing. The Administrative Member shall contribute to the Company such funds as are necessary to fully repay the Construction Loan, re-size the First Mortgage Loan if the amount of the First Mortgage Loan is not determined until Permanent Loan Closing, and achieve Permanent Loan Closing. In addition, at no time after the Ninety Five Percent Construction Completion Installment shall the outstanding balance of the Construction Loan exceed $2,700,000.

6.10(b) The Apartment Complex will be developed and operated in a manner that satisfies and shall continue to satisfy all requirements and restrictions, including tenant income and rent restrictions, (i) applicable to projects generating Credits, (ii) imposed by any Project Document, and (iii) necessary to comply with, or generate the benefits, amenities and services described in, the Company’s tax credit application. The Administrative Member shall cause the Apartment Complex to be placed in service within the meaning of the Code on or before December 31, 2016. All requirements shall be met which are necessary to obtain or achieve (i) compliance with the 40-60 “set-aside test” as defined in Section 42(g)(1)(B) of the Code, the “rent restriction” test as defined in Section 42(g)(2) of the Code, special set aside requirements pertaining to handicapped, impaired, homeless and other special tenants, if any, and any other requirements necessary for the Apartment Complex to initially qualify, and to continue to qualify, for Credits as to 68 residential rental units, (such requirement shall not include any manager units and shall be met from and after the end of the first year of the Credit Period) and (ii) issuance of all necessary certificates of occupancy, including all governmental approvals required to permit occupancy of all of the apartment units in the Apartment Complex.

The Company shall execute and record an Extended Use Agreement that is binding on all successors of the Company and otherwise qualifies as a valid “extended low-income housing commitment” under Code Section 42(h)(6), and shall maintain the Extended Use Agreement in full force and effect for each year of the Compliance Period. No portion of the financing or operation of the Apartment Complex will be funded with grants or federal subsidies (as defined in Code Section 42(i)(2)) and the Eligible Basis of the Apartment Complex shall not include any costs financed with the proceeds of a federally funded grant (within the meaning of Code Section 42(d)(5)(A));

6.10(c) While conducting the business of the Company, it shall not act in any manner which it knows or should have known after due inquiry would (i) cause the termination of the Company for federal income tax purposes without the Consent of the Investor Member, (ii) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation, (iii) cause the Company to fail to qualify as a limited liability company under the Uniform Act or (iv) cause a Investor Member to be liable for Company obligations in excess of its unpaid Capital Contributions plus any
distributions required to be returned pursuant to the Uniform Act, provided that such
Member shall not be in breach of this Section 6.10(c)(iv) if such liability is caused by an
action or inaction of any Investor Member. The Company will not (A) own or acquire
any asset or property other than the Apartment Complex and incidental personal property
necessary for the ownership or operation of the Apartment Complex or (B) engage in any
business other than that related to acquiring, owning, constructing and operating the
Apartment Complex;

6.10(d) The Administrative Member shall own no other property other
than its Interest and shall engage in no business activity other than serving as
Administrative Member of the Company. It shall exercise good faith in all activities
relating to the conduct of the business of the Company, including the acquisition,
operation and maintenance of the Apartment Complex, and shall take no action in its
capacity as Administrative Member with respect to the business and property of the
Company which is not reasonably related to the achievement of the purpose of the
Company;

6.10(e) The Administrative Member is exclusively responsible for
negotiating and performing all services incident to (i) the Company’s acquisition of the
Land underlying the Apartment Complex, (ii) the arranging of appropriate zoning and
equity and permanent financing with respect to the Apartment Complex (including, but
not limited to, reviewing the State of Texas’ qualified allocation plan, applying for
Credits and obtaining such marketing and feasibility studies and appraisals as it deems
reasonably necessary) and (iii) the organization and formation of the Company. In
addition, the Administrative Member is responsible for the management and operation of
the Company, including the oversight of the leasing and operational stages of the
Apartment Complex, and it shall promptly take all action that may be necessary or
appropriate for the proper development, maintenance and operation of the Apartment
Complex in accordance with the provisions of this Agreement and the Project
Documents. In this regard, among other things, it shall have the obligations to keep the
Apartment Complex in good working order and condition, reasonable wear and tear
excepted, to not commit waste with respect to the Apartment Complex and to promptly
repair or replace any damage to the Apartment Complex;

6.10(f) Such Member covenants that it shall cause the Company to
depreciate all of its applicable property under the Modified Accelerated Cost Recovery
System (MACRS) set forth in Code Section 168 and that no election will be made under
Code Section 168(g)(7) to use the Alternative Depreciation System (ADS) without the
Consent of the Investor Member. In addition, no lease of any portion of the Apartment
Complex will be entered into if such lease would cause any portion of the Apartment
Complex to be treated as tax-exempt use property under the Code;

6.10(g) The Apartment Complex and all of (i) the fixtures, maintenance
supplies, tools, equipment and the like now and to be owned by the Company or to be
appurtenant to, or to be used in the operation of, the Apartment Complex, as well as (ii)
the rents, revenues and profits earned from the operation of the Apartment Complex, will
be free and clear of all security interests and encumbrances except for the Mortgages and
any additional security agreements (including financing statements) executed in connection with the Mortgage Loans;

6.10(h) The Company will make on a timely basis all tax return and other filings necessary to qualify for the Credits. In addition, it will execute on behalf of the Company all documents necessary to elect, pursuant to Sections 732, 734, 743 and 754 of the Code, to adjust the basis of the Company’s property upon the request of the Investor Member. Additionally, Investor Member may compel the Company to make an election to defer commencement of the Credit Period to 2017 pursuant to Code Section 42(f)(1) in order to avoid the application of Code Section 42(f)(3). In connection with its preparation of all tax returns and forms (including initial Forms 8609 for each Building) from the date hereof, the Company shall receive (and provide to the Investor Member) (i) from the Accountants, the Cost Certification, in form and substance acceptable to the Investor Member, to be used by the Company in applying to Agency for the issuance of (A) a carryover allocation of Credit, including satisfaction of the “10% cost incurrence” requirement of Code Section 42(h)(1)(E) and (B) Form 8609 with respect to each Building and (ii) from the Accountants, a written agreed-upon procedure report addressing, based upon a review of the applicable tenant certifications and documents with respect to all units performed by such entity, the Qualified Basis (as such term is defined in Section 42(c)(1) of the Code) of each Building. The Administrative Member covenants that it will provide or cause to be provided to such entity (with a contemporaneous copy to the Investor Member) all information requested by such entity to determine the Qualified Basis of each Building, including, but not limited to, a copy of all tenant files, leases, certifications and income verification documentation. The Administrative Member shall provide the initial Forms 8609 to the Investor Member at least 14 calendar days (but in all events within 10 days of receipt thereof by the Administrative Member) prior to the date such Forms are required to be filed with the Service and the Consent of the Investor Member shall be received before any election is made to defer commencement of the Credit Period pursuant to Code Section 42(f)(1);

6.10(i) The Administrative Member will hire the Accountants and provide them with such information in its possession and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns (and in all events such returns shall be filed with respect to the year of the Investor Member’s admission to the Company and each year thereafter). The parties hereto covenant and agree that the Accountants identified in Section 2.01 shall be the accountants for the Company for the purposes of preparing such returns, the audit of the Company and the matters set forth in Section 6.10(h) from the date hereof and through at least the first three tax years commencing with the year in which the first Building in the Apartment Complex is placed in service by the Company or, if later, the first year of the Credit Period. Thereafter, the Administrative Member may change Accountants with the Consent of the Investor. The Administrative Member and the Company hereby agree, authorize and direct the Accountants to contemporaneously provide to the Investor Member copies of all tax returns, audits and any other information described in this Article 6 or Section 12.06 that the Accountants deliver to the Administrative Member or to the Company. The Administrative Member agrees and acknowledges that all Company Tax Returns shall be provided to the Investor Member for its review and approval at least
ten (10) Business Days prior to the date such tax returns are required to be filed (and the approval of the Investor Member to such returns shall be deemed received if no objection is received by the Administrative Member prior to the due date for filing; provided, however, approval of tax returns by the Investor Member shall not be treated or construed as a waiver of any of its rights or remedies under any provisions of this Agreement);

6.10(j) It will take all actions necessary to comply with the Project Documents and keep them in full force and effect and it will not intentionally take any action or intentionally fail to take an action which would result in (a) acceleration of payments owed under any Company loan or (b) an uncured default under any Project Document. The Administrative Member shall provide to the Investor Member fully executed copies of all construction and permanent loan documents (including, without limitation, the applicable construction or permanent loan note, loan agreement, mortgage, deed of trust and all other security agreements, assignments, financing statements, guarantees, agreements, certificates and instruments executed in connection with such loan) within 30 days of the applicable loan closing;

6.10(k) The Administrative Member shall furnish to the Investor Member within five Business Days of receipt thereof, a copy of any notice of default or other material notice under the Mortgage or any of the Project Documents (including any loan commitment) given to the Company or to the Administrative Member by the Lender. It shall also furnish to the Investor Member within five Business Days of execution a copy of all amendments or changes to the articles, bylaws, certificate, partnership agreement, operating agreement or other organizational documents of the Managing Member, the Administrative Member, the Company or any Guarantor (without implying the consent of Investor Member to any such amendment or change to any such organizational document). In addition, it shall promptly respond to any reasonable requests or inquiries made in writing by the Investor Member regarding matters affecting the Apartment Complex or the Company;

6.10(l) The Administrative Member will use all reasonable efforts to cause the Apartment Complex to be: (i) developed in compliance with all applicable laws including, without limitation, laws pertaining to (A) wetlands and (B) endangered, threatened, or rare species; and (ii) kept in compliance with all applicable zoning regulations, ordinances, and subdivision laws, rules, and regulations;

6.10(m) The Administrative Member shall use all reasonable efforts to maintain the Apartment Complex and the Land so that there is no discharge, release, spillage, uncontrolled loss or seepage of any oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (as such terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980) which causes a genuine risk to the health or safety of the residents or employees of the Apartment Complex. The Administrative Member shall also use all reasonable efforts to maintain the Apartment Complex and the land upon which it is located so as not to violate the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Response, Compensation and Liability Act and
Occupational Safety and Health Act and other federal, state and local laws governing hazardous substances. In the event that the Investor Member becomes personally liable for Company violations with respect to the Apartment Complex under any federal, state or local hazardous substance law, the Administrative Member shall indemnify and hold harmless the Investor Member (except to the extent attributable to direct actions of the Investor Member) for any and all costs, expenses (including reasonable attorneys’ fees), damages, or liabilities to the extent that the Investor Member is required personally to discharge such costs, expenses, damages, or liabilities in whole or in part from any source other than Company resources. The foregoing indemnification (i) shall be a recourse obligation of the Administrative Member, (ii) shall survive the dissolution of the Company with respect to violations which occurred prior to the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the Administrative Member against whom the indemnification provided in this paragraph is sought to be enforced, (iii) shall continue to benefit the Investor Member subsequent to its transfer of its Interest, and (iv) shall benefit the Investor Member’s successors and assigns. In addition, the Administrative Member shall provide the Investor Member with prompt written notice (i) upon any Administrative Member or Affiliate thereof obtaining knowledge of any potential or known release, or threat of release, of any hazardous material at or from the Apartment Complex or any other property owned, occupied or operated by any Administrative Member, any Affiliate of a Managing Member or any Person for whose conduct any Administrative Member or Affiliate of a Administrative Member is or was responsible and whose liability may result in a Lien on the Apartment Complex, (ii) upon any Administrative Member or Affiliate thereof receiving any notice to such effect from any federal, state, or other governmental authority, or (iii) upon any Administrative Member or Affiliate thereof obtaining knowledge of any occurrence of any expense or loss by any such governmental authority in connection with the assessment, containment, or removal of any hazardous material for which expense or loss a Lien may be imposed on the Apartment Complex;

6.10(n) The Administrative Member shall provide the Investor Member with prompt written notice (and with copies of appropriate correspondence) within five calendar days in the event that the Company receives any writing from the Service or the Agency that the Apartment Complex or any portion thereof is not in compliance with the requirements of Section 42 or is subject to a Credit recapture event or any other event that could result in an adjustment to the Credits or losses allocable to the Investor Member. In addition, it shall promptly provide to the Investor Member a copy of the annual certification required to be submitted by the Company to the Agency pursuant to Treas. Reg. § 1.42-5, including a copy of all required reports with respect to building code violations and the certification with respect to compliance with the Fair Housing Act;

6.10(o) If any of the low income residential rental units in the Apartment Complex fail at any time during the Compliance Period to constitute eligible low-income units or if the Apartment Complex is not in compliance with the requirements contained in Section 42 of the Code, the Administrative Member agrees to notify the Investor Member within five calendar days of its knowledge of such event or occurrence and the Administrative Member shall promptly commence and diligently prosecute to completion all actions reasonably necessary to bring the dwelling units or the Apartment Complex, as
the case may be, into compliance with the requirements of Section 42, such that the Apartment Complex will qualify and continue to qualify for Credits during the Compliance Period as projected. In addition, if at any time after attainment of Permanent Loan Closing, less than 90% of the low-income units in the Apartment Complex are physically occupied by Qualified Tenants who are current in the payment of rent under their leases, then the Administrative Member shall within five calendar days of such event provide written notification of same to the Investor Member;

6.10(p) The Administrative Member shall establish and maintain reasonable reserves to provide for working capital needs, improvements, replacements and any other contingencies of the Company;

6.10(p)(i) At a minimum, the Administrative Member shall cause the Company to establish and maintain a Replacement Reserve with Wells Fargo Bank, National Association (or with the First Mortgage Lender if required under its loan documents), to be funded monthly throughout the term of this Agreement, commencing the earlier of (A) 24 months after the Closing Date; or (B) Permanent Loan Closing at an annualized rate of $300 per dwelling unit per year (such amounts to be increased three percent (3%) each twelve month period), or such higher amount as is required by any Lender. Funds in the Replacement Reserve shall not be used for any purpose other than capital improvements. All amounts remaining in the Replacement Reserve at the end of the last expiring Compliance Period with respect to any Building shall either be used for Company expenses or capital expenditures or distributed in accordance with Section 4.02(a).

6.10(p)(ii) In addition, the Administrative Member shall cause the Company to establish, from a portion of the proceeds of the Final Installment, and thereafter maintain, a segregated operating reserve account with Wells Fargo Bank, National Association (or with the First Mortgage Lender if required under its loan documents), in an amount not less than $202,000 (the “Operating Reserve”). The Operating Reserve shall require the signatures of both the Administrative Member and the Investor Member before withdrawals therefrom can be made. The Operating Reserve may only be used to pay any operating expenses, debt service obligations or other expenses of the Company approved by the Members and accrued or paid subsequent to the expiration of Period 1 (as such term is defined in Section 6.12). The treatment and disbursement of sums remaining in the Operating Reserve upon the expiration of the last Compliance Period will be governed by the terms of the First Mortgage Loan documents; provided, however, that at such time as the First Mortgage Loan documents do not restrict the use of the funds in the Operating Reserve after the expiration of the last Compliance Period with respect to any Building, then such funds shall be distributed to the Members in accordance with Section 4.02(a).

6.10(q) The Administrative Member shall cause the Company to maintain in full force and effect with reputable licensed insurers (each insurer must have rating from A. M. Best Co. of A-VI or better), such insurance policies, including fire and extended coverage insurance, as may be required by any Lender; provided that in all
events, the Company shall obtain and maintain in favor of the Company, the Investor Member (as a “Loss Payee” with respect to items (i) and (iii) below and as an “Additional Insured” with respect to item (ii) below) and the Lender as named insureds as their interests appear: (i) fire and extended coverage insurance in an amount equal to at least the full replacement cost of the Apartment Complex, and with not more than $25,000 deductible from the loss payable for any casualty, (except that the deductible for wind damage shall not be more than 5% of the full replacement cost of the Apartment Complex); (ii) single limit comprehensive general liability insurance (including coverage for elevators, if any, in the Apartment Complex) on an “occurrence basis” against claims for personal injury in an amount of at least $1,000,000 coverage for any single occurrence and $2,000,000 aggregate coverage for any single year (inclusive of umbrella policies); (iii) business interruption insurance and/or rental loss insurance commencing on or before the date of Construction Completion and adjusted annually thereafter in an amount equal to the greater of (a) the maximum amount of rental income that could be generated over 12 months assuming each unit in the Apartment Complex was rented at the then maximum permitted rent under Code Section 42 or (b) rental income for the prior 12 months or (c) the amount of such insurance required by a Lender; and (iv) workers’ compensation insurance in an amount not less than the statutory minimum. Flood insurance will also be required if the Apartment Complex is located in a Special Flood Hazard Area (Zones A or V) as designated by the Federal Emergency Management Agency (“FEMA”) in an amount equal to the lesser of: (a) the minimum amount required under the terms of coverage to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Company’s outstanding mortgage indebtedness plus the total amount of the Investor Member’s Capital Contribution obligation if replacement cost coverage is not available for the type of building insured); or (b) the maximum insurance available under the appropriate National Flood Insurance Administration program. Unless a higher minimum amount is required by FEMA or other law, the maximum deductible clause for such flood insurance should be no more than $3,000 per Building. Title to the Apartment Complex shall be insured at all times by a reputable title insurance company in an amount equal to at least the sum of the then outstanding debt secured by the Apartment Complex plus the amount of the Investor Members’ Capital Contribution commitment reflected on Exhibit H hereto. All required insurance will be and shall be in effect and will be kept in full force and effect during the Company’s ownership of the Apartment Complex and each policy will include a provision requiring the insurance company to notify the Investor Member in writing 30 days (10 days for cancellation due to nonpayment of premium) prior to the cancellation of any such policy. The Administrative Member shall deliver to the Investor Member evidence that all insurance required hereunder has been obtained, continued or replaced with a policy meeting the conditions of this Agreement on or before 15 calendar days prior to any expiration or cancellation of a policy. The Administrative Member shall cause the Company to comply with the insurance provisions of all Project Documents. Subject to the rights of Mortgage Lenders, the proceeds of property insurance required by this Agreement shall be used to restore or rebuild the Apartment Complex, unless the Members mutually agree otherwise;

6.10(r) The Investor Member may, at its sole option and sole cost, require that the Company obtain types and amounts of insurance in addition to those described in
Section 6.10(q). In such event, the Administrative Member shall cooperate with the Investor Member in coordinating the various policies such that each insurer is aware of the other policies and shall ensure that the Company’s policies obtained pursuant to Section 6.10(q) (i) constitute primary coverage, and (ii) do not contain provisions that reduce the obligations under such policies due to the existence of the additional policies required by the Investor Member under this Section 6.10(r);

6.10(s) The Administrative Member shall cause the Company to display such financing signs at the Apartment Complex as reasonably requested by the Investor Member;

6.10(t) Except as otherwise required by applicable governmental agencies or regulations, neither the Administrative Member nor the Managing Member shall discuss or otherwise disclose any of the terms or conditions of the Investor Member’s investment in the Company without the Consent of the Investor Member; provided, however, any of the Members (and each employee, representative, or other agent of any of the Members) may, without limitation of any kind, disclose to any and all Persons the tax treatment and tax structure of the Investor Member’s investment in the Company and all materials of any kind (including, opinions or other tax analyses) that are provided to any of the Members relating to such tax treatment and tax structure.

6.10(u) The Administrative Member shall provide to the Investor Member at least thirty (30) days’ advance written notice of any ribbon cutting, groundbreaking, project opening or similar ceremony relating to the Apartment Complex and the Investor Member shall be entitled to attend any such ceremony and be publicly recognized;

6.10(v) The Managing Member and the Administrative Member acknowledge that the Investor Member is required, pursuant to Federal law and the applicable sections of the “Patriot Act,” to obtain, verify, and record certain financial and personal information in the fight to stop the funding of terrorism and money laundering activities in the United States. With respect to the Investor Member’s compliance with such laws, the Managing Member and the Administrative Member agree to assist, cooperate and, to the extent reasonably requested to do so, supply such information to the Investor Member;

6.10(w) The Administrative Member shall cause itself, the Managing Member and the Company to remain in good standing in accordance with the requirements of the State and the State of Texas, to the extent required under applicable laws of the State and the State of Texas, and shall annually provide to the Investor Member a current certificate of good standing for each entity at the same time it submits the Company Tax Returns pursuant to Section 6.10(i).

6.10(x) The Administrative Member shall provide Tenant Services to tenants of the Apartment Complex of the type, number and duration necessary for compliance with the requirements of the application for Tax Credits provided to the Agency.
6.10(y) The Administrative Member shall cause the Company to make the election pursuant to Section 42(f)(1)(B) of the Code prior to the end of the first year of the Credit Period with respect to a Building unless the Administrative Member provides satisfactory evidence to the Investor Member that 100% of the low-income set-aside units in such Building were leased and occupied by Qualified Tenants prior to the end of the first year of the Credit Period.

6.10(z) The Administrative Member represents, warrants and covenants that the Apartment Complex will at all times have the right of direct pedestrian and vehicular ingress to and egress from the Apartment Complex to an open and publicly-dedicated street.

Section 6.11. Construction of the Apartment Complex. Prior to Construction Completion, the Administrative Member shall have the following duties and obligations with respect to the Apartment Complex:

6.11(a) The Administrative Member shall provide, at the Company’s expense, all manner of materials, labor, implements and cartage of every description for the proper and complete construction of the Apartment Complex. In addition, the Company shall take all necessary steps to assure that construction and installation of the Apartment Complex improvements shall begin within 30 days following the date of receipt of a notice to proceed, and, in any event, not later than 30 days following the date of this Agreement, shall proceed continuously and diligently, and shall be completed in a timely manner in accordance with the Plans and the applicable construction documents. In addition, the Administrative Member shall provide the Investor Member with the construction development schedule for the Apartment Complex, and any amendments thereto, prior to the commencement of construction of the Apartment Complex.

6.11(b) The Administrative Member agrees that it will correct any work performed and replace any materials that do not comply with the Plans, and correct any latent defects, regardless of when discovered. In the event of any dispute between the Company and Lender or Investor Member with respect to the interpretation and meaning of the Plans, the same shall be determined by an independent architect selected by Lender and Investor Member.

6.11(c) All labor and materials contracted for and in connection with construction of the Apartment Complex shall be used and employed solely on the Apartment Complex and in said construction, and only in accordance with the Plans. The moneys disbursed to or for the account of the Company under this Agreement shall constitute a trust fund in the hands of the Company or other payee and shall be used solely by such payee for the payment of the Cost of Improvements and for no other purpose unless another use is specifically provided for in this Agreement or Consented to by Investor Member and Lender.

6.11(d) The Administrative Member shall on behalf of the Company promptly pay and discharge or cause to be paid and discharged, as and when due, any and all income taxes (federal or otherwise) lawfully assessed and imposed upon the
Company, and any and all lawful taxes, rates, levies and assessments whatsoever upon the Company’s properties and every part thereof, or upon the income or profits therefrom and all claims for labor, materials or supplies which, if unpaid, might be or become a Lien or charge upon any of the Company’s property; provided, however, that nothing herein contained shall be construed as prohibiting the Company from diligently contesting in good faith by appropriate proceedings the validity of any such taxes, rates, levies or assessments, provided the Company has established adequate reserves therefor in conformity with generally accepted accounting principles consistently applied on the books of the Company.

6.11(e) The Administrative Member shall cause the construction and equipping of the Apartment Complex (including, without limitation, all tenant improvement work) to be performed in a timely and good and workmanlike manner in accordance with the construction schedule approved by Investor Member prior to the Admission Date (the “Construction Schedule”), and to be prosecuted with diligence and continuity and, in all respects, in accordance with the approved Plans and otherwise in accordance with this Agreement, the Project Documents (as applicable) and in compliance with all Laws.

6.11(f) Subject to the requirements of any Mortgage Loan, the Administrative Member agrees to use all commercially reasonable means to cause Lender to apply all insurance proceeds resulting from casualty or damage of the Apartment Complex and all payments or awards resulting from a taking, for any public or quasi-public purpose, by any lawful power or authority by exercise of the power of condemnation or eminent domain, promptly toward the restoration, replacement or rebuilding of the Apartment Complex, or any part thereof, as nearly as possible to its value, condition and operational character immediately prior to any such damage, destruction or taking, free and clear from any and all Liens and claims other than Permitted Liens.

6.11(g) The Administrative Member shall not consent to the sale, assignment or transfer of any loan of any Lender, or any portion thereof, without first obtaining the Consent of the Investor Member.

6.11(h) The Administrative Member shall at all times during the construction of the Apartment Complex maintain or cause to be maintained (i) “builder’s all-risk” coverage insurance, which, upon Construction Completion, the Company shall convert to “all risk” coverage insurance against loss or damage as may now or hereafter be covered by the standard “all-risk” form of insurance policy, with claims to be settled on a replacement-cost basis. In addition, the Administrative Member shall promptly deliver to the Investor Member original certificates of insurance satisfactory to the Investor Member evidencing such insurance, together with the amount of the annual premium therefor, the name and address of the insurers and the name and telephone number of the individual insurance representative. Any changes in such insurance or insurers must be approved by the Investor Member and evidenced by replacement certificates of insurance satisfactory to the Investor Member. The Administrative Member shall promptly deliver to Investor Member copies of all insurance policies and
other insurance information, as required under the Project Documents or as required in this Agreement.

6.11(i) The Company shall not accept or permit materials to be stored on the real property upon which the Apartment Complex is being constructed if such materials are not intended to be used in connection with the Apartment Complex. No Capital Contributions will be made or funds advanced for materials stored at the Apartment Complex unless the Administrative Member furnishes satisfactory evidence, as determined by the Investor Member in its sole discretion, that such materials are properly stored and secured at the Apartment Complex and subject to such terms and conditions as the Investor Member may determine, which may include proof of sufficient insurance against risk of loss for full replacement cost with a standard loss payee endorsement. The Investor Member may impose limitations on the aggregate cost of materials stored at the Apartment Complex. All stored materials must be incorporated into the Apartment Complex within thirty (30) days of the request for funding regarding such materials, and the Investor Member may impose such additional conditions and requirements as it deems appropriate in its sole discretion. In the event any materials stored at the Apartment Complex are stolen, lost or in any other manner misplaced, destroyed or rendered unusable prior to the making of a Capital Contribution with respect thereto, the Investor Member shall not be obligated to make any Capital Contribution with respect thereto or on account of the cost of replacement thereof. Capital Contributions may be made for deposits placed with suppliers or for materials in fabrication or for costs incurred by the Company with respect to materials stored offsite of the Apartment Complex in the sole discretion of the Investor Member, and if such Capital Contributions are so permitted by the Investor Member, they shall be made subject to such terms and conditions as the Investor Member may require.

6.11(j) The Administrative Member shall disclose to the Investor Member any event that would prevent payment or reduce the amount of the Capital Contribution to be paid when due under this Agreement and, as a condition to the payment of each Installment, the Administrative Member shall furnish evidence satisfactory to Investor Member that the undisbursed proceeds of the Capital Contribution, plus the amount of the Construction Loan and any additional sums deposited by Administrative Member, less any deferred fees due Administrative Member (or its Affiliate) or Contractor, will be sufficient to pay the Costs of Improvements of the Apartment Complex.

6.11(k) The Administrative Member shall furnish to the Investor Member such other approvals, opinions, certificates, documents or agreements as Investor Member may reasonably request, in form and substance reasonably acceptable to Investor Member.

6.11(l) The Administrative Member agrees to provide notice to the Investor Member of any change in the financial condition of the Administrative Member or Guarantor which could have a material adverse effect on the ability of the Administrative Member or Guarantor to satisfy their respective obligations under the Project Documents or this Agreement.
6.11(m) Intentionally Omitted.

6.11(n) The Administrative Member agrees that all change orders of a material amount that effect a change in the Plans or Budget must be approved in writing by Lenders (as required under their respective loan documents) and Investor Member before the Company becomes committed to the same, provided that no change order shall increase the total Costs of Improvements unless the Company or the Administrative Member contributes sufficient additional equity to cover such increase in the total Costs of Improvements as determined by Investor Member in its sole and absolute discretion (provided, such additional equity shall not be required if funds are otherwise available as described in Section 6.10(a), and provided further, such funding may be subject to the reimbursement provisions set forth in Section 6.10(a)). In addition, any proposed material increase in the Budget, or any material changes in the various categories thereof shall be submitted to and approved by Lenders and Investor Member prior to the time that Company shall become committed to making any such increases or changes. For purposes of this paragraph, a change in the Budget or a change order shall be deemed to be a material amount if the same in any single instance equals or exceeds $50,000, or if the change, together with all prior changes, aggregates a sum exceeding $100,000.

6.11(o) The Administrative Member shall provide to the Investor Member a list of the names and contact information for each of the Major Subcontractors on or prior to the Closing Date, unless otherwise extended by the Investor Member.

6.11(p) Notwithstanding anything to the contrary contained herein or in any Project Document, the Administrative Member shall provide to the Investor Member for its approval, copies of all “construction draws” for Construction Loan proceeds (and Initial Installment proceeds as described herein) with back-up supporting documentation at least five (5) Business Days prior to submission of such draw to the Construction Lender. The Investor Member agrees to use commercially reasonable efforts to review each such draw within three (3) Business Days after receipt of such draw. To the extent any such draw is not approved by the Investor Member, the Administrative Member shall not submit such draw for payment to any Lender.

6.11(q) The Administrative Member shall obtain a foundation survey of the Apartment Complex within thirty (30) days following the completion of the foundation for the last Building in the Apartment Complex to have its foundation completed.

Section 6.12. Operating Deficit Loans. If, at any time prior to the satisfaction of all conditions precedent to the making of the Final Installment (“Period 1”), an Operating Deficit exists, the Administrative Member shall fund the Operating Deficit without limitation as to amount by making Operating Deficit Loans. For a minimum of 36 months following Period 1, the Administrative Member’s obligation to fund Operating Deficits through Operating Deficit Loans shall continue in an additional amount (i.e., not reduced by any Operating Deficit Loans made in Period 1) not to exceed $305,000 in the aggregate. Commencing with the 37th month following Period 1, if the Operating Reserve is fully funded to the amount of $202,000, the Administrative Member shall have no further obligation to fund Operating Deficits through Operating Deficit Loans. Notwithstanding anything to the contrary set forth in this Agreement, after Period 1, funds in the Operating Reserve may be used to pay Operating Deficits before the
Administrative Member is required to make Operating Deficit Loans; provided, however, that any release of funds from such reserves is subject to the Investor Member’s approval under Section 6.10(p)(ii) hereof, and further provided that funds in the Operating Reserve used to pay Operating Deficits shall not be credited against Administrative Member’s obligation to fund Operating Deficits.

An Operating Deficit Loan shall not be treated as funded for purposes of determining application of the limits on the Administrative Member’s Operating Deficit Loan obligations set forth in the prior paragraph if and to the extent the principal amount of any Operating Deficit Loan has been repaid to the Administrative Member pursuant to Section 4.02 after Period 1.

All Operating Deficit Loans shall bear interest at the rate of 10% per annum, compounded annually, and shall be repayable from Cash Flow or Net Proceeds as provided in Article 4. No Person who is not a party to this Agreement (including, without limitation, any creditor of the Company) shall be entitled to rely on the Administrative Member’s undertaking to make Operating Deficit Loans as set forth in this Section 6.12.

The parties hereto agree that nothing in this Section 6.12 shall reduce, limit or otherwise affect the obligations of the Administrative Member to make Adjuster Contributions as set forth in Section 3.05 of this Agreement.

The Administrative Member shall have the right, but not the obligation, to make Operating Deficit Loans to cover any Operating Deficit in excess of any limits on the Administrative Member’s Operating Deficit Loan obligations in this Section 6.12. Notwithstanding the prior sentence, the Investor Member shall have grounds to automatically remove the Administrative Member if (i) an Operating Deficit (which is not the subject of a good faith dispute) continues to exist for 60 consecutive days after receipt by the Administrative Member from the Investor Member of written notice of such Operating Deficit (which written notice shall state that failure by the Administrative Member to comply with the requirements of this Section 6.12 shall be grounds for automatic removal and shall request that the Administrative Member provide to the Investor Member a satisfactory work out plan) and the Administrative Member fails to provide in good faith a reasonable work out plan to the Investor Member during such 60 day period; or (ii) the Administrative Member fails to fund an Operating Deficit (which is not the subject of a good faith dispute) within 25 days after its receipt from the Investor Member of written notice that the Investor Member intends to fund such Operating Deficit (which written notice shall state that failure by the Administrative Member to comply with the requirements of this Section 6.12 shall be grounds for automatic removal), the Investor Member then funds such Operating Deficit after the expiration of such 25 day period in an amount greater than $10,000, and the Administrative Member then fails to reimburse the Investor Member in full within 5 days after the Investor Member funds such Operating Deficit. The Members agree that funds in the Operating Reserve shall be used to fund Operating Deficits prior to the application of the prior sentence.

Section 6.13. Obligation to Purchase Interest of Investor Member.

6.13(a) Notwithstanding any other provision contained herein, if (i) each Building is not placed in service on or before December 31, 2016, or, if earlier, the date required by any Lender or governmental agency; (ii) the Company’s basis in the Apartment Complex for federal income tax purposes as finally determined by the Accountants or pursuant to any audit by the Service, as of the date required by the
Agency, is less than 10% of the Company’s reasonably expected basis in the Apartment Complex as required by Section 42(h)(1)(E) of the Code or the requirements of the Agency’s allocation of Credits are otherwise not satisfied; (iii) the Company fails to meet the minimum set-aside test, the rent restriction test of Code Section 42(g) within 12 months of the date that the Apartment Complex is placed in service, or any other requirement necessary for the Apartment Complex to qualify for Credits; (iv) the Apartment Complex has not achieved occupancy by Qualified Tenants of at least 90% of its low-income set-aside units by December 31, 2017 or the Company fails to qualify for at least 70% of the projected Credits as referenced in Section 6.09(g) in any year after the first year in the Credit Period; provided, however, that if all Credit Adjuster Contributions have been made prior to the expiration of the fifth full tax year of property operations (provided the Investor Member has received final Company Tax Returns for all such years) (the first year in which the Investor Member is allocated Credits in an amount not less than 99.99% of the Credits for which the Company is determined to be eligible based upon the final Cost Certification and Forms 8609 for each building in the Apartment Complex for such year shall constitute the first full year of property operations for purposes hereof), then such event shall not constitute a grounds for repurchase under this Section 6.13(a); (v) the Company has not achieved Permanent Loan Closing by July 1, 2018 or, if earlier, the maturity date of the Construction Loan, or if prior thereto a commitment for any Company loan is cancelled, withdrawn or substantially modified without the Consent of the Investor Member; (vi) prior to Construction Completion, any substantial damage to or destruction of the Apartment Complex shall occur and the applicable insurance proceeds shall not be made available by the Lender for the restoration of the Apartment Complex or shall not, in the reasonable opinion of the Investor Member, be sufficient to repair and restore the Apartment Complex in a manner that would qualify for the aggregate projected Credit allocable to the Investor Member or the Apartment Complex is not restored within 24 months following such casualty; (vii) prior to Construction Completion, there shall have occurred an Abandonment; (viii) prior to the making of the Final Installment, a foreclosure action is commenced against the Apartment Complex and not dismissed within 45 days; or (ix) the Company fails to receive the approval of the Investor Member’s admission into the Company from any lender or governmental agency (whose approval is required) within 60 days of the Admission Date; then the Administrative Members shall be obligated to repurchase the Interest of the Investor Member (which shall include, for this purpose, the Interest of the Special Member) for an amount specified in Section 6.13(b). For purposes of this Agreement, “Abandonment” means the complete abandonment of the Apartment Complex such that all work by all contractors, subcontractors, materialmen, suppliers and any other tradespersons performing any work and supplying any materials or supplies for the Apartment Complex shall have ceased for at least 45 days.

6.13(b) If the Administrative Member becomes obligated to purchase the Investor Member’s Interest as provided in Section 6.13(a), the Administrative Member shall immediately give written notice to the Investor Member of the occurrence of such event and of the Administrative Member’s obligation to purchase the Investor Member’s Interest. By written notice to the Administrative Member (regardless of receipt of the Administrative Member’s notice), the Investor Member may elect to require the Administrative Member to purchase the Investor Member’s Interest upon the occurrence
of an event specified in Section 6.13(a). The amount of the purchase price (the “Buyout Price”) shall equal, as of the actual date of purchase, the sum of (A) the aggregate amount of Capital Contributions and advances made by the Investor Member to the Company plus (B) the legal, accounting and internal costs incurred by the Investor Member in connection with its investment in the Company (subject to an aggregate cap of $80,000 for the various costs included in this clause (B)) plus (C) the amount of any interest, penalties and recapture amounts imposed (or determined by the Accountants to likely be imposed) on the Investor Member as a result of such purchase or its prior claiming of Credits with respect to the Company, plus (D) an amount that, on an After-Tax Basis, equals all transfer taxes or similar assessments incurred by the Investor Member in connection with its investment in the Company or the sale of its Interest pursuant to this Agreement, such amount representing the parties’ good faith estimate of damages incurred by the Investor Member, less (E) Credits taken by the Investor Member and not recaptured.

If the Investor Member elects to have its Interest purchased, the Administrative Member shall purchase such Interest for the Buyout Price in cash within 30 days after notice from the Investor Member of its election to have its Interest purchased. Upon receipt of the Buyout Price, the Investor Member shall then transfer (and shall, for no additional consideration, cause the Special Member to transfer) its Company Interest to the Administrative Member or its designee free and clear of any Liens or interests of any third party and shall execute or cause to be executed any documents reasonably required to fully transfer such Company Interest. As of the effective date of such transfer, the Investor Member shall withdraw from the Company and shall have no further interest in or obligation to the Company, and, if required by the Uniform Act, the Administrative Member shall promptly file an amendment to the Certificate in the Filing Office reflecting the withdrawal of the Investor Member (and the Special Member).

The Investor Member may waive in writing its right to require the Administrative Member to purchase its Interest by reason of the application of any of the provisions of Section 6.13(a) at any time. After such waiver the Administrative Member shall have no further obligation to purchase the Interest of the Investor Member by reason of the application of the provision to which such waiver relates.

Section 6.14. Tenant Services. The Administrative Member is obligated to cause the Company to provide Tenant Services for the full Compliance Period of each Building. The Members currently anticipate that a third party social services provider will provide Tenant Services at no cost to the Company. If, however, the Company must pay for Tenant Services at any time, the Administrative Member shall pay the costs and expenses of providing Tenant Services. Neither the Company nor any other Member shall be obligated to reimburse the Administrative Member for any sums expended by the Administrative Member in paying for Tenant Services.

ARTICLE 7

PAYMENTS TO MEMBERS AND AFFILIATES AND OTHERS

Section 7.01. Property Management Fee. Subject to any restrictions set forth in the Project Documents, the Company shall pay to the Management Agent for its services in managing the Apartment Complex a monthly fee in an amount equal to the greater of (i) 5% of the Effective Gross Income for the preceding month, or (ii) $2,000 per month. In no event shall
Section 7.02. Developer Fee. For services rendered in connection with the Company’s development and construction of the Apartment Complex, the Company shall pay a Developer Fee (including overhead) to the Developer in an amount equal to $1,587,481 or such other amount as may be permitted by the Agency. The Developer Fee shall be the sole sum due the Developer for its services under the Development Agreement, and the Developer shall not be reimbursed for internal overhead or internal or third party expenses. If the Developer has expended funds on the Company’s behalf prior to the Closing Date, it may be reimbursed pursuant to the Reimbursement Agreement. The Developer Fee shall be deemed earned in its entirety as of the date of Construction Completion and otherwise in accordance with the terms of the Development Agreement provided, however, that the amount and timing of payments of the Developer Fee shall be governed by this Agreement. Notwithstanding anything to the contrary contained in this Agreement or in the Development Agreement, the Developer Fee, or any rights thereto, shall not be assigned or transferred to any third party without the Consent of the Investor Member. The Developer shall be paid such portion of its Developer Fee as possible from available debt and equity proceeds of the Company, to the extent such proceeds are not required for other Company purposes (e.g., payment of any Adjuster Distributions required pursuant to Section 3.05 hereunder). The remainder of the Developer Fee shall constitute a loan from the Developer to the Company with interest at the long-term Applicable Federal Rate (the “Developer Loan”), payable to the Developer from Cash Flow and/or Net Proceeds as described in Article 4, but in all events the Developer Loan shall be repaid by the date that is 15 years after projected completion date. In all events, however, a portion of the Developer Loan necessary for the Company to have sufficient eligible basis to allocate the Projected Aggregate Credit Amount to the Investor Member, (as determined by the Accountants and approved by the Investor Member), (the “Required Paydown”), shall be due on the fifteenth (15th) anniversary of Construction Completion. To the extent that Cash Flow and/or Net Proceeds through such date (or, if earlier, the date of liquidation of the Company) are insufficient to repay that portion of the Developer Loan, the Administrative Member shall make a Capital Contribution to the Company in the amount of the Required Paydown and the Company shall pay such amount to the Developer in reduction of the Developer Loan. If an Event of Bankruptcy occurs with respect to the Developer, the Administrative Member or any Guarantor, the Administrative Member shall be required to make a Capital Contribution to the Company in the amount necessary to pay the balance of the Developer Loan, if any. The Company shall use such Capital Contribution to repay the Developer Loan. The Developer shall not be a third party beneficiary of these covenants.

Subject to the provisions of this Agreement and to the extent funds are available as described above, it is anticipated (but not required) that the Developer Fee will be paid as follows: (i) $300,000 upon the Initial Installment (ii) $300,000 upon satisfaction of all conditions of the 95% Construction Completion Installment; (iii) $595,972 upon satisfaction of all conditions of the Final Installment; and (iv) the balance from Cash Flow and/or Net Proceeds.

Section 7.03. Incentive Management Fee. In consideration for the efficient management of the Company and the business thereof as described in the Incentive Management Fee Agreement, the Administrative Member and the Managing Member shall be paid a
noncumulative Incentive Management Fee from Cash Flow in the priority set forth in Section 4.02(a), in accordance with the Incentive Management Fee Agreement. In no event, however, may the combined amount of (i) the fees payable to any Management Agent, and (ii) the Incentive Management Fee payable with respect to any year exceed the lesser of $40,000 or 12% of the Company’s Effective Gross Income for such year. The Administrative Member and the Managing Member hereby represent that the Incentive Management Fee payable pursuant to this Section 7.03 constitutes reasonable compensation for its provision of the services described in Section 1 of the Incentive Management Fee Agreement.

Section 7.04. Grant of Security Interest. In order to secure the performance by the Administrative Member, the Managing Member and the Developer of their obligations under this Agreement, the Development Agreement and all other agreements or instruments delivered concurrently herewith, the Administrative Member, the Managing Member and the Developer hereby assign to the Investor Member, subject to the security interest of the Construction Lender, all amounts otherwise payable to the Administrative Member, the Managing Member and the Developer under this Agreement and the Development Agreement (as fees, distributions or otherwise), which assignment shall be deemed a grant of a security interest. The Administrative Member, the Managing Member and the Developer hereby represent and warrant to the Investor Member that the security interest granted hereunder is and shall remain a security interest in the collateral herein described subject only to the security interest granted to the Construction Lender. At the request of the Investor Member, the Administrative Member, the Managing Member and the Developer shall execute and deliver such documents and take such other actions as may be necessary or appropriate in the discretion of the Investor Member to further evidence and perfect the security interest granted hereby. To the extent permitted by applicable law, the Administrative Member, the Managing Member and the Developer hereby authorize the Investor Member to file Uniform Commercial Code financing statements in the name of such Persons, as applicable.

Notwithstanding any of the foregoing, unless and until there occurs an event of default of an obligation of the Administrative Member, the Managing Member or the Developer hereunder, which remains uncured after expiration of the applicable cure period, the Investor Member agrees to forebear exercising its right under this Section 7.04 to any Developer Fee payable to Developer or fees or distributions payable to the Managing Member or Administrative Member under this Agreement, and the Developer, the Administrative Member and the Managing Member shall have the right to receive all Developer Fee or fees/distributions payable to them under this Agreement or the Development Agreement.

ARTICLE 8

RIGHTS AND OBLIGATIONS OF INVESTOR MEMBERS

Section 8.01. Liability of Investor Members. The Investor Member shall be liable only to make Capital Contributions as and when due hereunder. After its Capital Contribution is fully paid, no Investor Member shall be required to make any further Capital Contribution or lend any funds to the Company, and no Investor Member shall be liable for any debts, liabilities, contracts, or obligations of the Company, except as otherwise required by the Uniform Act.
Section 8.02. No Right To Manage, Partition or Dissolve. No Investor Member shall take part in the management, control, conduct or operation of the Company (or the Apartment Complex), or have any right, power or authority to act for or bind the Company. Notwithstanding the foregoing, the Administrative Member, the Managing Member and the Company expressly agree that the Investor Member shall have the right, exercisable in its sole discretion, to contact at any time any Lender to ascertain the status of payment and/or performance by the Company under the applicable loan documents and the Accountants with respect to any financial or tax information with respect to the Company. No provision of this Agreement which makes the Consent of the Investor Member a condition for the effectiveness of an action taken by the Administrative Member or Managing Member is intended, and no such provision shall be construed, to give the Investor Member the right to participate in the control of the Company business. No Investor Member shall have the right to bring an action for partition or dissolution against the Company as long as the Company is operated in accordance with Section 1.04, and the Investor Member hereby waives, to the full extent permitted by law, the right to institute an action for partition or dissolution as long as the Company is operated in accordance with Section 1.04.

Section 8.03. Death or Disability of Investor Member. The Company shall not be dissolved by the death, insanity, adjudication of incompetency, bankruptcy, insolvency or Withdrawal of any Investor Member, by the assignment of the Interest of a Investor Member, by the assignment of the Interest of a Investor Member, or by the admission of a Substituted Investor Member.

Section 8.04. Removal of a Member.

8.04(a) The Investor Member shall have all rights and remedies available at law, in equity, and/or under this Agreement and the other Project Documents including, without limitation, the right to remove a Managing Member or Administrative Member and elect or appoint a new Managing Member or Administrative Member, upon the occurrence of any of the following events (a "Removal Event"):  

8.04(a)(i) in the event of (A) fraud or any felony conviction of such Member, any partner or member of such Member, any Guarantor, or any Affiliates thereof (collectively, the "Principals"), or (B) any Principal’s other violation of laws that, in the case of this clause (B) only, would or could have a material adverse impact on the Company or the Investor Member;  

8.04(a)(ii) such Member’s performance constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty;  

8.04(a)(iii) such Member, or any Affiliate thereof, shall have violated any provisions of any Project Document or any document required in connection with any Mortgage and shall not have cured such violation within applicable grace periods, if any (but in no event less than 10 days after its receipt of written notice of the violation);  

8.04(a)(iv) such Member shall have violated, and not cured within 10 days after written notice from the Investor Member, any provision of this
Agreement, including, but not limited to, any of its representations and covenants in Article 6, any obligation to provide funds under Sections 3.05, 6.10 or 6.12, and such violation causes a material adverse effect on the Company or any of its Members (provided that the parties hereto agree that any uncured violation to provide funds under Section 3.05, 6.10 or 6.12 shall be deemed to have a material adverse effect; similarly, any violation under Section 12.06 that has not been cured within 60 days of receipt by such Member of written notice of such violation shall be deemed to have a material adverse effect);

8.04(a)(v) any Mortgage shall have gone into default and not been cured within any applicable cure period provided therein;

8.04(a)(vi) an Event of Bankruptcy shall have occurred with respect to the Managing Member, the Administrative Member, the Company, or any Guarantor (or a Guarantor shall fail to comply with all material terms of the Guaranty) or if any Guarantor is a corporation, limited liability company, partnership or limited partnership, and such entity shall have dissolved, liquidated or otherwise terminated);

8.04(a)(vii) without the Consent of the Investor Member, an event of Withdrawal shall have occurred with respect to such Member as a result of one or more sales, transfers or other assignments to other than an Affiliate of a controlling interest in a Member which is a corporation or limited liability company or of a general partner interest in a Member which is a limited partnership;

8.04(a)(viii) any event (other than a Change in Law) that causes the Credits available to the Company in any year after the first year in which the Company claims Credits to be less than 85% of the Projected Annual Credit Amount for such year as referenced in Section 6.09(g); or

8.04(a)(ix) such Member shall have conducted its own affairs or the affairs of the Company in such a manner as would (x) cause the termination of the Company for federal income tax purpose or (y) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation.

8.04(b) Upon the removal of a Member, without any further action by any Member, the Special Member or its designee shall automatically become a Managing Member or Administrative Member, as applicable, and the Company shall acquire the Interest of the removed Member for an amount equal to the greater of (i) $100 or (ii) the Capital Account balance of the removed Member on the date of removal, less any amounts owed by the Member for Adjuster Contributions, operating deficits, or other obligations under this Agreement which have not been paid. Amounts owed to the removed Member pursuant to the preceding sentence shall be payable by the Company, without interest, upon the earlier of fifteen years from the date of removal or the sale of all or substantially all of the Company’s assets. The economic Interest of the Special Member as the Special Member shall continue unaffected by the new status of the Special
Member or its designee as a Managing Member or Administrative Member, and the new Member shall automatically be irrevocably delegated all of the powers and duties of the removed Managing Member or Administrative Member, as applicable, pursuant to this Agreement. Nothing in this Section 8.04(b) shall reduce or otherwise limit the rights, remedies or other actions available to the Investor Member against the removed Member. If a Member withdraws or is removed from the Company for any reason whatsoever, then such Member shall be and shall remain liable for all damages to the Company resulting from such Member's breach of this Agreement and for all its obligations and liabilities under this Agreement, including, without limitation, all its liabilities and obligations under Article 6 (and including, without limitation, its obligation to make the payments required under Section 7.02 herein), and liabilities and obligations based on facts and circumstances that occur prior to its withdrawal or removal except that (i) the former Member shall not be liable for any liabilities and obligations directly arising from the gross negligence, intentional misconduct or breach of this Agreement by any successor Member, and (ii) the former Member shall not have the obligation to continue to act as a Member of the Company. A Member so removed will not be liable for any obligations of the Company incurred or attributable to events or actions occurring after the effective date of its removal (including, without limitation, any obligation to make payments pursuant to Sections 3.05, 6.05, or 6.10 or loans pursuant to Section 6.12 to the extent attributable to events or actions occurring after the effective date of its removal), but shall continue to be liable for all obligations and liabilities incurred or attributable to events occurring prior to the effective date of its removal no matter when discovered. A Member so removed shall fully indemnify and hold harmless the Special Member (or its designee), as a substitute Member, as well as any other remaining Members, against any and all losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained in connection with its capacity as a Member to the extent that any such losses, judgments, liabilities, expenses and settlement payments relate to, arise from, or are attributable to claims, actions, omissions or events arising prior to the date of removal. Each Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to execute and deliver any and all documents and instruments on behalf of such Member and the Company as the Special Member may deem to be necessary or appropriate in order to effect the provisions of this Section 8.04 and to enable the new Administrative Member to manage the business of the Company. Nothing in this Section 8.04(b) shall limit or reduce the rights of the removed Member or any Affiliate thereof to receive any fees for services previously performed or repayment of Operating Deficit Loans, if any, in accordance with the terms thereof; provided, however, the parties hereto agree that any cash distributions, fees, loans or other payments otherwise distributable or owed to the removed Member or its Affiliates (including, without limitation, the amount of any Developer Loan or Operating Deficit Loan) shall, in the sole and absolute discretion of the substitute Member, be satisfied by applying all or any of such amounts to any unpaid obligation of the removed Member pursuant to this Agreement (including, without limitation, any obligations of the removed Member pursuant to Section 3.05, 6.05, 6.10, 6.12 or 7.02). In addition, notwithstanding any longer term of any Management Agreement or other contract, the Investor Member shall have the right in the event the Administrative Member is removed as such Administrative Member pursuant to this
Agreement, to terminate without penalty the Management Agreement (if the Management Agent is an Affiliate of the Administrative Member) and every other contract between the Company and the removed Member and/or Affiliates of the removed Member by notice, effective simultaneously with such removal.

Section 8.05. Outside Activities. Nothing herein contained shall be construed to constitute any Investor Member hereof the agent of any other Member hereof or to limit in any manner the Investor Member in the carrying on of its own business or activities. Any Investor Member may engage in and/or possess any interest in other business ventures (including partnerships of whatever kind) of every nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence. Neither the Company nor any other Member hereof shall have any rights in or to any such independent ventures or the income or profits derived therefrom and nothing shall be construed to render them partners or members in any such other business ventures.

ARTICLE 9

TRANSFERABILITY OF INVESTOR MEMBER INTERESTS

Section 9.01. Consent of Members Not Required for Assignment. The Investor Member may sell, transfer, assign or otherwise Dispose of all or any part of its Interest without the prior written consent of the Managing Member or the Administrative Member, provided the assignee assumes liability for all unpaid Capital Contribution obligations. Each assignee shall automatically become a Substituted Investor Member. Every assignee of an Investor Member’s Interest who desires to make a further assignment of its Interest shall be subject to all the provisions of this Article 9 to the same extent and in the same manner as an Investor Member.

Section 9.02. Member Cooperation. In conjunction with any sale, transfer, assignment or other Disposition by the Investor Member of all or any part of its Interest in accordance with the provisions of this Article 9, the Investor Member is authorized to obtain updated UCC, judgment and tax lien searches with respect to the Managing Member, the Administrative Member and the Company and to disclose information concerning the Company, the Administrative Member, the Managing Member, the Guarantor and any other Persons involved in the development and operation of the Apartment Complex and to initiate contact (and take any other actions needed to obtain required consents) with any Lender or other third-party whose consent to such Disposition may be required. The Managing Member and the Administrative Member represent and agree that they will take all actions reasonably necessary (or requested by the Investor Member) to cooperate with the Investor Member and facilitate the Investor Member’s Disposition of its Interest and/or the receipt of such consents, including, but not limited to, providing financial statements, information and reports with respect to the Managing Member, the Administrative Member, Guarantor and/or the Company and reaffirming the accuracy of the representations and covenants set forth in Sections 6.09 and 6.10 and the Investor Member shall reimburse the Managing Member and the Administrative Member for all costs reasonably incurred by it pursuant to this Section 9.02.
ARTICLE 10

WITHDRAWAL OF A MEMBER; DISPOSITION OF A MEMBER’S INTEREST

Section 10.01. Transfer and Withdrawal. No Managing Member or Administrative Member may voluntarily Withdraw from the Company or transfer all or any part of its Interest in the Company without the Consent of the Investor Member and all other Members, except that if the Special Member or a designee thereof becomes a Managing Member or Administrative Member pursuant to this Agreement, it shall not require the consent of any other Member to transfer all or any portion of its Interest as a Member, other than as may be required under the Uniform Act. In the event of any Withdrawal by a Managing Member or Administrative Member in violation of this Section 10.01, such Member, in addition to being subject to any and all other legal remedies which may be pursued by the Members, shall forfeit to the Special Member or its designee, such Member’s Interest and all unpaid fees from (and any loans to) the Company and shall remain liable for all of the Withdrawing Member’s obligations under this Agreement. In addition, upon such Withdrawal, the Special Member or its designee shall automatically become a Member without further action by the Withdrawing Member or any other Member, and each Member hereby consents to such transfer and to the admission of the Special Member or its designee as a Member in such a situation. Such transfer shall occur automatically upon such Withdrawal without further action by such Withdrawing Member.

Section 10.02. Obligation To Continue. Upon the Withdrawal of a Member, the Company shall continue except that any remaining Member shall have the right and obligation to elect to continue the business of the Company and shall, within 30 days, notify the Investor Member of such Withdrawal and such election. If the Investor Member elects and admits a successor Member, the relationship among the then Members shall be governed by this Agreement.

Section 10.03. [Intentionally Omitted].

Section 10.04. Interest of Member After Permitted Withdrawal. In the event of the Withdrawal of a Member not in violation of Section 10.01, the Withdrawing Member hereby covenants and agrees to transfer to any remaining Member(s) or to a successor Member selected in accordance with Section 10.02, as the case may be, such portion of the Withdrawing Member’s Interest as such remaining or successor Member(s) may designate. Such transfer shall be made in consideration of the payment by the transferee of the fair value of such Interest, which, in the absence of agreement between such parties, shall be determined by a committee of three appraisers, one selected by the Withdrawing Member, one selected by the transferee and a third selected by the other two appraisers. The proceedings of such committee shall conform to the rules of the American Arbitration Association, as far as appropriate, and its decision shall be final and binding. The portion of the Withdrawing Member’s Interest to be transferred in accordance with the provisions of this Section 10.04 shall be sufficient to ensure the continued treatment of the Company as a partnership under the Code, and, for the purposes of Article 4, shall be deemed to be effective as of the date of Withdrawal, but the Company shall not make any distributions to the designated transferee until the transfer has been made. Any holder of any portion of the Interest of a Withdrawing Member which is not designated to be transferred to the remaining or successor Member(s) pursuant to the provisions of this Section 10.04 shall become
a Special Member and shall be entitled to the same share of the Profits and Losses, Cash Flow and other distributions to which such Interest was entitled.

**Section 10.05. Additional Members.** With the Consent of the Investor Member, the Administrative Member shall have the right to designate one or more Persons as additional Members. Notice of any such designation shall be promptly given to all the other Members. The Administrative Member shall assign to such Persons such portion of its Interests as may be agreed upon by the Administrative Member and such Persons, provided such assignment does not cause a loss or recapture of the Credit to the Investor Member and does not jeopardize the classification of the Company as a partnership under the Code.

**ARTICLE 11**

**MANAGEMENT AGENT AND MANAGEMENT FEE**

11.01(a) The Administrative Member shall have the responsibility for supervising the management of the Apartment Complex and the Management Agent. The Company shall not enter into any Management Agreement or modify, terminate or extend any Management Agreement unless (i) it shall have obtained the Consent of the Investor Member to the identity of the Management Agent and the terms of the Management Agreement or the modification, termination or extension thereof; (ii) such Management Agreement or modified or extended Management Agreement provides that it is terminable without penalty by the Company on 30 days’ notice by the Company and (iii) the Lenders shall have consented, to the extent required under the Project Documents, to the new or modified Management Agreement. The Administrative Member shall cause each Management Agreement entered into by the Company to provide that the Management Agent shall take all actions reasonably necessary (or requested by the Investor Member or Administrative Member) to cooperate with the Investor Member or Administrative Member in monitoring the Management Agent’s compliance with the terms of the Management Agreement and this Agreement, including, but not limited to, maintaining tenant files and records in accordance with Section 12.01, verification of fees and expenses incurred by the Management Agent, verification of compliance with the tenant certification and other requirements of Code Section 42 and the Agency, and verification of compliance with the Fair Housing Act and other applicable laws.

11.01(b) The Management Agent shall receive a management fee, which fee shall be paid in accordance with the terms of Section 7.01 and the Management Agreement, which shall be executed by the Company. If (i) the Apartment Complex shall be subject to a substantial building code violation which shall not have been cured within two months after notice from the applicable governmental agency or department, (ii) an Event of Bankruptcy shall occur with respect to the Management Agent, (iii) the Management Agent shall commit misconduct or negligence in its conduct of its duties and obligations under the Management Agreement and/or any Lender-approved management plan for the Apartment Complex, (iv) the Apartment Complex has incurred Operating Deficits for two (2) consecutive months following the making of the Final Installment (provided, however, that if the Administrative Member has made loans or
Capital Contributions to the Company sufficient to cover such Operating Deficits, the termination and appointment rights of the Investor Member in this section shall not be exercised as a result of a violation of this subsection (iv)), (v) after the first year of the Credit Period, less than 95% of the low-income set-aside units are qualified “low-income units” under Code Section 42(i)(3), (vi) the Management Agent is cited by any Credit monitoring or compliance agency of the State of Texas or any other governmental agency for (and has not cured within a reasonable period of time the particular violation(s)) a material violation of any applicable rule, regulation or requirement, including, but not limited to, noncompliance with the minimum set-aside test, the rent restriction test or any other Credit-related provision, or (vii) the Management Agent fails to cooperate with the Investor Member or Administrative Member in monitoring the Management Agent’s compliance with the terms of the Management Agreement, then, upon request by the Investor Member and after providing the Management Agent with thirty (30) days notice and opportunity to cure (and the receipt of any required approval of the Lender), the Administrative Member shall cause the Company to promptly terminate the Management Agreement with the Management Agent and appoint a new Management Agent approved by the Investor Member. The Administrative Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to take any action and to execute and deliver any and all documents and instruments on behalf of the Administrative Member and the Company as the Special Member may deem necessary or appropriate to effectuate the provisions of this Section 11.01(b). The Company shall not enter into any future management arrangement or renew or extend any existing management arrangement unless such arrangement is terminable without penalty upon the occurrence of the events described in this Article 11. During the pendency of any proceeding to remove a Administrative Member from the Company, the Investor Member shall have the right to control all Company decisions as to the Management Agent.

11.01(c) The Administrative Member will have the duty to manage the Apartment Complex during any period when there is no Management Agent (until such time as a replacement Management Agent satisfactory to the Administrative Member and the Investor Member is found, and the parties hereto agree to use their best efforts to agree on an acceptable replacement Management Agent within 30 days) and the Company will pay the Administrative Member for such services a management fee equal to such amount as may be deemed to be reasonable by the Investor Member and no greater than the amount that would be paid to an unrelated party performing substantially similar services. If the Management Agent is not an Affiliate of a Administrative Member, the Administrative Member represents and agrees that it or its Affiliates shall not, directly or indirectly, receive any payment or other form of compensation from the Management Agent or any of its Affiliates.

ARTICLE 12

BOOKS AND RECORDS; ACCOUNTING; TAX ELECTIONS; ETC.

Section 12.01. Books and Records. The Company shall maintain all books and records which are required under the Uniform Act, the Code and Regulations, or by any governmental
agencies having jurisdiction and may maintain such other books and records as the Administrative Member deems advisable. All records required to determine the Company’s ability to claim Credits (including, without limitation, records regarding Eligible Basis of the Apartment Complex and records pertaining to the qualification and recertification of tenants) shall be kept and maintained during the entire Compliance Period plus six years thereafter (provided that records with respect to tenants who are other than the initial occupants of a unit need be maintained only for a period of six years). All such records shall be turned over to the Investor Member upon any removal or withdrawal of the Administrative Member or upon any termination of a Management Agent appointed pursuant to Article 11. Upon the request of the Investor Member, the Administrative Member shall promptly provide to the Investor Member copies of all records and files with respect to initial and other tenants, income certifications and such other information as is necessary to establish at any time the number of units treated as occupied by Qualified Tenants (and the Investor Member agrees to reimburse the Administrative Member for all costs reasonably incurred by the Administrative Member in providing such information to the Investor Member). The Company will also maintain a list of the names and addresses of all Members. The books and records and list of Members shall be available for examination by any Member, or its duly authorized representatives, at the principal office of the Company at any and all reasonable times. In addition, the Investor Member is authorized to conduct a physical inspection of the Apartment Complex at any and all reasonable times.

Section 12.02. Bank Accounts. The bank accounts of the Company shall be maintained with Wells Fargo Bank, National Association, unless otherwise required by the First Mortgage Lender, or such other financial institution as determined by the Administrative Member. Withdrawals shall be made only in the regular course of Company business on such signature(s) as the Administrative Member may determine. All deposits and other funds not needed in the operation of the business in the discretion of the Administrative Member shall be deposited in Qualified Investments selected in the sole and absolute discretion of the Administrative Member.

Section 12.03. Accrual Basis. The books of the Company shall be kept on the accrual basis and the fiscal and tax year of the Company shall be the calendar year.

Section 12.04. Accountants. The Accountants shall prepare, for execution by the Administrative Member, all Company Tax Returns and shall prepare all annual financial reports to the Members, which shall be in such detail as the Investor Member may reasonably require. If the Accountants provide any required returns, reports, calculations or other items that this Agreement requires them to provide more than 60 days late, or more than 30 days late in two consecutive calendar years, Investor Member shall have the absolute right to cause the Company to terminate the Accountants and engage substitute accountants selected by the Administrative Member that are acceptable to the Investor Member in its sole and absolute discretion.

Section 12.05. Federal Income Tax Elections. Subject to Article 4 and Section 6.10(h) all elections made by the Company under the Code shall be made by the Administrative Member, and the Administrative Member shall provide notice to the Investor Member of such elections (provided that the Consent of the Investor Member shall be required for any election that could affect the timing and/or amount of Credits or losses allocable to the Investor Member). Notwithstanding any other notice requirements contained herein, furnishing copies of the Company Tax Returns shall constitute notice under this Section 12.05.
Section 12.06. Information to Investor Member.

12.06(a) For each year of the Company’s existence, the Company shall deliver to the Investor Member, within 60 days after the end of the Company Taxable Year, the following:

12.06(a)(i) copies of all completed and executed forms that are required to be filed with the Internal Revenue Service. For the first year in which Credits are allocated to the Members (and any year in which a technical termination of the Company occurs), a draft copy of the tax return shall be delivered to Investor Member at least 10 days prior to the filing of the return, and the return shall not be filed prior to receiving the Consent of Investor Member;

12.06(a)(ii) internally prepared financial statements for the Administrative Member and the Managing Member and compiled financial statements for each Guarantor that is not an individual or a single purpose entity (including an annual net worth statement for each such Member) and internally prepared financial statements for each Guarantor who is an individual or a single purpose entity, certified by the appropriate individuals and officers, together with all other information and/or materials required to be delivered on behalf of the Guarantor pursuant to the Guaranty; and

12.06(a)(iii) audited financial statements for the Company (in a format reasonably acceptable to the Investor Member) for the preceding Company Accounting Year, beginning with respect to Accounting Year 2015.

12.06(b) An annual pro forma operating budget shall be prepared by the Administrative Member for the Management Agent and furnished to the Investor Member no later than 30 days before the beginning of each Company Accounting Year.

12.06(c) After the earlier of (i) twelve months following Construction Completion and (ii) Permanent Loan Closing, within 30 days after the end of each quarter of a fiscal year of the Company (provided, however, that if the Apartment Complex fails to attain a Debt Service Coverage Ratio of not less than 1.00 to 1 for any three (3) consecutive months the Investor Member shall, upon written notification to the Administrative Member, have the right to require the delivery of the information in this Section 12.06(c) to it within 30 days after the end of each month until such time as the Debt Service Coverage Ratio has increased to 1.10 to 1 for three (3) consecutive months), the Administrative Member shall cause to be prepared and distributed to the Investor Member a report containing:

12.06(c)(i) a Company balance sheet, which may be unaudited;

12.06(c)(ii) a statement of Company income and expenses for the quarter then ended, which may be unaudited;

12.06(c)(iii) a statement of Company cash flows, reserves and capital proceeds for the quarter then ended, which may be unaudited;
12.06(c)(iv) a certification of the Administrative Member that the Apartment Complex and its tenants are in compliance with all applicable federal, state and local requirements and regulations;

12.06(c)(v) a copy of the rent roll for the Apartment Complex and an occupancy/rental report, all in the form specified by the Investor Member;

12.06(c)(vi) a copy of the reports completed by the Management Agent and Administrative Member in the form satisfactory to the Investor Member; and

12.06(c)(vii) all other information which is reasonably requested by the Investor Member regarding the Company and its activities during the time period covered by the report, including, but not limited to, copies of any filings and correspondence with the United States Treasury or the Agency (and its successors and assigns) regarding the Apartment Complex.

12.06(d) Commencing the month of initial occupancy by the first tenant of the Apartment Complex until Permanent Loan Closing, within 30 days after the end of each month, the Company shall provide to the Investor Member the following:

12.06(d)(i) a statement of Company income and expenses for the month then ended, which may be unaudited; and

12.06(d)(ii) a copy of the rent roll for the Apartment Complex and an occupancy/rental report, all in the form specified by the Investor Member.

12.06(e) Within 30 days prior to the payment of insurance and property taxes, the Company shall supply to the Investor Member copies of insurance renewals and property tax bills, and within 10 days of the payment thereof, proof of the same.

12.06(f) Within 10 days of the receipt of any correspondence or notice from a taxing authority (state or federal) or housing agency, the Company shall supply a copy of the correspondence or notice to the Investor Member.

12.06(g) If the Administrative Member or Company shall fail to deliver any of the information required by this Section 12.06 within the specified time limits, the Administrative Member shall pay damages to the Investor Member in the sum of $100 per day thereafter until such information is received by the Investor Member. Such damages shall be paid forthwith by the Administrative Member, and failure to so pay shall constitute a material default of the Administrative Member under this Agreement. In addition, if the Administrative Member fails to so pay, the Administrative Member shall forthwith cease to be entitled to the payment or distribution of any Cash Flow or Net Proceeds to which it may otherwise be entitled under Article 4 hereof. Such payments or distributions of Cash Flow and Net Proceeds shall be restored and allowed only upon the payment of such damages in full, and any amount of such damages not so paid shall be deducted against payments of the Cash Flow or Net Proceeds otherwise due to the Administrative Member. In addition, if any delinquent delivery of the information required by this Section 12.06 is not cured within 30 days of the Administrative
Member’s receipt of written notice specifying the delinquency, then the Administrative Member, promptly upon the Investor Member’s written request, shall replace the Accountants with a firm approved by the Investor Member.

12.06(h) Within ninety (90) days after the end of each Company Accounting Year, updated information for each of the Guarantors identifying (i) direct or indirect interests in real estate owned, (ii) contingent liabilities, and (iii) any material adverse change in such Guarantor’s financial position.

12.06(i) Such other financial information regarding the Company, the Administrative Member, the Managing Member, the Guarantors or their Affiliates as may be reasonably requested by the Investor Member.

Section 12.07. HUD 2530s. If HUD-2530s are required or will be required with respect to any current or future financing, from and after the date that HUD issues a public notice requiring electronic submission of such filings, the Administrative Member shall cause the Company and each of its principals and/or affiliates, (A) to promptly complete their respective registrations and baseline submissions through the HUD Active Participation Performance System ("APPS") and (B) to submit any future HUD-2530 electronically through the APPS.

ARTICLE 13

[INTENTIONALLY LEFT BLANK]

ARTICLE 14

MISCELLANEOUS

Section 14.01. Brokers. To the extent permitted by law, each Member shall and does hereby covenant and agree, absolutely, unconditionally and irrevocably, to indemnify and hold harmless the Company and the other Members from any damages, claims, expenses or losses incurred by the indemnitee by reason of any third-party brokerage or finder’s agreement made by the indemnifying Member with respect to the transactions contemplated by this Agreement.

Section 14.02. Notice. All notices, demands, requests or other communications to be sent by one party to another hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee as follows:

If to the Administrative Member:

Wolfpack Bratton’s, LLC
421 W. 3rd Street
#1504
Austin, TX 78701
Attention: Louis Wolfson III

with a copy to:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
201 South Biscayne Boulevard, Suite 1500
Miami, FL 33131

If to the Managing Member:

O-SDA Bratton’s, LLC
1505 Pasadena
Austin, Texas 78757
Attention: Megan Lasch

If to the Investor Member:

Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street
Charlotte, NC 28288
Attention: Director of Tax Credit Asset Management

with a copy to:

Judy Crosby
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186

and

Joel Hjelmaas
Senior Counsel
Wells Fargo Bank, N.A.
MAC x2401-06T
1 Home Campus, 6th Floor
Des Moines, IA 50328-0001

All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier or three (3) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept
or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other parties hereto at least fifteen (15) days’ prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 14.03. Amendments. This Agreement may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by each of the parties hereto. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

Section 14.04. Meetings. Meetings of the Company may be called by the Administrative Member for any matter for which the Members may vote as set forth in this Agreement or to obtain information concerning the Company. A list of names and addresses of all Members shall be maintained as part of the books and records of the Company and shall be made available upon request to any Member or its representative at cost. Upon receipt of a request by a Member, either in person or by registered mail, stating the purposes of the meeting, the Administrative Member shall provide the Members, within ten days after receipt of such request, written notice of a meeting and the purpose of such meeting to be held on a date not less than 15 nor more than 30 days after receipt of such request, at a time and place within or without the State convenient to the Members.

Section 14.05. Entire Agreement. This Agreement and all other written agreements referred to herein constitute the entire agreement among the parties and supersede any prior agreements or understandings among them with respect to the subject matter hereof.

Section 14.06. Headings: References. All article and section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any article or section. Unless otherwise stated, references to Articles, Sections and Exhibits refer to Articles or Sections of, and Exhibits to, this Agreement.

Section 14.07. Separability Provisions. If the operation of any provision of this Agreement would contravene the provisions of the Uniform Act, or would result in the imposition of general liability on any Investor Member, such provision only shall be void and ineffectual.

Section 14.08. Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, except as otherwise provided herein. Among other things, the parties specifically intend that this Agreement inure to the benefit of any transferee of the Investor Member in accordance with the terms of Article 9 hereof.

Section 14.09. Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto. Any counterpart of this Agreement, which has attached to it separate signature pages which together
contain the signatures of all Members or is executed by an attorney-in-fact on behalf of some or all of the Members, shall for all purposes be deemed a fully executed instrument.

This Agreement (and any document or certification required to be provided to the Investor Member in conjunction with a requested Capital Contribution) may be executed as facsimile originals and each copy of this Agreement (or contribution request documents) bearing the facsimile transmitted signature of any party’s authorized representative shall be deemed to be an original. Notwithstanding the validity of the facsimile originals, it is intended that this Agreement (and contribution request documents) be manually executed and delivered to the Investor Member and the Investor Member shall have the right to require that executed original documents be provided to it. The Investor Member will then have the appropriate signature manually affixed to the Agreement and return executed copies to the appropriate parties.

Section 14.10. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to principles of conflicts of laws. The parties agree and consent that venue for purposes of resolving any dispute or controversy relating to this Agreement shall be in the State.

Section 14.11. Time of Admission. The Investor Member shall be deemed to have been admitted to the Company as of the day of the month in which it becomes a Investor Member for all purposes of this Agreement, including Article 4.

Section 14.12. Special Member. The Administrative Member and the Investor Member agree that (a) the Investor Member may, in its sole discretion, identify at any time in the future a Person who will become the Special Member and assign to such Person up to a 1% Interest in the Company as specified in writing by the Investor Member, (b) upon execution by such Person of this Agreement, the Special Member will be entitled to all of the rights and powers specified in this Agreement without any additional consents being required, (c) both prior to and after the admission of the Special Member, this Agreement shall be binding and in full force and effect and (d) prior to the admission of the Special Member, all rights, powers and obligations of the Special Member, including its rights under Article 4, shall be considered possessed and owned by the Investor Member.

Section 14.13. Waiver of Jury Trial. (a) Each of the parties hereto hereby knowingly, voluntarily and intentionally, after opportunity for consultation with independent counsel, waives its right to trial by jury in any action or proceeding to enforce or defend any rights or obligations (i) under this Agreement, (ii) arising from the financial relationship between the parties existing in connection with this Agreement or any loan document or (iii) arising from any course of dealing, course of conduct, statement (verbal or written) or action of the parties in connection with such financial relationship; (b) no party hereto will seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial has not been or cannot be waived; (c) the provisions of this Section have been fully negotiated by the parties hereto, and these provisions shall be subject to no exceptions; (d) no party hereto has in any way agreed with or represented to any other party that the provisions of this Section will not be fully enforced in all instances; and (e) this Section is a material inducement for the Investor Member to enter into this Agreement.
Section 14.14. Anticipated Funding Schedule. A summary of the Installments to be made by the Investor Member is set forth on Exhibit G for the convenience of the Members.

Section 14.15. Waiver of Certain Defenses. THE PARTIES HERETO ACKNOWLEDGE THAT THEY WERE REPRESENTED BY COMPETENT COUNSEL IN CONNECTION WITH THE NEGOTIATION, DRAFTING AND EXECUTION OF THIS AGREEMENT. THE INVESTOR MEMBER SHALL NOT BE SUBJECT TO ANY LIMITATION WHATSOEVER IN THE EXERCISE OF ANY RIGHTS OR REMEDIES AVAILABLE TO IT UNDER THIS AGREEMENT OR UNDER ANY OTHER DOCUMENTS EVIDENCING OR RELATING TO THE APARTMENT COMPLEX DESCRIBED HEREIN BY VIRTUE OF THE EXTENSION OF A MORTGAGE LOAN SECURED BY THE APARTMENT COMPLEX BY IT, OR ANY PARENT, SUBSIDIARY, OR AFFILIATE OF THE INVESTOR MEMBER, AND THE MANAGING MEMBER AND ADMINISTRATIVE MEMBER HEREBY IRREVOCABLY WAIVE THE RIGHT TO RAISE ANY DEFENSE OR TAKE ANY ACTION ON THE BASIS OF THE FOREGOING WITH RESPECT TO THE INVESTOR MEMBER’S EXERCISE OF ANY SUCH RIGHTS OR REMEDIES.
IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

ADMINISTRATIVE MEMBER:

WOLFPACK BRATTON’S, LLC, a Florida limited liability company

By: __________________________
    Louis Wolfson III, its President

MANAGING MEMBER:

O-SDA BRATTON’S, LLC, a Texas limited liability company

By: __________________________
    Megan Lasch, its President

INVESTOR MEMBER:

WELLS FARGO AFFORDABLE HOUSING COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation

By: __________________________
    Name: J. Frederick Davis, III
    Title: Senior Vice President

WITHDRAWING MEMBER:

Louis Wolfson III

[S1 - AMENDED AND RESTATE Operating Agreement]
IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

ADMINISTRATIVE MEMBER:

WOLFPACK BRATTON'S, LLC, a Florida limited liability company

By: ______________________
    Louis Wolfson III, its President

MANAGING MEMBER:

O-SDA BRATTON'S, LLC, a Texas limited liability company

By: ______________________
    Megan Lasch, its President

INVESTOR MEMBER:

WELLS FARGO AFFORDABLE HOUSING COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation

By: ______________________
    Name: J. Frederick Davis, III
    Title: Senior Vice President

WITHDRAWING MEMBER:

Louis Wolfson III

[SI - AMENDED AND RESTATE OPERATING AGREEMENT]
IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

ADMINISTRATIVE MEMBER:

WOLFPACK BRATTON'S, LLC, a Florida limited liability company

By: ___________________________
   Louis Wolfson III, its President

MANAGING MEMBER:

O-SDA BRATTON'S, LLC, a Texas limited liability company

By: ___________________________
   Megan Lasch, its President

INVESTOR MEMBER:

WELLS FARGO AFFORDABLE HOUSING COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation

By: ___________________________
   Name: J. Frederick Davis, III
   Title: Senior Vice President

WITHDRAWING MEMBER:

______________
Louis Wolfson III

[S1 - AMENDED AND RESTATED OPERATING AGREEMENT]
DEVELOPER CONSENT

By its signature below, the Developer acknowledges and agrees that, notwithstanding the terms of the Development Agreement, the payments of its Developer Fee may be delayed, reduced or offset in accordance with the provisions of this Agreement, including, without limitation, Section 3.05, 4.02, 4.03, 7.02, 7.04 and 8.04. Developer further acknowledges and agrees, (i) In the event of any conflict between the provisions of this Agreement and the Development Agreement, including, without limitation, a conflict regarding the timing or amount of payments, the terms of this Agreement shall prevail, (ii) apart from this Developer Consent, it is not a party to this Agreement and has no rights hereunder, and (iii) it is not an intended third beneficiary of this Agreement and has no right to enforce any provisions hereunder.

WOLFPACK GROUP, LLC, a Florida limited liability company

By: ________________________________
    Louis Wolfson III, its President

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: ________________________________
    Megan Lasch, President
DEVELOPER CONSENT

By its signature below, the Developer acknowledges and agrees that, notwithstanding the terms of the Development Agreement, the payments of its Developer Fee may be delayed, reduced or offset in accordance with the provisions of this Agreement, including, without limitation, Section 3.05, 4.02, 4.03, 7.02, 7.04 and 8.04. Developer further acknowledges and agrees, (i) in the event of any conflict between the provisions of this Agreement and the Development Agreement, including, without limitation, a conflict regarding the timing or amount of payments, the terms of this Agreement shall prevail, (ii) apart from this Developer Consent, it is not a party to this Agreement and has no rights hereunder, and (iii) it is not an intended third beneficiary of this Agreement and has no right to enforce any provisions hereunder.

WOLFPACK GROUP, LLC, a Florida limited liability company

By: ________________________________
   Louis Wolfson III, its President

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: ________________________________
   Megan Luseh, President
MANAGEMENT AGENT CONSENT

By its signature below, the Management Agent hereby agrees to the provisions Article 11 of this Agreement pertaining to, among other things, modification or termination of the Management Agreement and the provisions of Article 11 shall control notwithstanding anything to the contrary in the Management Agreement.

ACCOLADE PROPERTY MANAGEMENT, INC., a Texas corporation

By:  
Name: STEPHANIE FLYN
Title: PRESIDENT

[S3-AMENDED AND RESTATED OPERATING AGREEMENT]
EXHIBIT A

GENERAL CONDITIONS FOR ALL INSTALLMENTS

In addition to any other requirements and conditions set forth in this Agreement, the Investor Member shall not be required to make any further Capital Contribution to the Company unless the following requirements have been satisfied:

(A) All conditions to the attached Schedule applicable to the particular Installment and all prior Installments have been satisfied;

(B) Receipt by the Investor Member of (i) a Capital Contribution Request in the form of Exhibit C (other than with respect to the Initial Installment payable on the Closing Date) and (ii) a Company/Administrative Member Certification in the form of Exhibit D (other than with respect to the Initial Installment payable on the Closing Date). The Capital Contribution Request shall disclose all relevant facts, (including dates), regarding draw requests submitted with respect to, and advances made with respect to, the Construction Loan;

(C) Investor Member shall have independently verified the accuracy of all statements made in the Company/Administrative Member Certification if it so desires.

(D) No Lender shall have denied any request for advance under its respective Mortgage Loan.

(E) Investor Member shall have received copies of all Project Documents executed concurrently with or following the prior Installment (or construction draw portion thereof).

(F) No further Capital Contributions or portions thereof shall be made subsequent to the 60th day following the Closing Date unless the Investor Member shall have received and approved a duplicate original of the Title Policy.

(G) No further Capital Contributions or portions thereof shall be made subsequent to the 30th day following the completion of the foundation for last Building in the Apartment Complex to have its foundation completed unless the Investor Member shall have received and approved a foundation survey of the Apartment Complex.

(H) No further Capital Contributions or portions thereof shall be made subsequent to July 1, 2015, unless the Investor Member shall have received and approved evidence that the Agency has approved the 10% test with respect to the Apartment Complex.

(I) No further Capital Contributions or portions thereof shall be made subsequent to the Closing Date unless the Investor Member shall have received and approved, in form and substance (i) evidence that the Company has obtained hazard, liability and such other insurance as required by any Lender and this Agreement; (ii) an amendment to the General Contract that ties the General Contract to the plans
approved for construction of the Apartment Complex; (iii) the Notice to Proceed between the Company and the Contractor, (iv) a recorded affidavit of commencement; (v) final issuance of the Letter of Credit; and (vi) a drainage maintenance covenant in recordable form allowing the City of Austin, Texas certain rights with respect to repairing drainage on the Land (such rights to only be exercised in the event that the Company is failing to maintain the drainage properly).

(J) At any time prior to the 95% Construction Completion Installment, the Administrative Member shall have the right, upon the Investor Member’s receipt and approval of evidence that the Agency has approved such increase, to increase the number of market-rate units in the Apartment Complex from 8 to 10 (for a total of 78 units in the Apartment Complex); provided, however, that any such increase in the number of market-rate units shall only be constructed in accordance with the Plans, subject to any required Change Order(s) for the construction of such additional units, and the Investor Member’s approval of such Change Order(s) if required pursuant to the terms of this Agreement.
SCHEDULE A

INITIAL INSTALLMENT; 50% CONSTRUCTION COMPLETION INSTALLMENT; 95% CONSTRUCTION COMPLETION INSTALLMENT; “CONSTRUCTION DRAWS”

Pursuant to the terms and conditions of Section 3.03, the obligation of the Investor Member to make any “construction draw” of any portion of the Initial Installment, the 50% Construction Completion Installment, and the 95% Construction Completion Installment shall be further conditioned on the following:

(a) **Compliance With Representations and Warranties.** The Administrative Member and the Company shall have fully complied with all of their representations, covenants and warranties hereunder and in the Project Documents, as applicable and shall provide the Company/Administrative Member Certificate to the Investor Member (in the form of Exhibit D hereto).

(b) **Receipts for Payment of Costs.** The Administrative Member has (i) procured and delivered copies to the Investor Member of any general contractor’s and mechanics’ lien waivers, releases, affidavits and accepted bills as may be required by the Investor Member, the Title Insurer, or a Lender, as the case may be, showing payment of all parties who have furnished materials or performed labor of any kind entering into the construction or installation of any of the improvements of the Apartment Complex for work performed and materials furnished prior to the date of the most recent preceding Capital Contribution hereunder, and (ii) delivered invoices for any soft costs that individually exceed $5,000. The Company will promptly secure the release of the Apartment Complex from all Liens other than Permitted Liens and Liens securing the Mortgages.

(c) **Title Report/Endorsement.** The Investor Member has received a title search report conducted by Title Insurer insuring the Mortgage and an acceptable title opinion, dated as of the date of the Installment, reflecting no new title exceptions (except as previously approved by Investor Member) and showing that no intervening claim or Lien has been filed or recorded affecting the Apartment Complex, with no survey exceptions (except as previously approved by Investor Member). If any Lender has received a current endorsement from Title Insurer insuring same and Administrative Member delivers a copy thereof to Investor Member, no such title search report shall be required.

(d) **Contractor and Contractor’s Certificate.** Contractor shall have been paid all amounts properly due it to date (except amounts contained in the Capital Contribution Request under consideration) and all advances previously made, if any, with respect to the Capital Contribution and the Mortgage Loans, as applicable, have been properly applied. Contractor shall also have delivered to the Investor Member a certificate executed by Contractor and Administrative Member in the form attached hereto as Exhibit I, certifying that the improvements constituting the Apartment Complex have been constructed, as applicable, substantially in compliance with the Plans, the construction and materials used therein are substantially according to the Plans, all bills for labor, material and services then incurred and payable in connection with the Apartment Complex have been paid or will be paid from the Installment being requested, and such other matters as Investor Member may reasonably require.
(e) **Approval of Architect and Architect’s Certificate.** Architect shall have delivered to Investor Member a certificate executed by Architect and Administrative Member, in the form attached hereto as Exhibit J, certifying in part, that the improvements constituting the Apartment Complex have been constructed, as applicable, substantially in compliance with the Plans, the construction and materials used therein are substantially according to the Plans, the work has been accomplished to entitle Company to the Advance requested, the percentage of completion, and such other matters as the Investor Member may reasonably require.

(f) **Approval of Inspector.** The Investor Member shall have received an Inspector’s report (including a certificate certifying to such matters as Investor Member may require) from its Inspector, in form and substance satisfactory to Investor Member.

(g) **Mortgage Loan Closing.** The Investor Member shall have received executed copies of all documents executed in connection with the Mortgage Loans, together with evidence reasonably satisfactory to the Investor Member that initial advances of the Mortgage Loans have been made to the Company as set forth in the final settlement or closing statement.

(h) **Exhibit A: Additional Conditions.** The Company shall have satisfied the conditions precedent to each Installment, as set forth on Exhibit A to this Agreement.

(i) **50% Completion.** No portion of the 50% Construction Completion Installment shall be made until 50% Construction Completion shall have occurred. The 50% Construction Completion Installment shall be used to pay Costs of Improvements.

(j) **10% Cost Information.** No further Capital Contributions or portions thereof shall be made subsequent to July 1, 2015 unless the Investor Member shall be provided, in form and substance satisfactory to the Investor Member, the Accountants’ Cost Certification (and documentation) supporting the costs stated to have been incurred with respect to the Company’s satisfaction of the 10% test set forth in Code Section 42(h)(l)(E) at least 10 days before such certificate is provided (or required to be provided) to Agency. The Agency shall have approved the Company’s 10% test submission and acknowledged in writing that the Company has met the requirements of Code Section 42(h)(l)(E).

(k) **95% Completion.** No portion of the 95% Construction Completion Installment shall be made until 95% Construction Completion shall have occurred. The 95% Construction Completion Installment shall first be disbursed directly to the Construction Lender to pay down the Construction Loan to an amount not greater than $2,700,000. Thereafter, at the discretion of the Administrative Member, remaining funds from the Installment will be used to pay (i) the Costs of Improvements, (ii) down the Construction Loan and/or (iii) the Developer Fee. In the event Administrative Member reduces the Construction Loan to an amount below $2,700,000 the Administrative Member may, subject to the terms of the Construction Loan document, redraw funds from the Construction Loan up to a maximum outstanding principal balance of $2,700,000.

(l) **Developer Fee/95% Completion Installment.** No portion of the 95% Construction Completion Installment shall be used to pay Developer Fees until (i) the Investor Member shall have received the final, unconditional certificate of use and occupancy for each unit in the Apartment Complex and (ii) the attainment of Construction Completion (as defined in
Article 2 and receipt of an acceptable title opinion showing no new title exceptions (except as previously approved by Investor Member) as may be required by Investor Member.

(m) Construction Loan/95% Completion Installment. If the Construction Loan is greater than the Approved Loan Amount of the First Mortgage Loan, a portion of the 95% Completion Installment shall first be disbursed directly to the Construction Lender to pay down the Construction Loan to the Approved Loan Amount of the First Mortgage Loan. The Administrative Member and Managing Member hereby authorize the Investor Member to make such disbursement of its Capital Contribution in such manner.
SCHEDULE B

FINAL INSTALLMENT

Pursuant to the terms and conditions of Section 3.03, the obligation of the Investor Member to make the Final Installment in the amount of $797,972 (subject to adjustment as set forth in this Agreement) is further conditioned as set forth below:

(a) Exhibit A: Additional Conditions. The Company shall have satisfied the conditions precedent to each Installment, as set forth on Exhibit A to this Agreement.

(b) Use of Funds. Subject to the obligation to pay Adjuster Distributions, the Final Installment (together with other sources available upon the funding of the Final Installment) shall be used pay down the Construction Loan to fund the Operating Reserve in the amount of $202,000 and to pay Developer Fee. The Administrative Member hereby directs the Investor Member to contribute sums necessary to establish such reserves directly to Wells Fargo Bank, National Association. Such funding shall satisfy the Investor Member’s obligation to make Capital Contributions. Any remaining portion of the Final Installment not used for the foregoing purposes shall be used to pay Developer Fees.

(c) Certificate of Occupancy. The Investor Member shall have received the final, unconditional certificate of use and occupancy for each unit in the Apartment Complex (the “Certificate of Occupancy”).

(d) Lien-free Completion. The attainment of Construction Completion (as defined in Article 2 and receipt of an acceptable title opinion showing no new title exceptions (except as previously approved by Investor Member) as may be required by Investor Member.

(e) As-Built Survey. The Investor Member shall have received and approved a final ALTA “as-built” survey, reasonably satisfactory to Investor Member and Title Insurer, showing the completed improvements of the Apartment Complex and all utility locations, set-backs and easements, together with an additional endorsement to Company’s owner’s Title Policy (“Final Survey”).

(f) Architect’s, Contractor’s and Company/Administrative Member Certificates. The Investor Member shall have received and approved an Architect’s Certificate in the form attached hereto as Exhibit J and a Contractor’s Certificate in the form attached hereto as Exhibit I, each stating that the improvements of the Apartment Complex have been completed substantially in accordance with the Plans.

(g) Company/Contractor No Lien Affidavit. The Investor Member shall have received and approved an affidavit of Administrative Member and Contractor in the form attached hereto as Exhibit F, and such other evidence satisfactory to the Investor Member, stating that each person providing any material or performing any work in connection with a Capital Contribution installment has been (or will be, with the proceeds of and immediately following receipt by Administrative Member of such Capital...
Contribution installment) paid in full or bonded to the satisfaction of the Investor Member, and that all withholding taxes have been paid and lien waivers have been obtained from all contractors, subcontractors and suppliers who have performed work or supplied materials in connection with the construction of the improvements of the Apartment Complex, and covering such other matters as Investor Member may require (“Company/Contractor No-Lien Affidavit”).

(h) **As-Built Plans.** The Investor Member shall have received and approved detailed as-built Plans (“As-Built Plans and Specifications”).

(i) **Final Loan Disbursement.** The Investor Member shall have received evidence satisfactory to the Investor Member that all conditions have been satisfied under the Project Documents for final disbursement of all loans to the Company, and such disbursements have been made and funds are available in amounts sufficient to pay in full all Costs of Improvements (“Final Loan Disbursement”).

(j) **Insurance.** The Investor Member shall have received evidence satisfactory to Investor Member that the Company has obtained hazard, liability and such other insurance as required by any Lender and this Agreement (“Required Insurance”).

(k) **Estimate of Eligible Basis and Lease-up Schedule.** The Company shall cause the Administrative Member, and the Administrative Member agrees, to provide information with respect to the Eligible Basis of the Apartment Complex and the current and projected lease-up of units therein so that the Accountants will be able to make the preliminary determinations with respect to required Credit Adjuster Distributions, Current Adjuster Distributions, Additional Adjuster Distributions, and Timing Adjuster Distributions, if any, which Accountants certification and calculation shall be delivered to the Investor Member.

(l) **Permanent Loan Closing.** The Construction Loan has been repaid in full and each of the First Mortgage Loan and the County Loan has closed and fully funded.

(m) **Administrative Member and Accountant’s DSCR Certificate.** The Investor Member shall have received evidence satisfactory to Investor Member that the Apartment Complex has attained a Debt Service Coverage Ratio of 1.15 or better for 90 consecutive days (such period to be taken as a whole) (“Administrative Member and Accountant’s DSCR Certificate”). For purposes of the foregoing, the amount of required debt service payments for a period shall be computed assuming that permanent financing having the terms set forth in Section 5.04 is in effect.

(n) **Qualified Tenant Certificate.** The Investor Member shall have received and approved a certification from the Accountants, based on a review of the applicable tenant certifications and other documents with respect to all set-aside units in the Apartment Complex, 100% (or such percentage as approved by Investor Member) of the low-income set-aside residential units in the Apartment Complex have been leased to and physically occupied by Qualified Tenants (“Qualified Tenant Certificate”), as well as a
copy of all tenant files, leases, certifications, income verification information and other documentation required to be provided to the Investor Member under Section 6.10(g).

(o) **Title Policy from Initial Closing; Access**. Investor Member shall have received and approved a duplicate original of the Title Policy issued upon execution of this Agreement. Such Title Policy shall have been amended by endorsement to add an access endorsement insuring vehicular and pedestrian access to and from a publicly dedicated roadway.

(p) **Title Report/Endorsement**. The Investor Member has received a title search report conducted by Title Insurer insuring the Mortgage and an acceptable title opinion dated as of the date of the Installment reflecting no new title exceptions (except as previously approved by Investor Member) and showing that no intervening claim or Lien has been filed or recorded affecting the Apartment Complex, with no survey exceptions (except as previously approved by Investor Member). If any Lender has received a current endorsement from Title Insurer insuring same and Administrative Member delivers a copy thereof to Investor Member, no such title search report shall be required.

(q) **Other Evidences**. The Investor Member shall have received and approved copies of all documents, instruments and agreements and all insurance policies and certificates required to be delivered pursuant to any Project Document and, any other evidence required by Investor Member that the improvements constituting the Apartment Complex have been substantially completed in accordance with the Plans in compliance with all requirements of any governmental agency and free of all Liens except Permitted Liens.

(r) **Final Cost Certification**. The final Cost Certification for the Apartment Complex prepared by Accountants in form and substance as approved by Investor Member, which approval shall not be unreasonably withheld, to be used by Administrative Member in applying to the Agency for the issuance of Internal Revenue Form 8609 with respect to each Building.

(s) **Adjuster Distributions**. Evidence of payment of Adjuster Distributions, if any, owed to Investor Member pursuant to Section 3.05 of this Agreement.

(t) **Form 8609**. The Internal Revenue Form 8609 issued by the Agency with respect to each Building (“**Form 8609**”), fully executed by the Agency and the Company.

(u) **Extended Use Agreement**. The Investor Member shall have received a copy of the duly recorded Extended Use Agreement.
EXHIBIT B

SUMMARY OF CONDITIONS TO CERTAIN INSTALLMENTS

1. The Initial Installment, the 50% Completion Installment, and the 95% Construction Completion Installment will be contributed pursuant to construction draws in accordance with Exhibit A and Schedule A.

2. Final Installment

   (a) Exhibit A: Additional Conditions;
   (b) Use of Funds;
   (c) Certificate of Occupancy;
   (d) Lien-Free Completion;
   (e) As-Built Survey;
   (f) Architect’s, Contractor’s and Company/Administrative Member Certificates;
   (g) Company/Contractor No Lien Affidavit;
   (h) As-Built Plans;
   (i) Final Loan Disbursement;
   (j) Insurance;
   (k) Estimate of Basis and Lease Up;
   (l) Permanent Loan Closing;
   (m) Administrative Member and Accountant’s DSCR Certificate;
   (n) Qualified Tenant Certificate;
   (o) Title Policy from Initial Closing; Access;
   (p) Title Report/Endorsement;
   (q) Other Evidences;
   (r) Final Cost Certification;
   (s) Adjuster Distributions;
   (t) Form 8609; and
   (u) Extended Use Agreement.
Wells Fargo Affordable Housing
Community Development Corporation
MACD1053-170
301 South College Street
Charlotte, NC 28288
Attention: Director of Tax Credit Asset Management

Re: Capital Contribution Installment No. [___] as per the Amended and Restated Operating Agreement dated as of July 1, 2015 (the “Agreement”) of Art at Bratton’s Edge, LLC (the “Company”), by and between Wolfpack Bratton’s, LLC (“Administrative Member”), O-SDA Bratton’s, LLC (“Managing Member”) and Wells Fargo Affordable Housing Community Development Corporation (“Investor Member”)

Ladies and Gentlemen:

We request, subject to the terms and conditions of the Agreement, that the Investor Member advance $[__________], which shall be used in accordance with the Budget, on [___, 201__].

COMPANY:

ART AT BRATTON’S EDGE, LLC, a Florida limited liability company

By: Wolfpack Bratton’s, LLC,
a Florida limited liability company, its administrative member

By: ___________________________
Louis Wolfson III, its President

Attachments include:
a) Company/Administrative Member Certificate
b) Architect’s Certificate
c) Contractor’s Certificate
d) Other required documents as set forth in the Agreement or as may be requested by Investor Member
EXHIBIT D

COMPANY/ADMINISTRATIVE MEMBER CERTIFICATE

[FORM]

[___________], 201[__]

Signatory is the President of Wolfpack Bratton’s, LLC, the Administrative Member of Art at Bratton’s Edge, LLC, (the “Company”), and has made due investigation as to the matters hereinafter set forth and does hereby certify the following to induce Wells Fargo Affordable Housing Community Development Corporation (the “Investor Member”) to make and contribute the aggregate sum of $[__________] (the “Installment”) to Company pursuant to the terms of the Company’s Operating Agreement (the “Agreement”) and Capital Contribution Request No. [___________], dated [___________], 201[__], which is being submitted to the Investor Member herewith. (Capitalized terms used and not otherwise defined herein shall have the respective meanings given to them in the Agreement.)

1. All of the representations and warranties contained in the Agreement and all of the Project Documents are true and correct in all material respects as of the date hereof.

2. No default and no event of default exist under any Mortgage Loan or the Agreement.

3. Construction of the Apartment Complex has been carried on with reasonable dispatch and has not been discontinued at any time in excess of that allowed under the Agreement. The Apartment Complex has not been damaged by fire or other casualty, and no part of the property underlying the Apartment Complex has been taken by eminent domain and no proceedings or negotiations therefor are pending or threatened.

4. Construction of the Apartment Complex is progressing in accordance with all applicable Laws and in good and workmanlike manner, in such manner so as to assure the completion thereof in accordance with the Plans, and there have been no changes in the Plans or substantial deviations from the Construction Schedule, except as approved by the Investor Member or as authorized by the Agreement. The construction of the Apartment Complex, as of the date hereof is [____]% complete. The unpaid portion of the Cost of the Improvements, whether complete or incomplete, will not exceed the undisbursed portion of the proceeds of the Loans, the Capital Contribution and any sums deposited by Company.

5. All funds previously received from the Investor Member as Capital Contributions under the Agreement have been expended or are being held in trust for the sole purpose of paying Costs of Improvements previously certified to the Investor Member in Capital Contribution Requests, and no part of such funds have been used, and the funds to be received pursuant to the Capital Contribution Request submitted herewith shall not be used, for any other purpose. No item of Costs of Improvements previously covered in a Capital Contribution Request remains unpaid as of the date of this Certificate.
6. All of the statements and information set forth in the request for an Installment being submitted to Lender and/or the Capital Contribution Request being submitted to the Investor Member in connection herewith are true and correct in every material respect as of the date hereof. The Capital Contribution Request being submitted to the Investor Member accurately reflects the work accomplished to entitle the Company to the disbursement requested and the precise amounts due and payable during the period covered by such Capital Contribution Request. All of the funds to be received pursuant to such Capital Contribution Request shall be used solely for the purpose of reimbursing Company for such items previously paid by Company and paying the items of cost comprising the current Capital Contribution Request.

7. Nothing has occurred subsequent to the date of the Agreement which has or may result in the creation of any lien, charge or encumbrance upon the Apartment Complex or any part thereof, or anything affixed thereto or used in connection therewith, or which has or may substantially and adversely impair the ability of Company to make all payments of principal and interest on the Mortgage Note, the ability of Administrative Member to meet its obligations under the Agreement, or the ability of the Guarantor to meet its obligations under any guaranty delivered in connection with the Agreement.

8. None of the labor, materials, overhead or other items of expense covered by the Capital Contribution Request submitted herewith have previously been the basis of (i) any Capital Contribution Request; (ii) any request for an advance from Lender(s); or (iii) any payment by the Investor Member.

9. The Cost of Improvements has not increased since the date of the Agreement. The aggregate sum of direct and hard costs currently included in the Apartment Complex is $[__________], and the aggregate sum of indirect and soft costs currently included in the Apartment Complex is $[__________].

10. All required permits, certificates, licenses and other governmental approvals required to commence, continue and complete the work described in the Plans have been obtained and are in full force and effect.
11. All conditions to the Installment to be made in accordance with the Capital Contribution Request submitted herewith have been met in accordance with the terms of the Agreement.

ADMINISTRATIVE MEMBER:

WOLFPACK BRATTON’S, LLC, a Florida limited liability company

By: ___________________________
Louis Wolfson III, its President

All representations, warranties, obligations and covenants contained in Sections 6.09, 6.10, 6.11 and 6.12 respectively, of the Agreement are true and correct in all material respects as of the date hereof. Managing Member, Administrative Member, the Company and Guarantor (as applicable) are in good standing and authorized to engage in the activities as set forth in the Agreement. In addition, there have been no changes or amendments to the articles, bylaws, certificates or other organizational documents, as appropriate, of Managing Member, Administrative Member, the Company and Guarantor (as applicable), except as provided to the Investor Member. All obligations of Managing Member and Administrative Member set forth in the Agreement (including, without limitation, the delivery of all required financial and other reports pursuant to Article 12 of the Agreement) have been satisfied.

COMPANY:

ART AT BRATTON’S EDGE, LLC, a Florida limited liability company

By: Wolfpack Bratton’s, LLC,
a Florida limited liability company, its administrative member

By: ___________________________
Louis Wolfson III, its President
EXHIBIT E

LEGAL DESCRIPTION OF APARTMENT COMPLEX

LOT 1, BLOCK A, OF ART AT BRATTON’S EDGE (AN AMENDED PLAT OF LOT 1, BLOCK A, OF VISTA BUSINESS PARK II) FINAL PLAT, A SUBDIVISION OF TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT RECORDED UNDER DOCUMENT NUMBER 201500004, IN THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.
EXHIBIT F

NO LIEN AFFIDAVIT

Company/Contractor No Lien Affidavit

Property: Art at Bratton’s Edge

Advance at Construction Completion (“Construction Completion Installment”).

I hereby certify the following:

- The Administrative Member certifies that each person providing any material or performing any work in connection with the Capital Contribution Installment (“Advance”) at Construction Completion (“Construction Completion Installment”) has been (or will be, with the proceeds of and immediately following receipt by Administrative Member of such Capital Contribution Installment) paid in full or bonded. All withholding taxes have been paid and lien waivers have been obtained from all contractors, subcontractors and suppliers who have performed work or supplied materials in connection with the construction of the improvements of the Apartment Complex.

- The Contractor certifies that each person providing any material or performing any work in connection with the Capital Contribution Installment (“Advance”) at Construction Completion (“Construction Completion Installment”) has been (or will be, with the proceeds of and immediately following receipt by Contractor of such Capital Contribution Installment) paid in full or bonded. All withholding taxes have been paid and lien waivers have been obtained from all contractors, subcontractors and suppliers who have performed work or supplied materials in connection with the construction of the improvements of the Apartment Complex.

Legal Name of Owner or Ownership Entity of Project:
Art at Bratton’s Edge, LLC

Contractor: PINROC CONSTRUCTION, LLC, a Florida limited liability company

ADMINISTRATIVE MEMBER: WOLFPACK BRATTON’S, LLC, a Florida limited liability company

By: ______________________  By: ______________________
Name: ______________________  Louis Wolfson III, its President
Its: ______________________

Exhibit F - 1

4832-2694-2499.7
EXHIBIT G

ANTICIPATED FUNDING SCHEDULE

Subject to the terms and provisions of this Agreement, including without limitation, the provisions set forth in Exhibit A and the Schedules thereto, the Investor Member shall be obligated to make Capital Contributions to the Company in four (4) installments (the “Installments”), which Installments shall be due and payable by the Investor Members as follows: (i) $3,880,412 (the “Initial Installment”), $3,880,412 (the “50% Construction Completion Installment”), $2,528,095 (the “95% Construction Completion Installment”) shall each be disbursed on a “construction draw” basis and such disbursements shall commence pursuant to and upon receipt by the Investor Member of the items set forth on Schedule A hereto; and (ii) $797,972 (the “Final Installment”) shall be disbursed pursuant to and upon satisfaction of all of the items on Schedule B hereto.
## EXHIBIT H

<table>
<thead>
<tr>
<th>Member and Address</th>
<th>Capital Contribution</th>
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<tbody>
<tr>
<td><strong>Administrative Member</strong></td>
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<tr>
<td>Wolfpack Bratton’s, LLC</td>
<td>$10</td>
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<td>421 W. 3rd Street</td>
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<td>Austin, Texas 78756</td>
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<tr>
<td>Attention: Megan Lasch</td>
<td></td>
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<td>Wells Fargo Affordable Housing Community Development Corporation</td>
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<td>MAC D1053-170</td>
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<tr>
<td>301 South College Street</td>
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<td>Charlotte, NC 28288</td>
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<td>Attention: Director of Tax Credit Asset Management</td>
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</tbody>
</table>
EXHIBIT I

CONTRACTOR’S CERTIFICATE

The undersigned (“Contractor”) has made due investigation as to the matters hereinafter set forth and does hereby certify the following to induce Wells Fargo Affordable Housing Community Development Corporation (the “Investor Member”) to make and advance the aggregate sum of $[_________] (the “Advance”) to Company pursuant to the terms of that certain Amended and Restated Operating Agreement, dated as of July 1, 2015, between the Investor Member, Managing Member and Administrative Member (together with any amendments, modifications, supplements and replacements thereof, the “Agreement”) and the Advance Request No. [______], dated [____], 201[____], which is being submitted to the Investor Member herewith. (Capitalized terms used and not otherwise defined herein shall have the respective meanings given to them in the Agreement.) Contractor certifies as follows:

(i) The improvements constituting the Apartment Complex have been completed in a good and workmanlike manner, substantially in accordance with the Plans for the Apartment Complex, the construction and materials used therein are substantially according to the Plans, and the work has been accomplished to entitle the Company to the Advance requested.

(ii) All material permits, licenses, certificates and related governmental approvals required to construct the Apartment Complex were obtained. All permits, licenses, certificates and related governmental approvals required to occupy and operate the Apartment Complex for its intended purpose have been obtained and Company may commence or has commenced normal operation of the Apartment Complex.

(iii) Each person providing any material or performing any work in connection with the Advance has been (or will be, with the proceeds of and immediately following receipt by Administrative Member of such Advance) paid in full or bonded. All withholding taxes have been paid and lien waivers have been obtained from all contractors, subcontractors and suppliers who have performed work or supplied materials in connection with the construction of the improvements of the Apartment Complex.

Dated __________________________, 201__.

CONTRACTOR:

PINROC CONSTRUCTION, LLC, a Florida limited liability company

By: __________________________
Name: __________________________
Its: __________________________

Exhibit I - 1
Certified to the Investor Member to be true, correct and complete to the best of the undersigned’s knowledge.

ADMINISTRATIVE MEMBER:

WOLFPACK BRATTON’S, LLC,
a Florida limited liability company

By: _______________________
      Louis Wolfson III, its President
EXHIBIT J

ARCHITECT’S CERTIFICATE

The undersigned ("Architect") has made due investigation as to the matters hereinafter set forth and does hereby certify the following to induce Wells Fargo Affordable Housing Community Development Corporation (the “Investor Member”) to make and advance the aggregate sum of $[_________] (the “Advance”) to Company pursuant to the terms of that certain Amended and Restated Operating Agreement, dated as of July 1, 2015, between the Investor Member, Managing Member and Administrative Member, and the Advance Request No. [____], dated [____], 201[____], which is being submitted to the Investor Member herewith. (Capitalized terms used and not otherwise defined herein shall have the respective meanings given to them in the Agreement.)

Architect certifies as follows:

(i) The improvements constituting the Apartment Complex have been completed in a good and workmanlike manner, substantially in accordance with the Plans for the Apartment Complex, the construction and materials used therein are substantially according to the Plans, and the work has been accomplished to entitle the Company to the Advance requested.

(ii) All material permits, licenses, certificates and related governmental approvals required to construct the Apartment Complex were obtained. All permits, licenses, certificates and related governmental approvals required to occupy and operate the Apartment Complex for its intended purpose have been obtained and Company may commence or has commenced normal operation of the Apartment Complex as a _______ ________________.

Dated _______________________, 201__.

ARCHITECT:

5G STUDIO COLLABORATIVE, LLC

By: _______________________________
Name: _____________________________
Its: _______________________________
Certified to the Investor Member to be true, correct and complete to the best of the undersigned’s knowledge.

ADMINISTRATIVE MEMBER:

WOLFPACK BRATTON’S, LLC, a Florida limited liability company

By: _______________________
   Louis Wolfson III, its President
ART AT BRATTON’S EDGE, LLC
AMENDED AND RESTATED OPERATING AGREEMENT

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article/Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1</td>
<td>NAME AND BUSINESS</td>
<td>1</td>
</tr>
<tr>
<td>Section 1.01</td>
<td>Name; Formation; Filings</td>
<td>1</td>
</tr>
<tr>
<td>Section 1.02</td>
<td>Place of Business</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.03</td>
<td>Names and Addresses of Members</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.04</td>
<td>Purposes</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.05</td>
<td>Term and Dissolution</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.06</td>
<td>Title to Apartment Complex</td>
<td>3</td>
</tr>
<tr>
<td>ARTICLE 2</td>
<td>DEFINITIONS</td>
<td>3</td>
</tr>
<tr>
<td>Section 2.01</td>
<td>Meanings</td>
<td>3</td>
</tr>
<tr>
<td>Section 2.02</td>
<td>Pronouns and Plurals</td>
<td>22</td>
</tr>
<tr>
<td>ARTICLE 3</td>
<td>CAPITAL</td>
<td>23</td>
</tr>
<tr>
<td>Section 3.01</td>
<td>Capital Contribution of Managing Member and Administrative Member</td>
<td>23</td>
</tr>
<tr>
<td>Section 3.02</td>
<td>Withdrawal of Withdrawing Member and Admission of Investor Member</td>
<td>23</td>
</tr>
<tr>
<td>Section 3.03</td>
<td>Capital Contribution of Investor Member</td>
<td>23</td>
</tr>
<tr>
<td>Section 3.04</td>
<td>Default</td>
<td>26</td>
</tr>
<tr>
<td>Section 3.05</td>
<td>Credit Adjuster Distributions to the Investor Member</td>
<td>27</td>
</tr>
<tr>
<td>Section 3.06</td>
<td>No Interest on Capital Contribution; Return of Capital</td>
<td>31</td>
</tr>
<tr>
<td>Section 3.07</td>
<td>No Third-party Beneficiary</td>
<td>31</td>
</tr>
<tr>
<td>Section 3.08</td>
<td>Investor Member Put Option</td>
<td>32</td>
</tr>
</tbody>
</table>
ARTICLE 4 PROFITS AND LOSSES; DISTRIBUTIONS; CAPITAL ACCOUNTS........32

Section 4.01. Profits, Losses and Credits.................................................................32
Section 4.02. Cash Distributions Prior to Dissolution..............................................33
Section 4.03. Termination Distributions.................................................................35
Section 4.04. Special Allocations.............................................................................36
Section 4.05. Section 704(c) Allocations.................................................................40
Section 4.06. Miscellaneous Allocations.................................................................40

ARTICLE 5 COMPANY BORROWINGS.................................................................41

Section 5.01. Authorization to the Administrative Member.................................41
Section 5.02. Right To Mortgage.............................................................................41
Section 5.03. Loans.................................................................................................41
Section 5.04. Loans Amounts.................................................................................41

ARTICLE 6 RIGHTS, POWERS AND OBLIGATIONS OF MEMBERS.......................43

Section 6.01. Exercise of Management.................................................................43
Section 6.02. Powers...............................................................................................43
Section 6.03. Restrictions on Authority.................................................................45
Section 6.04. Other Activities................................................................................47
Section 6.05. Liability to Company and Investor Member and Indemnification of Investor Member and Company..........................48
Section 6.06. Indemnification of Members.............................................................49
Section 6.07. Dealing With Affiliates.....................................................................50
Section 6.08. No Salary Payable to Members.........................................................50
Section 6.09. Representations and Warranties.......................................................50
Section 6.10. Covenants Relating to the Apartment Complex and the Company..................................................................................54
Section 6.11. Construction of the Apartment Complex.........................................64
Section 12.01. Books and Records .................................................................79
Section 12.02. Bank Accounts .................................................................80
Section 12.03. Accrual Basis ................................................................80
Section 12.04. Accountants ................................................................80
Section 12.05. Federal Income Tax Elections .........................................80
Section 12.06. Information to Investor Member. ....................................81
Section 12.07. HUD 2530s .................................................................83

ARTICLE 13 [INTENTIONALLY LEFT BLANK] ........................................83

ARTICLE 14 MISCELLANEOUS .............................................................83

Section 14.01. Brokers ........................................................................83
Section 14.02. Notice ............................................................................83
Section 14.03. Amendments ...............................................................85
Section 14.04. Meetings .....................................................................85
Section 14.05. Entire Agreement .........................................................85
Section 14.06. Headings: References ..................................................85
Section 14.07. Separability Provisions ................................................85
Section 14.08. Binding Agreement .......................................................85
Section 14.09. Counterparts .................................................................85
Section 14.10. Governing Law ..............................................................86
Section 14.11. Time of Admission .......................................................86
Section 14.12. Special Member ...........................................................86
Section 14.13. Waiver of Jury Trial .....................................................86
Section 14.14. Anticipated Funding Schedule .......................................87
Section 14.15. Waiver of Certain Defenses ............................................87
EXHIBIT A—GENERAL CONDITIONS FOR ALL INSTALLMENTS
  SCHEDULE A—Initial Installment; “Construction Draws”
  SCHEDULE B—Final Installment
EXHIBIT B—SUMMARY OF CONDITIONS TO CERTAIN INSTALLMENTS
EXHIBIT C—CAPITAL CONTRIBUTION REQUEST [FORM]
EXHIBIT D—COMPANY/MANAGING MEMBER CERTIFICATE [FORM]
EXHIBIT E—LEGAL DESCRIPTION OF APARTMENT COMPLEX
EXHIBIT F—NO LIEN AFFIDAVIT
EXHIBIT G—ANTICIPATED FUNDING SCHEDULE
EXHIBIT H—COMPANY INTERESTS
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet  
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name Art at Bratton's Edge

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Request letter to Wells Fargo to add 811 units to Art at Bratton's Edge

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 18, 2019

Mr. Jason Brow
Vice President
Well Fargo
Via email: jason.brow@wellsfargo.com

Re: 811 Units – Art at Bratton’s Edge

Dear Jason:

Per the 2019 TDHCA Qualified Allocation Plan, I am hereby submitting a request for your consideration to add ten 811 program units at Art at Bratton’s Edge, in Austin, Texas.

Under the Amended and Restated Operating Agreement for Art at Bratton’s Edge, the Managing Member’s authority is restricted under section 6.01 and operational authority is vested in the Administrative Member. Further, neither the Managing Member nor the Administrative Member has the authority without consent of the Investor Member to modify the Project Document or create and permit any encumbrances other than the Mortgages and Mortgage Loans. As such, Investor Member consent would be required to add 811 units which require a Use Restriction be recorded for the property. Since lease up Art at Bratton’s Edge has maintained on average better than 95% occupancy and does not require additional subsidy units to maintain its occupancy.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 830-330-0762.

Sincerely,

Megan D. Lasch
President

5501-A Balcones Dr., #302 Austin, Texas 78731
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(iii)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name: Art at Bratton’s Edge

iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from Wells Fargo denying the request to add 811 units.

**ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.**
February 28, 2019

Ms. Megan Lasch, President
O-SDA Bratton's, LLC
5501-A Balcones Dr. #302
Austin, TX 78731

Re: Art at Bratton's Edge, LLC

Dear Ms. Lasch:

We have received your request regarding adding ten 811 program units to Art at Bratton’s Edge, in Austin, TX.

At the time of our investment, Wells Fargo had completed a lengthy underwriting and market analysis process, based upon the information and due diligence on hand at that time. The requested change in unit mix would require additional underwriting and marketing analysis, as well as resubmission through the consent process. As it does not appear that the property is in need of these units, and is continuing to serve the needs of the originally anticipated tenant market, at this time we do not approve the requested additional 811 program units.

If you have any questions and/or concerns, please do not hesitate to contact me.

Sincerely,

Jason Brow
Vice President
704-715-1768
2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name Art at Bratton's Edge

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: Credit Support & Funding Agreement

Provide the name of the Third Party: CommunityBank of Texas

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: Section 3.1 Representations and Warranties of Borrower - para c, Section 4.1 Covenants of Borrower - para a; Section 5.1 Negative Covenants - para f

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: 19, 22, 39-41 and Definitions on page 6, 13 - 16

**ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.**
CREDIT SUPPORT AND FUNDING AGREEMENT

(CONSTRUCTION TO PERMANENT PHASE)

BY

AND

BETWEEN

ART AT BRATTON'S EDGE, LLC
as Borrower

AND

COMMUNITY BANK OF TEXAS, N.A.
as Bank

DATED JULY 1, 2015
ARTICLE VII - DEFAULTS AND REMEDIES .......................................................... 61

7.1 Events of Default ................................................................. 61
7.2 Termination of Obligations ..................................................... 65
7.3 Rights and Remedies ............................................................ 65
7.4 Due on Sale .................................................................. 68
7.5 Notice and Cure Rights of Investor Member ....................... 68

ARTICLE VIII - MISCELLANEOUS ......................................................... 69

8.1 Bank Approvals ................................................................. 69
8.2 No Third Party Beneficiaries ............................................... 69
8.3 No Waiver .................................................................. 69
8.4 Notices .................................................................... 69
8.5 Transfer of Rights ............................................................... 70
8.6 Severability ................................................................ 70
8.7 Advertising .................................................................. 70
8.8 GOVERNING LAW ....................................................... 70
8.9 Other Advances .............................................................. 70
8.10 No Duty or Special Relationship ....................................... 70
8.11 Other Remedies Not Required ........................................ 71
8.12 NO CONTROL BY BANK ............................................. 71
8.13 Commitment Rendered ..................................................... 71
8.14 No Partnership ............................................................... 71
8.15 Release of Liens ............................................................... 71
8.16 Renewal of Indebtedness ................................................. 71
8.17 Counterparts ................................................................. 72
8.18 Controlling Agreement ...................................................... 72
8.19 NO ORAL AGREEMENT ............................................... 72
8.20 JURY WAIVER .............................................................. 72
8.21 Bank Consent ................................................................. 73
8.22 Governing Documents ..................................................... 73
8.23 Participations ................................................................ 73
8.24 Placement of Restrictive Covenants ................................. 73
8.25 No Offset .................................................................. 74
8.26 RECOGNITION .............................................................. 74
8.27 Increased Costs ............................................................... 74
8.28 Business Loans .............................................................. 75
8.29 USA Patriot Act Notification ........................................... 75
8.30 WAIVER OF SPECIAL DAMAGES ............................... 76
8.31 Termination of Agreement ................................................. 76
CREDIT SUPPORT AND FUNDING AGREEMENT

This Credit Support and Funding Agreement (this "Agreement") is dated as of July 1, 2015, by and between ART AT BRATTON'S EDGE, LLC, a Florida limited liability company ("Borrower"), having its address at 421 West 3rd Street, Suite 1504, Austin, Texas 78701, and COMMUNITYBANK OF TEXAS, N.A., a national banking association ("Bank"), and its address for purposes hereof at 5999 Delaware, Beaumont, Texas 77706-7607.

In consideration of the mutual covenants and agreements contained herein, and intending to be legally bound hereby, Bank and Borrower agree as follows:

ARTICLE I - DEFINITIONS

1.1 Definitions and Reference Terms. In addition to any other terms defined herein, the following terms shall have the meanings set forth with respect thereto:

Adjusted Expenses: The actual cash operating expenses of the Borrower with respect to the Premises (excluding non-cash expenses such as depreciation and expenses paid from revenues which are not the result of operating income) during the applicable period preceding the date of calculation, adjusted to include projections for appropriate monthly accruals, including, without limitation, for property taxes, insurance, and, to the extent applicable, reserves for capital repairs and replacements approved by Bank. For purpose of this Agreement, Adjusted Expenses shall not include payments of principal and interest to be made on the Note.

Adjusted Income: The actual cash operating income received from the Premises during the applicable period preceding the date of calculation (based upon rental and other income earned by Borrower with respect to its ownership and operation of the Premises), but excluding tenant security and other deposits (except to the extent the tenant has forfeited its rights to return thereof), and other penalties and income deemed by Bank to be of a nonrecurring nature.

Administrative Member: Wolfpack Bratton’s, LLC, a Florida limited liability company

Affiliate or affiliate: With respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with the Person specified.

Agent to Request Disbursements: Any of the individuals listed on Exhibit “A”.

Error! Unknown document property name.
Appraisal or appraisal: A written statement setting forth an opinion of the Appraisal Value of the Premises that (i) has been independently and impartially prepared by a qualified appraiser directly engaged by the Bank or its agent, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, and (iii) has been reviewed as to form and content and approved by the Bank, in its reasonable judgment.

Appraisal Value: The stabilized, as-completed, rent restricted value (relating to the Affordable Units) of the Premises, as determined by the Bank based on its review of the most current Appraisal obtained pursuant to Section 4.1(t) or otherwise (and for purposes of determining compliance with Loan to Value requirements for Closing and prior to the Conversion Date, after taking into account the value of the Low Income Housing Tax Credit allocated to the Affordable Units and any other collateral acceptable to Bank, but that for purposes of determining Lease Stabilization and any Loan to Value Requirements in the Mortgage, no value will be given to the Low Income Housing Tax Credit). In making this determination, the "value of the Low Income Housing Tax Credit" will be based on, among other factors, the total Capital Contributions made or to be made by the Investor Member pursuant to the Operating Agreement.

Approved Leases: A lease of any portion of the Improvements which satisfies the requirements of Section 4.1(a).

Architect: 5G Studio Collaborative, LLC, a Texas limited liability company.

Assignment of Management Agreement: Assignment of Management Agreement of even date herewith from Borrower to Bank.

Bank’s Required Completion Date: The earlier to occur of (a) eighteen (18) calendar months after the Closing Date (which date may be extended for up to an aggregate, combined amount of sixty (60) days as a result of Excusable Delays, (b) the date the Investor Member shall require that the Improvements are placed in service (as such term is used and/or defined in the Operating Agreement) as provided in the Operating Agreement, (c) the date the Improvements are required to be completed I the TCHFC Loan Documents, and (d) the date required in a Tax Credit Allocation for placing the Improvements in service in order to maintain the Tax Credits.

Budget: The budget prepared by Borrower, and approved by Bank, setting forth in detail all direct and indirect costs for the acquisition of the Land and construction of the Improvements (subject to reallocations permitted by Section 2.7), as provided for in Exhibit "B" attached hereto (which should clearly itemize amounts being paid to the Contractor). The
Budget shall in any event include a 5% contingency (based on the total amount of the Construction Contract, including profit, overhead, and general conditions).

**Business Day:** A day, other than Saturday, Sunday, and holidays, when Bank is open for conducting all of its normal business activities, and the Federal Reserve Bank is open for business.

**Capital Contributions:** The Capital Contributions to be made by the Investor Member to Borrower in the aggregate amount of $11,086,891.00, as provided for in Exhibit "H", which will be funded and subject to adjustment in accordance with the terms and provisions of the Operating Agreement. References to particular Capital Contributions shall be to the Capital Contributions listed in Exhibit "H" (for example, the second Capital Contribution will be to the second Capital Contribution listed in Exhibit "H"). Further, funding of each Capital Contribution by Investor Member will be made as and when provided for in the Operating Agreement by Investor Member and subject to the terms of Section 2.1(d).

**City:** The City of Austin, Texas.

**Closing Date:** The date of this Agreement.

**Commencement Deadline:** September 1, 2015.

**Commitment:** Any written or oral agreement or commitment issued or made by Bank to Borrower before the Closing Date with respect to the terms and manner upon which Bank will make the Loan (including the term sheet provided for discussion purposes dated on or about May 11, 2015, and subsequent term sheets as may have been issued by Bank from time to time).

**Construction Contracts:** The fixed price contract with Contractor with respect to the Improvements and otherwise shall have the meaning assigned to that term in Section 4.3.

**Contractor:** Pinroc Construction, LLC, and each other general contractor, whether one or more, engaged by Borrower, and approved in writing by Bank, to construct the Improvements.

**Control:** The possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” shall have meanings correlative thereto.

**Conversion Certificate:** The conversion certificate substantially in the form attached hereto as Exhibit "K".
Conversion Date: The date of the Conversion Certificate, which in any event shall not be later than the Conversion Deadline.

Conversion Deadline: Thirty (30) months after the Closing Date, unless extended in accordance with the terms of Section 2.2.

Credit Agency: Texas Department of Housing and Community Affairs, together with its successors and assigns in such capacity.

Debt: (a) All items of indebtedness or liability (other than the debt of an affiliate, capital, surplus, deferred credits and reserves, as such) which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet as of the date as of which indebtedness is to be determined, (b) indebtedness or other liabilities secured by any mortgage, security agreement, pledge, or lien existing on or encumbering the real property owned by Borrower, whether or not the indebtedness or other liabilities secured thereby shall have been assumed by Borrower, (c) all liabilities under capitalized leases; (d) all indebtedness of Borrower to Bank under any interest rate swap agreement, interest rate cap agreement and interest rate collar agreement; and (e) all indebtedness of any Person (i) which Borrower has directly or indirectly guaranteed, endorsed (otherwise than for collection or deposit in the ordinary course of business), discounted with recourse, agreed (contingently or otherwise) to purchase or repurchase or otherwise acquire, (ii) in respect of which Borrower has agreed to supply or advance funds (whether by way of loan, purchase of securities or capital contribution, through a commitment to pay for property or services regardless of the non-delivery of such property or the non-furnishing of such services or otherwise), or (iii) in respect of which Borrower has otherwise become directly or indirectly liable, contingently or otherwise, whether now existing or hereafter arising.

Default: Any event which with the passage of time, lapse, or both, would constitute an Event of Default.

Event of Default: Any of the events specified in Section 7.1 of this Agreement, provided that any applicable requirements specifically provided for in Section 7.1 for notice, lapse of time, or otherwise have been satisfied.

Excusable Delays: Unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, hurricane, tornado, earthquake or other acts of God, shortages of materials, strike, lockout, acts of public enemy, riot, or insurrection or any unforeseen circumstances or events (except financial circumstances or events or matters which may be resolved by the payment of money on commercially reasonable terms) beyond the control of Borrower, provided
Borrower shall notify Bank in writing within five (5) Business Days after it knows of such occurrence, but no Excusable Delay shall suspend or abate any obligation of Borrower or any other person to pay any money under this Agreement and the other Loan Documents.

**Financial Statements:** The financial statements of Borrower, Contractor, and Guarantor, which have been delivered to Bank in connection with Borrower’s application to Bank for the Loan to be made by Bank pursuant to this Agreement.

**GAAP:** Generally accepted accounting principles established by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants and in effect in the United States from time to time, applied on a basis consistent with that of the preceding fiscal year of Borrower, reflecting only such changes in accounting principles or practice with which the independent public accountants of Borrower concur.

**Governmental Authority:** Any nation, country, commonwealth, territory, government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government (which shall include the Credit Agency, the City, TCHFC, and HUD), including, without limitation, any state agencies and persons responsible in whole or in part for monitoring compliance with all land use restriction agreements relating to the Tax Credits, and for environmental matters in the state in which Borrower is located or otherwise conducting its business activities and the United States Environmental Protection Agency.

**Governmental Permits:** All certificates, licenses, zoning variances, permits, and no action letters from any Governmental Authority required to evidence full compliance by Borrower, and conformance of the construction of the Improvements, with all Requirements of Law applicable to the Land, the construction of the Improvements to completion, and the operation of the Improvements.

**Guarantor:** Louis Wolfson III.

**Guaranty:** The Guaranty of even date herewith, executed by each Guarantor to Bank, as may be restated, supplemented, affirmed, and ratified from time to time.

**Hazardous Materials:** All materials constituting "Hazardous Materials" under and as defined in the Mortgage.

**HUD:** The United States Department of Housing and Urban Development.
Improvements: The 76-unit multi-family housing residential rental project, consisting of four two and three-story residential buildings and a clubhouse within a residential building, to be known as Art at Bratton's Edge, which will be located on the Land, and will be developed with the proceeds of the Capital Contributions and the Loan. All of the units will be subject to the Low Income Housing Tax Credit as follows: 7 of the units will be restricted to qualified tenants earning less than 30% of the area median income, 28 of the units will be restricted to qualified tenants earning less than 50% of the area income, and 33 of the units will be restricted to qualified tenants earning less than 60% of the area median income (collectively, the "Affordable Units"). 8 of the units will be market rate units and are not subject to any income or rent restrictions (Bank acknowledges that the Borrower has requested the Credit Agency agree to allow 2 additional market rate units as part of the Improvements and if approved by the Credit Agency, Improvements for purposes of this Agreement and the other Loan Documents, will be 78 units).

Initial Capital Contribution: The first installment of the Capital Contribution set forth in the schedule provided in Exhibit "H" to be paid in accordance with the Operating Agreement.

Intercreditor Agreement: The Intercreditor Agreement among Borrower, Bank, and TCHFC, on a form and relating to the relative priority and agreements of the TCHFC Loan and the Loan.

Internal Revenue Code: The Internal Revenue Code of 1986, as amended; all references to a particular section of the Internal Revenue Code include (a) rulings of the Internal Revenue Service applicable to such sections that are available to the general public, and (b) final, proposed and temporary regulations issued under the Internal Revenue Code with respect to such sections.

Investor Member: Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, its successors and assigns (to the extent permitted by this Agreement).

Land: The 5.048 acre tract of land comprising an aggregate of 5.048 acres (more or less) located at 15405 Long Vista Drive (intersection of Bratton Lane) in Austin, Travis County, Texas, and which is more particularly described in Exhibit "A" to the Mortgage.

Lease Stabilization: Such time when (i) the Premises shall have at least ninety percent (90%) occupancy levels (on the basis of completion of all units) pursuant to Approved Leases at pro forma rents, as may be adjusted upward under applicable law (on an average basis) for ninety (90) consecutive days, (ii) the amount of the Loan evidenced by the Note shall not be more than eighty percent (80%) of the appraised value of the
Premises (calculated based upon restricted rents (as to the Affordable Units) and a thirty (30) year amortization period), and (iii) a debt service coverage ratio for the ninety (90) day period in clause (i) of at least 1.15 to 1.0 (or such higher debt service coverage ratio as may be required by the Operating Agreement for the funding of the third and fourth, Capital Contribution set forth in Exhibit "H"). The debt coverage ratio will be calculated in a manner acceptable to Bank, in Bank's sole and reasonable discretion, and will include principal, interest (on the Loan), operating expenses, any and all taxes payable, insurance and replacement reserves and will be based upon a thirty (30) year amortization period and an assumed rate equal to the Permanent Rate provided in the Note.

Loan: Collectively, (a) prior to the Conversion Date, the construction loan in the principal amount of up to $5,300,000.00 for the development of the Improvements in accordance with this Agreement, and (b) on and after the Conversion Date, the permanent loan in the principal amount of up to $2,700,000.00 (the "Permanent Mortgage Loan Commitment").

Loan Account: Non-interest bearing account no. 21420143, in the name of Borrower located at Bank to be used for the deposit by Bank of the proceeds of the Note.

Loan Documents: This Agreement, the Assignment of Management Agreement, the Note, the Mortgage, the Guaranty, the Replacement Reserve and Security Agreement, the Operating Reserve Agreement, the Intercreditor Agreement, and such other instruments, documents, and agreements evidencing, securing, or governing the loans which have heretofore been or hereafter are from time to time executed and delivered to Bank by Borrower, or any other party pursuant to this Agreement.

Loan to Value Ratio: The ratio expressed as a percentage, of (a) the aggregate maximum commitment (as then applicable) of the Bank with respect to the Loan, to (b) the Appraisal Value.

Low Income Housing Tax Credits: The allocation of a 2014 Low-Income Housing Credit as that term is used in Section 42 of the Internal Revenue Code allocated to the Premises in the anticipated amount of: (i) $31,056 in 2016, (ii) $869,560 in 2017, (iii) $1,055,894 in each of years 2018 through 2025; (iv) $1,024,838.00 in 2026, and (v) $186,334.00 in 2027.

Material Adverse Change: Any act, circumstance, or event (including, without limitation, any announcement of action) which (i) causes an Event of Default, (ii) otherwise could reasonably be expected to be material and adverse to the financial condition or operations of
Borrower or Guarantor, and (iii) in any manner could reasonably be expected to materially and adversely affect the validity or enforceability of any Loan Document.

**Maturity Date:** The earlier to occur of (i) seventeen (17) years after the Conversion Date (but no later than January __, 2035, unless the Construction Deadline is extended by six calendar months as provided in Section 2.2) or (ii) an acceleration of the Note following an Event of Default.

**Maximum Rate:** On any day, the maximum nonusurious rate of interest permitted for that day by whichever of applicable federal or Texas law permits the higher interest rate, stated as a rate per annum. On each day, if any, that the Texas Finance Code, as it may from time to time be amended, establishes the Maximum Rate, the Maximum Rate shall be the "weekly rate ceiling", as referenced in Section 303.002 of the Texas Finance Code, after application of Section 303.009 of the Texas Finance Code, for that day. Provided, however, that to the extent permitted by applicable law, Bank reserves the right to change, from time to time by further notice and disclosure to Borrower, the ceiling on which the Maximum Rate is based under the Texas Finance Code; and, provided further, that the "highest non-usurious rate of interest permitted by applicable law" for purposes of this Agreement shall not be limited to the applicable rate ceiling under the Texas Finance Code if federal laws or other state laws now or hereafter in effect and applicable to this Agreement (and the interest contracted for, charged and collected thereunder) shall permit a higher rate of interest.

**Mortgage:** The Multifamily Construction and Permanent Deed of Trust, Fixture Filing, Assignment of Rents and Security Agreement of even date herewith, from Borrower for the benefit of Bank covering, among other things, the Land and the Improvements, and all amendments, supplements, restatements, renewals, and extensions thereof.

**NOI:** For a designated period, Adjusted Income, minus Adjusted Expenses.

**Note:** The Promissory Note, of even date herewith, in the maximum amount of $5,300,000.00, executed by Borrower and made payable to the order of Bank, and all modifications, renewals, extensions, restatements, replacements, increases, and rearrangements thereof.

**Obligations:** All indebtedness, obligations, and liabilities of Borrower to Bank, of every nature and description, now or hereafter existing or arising with respect to the development of the Premises as provided in this Agreement or any other Loan Document (whether or not budgeted), whether such indebtedness is direct or indirect, primary or
secondary, fixed or contingent, or arises out of or is evidenced by a promissory note, deed of trust, security agreement, open account, overdraft, endorsement, surety agreement, guaranty, letter of credit reimbursement obligations, letter of credit application, or otherwise. Obligations shall include all renewals, extensions, and rearrangements of any of the above described obligations and indebtedness.

**Operating Agreement:** The Amended and Restated Operating Agreement of Borrower, by and among O-SDA Bratton's, LLC, a Texas limited liability company, as managing member ("Managing Member"), the Investor Member, as the investor member, and the Administrative Member, as the administrative member, as it may be amended from time to time in accordance with the terms of this Agreement.

**Operating Reserve:** The amount required by the Operating Agreement to be reserved by the Borrower to fund operating deficits.

**Operating Reserve Agreement:** The Operating Reserve and Security Agreement of even date herewith between Bank and Borrower.

**Permanent Term:** The term of the Loan commencing on the Conversion Date and ending on the Maturity Date.

**Permitted Exceptions:** All of the Permitted Exceptions under and as defined in the Mortgage and the subordinate lien against the Premises securing the TCHFC Loan.

**Person:** Any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

**Placed in Service or placed in service:** Except as otherwise expressly provided in this Agreement, with respect to the Premises, the date that it has received all temporary or permanent certificates of occupancy and use permits required for legal occupancy of all of its dwelling units and is ready and available for occupancy by tenants under Approved Leases.

**Plans:** The plans and specifications, relating to the Improvements, prepared by the Architect which have been delivered to and then reviewed and approved by the Bank and the Credit Agency on or before the date of this Agreement, and any and all amendments thereto.

**Premises:** The leasehold interest in the Land, the Improvements, and any other improvements, fixtures, and buildings currently or hereafter existing on the Land.
QAP: Qualified Allocation Plan for the 2014 Housing Tax Credit Program adopted by the Credit Agency (as may be amended, replaced, or superseded).

Replacement Reserve and Security Agreement: Replacement Reserve and Security Agreement of even date herewith, from Borrower to Bank, granting to Bank a first lien and security interest in all replacement reserves deposited by Borrower in accordance with Sections 4.1(cc) or 4.1(dd), or otherwise provided for in the Replacement Reserve and Security Agreement.

Requirements of Law: As to any Person: the certificate or articles of incorporation and by-laws, Operating Agreement, or other organizational or governing documents of such Person; the TCHFC Loan Documents, all requirements of the QAP, and other requirements of the Credit Agency, all Declaration of Land Use Restrictions relating to the Tax Credits, HUD, TCHFC restrictions against the Land in favor of HUD and any other restrictions or covenants affecting the use and development of the Premises; and any applicable law, treaty, ordinance, order, judgment, rule, decree, regulation, or determination of an arbitrator, court, or other Governmental Authority, including, without limitation, rules, decrees, judgments, regulations, orders, and requirements for permits, licenses, registrations, approvals, or authorizations (and any authoritative interpretation of any of the foregoing), in each case as such now exist or may be hereafter amended or adopted and are applicable to or binding with respect to the Premises upon or to which Borrower or the Premises is subject. Without limiting the generality of the foregoing, Requirements of Law shall also include, without limitation, the requirements of Section 42 of the Internal Revenue Code and all requirements relating to the Solar Tax Credit, any and all applicable (a) federal, state, parish, and municipal laws, codes, ordinances, rules and regulations applicable to the Premises, whether currently existing or hereafter promulgated, including without limitation environmental laws, building codes, land use, and zoning codes, (b) all requirements and terms of the QAP, (c) HUD regulations and the provisions of 24 CFR Part 570, as amended from time to time, and (d) federal regulations and policies issued pursuant to these regulations, including without limitations: (a) the Architectural Barriers Act of 1968 (42 U.S.C. §4151-4157); (b) the Uniform Federal Accessibility Standards, as set forth in 24 CFR Part 570.614; (c) the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973; (d) the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7) 24 CFR Part 570.603) and supporting Department of Labor regulations; (e) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended, and 24 CFR Part 570.606; and (f) for existing properties built prior to 1978, the Lead-Based Paint

**Retainage:** An amount equal to ten percent (10%) provided pursuant to the contract with Contractor for work in place as part of the construction of the Improvements, as verified from time to time by the Bank's construction consultant pursuant to the provisions of this Agreement; provided, however, there shall be no Retainage or other holdback for material purchases made by the Contractor or "Contractor's General Conditions Costs" identified in the schedule of values. The Retainage shall in no event be less than the amount actually held back by the Borrower from the Contractor and all subcontractors and materialmen engaged in the construction of the Improvements.

**Survey:** A survey of the Premises prepared by and certified to Bank by a licensed civil engineer or surveyor satisfactory to Bank, which survey shall: (i) include a legal description identical to the legal description identified in the Title Insurance Commitment; (ii) locate the perimeter of the Premises, (iii) locate any improvements (e.g., water, gas, electric and sewer lines, walks, alleys, drives); (iv) locate and identify (by reference to book and page number and/or instrument of record) all easements, rights of way, setback lines and other matters affecting the Premises and set forth in the Title Insurance Commitment; (v) locate all completed Improvements; and (vi) showing other physical matters affecting the title and use of the Premises required by Bank and the title insurance company issuing the Title Insurance Commitment and Title Insurance Policy.

**Substantial Completion:** The completion of the construction and equipping of the Improvements free and clear of all liens other than Permitted Exceptions in substantial accordance with the Plans to the reasonable satisfaction of Bank and the Bank's construction consultant, except for such defects or departures which do not, in the opinion of the Bank's construction consultant, adversely affect either the value of the work in place or the full utilization of the applicable portion of the Improvements for which it is intended, and the issuance and delivery to Bank of a certificate of substantial completion by the Architect on a form acceptable to Bank and copies of all permits and approvals of Governmental Authorities for the occupancy of all apartment units comprised of the Improvements including, and not by way of limitation, a conditional or permanent certificate of occupancy.

**Tax Credit Allocation:** The letter (or other form of notice) awarding the allocation of a Low Income Housing Tax Credit for certain units in the Premises which is attached as Exhibit "J".
TCHFC: Travis County Housing Finance Corporation.

TCHFC Loan: The loan evidenced by a Promissory Note in the face amount of $122,400.00, to be executed by Borrower on or before the Closing Date to the order of TCHFC.

TCHFC Loan Documents: All notes, mortgages, any other agreements, instruments and documents governing, evidencing, or securing the TCHFC Loan.

Title Insurance Commitment: An original mortgagee’s title commitment in favor of Bank issued by a title insurer and agent satisfactory to Bank, committing to issue a Texas mortgagee’s title guaranty policy insuring the Mortgage to be a first and prior lien on the Premises and Improvements, containing only such exceptions which are acceptable to Bank, and subject to the following additional requirements: (i) the insured amount must equal the Loan amount; (ii) the legal description must be identical with the description of the property identified in the Survey; (iii) the legal description should show as separately insured parcels any off-premises easements that benefit the Bank; (iv) list and identify by reference to volume and page number all easements, rights of way and other instruments or matters affecting title to the Premises or any off-premises easements that benefit the Premises; (v) legible copies of all instruments affecting title to the Premises must be submitted with the Title Insurance Commitment; and (vi) the “standard” exceptions regarding (a) matters which a survey would disclose, (b) liens, (c) possessors’ interests, and (d) all requirements must be deleted prior to closing, except as otherwise may be permitted by Bank. The Title Insurance Policy shall be endorsed with a revolving loan endorsement to provide for the revolving portion of Loan.

Title Insurance Policy: An original fully paid Texas lender title insurance policy issued pursuant to the Title Insurance Commitment in the amount of the Loan and insuring the Mortgage to be a first and prior lien on Borrower’s fee simple ownership interests in the Premises, with no exceptions from coverage as to mechanics’ and materialmen’s liens, matters shown by a current survey, rights of parties in possession, or such other exceptions as Bank shall approve. The Title Insurance Policy shall be endorsed with a revolving loan endorsement to provide for the revolving portion of Loan.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with such principles. In the event that changes in GAAP shall be mandated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants or any similar accounting body of comparable standing, or shall be recommended by Borrower’s certified public accountants, to the extent that such changes would modify
such accounting terms or the interpretation or computation thereof as contemplated by this Agreement at the time of execution hereof, then in such event, such changes shall be followed in defining such accounting terms only after Bank and Borrower amend this Agreement to reflect the original intent of such terms in light of such changes, and such terms shall continue to be applied and interpreted without such change until such agreement.

1.3 Other Terms. All other terms contained in this Agreement shall have, when the context so indicates, the meanings provided for in the Texas Uniform Commercial Code (as presently and hereafter in effect) (the "UCC") to the extent the same are used or defined therein.

1.4 References. References in this Agreement to Section or Exhibit numbers shall be to Sections and Exhibits of this Agreement, unless expressly stated to the contrary. References in this Agreement to "hereby," "herein," "hereinafore," "hereinafter," "hereinabove," "hereinbelow," "hereof," and "hereunder" shall be to this Agreement in its entirety and not only to the particular Section or Exhibit in which such reference appears.

1.5 Sections. This Agreement, for convenience only, has been divided into Sections and it is understood that the rights and other legal relations of the parties hereto shall be determined from this instrument as an entirety and without regard to the aforesaid division into Sections and without regard to headings prefixed to such Sections.

1.6 Number and Gender. Whenever the context requires, reference herein made to the single number shall be understood to include the plural; and likewise, the plural shall be understood to include the singular. Definitions of terms defined in the singular or plural shall be equally applicable to the plural or singular, as the case may be, unless otherwise indicated. Words denoting sex shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be construed as cumulative.

1.7 Incorporation of Recitals and Exhibits. The recitals of this Agreement and the Exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for all purposes.

1.8 Certain Other Matters of Construction. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. All references to any instruments or agreements, including, without limitation, references to any of the Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof. Knowledge, for purposes of this Agreement (and the other Loan Documents), shall mean actual knowledge. Current, for purposes of this Agreement and the other Loan Documents, shall mean within thirty (30) Business Days from the applicable date. The term, "or" when used in this Agreement and the other Loan Documents in a sequence shall mean "and/or". References in this Agreement and the other Loan Documents to
particular sections of the Internal Revenue Code, the Uniform Commercial Code, or any other legislation, rule, or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes.

**ARTICLE II - COMMITMENTS**

2.1 Loan Commitments.

(a) Subject to the full, complete, and timely satisfaction by Borrower of each of the applicable conditions precedent described in Section 6.1, 6.2, and 6.3, and all of the other terms and conditions of this Agreement, and relying on the representations and warranties of Borrower hereinafter set forth, Bank agrees to make the Loan as a revolving loan, up to the amount of $5,300,000.00 (an amount borrowed may be repaid and reborrowed), which shall be evidenced by the issuance, execution, and delivery of the Note. In no event will Bank make advances under the Note if the balance of the Note is in excess of the face amount of the Note.

(b) With respect to the Loan, Borrower shall be entitled (subject to Section 6.2 and Section 6.3) to request Bank to make advances under the Note until, but not including the Bank's Required Completion Date, when, except as herein provided in the last sentence of this subsection, each Loan shall automatically convert to a non-advancing term loan. Notwithstanding the foregoing or anything to the contrary herein, advances of the Loan for budgeted interest reserve and for other hard and soft costs approved by Bank in writing and which are provided for in the Budget as being payable from a Loan (and reflected in the draw schedule provided to Bank pursuant to Section 6.1 as being payable) may be made after the Bank's Required Completion Date, (but in any event, in each case, prior to the Conversion Deadline); provided that with respect to any such fundamentals for any such hard and soft costs payable after the Banks' Required Completion Date (and not fundamentals of interest carry), the conditions listed in Section 6.2 are fully satisfied, and with respect to the final advance for Retainage, the conditions listed in Section 6.6 are fully satisfied.

(c) Without limiting the foregoing, requests made by Borrower for amounts to be disbursed by Bank to Borrower in accordance with the terms of this Agreement shall be (subject to the further terms hereof) made (i) first from the fundamentals of the first two Capital Contributions set forth in Exhibit "H", and (ii) then from advances of the Note up to the face amount thereof. Notwithstanding the foregoing, provided no default is then existing under the Operating Agreement, if the Initial Capital Contribution is funded and the next contribution is not yet then payable under the terms of the Operating Agreement, subject to the terms of this Agreement, Bank shall make advances of the Loan as provided for in Sections 6.1, 6.2, and 6.3 until the next Capital Contribution is payable.
under the terms of the Operating Agreement. Without limiting the foregoing, Borrower agrees that the first, second and third Capital Contribution set forth in Exhibit "H" will be funded on a draw basis by the Investor Member as provided for in the Operating Agreement only after Bank has approved that draw (which approval will be based on satisfaction of Sections 6.2 and 6.3) and net fundings of the approved draw shall be paid for deposit into the Loan Account. Further, Borrower shall cause all portions of the Capital Contributions to be applied to the Note to be paid directly to the Bank for application to the Note.

2.2 Renewal Option. The Conversion Deadline may be extended from January 1, 2018, for six (6) calendar months from that date, provided that each of the following conditions have been fully, completely, and timely satisfied on or before January 1, 2018:

(a) At least 60 days prior to January 1, 2018, Borrower shall have notified Bank in writing that it requests an extension of the Conversion Deadline for six calendar months (which request shall specify the length of the renewal);

(b) Substantial Completion of the Improvements shall have occurred;

(c) No event which limits, reduces, or impairs the Low Income Housing Tax Credit for the Premises shall have occurred, and Borrower shall otherwise be in compliance with all Requirements of Law relating to the Low Income Housing Tax Credit for the Premises;

(d) Borrower shall have delivered, at its sole cost and expense, all extension and other agreements, instruments, amendments, title insurance endorsements, and modifications required by Bank in its reasonable discretion to effect such renewal and extension (which extension agreement will provide for, among other things, that interest shall continue to accrue on the Note at the rate provided for in the Note, and the Note shall continue to be payable as provided for in the Note prior to the Conversion Date);

(e) At least eighty-five percent (85%) of the planned units in the Improvements shall be occupied by tenants pursuant to Approved Leases;

(f) The TCHFC Loan shall be in full force and effect and any requirements in the TCHFC Loan Documents for completion of the Improvements and no default shall be then continuing with respect to the TCHFC Loan past all applicable notice and cure periods;

(g) Borrower shall have reimbursed Bank for all of its reasonable costs and expenses (including reasonable attorney’s fees) relating to the preparation of the extension agreement extending the Conversion Deadline to July 1, 2018;

(h) The interest reserve shall be adequate for the renewal term as determined by Bank, or Bank shall have determined the projected NOI from the
Premises during the renewal term will be sufficient to pay estimated interest and fees on the Note during the renewal term;

(i) As independent consideration for the extension, Borrower shall have paid to Bank an extension fee equal to one quarter percent (0.25%) of the aggregate, then outstanding principal balance of the Note existing on the date the extension term commences;

(j) No Material Adverse Change shall have occurred with respect to Borrower, Guarantor, or the Premises;

(k) No Default or Event of Default shall be then existing; and

(l) The Loan shall then be in balance as required by this Agreement and all installments of the Capital Contribution and the TCHFC Loan then payable shall have been funded as set forth in this Agreement.

2.3 Loan Purpose. The advances to be made under this Agreement and under the Note shall be used by Borrower in connection with the development, construction, financing, leasing, ownership, acquisition and operation of the Premises (to the extent provided for in the Budget).

2.4 Payment of Contractor Fees, Overhead, and Profits. Provided no Event of Default is then continuing, Borrower shall be permitted to pay budgeted contractor fees and overhead based upon a percentage of completion basis.

2.5 Payment of Developer Fees and/or Overhead. Until the Conversion Date, no developer fees or overhead shall be paid; provided, however, that notwithstanding the foregoing, if no Event of Default is then existing (or would result therefrom), (a) on the Closing Date, $300,000.00 of the budgeted developer fee shall be paid from the first Capital Contribution described in Exhibit "H" (subject to the terms and requirements of the Operating Agreement), (b) upon 95% completion and receipt of the final Certificate of Completion, $300,000.00 of the budgeted developer fee shall be paid from the third Capital Contribution described in Exhibit "H" (subject to the terms and requirements of the Operating Agreement), and (c) upon the Premises achieving stabilized operations, $595,972.00 of the budgeted developer fee shall be paid from the fourth Capital Contribution described in Exhibit "H" (subject to the terms and requirements of the Operating Agreement).

2.6 Fees.

(a) As independent consideration for Bank’s commitment to make the Loan as provided for herein, prior to or contemporaneously with Borrower’s execution and delivery of this Agreement, Borrower shall pay to Bank, a non-refundable origination fee equal to $53,000.00 for Bank’s agreement to provide construction financing as provided herein, and a non-refundable origination fee equal to $27,000.00 for Bank’s agreement to provide permanent financing as provided herein.
(b) Borrower shall pay reasonable inspection fees of Bank's construction consultant as provided in Section 6.8.

2.7 Reallocation of Budget. The Budget has been prepared by Borrower, and Borrower represents to Bank that the Budget includes as of closing, all known and anticipated costs and expenses incident to the Loan, and the construction of the Improvements after taking into account the requirements of the Loan Documents. Subject to Section 4.1(c), Borrower shall (a) except as permitted by Section 4.1(c), only reallocate Loan funds from one Budget line item to another or otherwise amend the Budget with the Bank's written approval (which will not be unreasonably withheld, delayed or conditioned) provided that in no event may any reallocation be made from the interest reserve line item, and the reallocation shall always leave a sufficient amount available with respect to a particular line item to complete the work associated with that line item), and (b) notify Bank promptly whenever Borrower becomes aware that the Budget is, or might be, inaccurate in any material respect.

2.8 Capital Contributions.

(a) The first two Capital Contributions described in Exhibit "H" shall be funded on a draw basis as provided in the Operating Agreement by deposit into the Loan Account to pay for items provided for in the Budget and as otherwise provided for in Section 2.1(c) of this Agreement. The portion of the third Capital Contribution set forth in Exhibit "H" to pay the balance of the Note down to the amount of the Permanent Mortgage Loan Commitment (or such lesser amount needed to achieve Lease Stabilization) shall be paid to Bank for application to the Note. The fourth Capital Contribution set forth in Exhibit "H" shall be first deposited in the Loan Account on the date of the funding thereof (as needed) to pay the Note down to the amount of the Permanent Mortgage Loan Commitment (or such lesser amount needed to achieve Lease Stabilization), and then any remaining amounts shall be paid directly to the Borrower to be used to be applied as provided in the Operating Agreement. Notwithstanding the foregoing, the portion of the Capital Contribution which is to be applied to the Loan or any other Obligation shall be so applied immediately upon receipt thereof by Bank, without regard to the satisfaction of Sections 6.1, 6.2, and 6.3 (the balance of any such Capital Contribution shall be disbursed to pay costs for which such draw was approved by the Investor Member subject to the terms of this Agreement). The foregoing shall not change the treatment of the payment of such Capital Contributions as Capital Contributions from the Investor Member for purposes of the Operating Agreement.

(b) If after the Closing Date, there is an additional allocation or increase of any of the Tax Credits for the Premises, in that event, any additional Capital Contributions payable as a result of such additional allocation or increase shall be used and applied when paid in a manner reasonably satisfactory to Bank.
2.9 Cash Flow. Unless and until the Conversion Date, upon the written request therefor by Bank (which request may be made if an Event of Default is then existing), all NOI shall be deposited by Borrower, on a monthly basis, in an account of Borrower located at Bank which shall be a blocked collateral account. Borrower shall have no access to such account unless and until the Conversion Date (if cash flow is sufficient to pay interest due on the Note, then such cash flow shall be used to pay interest even if there is sufficient availability in the interest reserve line item; it being agreed that interest will be paid first from cash flow then from the unfunded portion of the interest reserve line item in Exhibit "B").

2.10 Interest Reserve. The portion of the Loan allocated in the Budget for interest shall be held by the Bank as an unfunded interest reserve, and the Borrower hereby authorizes the Bank to make advances thereof to pay interest when due under the Loan to the extent not paid out of cash flow as set forth in Section 2.9. Such authorization is irrevocable and no further direction or authorization shall be required for the Bank to make such advances. The Bank may make such advances notwithstanding that the Borrower may be in default under the terms of this Agreement or any other Loan Document. If funds are not available from the interest reserve to pay interest due under the Loan, Borrower shall pay such interest from its own funds which may include the TCHFC Loan and the Capital Contributions. Nothing in this provision shall prevent the Borrower from paying interest from its own funds and from cash flow from the Premises.

2.11 Recourse. Subject to the terms, provisions, covenants and agreements set forth in this Agreement and the other Loan Documents, including, without limitation, Section 16 of the Note, Bank agrees to lend to Borrower, and Borrower agrees to borrow from Bank, up to the amount of the Loan, which Loan shall be used by Borrower in accordance with the terms of this Agreement. Subject to Section 16 of the Note, prior to the Conversion Date, Bank shall have full recourse against Borrower and each Guarantor, as well as against the Premises, for payment and performance of the Loan and the Loan Documents and for completion of the Improvements in accordance with the Loan Documents. All payments due from Borrower to Bank shall be made without offset or other reduction. Notwithstanding the foregoing, with respect to the requirements of this Agreement, the Note, and the other Loan Documents, Bank acknowledges that nothing herein shall impair or modify the limitation of liabilities provided to members under the Texas Business Organizations Act (Bank shall have no recourse directly against any member of Borrower with respect to any Note or the other Obligations).

2.12 TCHFC Loan. The TCHFC Loan will be funded on or about the Conversion Date as provided for in the applicable TCHFC Loan Document in a manner and for purposes satisfactory to Bank.
ARTICLE III - REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Borrower. As an inducement to Bank to enter into this Agreement and to make the Loan, Borrower represents and warrants to Bank as follows:

(a) Borrower Organization. Borrower is duly organized and existing under the laws of the state of its organization and is duly qualified in the state where the Land is located to own, construct, and operate the Improvements. Borrower has the authority and the legal right to carry on the activities now being conducted by it and to engage in the transactions contemplated by the Loan Documents.

(b) Binding Documents. The Loan Documents executed by Borrower are legal, valid, and binding obligations of Borrower in accordance with their terms (subject to any exceptions, assumptions or limitations set forth in the opinion of Borrower's counsel to the Bank) and have been duly authorized, executed, and delivered by Borrower.

(c) Legal and Environmental Compliance. To Borrower's current actual knowledge, the Plans for the Improvements and the anticipated use of the Premises and all easements and rights appurtenant thereto comply in all material respects with all applicable Requirements of Law, including, without limitation, all restrictive covenants, zoning ordinances, laws and regulations relating to environmental matters and access and facilities for persons with disabilities, building laws and codes. To Borrower's knowledge, Borrower's use of the Premises will be in full compliance with the requirements of the Internal Revenue Code for obtaining and preserving the Tax Credits, in compliance with all requirements of HUD, and all of the units on the Premises will be dedicated to affordable housing residents as required by the Tax Credit Allocation; and otherwise satisfying the applicable requirements for completing and operating the Improvements of all Governmental Authorities. All Governmental Permits and other approvals necessary to commence work on the Premises, including, without limitation, all requisite approvals of the Credit Agency and HUD, have been or will be obtained by Borrower and Bank prior to the commencement of the construction and development of the Improvements. To the Borrower's current actual knowledge, the Premises have not been used in violation of any federal laws, rules or ordinances for environmental protection, regulations of the Environmental Protection Agency, the environmental requirements the Credit Agency and HUD and of any applicable local or state law, rule, regulation or rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Substances.

(d) Tax Credits. The Tax Credits have been allocated to the Premises in the amount set forth in the related Tax Credit Allocation and
all requirements to Borrower's right to receive the allocation of the Tax Credits have been met. In connection with the foregoing, the Tax Credit Allocation is in full force and effect and Borrower is in full compliance with the terms and provisions thereof.

(e) **Utilities Availability.** All utility services necessary for the construction and full utilization of the Premises for their intended purposes are presently or will be prior to the need therefor, available at the boundaries of the Land through public or unencumbered private easements or rights of way and are, or will be prior to the need therefor, available for connection to the Improvements (for the area in which the Land is located) at ordinary costs and impact fees.

(f) **Access to the Premises.** Access necessary for the construction and full utilization of the Premises for their intended purposes is presently, or will be prior to the need therefor, available to the Premises over streets or roads which have been dedicated to public use and accepted therefor by appropriate Governmental Authorities or easements from the adjacent landowner and any permits necessary for connecting the driveways on the Premises to such streets or roads have been, or will be prior to the need therefor, obtained without impairing the construction schedule for the Improvements.

(g) **Financial Statements.** The Financial Statements (i) are true and correct in all material respects, (ii) have been prepared in accordance with accounting practices historically used by Borrower and Guarantor consistently applied, (iii) fairly represent the financial condition of Borrower and Guarantor in all material respects, (iv) and no Material Adverse Change has occurred in the financial condition of Borrower and each Guarantor since the date thereof.

(h) **Litigation.** There is no litigation against Borrower pending or, to the knowledge of Borrower, threatened before any Governmental Authority, except as disclosed to Bank in writing.

(i) **No Commencement.** Except as disclosed to the Bank prior to the Closing Date in writing, there has been no commencement of work of any nature on, or delivery of materials to, the Premises.

(j) **Leases.** There are and will be no leases of the Premises in effect, other than Approved Leases, and laundry, cable services leases and communications facilities leases.

(k) **Reaffirmations.** Each request to Bank for approval of a disbursement of a portion of the Capital Contributions then on deposit with Bank or for an advance on the Note shall constitute an express representation, warranty, and affirmation to Bank, as of the date of the
request, that each of the representations and warranties of this Section 3 (other than representations and warranties made as to a specific date) are true and correct in all material respects as of the date of each request and on the date of its disbursement, except as may be otherwise disclosed to Bank in writing.

(l) **No Conflicting Agreements.** There is no charter, bylaw, stock provision, constitution or other document pertaining to the organization, power, or authority of Borrower and no provision of any existing agreement, mortgage (other than mortgages to be paid in full in connection with the closing), indenture or contract binding on Borrower or affecting its property, which would conflict with or in any way prevent the execution, delivery, or carrying out of the terms of this Agreement and the other Loan Documents.

(m) **Ownership of Assets.** Borrower has good and indefeasible title to the Premises, and the Premises are free and clear of liens, except those granted to Bank, Permitted Encumbrances, those contemplated by the Loan Documents, subordinate liens securing a TCHFC Loan, and those provided for in Section 5.1(f), and liens disclosed to Bank in writing prior to the date of this Agreement or approved by Bank (in writing) after the date of this Agreement.

(n) **Taxes.** All taxes and assessments currently due and payable by Borrower have been paid or, will be paid prior to delinquency, or are being contested in good faith by appropriate proceedings (to the extent permitted by this Agreement) and the Borrower has filed all tax returns which it is required to file.

(o) **Place of Business.** Borrower's chief executive office is located at the address of Borrower provided for in the introductory paragraph of this Agreement.

(p) **No Misstatements or Misrepresentations.** No information, exhibit, or report prepared by or at the direction or with the supervision of Borrower and furnished to Bank in connection with the negotiation and preparation of this Agreement or any other Loan Documents contain any material misstatements of fact or omits to state a material fact necessary to make the statements contained therein not misleading as of the date made or deemed made in any material respect. To Borrower's current actual knowledge, there is no fact which Borrower has failed to disclose to Bank in writing which materially affects adversely or, so far as Borrower can now foresee, will materially affect adversely the business, prospects, profits, or condition (financial or otherwise) of Borrower or the ability of Borrower to perform this Agreement.
(q) **No Event of Default.** To Borrower’s knowledge, as of the
date hereof, no event has occurred and no condition exists which would,
upon the execution and delivery of this Agreement or Borrower’s
performance hereunder, constitute an Event of Default.

(r) **Other Representations.** All representations made by the
Borrower in the TCHFC Loan Documents, and by the Managing Member
and the Administrative Member in the Operating Agreement are true and
correct in all material respects.

(s) **Specially Designated Nationals.** Neither the Borrower nor
any of its officers, managers or principal employees is on the list of
Specially Designated Nationals and Blocked Persons issued by the Office
of Foreign Assets Control of the U.S. Department of Treasury.

**ARTICLE IV - AFFIRMATIVE COVENANTS**

4.1 **Covenants of Borrower.** In addition to the covenants and
agreements of Borrower made elsewhere in this Agreement, unless Bank shall
otherwise consent in writing, Borrower covenants and agrees with Bank as follows:

(a) **Approved Leases:** Borrower shall lease (or permit to be
leased) tenant space in the Improvements only pursuant to Approved
Leases. An "Approved Lease" is (i) a tenant lease of residential living
space in the Improvements that is substantially on the standard form
submitted to Bank prior to the Closing Date and which has been approved
by Bank, and (ii) which is on terms and to a tenant who satisfies the
requirements (1) of the terms and conditions of the Internal Revenue Code
for preserving the Low Income Housing Tax Credits, as to the Affordable
Units, (2) as to the Affordable Units, (3) of the QAP, (4) of the Operating
Agreement, (5) of the TCHFC Loan Documents (6) of Bank for satisfying
minimum occupancy requirements (which include that the lease
agreement be with a bona fide tenant and be for an initial term of at least
six months), and (7) of all other applicable Requirements of Law. Further,
if the applicable tenant is to receive Title IX Housing Protection for the
associated lease to be an Approved Lease, the Borrower shall have
provided to that tenant a copy of the HUD disclosure form. Except to
comply with changes in the applicable law, Bank shall not, without the
consent and approval of Bank, make any change to its standard form of
lease other than in the ordinary course of business.

(b) **Progress of Work; Lien Free Completion:** All
Governmental Permits and other approvals necessary for the work on the
Premises, including, without limitation, all requisite approvals under the
TCHFC Loan Documents, and by all Governmental Authorities will be
obtained by Borrower prior to the commencement of the construction and
development of the Improvements. Borrower shall commence construction
on or before the Commencement Deadline, and then continually prosecute the work and guarantees and commits that it will complete the construction and development of the Improvements on or before the Bank's Required Completion Date, all in substantial conformity in all material respects with the approved Plans and the Budget and in compliance with all Requirements of Law. Notwithstanding anything herein to the contrary, no advance shall be made under the Loan after the Closing Date until Bank has received and approved evidence that all such building and other requisite permits and governmental approvals have been issued or will be issued in a timely manner. Borrower shall not permit cessation of work on the Premises for a period in excess of thirty (30) consecutive Business Days without Bank's prior written consent, provided that in no event shall there be a cessation of work on the Premises for an aggregate period in excess of thirty (30) Business Days (whether or not consecutive) without Bank's written consent unless under either circumstance the cessation is as a result of Excusable Delays. Borrower shall, within fifteen (15) Business Days after Borrower obtains knowledge thereof, correct any material defect in the Improvements, any material departure from the Plans in a manner acceptable to Bank, Requirements of Law, or good construction practices for Austin, Texas, and any encroachment by the Improvements on any property line, setback line, easement or other restricted area. Borrower shall keep the Premises free at all times from all liens for services, labor, materials, or indebtedness, except liens with respect to which Contractor (or Borrower as the case may be) has furnished and perfected a bond issued by a company satisfactory to Bank and on a form and in an amount reasonably satisfactory to Bank, and except for the other liens and encumbrances permitted under the terms of the Mortgage, including without limitation, the Permitted Exceptions. Any water wells encountered in the development of the Premises shall be plugged in accordance with all applicable Requirements of Law. Prior to the Bank's Required Completion Date, the Premises will be fully equipped and ready for use for their intended purposes. Borrower shall cause the Improvements to be Placed in Service, as such term is used in this context in connection with, for purposes of and within the time required by all requirements of applicable law for, maintaining the Tax Credits.

(c) Plans, Contracts and Budget Approval; Assignment of Contracts: Borrower shall submit all contracts for construction and other services to the Premises, the Plans, the Budget, surveys of the Land, and all other items required by the Loan Documents to Bank for approval, and Bank shall have no obligation to make any disbursement hereunder after the Closing Date until it has approved those items (which approval shall not be unreasonably withheld, conditioned, or delayed). Borrower agrees that the approved Construction Contract with the Contractor will not be terminated and that it and the Plans and Budget will not be modified or otherwise changed in all material respects, in whole or in part, without the
prior written consent of Bank (provided, however, subject to the other
terms of this Agreement and the Operating Agreement, Borrower may
make changes to the Plans and/or reallocate Loan funds from one Budget
line item to another without Bank's consent as long as the amount of any
single change order does not exceed $25,000.00, and the aggregate
amount of all such change orders does not exceed $200,000.00; provided
that a reallocation from the contingency line item may not be in excess of
the percentage of completion of the Improvements at the time of the
reallocation. Borrower further agrees to perform all of its obligations under
the approved Construction Contracts with the Contractor in a timely
manner.

(d) Insurance: The Borrower and Contractor, at their own
expense, shall each maintain and deliver to the Bank policies of insurance
as set forth in Exhibit "L".

(e) Title Instruments: Borrower shall submit all proposed
easements, permits, licenses, and other instruments which would or may
affect title to the Premises to Bank for approval prior to the execution
thereof by Borrower (such approval not to be unreasonably withheld,
conditioned or delayed).

(f) Use of Proceeds: The proceeds of the Loan disbursed by
Bank to Borrower in accordance with this Agreement shall be used only
for the purposes set forth in Section 2.3 and as provided for in the Budget.

(g) Additional Equity: If the sum of (i) the undisbursed portion
of the proceeds of the Capital Contributions intended to be used to pay
budgeted construction items and to pay the Note as provided herein and
the undisbursed portions of the Loan to be used for the acquisition (or
refinancing of the acquisition, as the case may be) and development of the
Improvements, plus (ii) any sums then on deposit with Bank and pursuant
to this subsection, are at any time insufficient, in Bank's reasonable
judgment, to fully complete the development of the Improvements in
accordance with the Plans and development of the Improvements (but
excluding the payment of budgeted developer fees in determining
Borrower's cash needs for the development of the Improvements to the
extent Borrower deferred payment of such fees until after completion of
the Improvements under the terms of the Operating Agreement, or
otherwise) and to pay all interest under the Note when due, Borrower shall
within 5 days after written notice thereof from Bank, deposit with Bank
such sums of money in cash as Bank may reasonably require to remedy
such condition and to pay any liens for services and materials due and
payable at that time (unless it is being contested in accordance with
Section 4.1(y) below). Notwithstanding anything herein to the contrary, at
Bank's option, no further approval of disbursements of the Capital
Contributions then on deposit with Bank and advances of the Loan shall
be made until Borrower has fully complied with this requirement. All deposited sums under this subsection shall stand as additional security for Borrower's obligations under this Agreement and may be disbursed, at Bank's option, before any further approvals of disbursements of the Capital Contributions then on deposit with Bank and advances of the Loan.

(h) Environmental Inspections; Inspection of Improvements: Subject to the rights of tenants of apartment units, Borrower agrees to permit Bank, its agents, contractors, and employees to enter and inspect the Premises at any reasonable time during normal business hours, with reasonable cause (except as hereafter provided, at Bank's own cost unless an Event of Default has occurred and is continuing, in such event, at Borrower's cost), upon two Business Days prior written notice (but no such notice shall be required during the continuance of an Event of Default) for the purposes of conducting an environmental investigation and audit (including taking physical samples) to ensure that Borrower is complying with the representations made in Section 3.1(c) hereof. Borrower shall provide Bank, its agents, contractors, employees, and representatives with access to and copies of any and all data and documents relating to or dealing with any Hazardous Materials used, generated, manufactured, stored, or disposed on the Premises within five Business Days of the written request therefor. Additionally, Borrower shall permit Bank and its representatives to enter upon the Premises at reasonable times and with at least 24 hours prior written notice (provided that no such notice will be required during the continuance of a Default or an Event of Default) and to inspect the Improvements and all materials used in the construction thereof. Bank (or its construction consultant) shall have the right to reject and require Borrower to replace any material or work which does not substantially comply in any material respect with the Plans or good construction practices in Austin, Texas. It is understood and agreed that Bank's rights under this Section 4.1(h) are solely for Bank's loan administration purposes and do not impose any duty of care of Bank to Borrower or to any other person or entity. Bank shall have no liability, obligation, or responsibility whatsoever with respect to the construction or development of the Improvements, except to approve, in accordance with this Agreement, disbursements of the Capital Contributions, and advances of the Note. Bank shall not be obligated to cause to be performed any environmental audit or investigation or inspect the Premises or the construction of the Improvements. Bank shall not be liable for any defect in the Premises by reason of inspecting or not inspecting the same. Without limiting any of the foregoing, it is specifically agreed and acknowledged that Bank, at its option, may engage an independent construction consultant as set forth in Section 6.8 (at Borrower's sole and reasonable cost and expense as provided in Section 6.8) to periodically inspect the Improvements as a condition to any requested consent and
authorization to the disbursement of the Capital Contributions then on
deposit with Bank or any advance under the Note to pay budgeted items,
to in each case confirm, among other things, the accuracy of the materials
provided in connection with that consent or request for an advance or
disbursement and that all previously disbursed proceeds of the Note and
the Capital Contributions have been used in the construction of the
Improvements in the manner represented to Bank. Bank shall not be
liable for the performance or default of Borrower, any architect, engineer,
contractor, construction consultant or any other party, nor for any failure to
construct, complete, protect or insure the Improvements, nor for the
payment of the costs of labor, materials or services supplied for the
construction of the Improvements, nor for the performance of any
obligation of Borrower, except for any such liability that arises solely and
exclusively due to the gross negligence or willful misconduct of Bank or
any Bank Party (hereinafter defined).

(i) **Notice of Environmental Claims and Actions:** Borrower
shall advise Bank in writing, promptly after Borrower becomes actually
aware thereof, of (i) any and all enforcement, cleanup, remedial, removal,
or other governmental or regulatory actions instituted, completed or
threatened in writing pursuant to any applicable federal, state, or local
laws, ordinances or regulations relating to any Hazardous Materials
affecting the Premises or the use of the Premises and (ii) all written claims
made or threatened by any third party against Borrower relating to
damages, contribution, cost recovery, compensation, loss or injury
resulting from any Hazardous Materials. Borrower shall promptly notify
Bank of any remedial action taken by Borrower in connection with
Hazardous Materials with respect to the Premises or the use of the
Premises. Borrower shall promptly deliver to Bank copies of any
Environmental Reports obtained by Borrower with respect to the
Premises.

(ii) **Financial Statements and Other Information:** Borrower
shall maintain a system of accounting reasonably satisfactory to Bank and
in accordance with Borrower’s historical accounting practices applied on a
consistent basis throughout the period involved, and permit Bank’s officers
or authorized representatives to visit and inspect Borrower’s books of
account and other records at such reasonable times during normal
business hours and as often as Bank may desire upon at least 72 hours
prior written notice to Borrower (provided that during the continuance of
any Event of Default, no such prior notice shall be required and the cost of
the inspections shall be paid by Borrower and nothing herein shall limit
Borrower’s obligations to reimburse Bank for the reasonable fees of
Bank’s construction consultant as provided for in Section 6.8). Unless
written notice of another location is given to Bank, Borrower’s books and
records will be located at Borrower’s chief executive office set forth above
or at the Premises.
(k) **Retainage:** Borrower shall withhold Retainage as required herein in the definition of Retainage and by all Requirements of Law in connection with the development of the Improvements (except as otherwise may be provided for in Section 6.6).

(l) **Existence and Compliance:** Borrower shall maintain its existence and qualification to do business, where required, and comply with all Requirements of Law, including, without limitation, environmental laws applicable to the Premises. Borrower shall at all times operate the Premises in a manner which preserves the Tax Credits, including, without limitation, the Premises shall be Placed in Service (as such term is used by the Credit Agency in connection with the Low Income Housing Tax Credits) by the date required by the Credit Agency. Borrower shall (and cause the Managing Member and Administrative Member to) fully comply with all terms and provisions of the Operating Agreement. The other members of Borrower have authorized the Managing Member of Borrower and to severally enter into this Agreement and the other Loan Documents for and on behalf of Borrower.

(m) **Taxes and Other Obligations:** Borrower shall pay or contest in accordance with the terms of this Agreement all of its current obligations before they become delinquent, including all federal, state and local taxes and all other payments required under federal, state, or local law. Without limitation of the foregoing, Borrower will cause to be paid prior to delinquency all taxes and assessments heretofore or hereafter levied or assessed against the Premises, or any part thereof, and will furnish to Bank, on or before February 28th of each year, receipts showing payment of such taxes and assessments with respect to the preceding calendar year, to the extent the same are due and payable on such date, provided that Borrower may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment, and pending such contest Borrower shall not be deemed in default hereunder if (i) Borrower shall diligently prosecute such contest in a manner not prejudicial to the rights, liens and security interests of Bank; (ii) prior to delinquency of the asserted tax or assessment, and to the extent Borrower has not paid such disputed tax or assessment to the relevant taxing authority pending resolution of such contest, Borrower establishes with Bank, or as otherwise required by the taxing authority, an escrow reasonably acceptable to Bank adequate to cover the payment of such tax or assessment with interest, costs and penalties and a reasonable additional sum to cover possible costs, interest and penalties (which escrow shall be used to pay, or shall be returned to Borrower upon payment of all such taxes, assessments, interest, costs and penalties or disbursed in accordance with the resolution of the contest to the claimant) or furnishes Bank with an Indemnity secured by a deposit in cash or other security reasonably acceptable to Bank, or an indemnity bond with a surety reasonably acceptable to Bank, in the amount of the tax or
assessment being contested by Borrower plus a reasonable additional sum to pay all costs, interests and penalties which may be imposed or incurred in connection therewith; (iii) Borrower pays to Bank promptly after demand therefor all costs and expenses incurred by Bank in connection with such contest; and (iv) Borrower promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final and non-appealable; provided, however, that in any event each such contest shall be concluded, and the tax, assessment, penalties, interest and costs shall be paid, prior to the date any writ or order is issued under which the Premises or any part thereof may be sold. To the extent there is conflict between this Section and the provisions of any of the other Loan Documents, this Section shall control.

(n) Maintenance: Borrower shall maintain all of its material tangible property in good condition (subject to ordinary wear and tear) and repair and make all necessary replacements thereof as necessary to operate the Improvements for the purposes stated in the Loan Documents, and preserve and maintain all licenses, trademarks, privileges, permits, franchises, certificates and the like necessary for the operation of its business. Notwithstanding the foregoing, Borrower shall not be obligated to preserve, repair or replace any item of tangible property which has become obsolete and which will as necessary be replaced.

(o) Financial Reporting: Borrower shall promptly furnish to Bank such information regarding the business affairs, financial condition, assets, liabilities, operations, and transactions of Borrower and the Premises, as Bank may reasonably request, and, without limiting the foregoing, furnish to Bank all items set forth in Section 14(b) of the Mortgage.

(p) Further Assurances: Borrower shall promptly cure any defects in the execution and delivery of the Loan Documents and immediately execute and deliver to Bank all such other and further instruments consistent with this Agreement as may be reasonably required by Bank from time to time in order to satisfy or comply with the covenants and agreements of Borrower made in this Agreement provided, however, no such instruments shall change the economic terms of the transactions as contemplated by the Loan Documents or expand the liability or reduce the rights of the parties hereunder.

(q) Delivery of Information: Subject to the effect of any confidentiality obligations of Borrower under applicable Requirements of Law, Bank is authorized by Borrower to deliver copies of all information and materials provided to Bank pursuant to the terms of this Agreement and the other Loan Documents to the Credit Agency and their respective
representatives. Additionally, Borrower shall provide Bank with all additional and supplemental information regarding Borrower, Guarantor, and the Premises as is reasonably required in writing by Bank. The Managing Member and Administrative Member of Borrower shall provide Bank with copies of all written notices of default or non-compliance provided to, and received by, a Managing Member or Administrative Member to and from the Investor Member.

(r) **Additional Notices**: Borrower shall, in addition to, and without in any way limiting, the other requirements in this Agreement to provide certain notices to Bank, deliver to Bank, promptly upon any officer of the Managing Member or the Administrative Member of Borrower having actual knowledge of the occurrence of any of the following events or circumstances, a written statement with respect thereto, signed by an authorized representative of Borrower, advising Bank of the occurrence of such event or circumstance and the steps, if any, being taken by Borrower with respect thereto:

(i) any Default or Event of Default;

(ii) copies of any notice of default or non-compliance provided to Borrower under a TCHFC Loan Document;

(iii) any litigation or proceeding or contingent liability in which the amount involved is $75,000.00 or more, which is not covered by insurance, and which involves Borrower as a defendant or the Premises or any other property of Borrower; and

(iv) any other event or occasion which could reasonably be expected to cause a Material Adverse Change.

(s) **INDEMNIFICATION**: BORROWER SHALL AND DOES HEREBY INDEMNIFY AND HOLD HARMLESS BANK, THE DIRECTORS, TRUSTEES, SUBSTITUTE TRUSTEES, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, HEIRS, REPRESENTATIVES, ATTORNEYS, SUCCESSORS AND ASSIGNS OF BANK, AND ANY PERSONS OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH BANK (EACH AN "INDEMNIFIED PERSON"), FROM AND AGAINST, AND REIMBURSE THEM ON DEMAND FOR, ANY AND ALL INDEMNIFIED MATTERS (DEFINED BELOW). WITHOUT LIMITATION, THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO MATTERS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE SOLELY AND
EXCLUSIVELY OUT OF THE NEGLIGENCE OF SUCH, AND/OR ANY OTHER, INDEMNIFIED PERSON. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO A PARTICULAR INDEMNIFIED PERSON TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PERSON AND/OR ANY OTHER INDEMNIFIED PERSON. ANY AMOUNT TO BE PAID UNDER THIS SECTION BY BORROWER TO AN INDEMNIFIED PERSON SHALL BE A DEMAND OBLIGATION OWING BY BORROWER, WHICH BORROWER HEREBY PROMISES TO PAY, TO BANK, AS PART OF THE OBLIGATIONS, EVEN IF IN EXCESS OF THE LOAN AMOUNT, AND SECURED BY THE LOAN DOCUMENTS. NOTHING IN THIS SECTION, ELSEWHERE IN THIS AGREEMENT, OR IN ANY OTHER LOAN DOCUMENT SHALL LIMIT OR IMPAIR ANY RIGHTS OR REMEDIES OF BANK, OR ANY OTHER INDEMNIFIED PERSON, INCLUDING WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION OR INDEMNIFICATION, AGAINST BORROWER OR ANY OTHER PERSON UNDER ANY OTHER PROVISION OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, ANY OTHER AGREEMENT, OR ANY APPLICABLE REQUIREMENT OF LAW. AS USED HEREIN, THE TERM "INDEMNIFIED MATTERS" MEANS ANY AND ALL REASONABLE CLAIMS, DEMANDS, LIABILITIES (EXCLUDING STRICT LIABILITY), DAMAGES (EXCLUDING CONSEQUENTIAL DAMAGES), CAUSES OF ACTION, JUDGMENTS, PENALTIES, FINES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS AND OTHER PROFESSIONAL CONSULTANTS AND EXPERTS, AND OF THE INVESTIGATION AND DEFENSE OF ANY CLAIM, WHETHER OR NOT SUCH CLAIM IS ULTIMATELY DEFEATED, AND THE SETTLEMENT OF ANY CLAIM OR JUDGMENT INCLUDING ALL VALUE PAID OR GIVEN IN SETTLEMENT) OF EVERY KIND, KNOWN OR UNKNOWN, FORESEEABLE OR UNFORESEEABLE, WHICH MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR PAID BY BANK OR ANY INDEMNIFIED PERSON AT ANY TIME AND FROM TIME TO TIME, WHENEVER IMPOSED, ASSERTED, OR INCURRED, BECAUSE OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING OUT OF ANY TRANSACTION, ACT, OMISSION, EVENT, OR CIRCUMSTANCE IN ANY WAY CONNECTED WITH THE PREMISES, THE IMPROVEMENTS OR THE LAND OR WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, INCLUDING APPROVAL OF A DISBURSEMENT OF THE LOAN PROCEEDS, ANY DRAW OR FAILURE TO DRAW ON THE LETTER OF CREDIT PROVIDED PURSUANT TO SECTION 6.1(a)(25) OR ANY OTHER ACTION OR INACTION RELATING TO SUCH LETTER OF CREDIT OR THE RELATED LETTER OF CREDIT AGREEMENT, THE CONDITION OF THE LAND AND THE IMPROVEMENTS, ANY BODILY INJURY OR
DEATH OR PROPERTY DAMAGE OCCURRING IN OR UPON THE LAND OR THE IMPROVEMENTS THROUGH ANY CAUSE WHATSOEVER AT ANY TIME ON OR BEFORE THE RELEASE DATE (DEFINED BELOW), AND ANY CLAIM UNDER OR WITH RESPECT TO ANY LEASE (BUT EXCLUDING ANY LOSSES, DAMAGES, COSTS OR EXPENSES SUFFERED, INCURRED OR PAID BY BANK IN CONNECTION WITH FAILURE OF THE BORROWER OR ANY OTHER PERSON TO PAY OR PERFORM THE LOAN; PROVIDED THAT ANY LOSS, CLAIM, OR CAUSE OF ACTION RESULTING SOLELY AND EXCLUSIVELY FROM ANY INDEMNIFIED PERSON’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SHALL NOT BE AN INDEMNIFIED MATTER FOR PURPOSES HEREOF). THE TERM “RELEASE DATE” AS USED HEREIN MEANS THE EARLIER OF: (i) THE DATE ON WHICH THE OBLIGATIONS HAVE BEEN PAID AND PERFORMED IN FULL AND THE LOAN DOCUMENTS HAVE BEEN RELEASED, OR (ii) THE DATE ON WHICH THE LIEN CREATED UNDER THE MORTGAGE IS FULLY AND FINALLY FORECLOSED OR A CONVEYANCE BY DEED IN LIEU OF SUCH FORECLOSURE IS FULLY AND FINALLY EFFECTIVE AND POSSESSION OF THE PREMISES HAS BEEN GIVEN TO THE PURCHASER OR GRANTEE FREE OF OCCUPANCY AND CLAIMS TO OCCUPANCY BY BORROWER AND BORROWER’S HEIRS, DEVISEES, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS; PROVIDED, THAT IF SUCH PAYMENT, PERFORMANCE, RELEASE, FORECLOSURE, OR CONVEYANCE IS CHALLENGED, IN BANKRUPTCY PROCEEDINGS OR OTHERWISE, THE RELEASE DATE SHALL BE DEEMED NOT TO HAVE OCCURRED UNTIL SUCH CHALLENGE IS REJECTED, DISMISSED, OR WITHDRAWN WITH PREJUDICE. THE INDEMNITIES IN THIS SECTION SHALL BE SOLELY FOR EVENTS OCCURRING PRIOR TO THE RELEASE DATE, SHALL NOT TERMINATE UPON THE RELEASE DATE OR UPON THE RELEASE, FORECLOSURE, OR OTHER TERMINATION OF ANY LOAN DOCUMENT, AND SHALL SURVIVE THE RELEASE DATE, FORECLOSURE OF THE MORTGAGE OR CONVEYANCE IN LIEU OF FORECLOSURE, THE PAYMENT AND PERFORMANCE OF THE OBLIGATIONS, THE DISCHARGE AND RELEASE OF THE LOAN DOCUMENTS, ANY BANKRUPTCY OR OTHER DEBTOR RELIEF PROCEEDING, AND ANY OTHER EVENT WHATSOEVER. THE TERMS OF THIS SECTION ARE CUMULATIVE WITH, AND NOT LIMITED BY, THE TERMS AND PROVISIONS OF THE MORTGAGE.

(t) **Appraisal:** Bank shall have the right to order new Appraisals of the Premises from time to time. Each Appraisal is subject to review and approval by Bank. If required by this Section, Borrower agrees upon demand to pay to Bank the reasonable cost and expense for such Appraisals and a reasonable fee for Bank’s review of each Appraisal. Notwithstanding the foregoing, Borrower has no obligation to pay the cost
and expense of the Appraisal if the Appraisal is ordered during the continuance of an Event of Default or is required by applicable law or regulation.

(u) **Operation:** Borrower shall operate the Premises in a good and workmanlike manner and in accordance with all applicable Requirements of Law and will pay all fees or charges in connection therewith. In particular, the Premises will be operated as a "qualified residential rental project" within the meaning of Section 42(d) of the Internal Revenue Code with respect to the units in the Premises subject to the Low Income Housing Tax Credit. With respect to the Affordable Units, Borrower shall fully comply with the terms and provisions of the Tax Credit Allocation, and the Declaration of Land Use Restrictions relating to the Low-Income Housing Tax Credit.

(v) **Expenses of Bank.** Without limiting the terms of this Agreement or any of the other Loan Documents, to the extent not prohibited by applicable law, Borrower will pay all reasonable costs and expenses and reimburse Bank for any and all reasonable expenditures of every character reasonably incurred or expended from time to time, regardless of whether a Default or Event of Default shall have occurred, in connection with (i) the preparation, negotiation and filing of any and all Loan Documents, and (ii) Bank's creating, perfecting or realizing upon Bank's security interest in and liens on the Land, and all reasonable costs and expenses relating to Bank's exercising any of its rights and remedies under the Loan Documents or at law, including, without limitation, all filing fees, taxes, brokerage fees and commissions, title review and abstract fees, Uniform Commercial Code search fees, other reasonable fees and expenses incident to title searches, reports and security interests, escrow fees, reasonable attorneys' fees and legal expenses, court costs, reasonable fees and expenses incurred in connection with any complete or partial liquidation of such property, and all reasonable fees and expenses for any professional service relating to such property or any operations conducted in connection with it; provided, that no right or option granted by Borrower or Bank or otherwise arising pursuant to any provision of this Agreement or any other Loan Document shall be deemed to impose or admit a duty on Bank to supervise, monitor, or control any aspect of the character or condition of the Premises or any operations conducted in connection with it for the benefit of Borrower or any other person other than Bank. Borrower shall pay all reasonable costs and expenses of complying with this subsection and the Loan Documents, whether or not such costs and expenses are included in the Budget. Borrower's obligations under this subsection shall survive the delivery of the Loan Documents, the making of advances, the payment and performance in full of the Obligations, the release or termination of the Loan Documents, the foreclosure of the Mortgage or conveyance in lieu of
foreclosure, or any bankruptcy proceeding, and any other event whatsoever.

(w) [RESERVED].

(x) Stored Materials.

(i) Bank shall have the right to approve or disapprove specifically, in its sole and reasonable judgment, all disbursements for any materials to be used for the construction of the Improvements and not to be immediately incorporated into and made a part of the Improvements ("Stored Materials"). Without limiting Bank's approval rights as set forth in the preceding sentence, Bank will not approve disbursements for Stored Materials until Borrower complies with the conditions set forth in subsection (ii) below.

(ii) In addition to the requirements of Sections 6.1, 6.2, and 6.3, as a condition precedent to Bank's request for a disbursement of Capital Contributions (if and to the extent any is then deposited with Bank), or an advance of the Note for Stored Materials, Borrower shall supply Bank, as requested by Bank (x) evidence satisfactory to Bank that the Stored Materials are included in the coverage of the insurance policies required by Section 4.1(d); (y) evidence satisfactory to Bank from the seller or fabricator of the Stored Materials that, upon payment, ownership thereof will vest in Borrower free of any liens or claims of third parties; and (z)(A) evidence satisfactory to Bank that the Stored Materials are satisfactorily stored on the Land to protect against theft or damage, or (B) if the Stored Materials are not stored on the Land, (1) evidence satisfactory to Bank that the Stored Materials are stored in a bonded warehouse or storage yard approved by Bank, and the warehouse or yard has been notified that Bank has a security interest in the subject Stored Materials, and (2) Bank shall have received from Borrower the original warehouse receipt. With Bank's prior written approval, Stored Materials may be stored in the yard or warehouse of the seller or fabricator, subject to satisfaction of conditions (1) and (2) in this subsection (z)(B), and provided further that Bank receives satisfactory evidence that the Stored Materials are protected against theft or damage, have been suitably identified as belonging to Borrower for use in the Premises, and that such seller or fabricator has been notified of the security interest of Bank therein.
(y) **Contest of Certain Claims.** Notwithstanding the terms of the Mortgage or any other Loan Document, Borrower may, to the extent and in the manner permitted by applicable law, contest the payment of any claim for payment by a Contractor or subcontractor, or any tax, assessment, or other governmental charge against the Land. The failure of Borrower to pay such contested claim pending such contest shall not be or become a Default or an Event of Default if (i) Borrower has notified Bank promptly after the commencement of Borrower's contest of such payment; (ii) Borrower has made any deposit or payment under protest, or posted security, as and to the extent required by applicable law; (iii) Contractor or Borrower has furnished to Bank a cash deposit reasonably satisfactory to Bank, or an indemnity bond satisfactory to Bank with a surety satisfactory to Bank, in an amount reasonably satisfactory to Bank (or in the statutory amount, in the case of bond authorized by statute), to assure payment of the matters under contest and to prevent any sale or forfeiture of any part of the Land or the Improvements, and (iv) in the case of a claim for work which does or could result in a lien against the Land or the Improvements, Borrower has provided (x) to the extent required by Bank and available under applicable law, a bond which under applicable law releases the lien from the Land and the Improvements, and (y) such security, assurances and other items, if any, as the title insurer may require to insure around the lien; (v) Borrower diligently and in good faith contests the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of any part of the Land and the Improvements to satisfy the same during the pendency of the contest; (vi) Borrower promptly upon final determination thereof pays the amount of any such claim so determined, together with all costs, interest, and penalties payable in connection therewith; (vii) the failure to pay the claim does not constitute a default under any other deed of trust, mortgage, or security interest covering or affecting any part of the Land or the Improvements and does not subject Bank to any civil or criminal liability or to any damages or expense; and (viii) the aggregate amount of all claims being contested shall not exceed ten percent (10%) of the amount of the Loan. Notwithstanding the forgoing, Borrower shall immediately upon request of Bank pay (and if Borrower shall fail to do so, Bank may, but shall not be required to, pay or cause to be discharged or bonded against) any such claim notwithstanding such contest if, in the reasonable opinion of Bank, the Land or the Improvements are in jeopardy or in danger of being forfeited or foreclosed. Bank may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Bank, the entitlement of such claimant is established.

(z) **Asbestos-Containing Materials.** Asbestos-containing materials (if any) shall be properly managed during demolition activities relating to the Premises in accordance with any applicable law, treaty, ordinance, order, judgment, rule, decree, regulation, or determination of
an arbitrator, court, or other Governmental Authority, including, without limitation, rules, decrees, judgments, regulations; orders, and requirements for permits, licenses, registrations, approvals, or authorizations (and any authoritative interpretation of any of the foregoing), in each case as such now exist or may be hereafter amended and applicable to the Premises. An O&M Plan shall be in place during the construction of the Improvements, if and to the extent reasonably required by Bank. If any sampling or abatement activities are conducted with respect to the Premises, Borrower shall promptly deliver copies of the related reports to Bank.

(aa) Loan Account. Borrower agrees to maintain the Loan Account as a special account with Bank into which the proceeds from distributions of the Capital Contributions and from advances under the Note (but no other funds, except for deposits of additional equity described in Section 4.1(g) above which are disbursed to Borrower pursuant to the terms of this Agreement) shall be deposited pursuant to the terms of this Agreement and against which checks shall be drawn by Borrower (or its designee) only for payment of all costs and expenses incident to and associated with the Budget.

(bb) Sales and Use Taxes. If Bank reasonably determines, based upon any duly issued ruling, law, opinion, or regulation (or as the result of the withdrawal of any previously issued ruling, law, opinion, or regulation), that Contractor (or its subcontractors) is not exempt from state sales and use taxes, in such event, if Contractor has not paid such taxes, at the written request of Bank, Borrower shall create and maintain a reserve or other account in a manner satisfactory to Bank in an amount at least equal to the aggregate sales and use taxes that Contractor did not pay with respect to the development of the Premises because Contractor took the position it was exempt from such sales and use taxes. Borrower agrees Bank has not represented to Borrower or to any other Person, whether sales and use taxes are and shall be due with respect to the Premises. Borrower has and does hereby agree to indemnify and hold Bank harmless from any loss, claims, or causes of action arising as a result of the failure of Borrower or Contractor to pay any such sales and use taxes.

(cc) Escrows. From and after the Conversion Date (and, with the exception of replacement reserves which will be deposited as provided in the Replacement Reserve and Security Agreement), Borrower shall make monthly deposits to escrows established with Bank for real estate taxes, special assessments, insurance premiums, and replacement reserves. Bank shall determine the amount of these monthly deposits (which, in the case of the escrows for real estate taxes, special assessments and insurance, shall be in amounts sufficient to accumulate the full amount of anticipated billings, one month before their due dates,
and may, at its discretion, adjust those amounts from time to time, as it 
deems appropriate.

(dd) **Replacement Reserve.** At the Conversion Date, Borrower 
shall establish and fund a replacement reserve account as required by the 
Replacement Reserve and Security Agreement and as and when required 
by the Operating Agreement. The replacement reserve will initially be 
$22,800.00 per year ($300.00/unit), based on 76 units, and may be used 
to fund specified replacements and capital improvements.

(ee) **Operating Reserve.** Borrower shall establish an operating 
reserve of $202,000.00 as required by the Operating Agreement and held 
as provided in the Operating Reserve Agreement (such operating reserve 
shall be the same operating reserve as required by the Operating 
Agreement). The foregoing shall not limit any requirements of the 
Operating Agreement to include a working capital or other reserves.

(ff) **Credit Agency.** The Premises will comply with or contain 
any other project unit amenity, design item, standard of construction, or 
similar item listed in the low income housing tax credit application 
approved by Credit Agency unless otherwise consented to by the Bank 
and Credit Agency.

(gg) **Affordable Restrictions.** Borrower shall operate the 
Affordable Units in accordance with federal affordability restrictions under 
section 42 of the Internal Revenue Code and other applicable 
Requirements of Law.

(hh) **Lead Containing Material.** Borrower shall use no materials 
containing lead in violation of quantities permitted under applicable 
Requirements of Law in the construction of the Improvements.

(ii) **Mold.** During any construction of the Premises, if 
applicable, all identified mold contamination shall be remediated and all 
roof leaks shall be repaired and water damaged wall and ceiling materials 
shall be replaced.

(jj) **PCB.** During any construction of the Premises, if applicable, 
all light ballasts that are not labeled "No PCB" will be replaced with 
ballasts that are labeled "No PCB."

(kk) **Equity Funding.** If Bank (or its Affiliate) is not the upper tier 
investor in the Investor Member, as and when requested by Bank, on or 
prior to the Closing Date, Borrower shall provide Bank with the source and 
terms of the funding of the Capital Contributions (Bank’s obligation to 
close the Loan is subject to its approval of the upper tier equity investor). 
If, after the Closing Date, the Investor Member transfers any of the 
Investor Member’s interest in the Borrower, if the transfer is not permitted
by Section 5.1(l), the Investor Member shall provide Bank with the identity of all partners or members of the entity (the "Fund") to which the Investor Member's interests were transferred. All information received in connection with the foregoing shall be kept confidential by Bank. If prior to the earlier to occur of (i) the Conversion Date or (ii) the payment in full of the Capital Contribution, subject to any adjustments, in the Operating Agreement, any major partner or member (being any particular partner or member owning 25% or more of the Fund) in the Fund is substituted for any one or more other Persons, unless the transfer is permitted by Section 5.1(l), the Investor Member shall promptly notify Bank of the substitution. Partners or members in the Fund (whether as a result of the original syndication or after a transfer) will either be an Affiliate of Wells Fargo Bank, National Association, a financial institution or an investment grade corporation (defined as BBB- or better rated by S&P or similar rating agency) or otherwise approved by Bank in writing, which approval shall not be unreasonably withheld or delayed.

(ii) Project Account. Borrower shall maintain Bank as its principal depository bank for project accounts related to the Premises.

(mm) FLORIDA TAX LIABILITY. BORROWER HAS DETERMINED THAT NO FLORIDA DOCUMENTARY TAX OR FLORIDA INTANGIBLES TAX IS DUE BY BORROWER OR GUARANTOR (OR BY BANK AS THE CASE MAY BE) IN CONNECTION WITH THE LOAN TRANSACTION RELATING TO THE LOAN, OR IF ANY SUCH TAX IS DUE, BORROWER SHALL CAUSE THAT TAX TO BE PROMPTLY PAID BEFORE AS REQUIRED BY APPLICABLE LAW.

4.2 Assignment of Plans. As additional security for the payment of the Note and other Obligations, Borrower hereby transfers and assigns, and grants a security interest, to Bank all of Borrower's rights and interest in and to the Plans and all design contracts (collectively, referred to in this Section as the "Plans") and hereby represents and warrants to and agrees with Bank as follows:

(a) The Plans delivered to Bank are a complete and accurate description of the Plans. The Plans have been heretofore approved in writing by, as applicable, the Credit Agency, HUD and the City. No approval of the Plans is required by any other Person under the Operating Agreement, the TCHFC Loan Documents, or otherwise.

(b) The Plans are complete and adequate for the construction of the Improvements and there have been no modifications thereof. The Plans shall not be modified without the prior written consent of Bank (except for change orders permitted under Section 4.1(c) hereof).
(c) Bank may use the Plans for any purpose related to the improvements, including, but not limited to, inspections of construction and the completion of the improvements.

(d) Bank's acceptance of this assignment shall not constitute approval of the Plans by Bank. Notwithstanding anything herein to the contrary, Bank has no liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans. Bank has no duty to inspect the Improvements, and, if Bank should inspect the Improvements, Bank shall have no liability or obligation to Borrower arising out of such inspection. No such inspection nor any failure by Bank to make objections after any such inspection shall constitute a representation by Bank that the Improvements are in accordance with the Plans nor shall any such matter constitute a waiver of Bank's right thereafter to insist that the Improvements be constructed in accordance with the Plans.

(e) This assignment shall inure to the benefit of Bank, its successors, and assigns, including, without limitation, any purchaser upon foreclosure of the Mortgage or any receiver in possession of the Land that assumes Bank's rights and obligations under this Agreement.

4.3 Assignment of Construction Contracts. As additional security for the payment of the Note and other Obligations, Borrower hereby transfers and assigns, and grants a security interest, to Bank all of Borrower's rights and interest, but not its liability for any breach, in, under, and to the Construction Contracts (as hereafter defined), upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each original construction contract (collectively with all other original contracts relating to construction of the Improvements, the "Construction Contracts") it has furnished or will furnish to Bank is and shall be a true and complete copy thereof and that Borrower's interest therein is not subject to any claim, setoff, or encumbrance other than the Permitted Exceptions and the security interests granted to the Bank.

(b) NEITHER THIS ASSIGNMENT NOR ANY ACTION BY BANK (INCLUDING BUT NOT LIMITED TO APPROVAL OF THE PLANS BY BANK) SHALL CONSTITUTE AN ASSUMPTION BY BANK OF ANY OBLIGATION UNDER ANY CONSTRUCTION CONTRACT, AND BORROWER SHALL CONTINUE TO BE LIABLE FOR ALL OBLIGATIONS OF BORROWER THEREUNDER, BORROWER HEREBY AGREEING TO PERFORM ALL OF ITS OBLIGATIONS UNDER ANY CONSTRUCTION CONTRACT. BORROWER INDEMNIFIES AND HOLDS BANK HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING, BUT NOT
LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM, BUT NOT AS A RESULT OF BANK'S, OR ANY OF THE INDEMNIFIED PARTIES', GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(c) Bank shall have the right at any time during the continuance of an Event of Default (but shall have no obligation) to take in its name or in the name of Borrower such action as Bank may at any time determine to be necessary to cure any default under any Construction Contract or to protect the rights of Borrower or Bank thereunder. Bank shall incur no liability if any action so taken by it or on its behalf shall prove to be inadequate or invalid, and Borrower agrees to hold Bank free and harmless against and from any loss, cost, liability or expense (including, but not limited to, reasonable attorneys' fees and expenses) incurred in connection with any such action, other than as a result of Bank's (which shall include agents, employees and invitees of Bank) gross negligence or willful misconduct.

(d) Borrower hereby irrevocably constitutes and appoints Bank as Borrower's attorney-in-fact, in Borrower's name or in Bank's name, to, during the continuance of an Event of Default, enforce all rights of Borrower under any Construction Contract.

(e) Prior to the occurrence and continuation of an Event of Default, Borrower shall have the right to exercise its rights as a party to the Construction Contract, provided that, except as otherwise expressly set out herein, Borrower shall not cancel or amend any Construction Contract in any material manner (except for change orders permitted hereunder) or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Bank.

(f) This assignment shall inure to the benefit of Bank, its successors and assigns, including any purchaser upon foreclosure of the Mortgage, any receiver in possession of the Premises, and any corporation formed by or on behalf of Bank which assumes Bank's rights and obligations under this Agreement.

ARTICLE V - NEGATIVE COVENANTS

5.1 Negative Covenants. Unless otherwise expressly permitted under the Loan Documents, until full payment and performance of the Note and all other Obligations of Borrower, and the expiration of Bank's funding commitments hereunder, Borrower shall not, without the prior written consent of Bank, which consent will not be unreasonably delayed, withheld or conditioned (and without limiting any requirement of any other Loan Document):
(a) **Transfer of Assets.** Sell, lease, assign, or otherwise dispose of or transfer any assets, except for Approved Leases or if done in the normal course of its business or as otherwise permitted by the Loan Documents.

(b) **Off-Site Storage.** Except as expressly permitted by Section 4.1(x) of this Agreement, store or permit any materials to be used for the construction of the Improvements to be stored off the Land, or permit any materials to be stored on the Land not in a manner satisfactory to Bank (all such items shall be specified in a request for advance as "stored materials" and not "work in place").

(c) **No Amendments.** Amend, restate, modify, cancel, or permit to be terminated, the TCHFC Loan Documents, the Operating Agreement (provided that the Operating Agreement may be amended without the necessity of prior Bank consent if the amendment does not amend or otherwise affect, directly or indirectly, the timing, amount, or conditions of and to the payment of the Capital Contributions).

(d) **No Other Debt.** Incur, create, assume, or permit to exist any Debt, except:

(i) the Obligations;

(ii) all existing loans and borrowings by Borrower as reflected in the Financial Statements; and all renewals, extensions, modifications and rearrangements thereof;

(iii) liabilities, direct or contingent, of Borrower to the extent that such liabilities existed on the date of this Agreement and continue to exist and are reflected in the Financial Statements or have been disclosed to Bank in writing and approved by Bank prior to the date of this Agreement;

(iv) the TCHFC Loan (to the extent subordinated to the Bank in a manner satisfactory to Bank);

(v) endorsements of negotiable instruments for collection or deposit in the ordinary course of business;

(vi) obligations from time to time incurred in the ordinary course of business, other than for borrowed money;

(vii) Debt contemplated by the Operating Agreement (to the extent subordinated to the Bank in a manner satisfactory to Bank);
(viii) taxes, assessments, or other government charges which are not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted if a reserve shall have been made therefor as required by GAAP;

(ix) Debt to be paid in connection with the closing of the Loan and from the first payment of the Capital Contribution (including, without limitation, any pre-development loan made prior to the Closing Date by the Investor Member or any other Person to Borrower); and

(x) If applicable, a letter of credit provided pursuant to Section 6.1(a)(25).

(e) No Loan, Advances, or Investments. Make or permit to remain outstanding any loans or advances to or investments in any Person except that the foregoing restrictions shall not apply to the following:

(i) loans, advances, or investments the material details of which have been set forth in the Financial Statements, or which have been otherwise disclosed to and approved by Bank in writing prior to the date of this Agreement;

(ii) certificates of deposit or interest bearing accounts of banks or savings and loan associations insured by an agency of the United States; and

(iii) securities issued and/or guaranteed by the United States of America, the State of Texas, any other state of the United States, or any agency, unit, instrumentality or subdivision thereof.

(f) No Mortgages.

(i) Create, incur, assume, or permit to exist any mortgage, pledge, security interest, lien, or similar encumbrance on any of Borrower’s respective assets, including, without limitation, any of the Borrower’s interest in the Premises (to the extent owned by Borrower), except as specifically disclosed in the Financial Statements, (ii) acquire or agree to acquire assets under any conditional sale agreement or title retention contract, or (iii) sell and leaseback any assets, except that the foregoing restrictions shall not apply to:
(1) liens for taxes, assessments and other governmental charges not yet due, unless any such taxes, assessments and other governmental charges are being contested in accordance with Section 4.1(m);

(2) liens of vendors, carriers, warehousemen, landlords, mechanics, laborers, and materialmen arising by law in the ordinary course of business for sums not yet due or being contested in good faith if reserve shall have been made therefor as required by GAAP or which have been bonded or insured;

(3) pledges or deposits in connection with or to secure worker's compensation, unemployment insurance, pensions or other employee benefits;

(4) mortgages, pledges, security interests, liens, encumbrances, landlord's liens, or title retention contracts existing as of the date of this Agreement and disclosed to Bank in writing and approved by Bank before the date hereof;

(5) liens and/or security interests required by this Agreement and the other Loan Documents;

(6) liens against the Premises securing the TCHFC Loan (to the extent made subordinate to the Mortgage in a manner reasonably satisfactory to Bank);

(7) Permitted Exceptions; and

(8) liens contemplated by the Operating Agreement, if and to the extent made subordinate to Bank as may be required by Bank.

(g) **Utilities.** Except as expressly permitted by Section 5.1(f), Borrower shall not permit any person or entity (other than tenants under Approved Leases) to obtain any right to its utility services, including, without limitation, water and sewer taps, nor shall Borrower permit to expire any of its rights to utility services or commitments for capacity, including, without limitation, water and sewer taps.

(h) **No Assignment.** Borrower shall not assign, transfer, or encumber its rights or Obligations under any Loan Document or any proceeds of the Loan.
(i) **Borrower’s Existence.** Borrower shall not dissolve or liquidate or merge with or be consolidated into any other entity or modify or amend the Operating Agreement with respect to the timing and amount of the payment of the Capital Contribution or the identity of the Investor Member (except for the amendment and restatement of the Operating Agreement on or about the date hereof, any amendment to the Operating Agreement permitted under Section 5.1(c), transfers of the Investor Member’s interest to Affiliates of the Investor Member, changes in the Managing Member or Administrative Member in accordance with the Operating Agreement to the extent permitted by Section 5.1(l) or to Persons reasonably satisfactory to Bank).

(j) **Payment of Development Fees, Contractor Fees, and Lease Commissions.** Except as permitted by this Agreement, Borrower shall not permit any development and developer overhead fees, contractor profit or fees, or lease commissions to be disbursed (pursuant to the draw schedule approved by Bank or otherwise) to Borrower, Guarantor, or any other party.

(k) **Operating Reserves.** Prior to the Conversion Date, no portion of the Capital Contributions or the Note shall be used by Borrower to fund operating reserves (except as otherwise shown in Exhibit “H” and in accordance with the Budget and the associated draw schedule approved by Bank which may allow for certain Operating Reserves to be funded prior to the Conversion Date).

(l) **Change in Composition of Borrower.** Borrower shall not permit any change in the ownership of the Premises or in Borrower, or in the ownership interests of the members of Borrower, except that (i) a member (including the Investor Member) may transfer its interest to an Affiliate of that member (to the extent such new investor member is capitalized in a sufficient manner), (ii) Investor Member may transfer its beneficial interest in the Borrower to an entity controlled by the Investor Member (or an Affiliate thereof), and (iii) subject to the requirements of the Credit Agency relating to the ownership of the managing member of Borrower, and otherwise, the Investor Member may remove the managing member in accordance with the terms of the Operating Agreement, provided that any replacement managing member is acceptable to Bank and the Credit Agency, in their reasonable discretion, which approval will not be unreasonably withheld, conditioned, or delayed (Bank agrees that an Affiliate of the Investor Member would be an acceptable managing member).

(m) **Hazardous Substances.** Borrower shall not use or knowingly permit any other party to use any Hazardous Materials on the Premises, except such materials as are incidental to a tenant’s tenancy,
Borrower’s normal course of business, maintenance, and repairs and which are handled in compliance with all applicable environmental laws.

(n) **Property Management and Service Contracts.** Borrower shall not change the management company managing the operation of the Premises or materially change any material term or provision of any management agreement relating to the Premises unless required by the Investor Member, and in any event, subject to the prior written consent of the Bank, such consent not to be unreasonably delayed, withheld or conditioned. Except as approved by Bank in writing in each instance, Borrower shall not enter into any management or service contract in connection with the Premises (other than for the provision of cable television, telephone, internet, security, and coin operated laundry services to the Premises) which is not terminable by Borrower (or its successors) without cause, or with not more than thirty (30) Business Days notice.

(o) **Management of Borrower.** Except as expressly permitted by this Agreement, the Mortgage, and the Operating Agreement, Borrower shall not permit any change in the management of Borrower (or of any managing member or the equivalent) of Borrower.

(p) **Loan to Value.** Borrower shall not permit the Loan to Value Ratio to exceed eighty percent (80%) at any time.

(q) **No Change In Basic Business.** Borrower shall not permit its basic business operations, as contemplated on the Closing Date to materially change or cease.

(r) **Government Regulation.** Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Bank from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower’s identity as may be requested by Bank at any time to enable Bank to verify Borrower’s identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

(s) **Distributions to Members.** Prior to the Conversion Date, except as expressly permitted by the terms of this Agreement, Borrower shall not make any distributions or advances to its members after the Closing Date without the written consent of Bank.
ARTICLE VI - CONDITIONS TO VARIABLE RATE LOAN

6.1 Conditions to Closing of the Loan. Bank shall be under no obligation to advance any portion of the Loan unless and until each of the following conditions precedent shall have been (i) fully and completely satisfied, with proof thereof being furnished in form and sufficiency as may be required by Bank, or (ii) waived by Bank in writing:

(a) Bank shall be furnished with and shall have approved fully executed counterparts, as appropriate, of the following:

(1) the Loan Documents;

(2) evidence that the Borrower has obtained a binding, irrevocable and enforceable federal award of the Tax Credits for the Premises in an amount sufficient enough to allow for the development of the Premises, as provided herein, and that such allocation has not been rescinded, repealed, cancelled, or otherwise suspended, and that the Investor Member will contribute (as required by this Agreement) capital to Borrower, in an amount not less than $11,086,891.00 subject to the terms and conditions of Borrower's Operating Agreement and Exhibit "H" (subject to finalization), in exchange for the receipt of such Tax Credits;

(3) Bank shall have been provided evidence that the Initial Capital Contribution has been used to pay budgeted items in a manner satisfactory to Bank;

(4) all fees due to Bank under Section 2.6 shall have been paid;

(5) reimbursement for all of Bank's reasonable legal fees and other costs and expenses incurred by Bank in connection with the Loan and the other transactions described herein;

(6) a current Title Commitment issued by a company acceptable to Bank, together with the payment of a premium required to issue a Title Insurance Policy in connection therewith, in the amount of the Note, and all endorsements thereto as required by Bank (including a revolving loan endorsement);
(7) an opinion of counsel to Borrower and Guarantor, which, among other things, provides that the Loan Documents are authorized and duly executed and constitute binding and enforceable obligations of Borrower and Guarantor and shall confirm whether any Florida documentary stamp tax or Florida intangibles tax is due in connection with the Loan transaction (including that Guarantor has received adequate legal consideration for its and his delivery of a Guaranty), subject to any exceptions, limitations and assumptions as may be reasonably acceptable to the Bank;

(8) (x) a copy of the Operating Agreement (and all modifications and amendments thereto), (y) a copy of the filed Certificate of Formation (or its equivalent) for Borrower and such other evidence of Borrower's and the Managing Member's and Administrative Member's (and its constituent entities, if any) existence and good standing of Borrower and their managing members as may be required by Bank, and (z) copies of any and all development agreements, management agreements, investment agreements, deficit funding facility agreements, equity notes, purchase options, if any, and other documents and agreements referenced in the Operating Agreement, and all modifications and amendments thereto, or otherwise required in connection therewith by the Investor Member;

(9) Evidence that the TCHFC Loan has closed in accordance with the terms of the TCHFC Loan Documents;

(10) Evidence of the authority of Borrower (its managing member and its managing member's managing member) and Guarantor to enter into the transactions described herein;

(11) the organizational documents of the Managing Member and the Administrative Member of Borrower (and their constituent entities, if any), together with any and all modifications thereof as of the date hereof;

(12) all financial information as may be required by Bank of Guarantor and the Contractor;
(13) [RESERVED];

(14) an Affidavit of No Liens in the form of Exhibit "C" attached hereto;

(15) if and to the extent required by Bank, all Certificates of Authority, Certificates of Good Standing, Certificates of Existence, resolutions (with secretary's certificate), Secretary's Certificates of Incumbency, and all other documents required by Bank to evidence the Managing Member of Borrower and its constituents and their representatives are empowered and duly authorized to enter into the agreements evidenced by the Loan Documents executed by each of them (including, without limitation, evidence that managing member may execute the Loan Documents and bind Borrower without the joinder of any other member);

(16) if available and only to the extent required by Bank, a narrative report prepared by a licensed soil consultant regarding the soil conditions of the land, which shall include results of the test borings and recommendations concerning soil bearing pressures, foundations, excavations, fill, and compaction, and evidence the proposed drainage of the Premises is adequate and that the foundation designed for the Improvements is adequate for the existing conditions;

(17) evidence of all fire, hazard, general and excess liability, flood (if applicable), builder's risk, and workman's compensation insurance required under Section 4.1(d) and all other insurance as required by Bank and the other Loan Documents (and all other requirements in Exhibit "L" shall then be satisfied, including requirements in Exhibit "L" to the funding of the Loan);

(18) proof in form and substance satisfactory to Bank that the required permits, building and otherwise, and authorizations from all appropriate Governmental Authorities necessary or required in connection with the construction of the Improvements have been obtained (or available to be obtained subject only to payment by Borrower of applicable
fees), together with copies of all other required Governmental Permits;

(19) a current Survey of the Premises (which shall indicate whether the Premises is located in the 100 year flood plain);

(20) a pro-forma operating statement for the Premises which shall be consistent with the projections made to the Bank and evidence of market conditions for the use of the Premises (including review and approval of the feasibility of the 76 units and review and approval that projected NOI will support the Loan);

(21) Appraisal of the Premises, reflecting the market value of the Premises and will include the valuation of the Low Income Housing Tax Credit awarded to the Premises (on an as-completed, rent restricted, stabilized basis) to be an amount which satisfies Section 5.1(p) above satisfactory to Bank;

(22) [RESERVED].

(23) a Phase I Environmental Audit, performed by an independent third party acceptable to Bank and, if applicable, an O&M Plan with respect to asbestos containing materials, and a cost estimate to address asbestos, water damages, microbial growth, and potential PCB light ballasts during construction activities at the Premises (all of which estimated costs shall be provided for in the Budget), each of which shall be approved by all applicable departments of the Bank;

(24) a letter of credit issued by a financial institution acceptable to the Bank (which in any event shall have a Fitch rating of B or higher and if the institution is not rated by Fitch, then having an S&P rating of A or higher or a Moody’s rating of A1 or higher) with a face amount of 10% of the amount of the Construction Contract with the Contractor budgeted hard costs for the Improvements (and in any event including the amount of contractor overhead and profit as well as materials and labor), will be for a term of 12 months (with automatic renewals), and otherwise on a form acceptable to
Bank. If at any time the Bank, in its reasonable discretion, determines that the creditworthiness of the issuer of any letter of credit issued under this Section 6.1(a)(25) is no longer acceptable, the Borrower shall cause such letter of credit to be replaced within 30 days of written notice thereof with a letter of credit issued by a financial institution acceptable to Bank or a collateral account established as provided in this subsection,

(25) a final and complete set of the Plans with all necessary regulatory approvals evidenced thereon, as well as the signatures of Borrower, the Contractor, and the Architect, and reviewed by a review architect satisfactory to Bank;

(26) evidence (including, without limitation, lien waivers) that all parties which have provided materials or services on the Land prior to the Closing Date have been paid (or will be in connection with closing) in full;

(27) an agreement from the Architect, consenting to the assignment of the Plans prepared by the Architect to Bank, and providing for the subordination of all statutory and contractual liens and claims of the Architect against the Premises;

(28) an agreement from the Contractor, consenting to the assignment of the general contract to Bank, and providing for the subordination of all statutory and contractual liens and claims of the Contractor against the Premises;

(29) Borrower shall have opened and maintained the Loan Account;

(30) Evidence of utility availability to the Premises;

(31) the Financial Statements (as required by Bank);

(32) evidence that there is sufficient parking for the intended use of the Premises to the extent required by all requisite Governmental Authorities;
(33) the final Budget, pro forma operating statements, and a verification of market conditions for use;

(34) evidence that the Land comprises one or more separate tax parcels;

(35) the form of lease to be used for leases of units in the Premises;

(36) the interest rate of the Loan after the Conversion Date shall have been rate locked (or otherwise set by Bank);

(37) a copy of the agreement for the acquisition of the Land by Borrower and a copy of the deed and closing statement relating thereto;

(38) a complete list of costs for the Improvements, enumerated on AIA document G703 or similar form, to include all hard (direct) costs and all anticipated soft (indirect) costs. The cost breakdown should clearly indicate those line items to be funded by Capital Contributions and the estimated timing of such contributions;

(39) a projected schedule of (i) construction progress, (ii) timing of amounts to be funded from Capital Contributions, and (iii) the timing of disbursements of the Loan;

(40) an executed copy of the general contract for construction of the Improvements, which contract shall comply in all material respects with the final approved Plans and shall set forth a "fixed price" or "guaranteed maximum price." Said contract shall, with the general contractor, be subject to approval by Bank. If required by Bank, the general contractor shall submit, for Bank's review and approval, a "Contractor's Qualification Statement" on AIA document A305. The general contract shall, by its terms or by separate instrument, be assignable to Bank. The assignment in Section 4.3 shall be acknowledged in writing by the Contractor in a manner satisfactory to Bank and shall provide for the subordination of all statutory and contractual liens and claims of the Contractor against the Premises. If
required by Bank, Bank shall also have received copies of all major subcontracts and a complete list with names and addresses of all subcontractors providing labor and/or materials to the Improvements. Bank acknowledges that certain subcontracts may not be awarded prior to closing the Loan, in which case Borrower shall submit an amended list of subcontracts as and when awarded;

(41) an executed copy of the architectural contract with the Architect, which contract shall be subject to approval by Bank. The contract shall, by its terms or by separate instrument, be assignable to Bank and inure to the benefit of Borrower. The assignment in Section 4.2 shall be acknowledged in writing by the Architect in a manner satisfactory to Bank and shall provide for the subordination of all statutory and contractual liens and claims of Architect against the Premises. Bank shall require that the Architect perform regular progress inspections and certify on AIA form G702 each disbursement request for quantity and quality of work in place and compliance with the approved Plans;

(42) the identity and experience of the management company, together with all management contracts, development agreements, operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the Premises. If required by Bank, the assignment of such contracts and arrangements provided for in the Mortgage and the other Loan Documents shall be acknowledged by the contracting third parties;

(43) evidence in the form of letters from the appropriate provider or from the project engineer, that public water, sanitary and storm sewer, electricity, gas, and other required utilities are available to the Premises (as clearly identified in said letters) and in quantities sufficient for the successful operation of the Premises. Borrower shall also provide Bank with evidence that all utility lines will enter the Premises through adjoining public streets or, if passing through adjoining private land, do so in accordance with recorded public or private easements satisfactory in form and content to Bank;
(44) evidence that (a) the Premises and all planned Improvements and intended uses will fully comply with all applicable deed restrictions, laws, regulations, and zoning requirements; and (b) there are no pending proceedings, either administrative, legislative, or judicial, which would in any manner adversely affect that status of zoning with respect to the Premises or any part thereof;

(45) a marketing plan and marketing budget for the Premises;

(46) certificates of a reporting service acceptable to Bank, reflecting the results of a search of the central and local Uniform Commercial Code records made no earlier than thirty (30) days prior to the date hereof, showing no filings against Borrower or any of the collateral for the Loan except those, if any, approved by Bank or to be paid on the Closing Date; and

(47) such regulatory/grant agreements, restrictive covenants, and other information, documents, and certificates as Bank or the title company may reasonably request in connection with the transactions contemplated in this Agreement (including without limitation, the items listed in Exhibit "I").

(b) The Mortgage, all financing statements, and all other documents and agreements required by Bank shall have been recorded or filed in the manner required by Bank;

(c) No Default or Event of Default is then continuing; and

(d) Each of the foregoing shall have been fully satisfied, deferred, or waived in writing by Bank no later than the Closing Date (except as otherwise provided for above).

6.2 Advances During Construction Phase. Each of the following conditions shall be fully and completely satisfied (or waived by Bank in writing) at the time of each request made to the Bank for an approval of a disbursement of the Capital Contributions then on deposit with Bank or for an advance under the Note:

(a) Bank shall have been furnished with, and approved, fully executed counterparts, as appropriate, of a Waiver of Lien to Date, in the form of Exhibit "D" attached hereto (using the applicable form), or such other form which substantially satisfies the requirements of HB 1456 as
adopted by the Texas legislature and effect as of March 1, 2013, from the Contractor and each of the subcontractors who were paid by Borrower with the proceeds from the immediately preceding requested advance or disbursement (as itemized in the request for disbursement for that advance or disbursement submitted pursuant to Section 6.3(a) hereof) or who were paid otherwise by Borrower during the preceding thirty (30) days for work in connection with construction of the Improvements;

(b) Borrower shall have fully and completely satisfied all of the conditions set out in Section 6.1 (compliance with same being continuing conditions for all advances hereunder), regardless if a particular condition or covenant had been waived by Bank in whole or in part in connection with the closing or a prior advance;

(c) Prior to the first advance/disbursement for hard costs, a copy of a filed Affidavit of Commencement, in the form of Exhibit "F", as filed with the County Clerk of Travis County, Texas, and otherwise satisfying the requirements of the Texas Property Code (which shall evidence that commencement of construction of the Improvements began after the date the Mortgage was recorded);

(d) If the request is made for an advance of the Loan, the amount of the requested advance, when added to all previous advances under the Note, shall not cause the aggregate combined amount advanced under the Loan to exceed $5,300,000.00;

(e) All of Borrower’s representations and warranties made in this Agreement shall be true and correct in all material respects as of the date of each advance (other than representations and warranties made as to a specific date);

(f) No Default or Event of Default shall have occurred and be continuing;

(g) No mechanic’s or materialman’s lien claim or other encumbrance shall have been filed and be in effect against the Land or the Improvements unless it has been bonded against in a manner acceptable to Bank;

(h) With respect to any advance or disbursement for hard costs, Bank shall have received an AIA Document G-702 and G-703 (1992 Edition), completed by the Contractor and certified by the Architect (if required by Bank);

(i) With respect to any advance for soft costs (including contingencies), all vouchers, invoices, and other evidence required by Bank;
(j) Borrower shall have delivered to Bank and its construction consultant, for their approval, evidence (which shall include a report of an inspection by its construction consultant) that (i) construction is proceeding in a manner to assure completion of the Improvements by the Bank's Required Completion Date; (ii) the amount theretofore invested by Borrower in the Land and the Improvements, together with the funds remaining to be paid from the Capital Contribution and from the Note, and from any other sources approved by Bank for the development of the Improvements, are adequate to meet all costs incurred and to be incurred in connection with the Improvements; and (iii) that construction of the Improvements has been substantially in accordance with the Plans and in accordance with the Loan Documents which shall include without limitation, any other due diligence with respect to the Premises required by Bank's construction consultant, and Bank shall have received and approved all third party inspection and other reports required by Bank with respect to the advance;

(k) Bank shall have received, at Borrower's cost and expense (to the extent a request is made therefor by Bank within five Business Days after Bank's receipt of the applicable Request For Advance), a satisfactory "downrate endorsement" and all other endorsements if or as required by Bank to its mortgagee's title policy in connection with the advance;

(l) Borrower shall have complied with Sections 4.1(c) and 4.1(h) and the other terms and covenants of this Agreement;

(m) If and to the extent required by Bank, upon completion of the slab, Borrower shall have delivered a current survey evidencing the intended and actual location of the slab, showing no encroachment. If and to the extent required by Bank, Borrower shall have delivered a slab survey, if the proceeds of the advance are for, among other things, costs associated with the slab to the Improvements, showing, among other things, no encroachments on or over any boundary line, easement, setback line, or other restricted area;

(n) The Improvements shall not have been damaged by fire or other casualty or, in such event, to the extent permitted under the terms and provisions of this Agreement and the Mortgage, the Improvements shall have been fully repaired and restored, or be in the process of being fully repaired and restored, to the state of completion achieved immediately before the casualty;

(o) No event, circumstance, or condition shall exist or shall have occurred which has caused a Material Adverse Change;
(p) All requirements of Section 6.3 shall be fully and completely
satisfied with respect to the requested advance;

(q) Borrower shall have delivered to Bank such other
information, documents, legal opinions, schedules, affidavits, statements,
invoices, bills and other supporting documentation and material
reasonably required by Bank to verify the progress of construction, or
otherwise reasonably required by Bank to substantiate any of the matters
necessary to qualify for the advance; and

(r) Bank shall have received evidence that, to the extent
required to be then paid, all utility or reservation fees have been paid.

6.3 Disbursement Procedures and Requirements. Subject to the
terms of Sections 6.1 and 6.2, Bank agrees to approve disbursements of the Capital
Contributions then on deposit with Bank and make advances under the Note (each of
which shall be net of Retainage by Bank) pursuant to the following procedures and
requirements:

(a) Borrower or Borrower's Agent to Request Disbursements
shall complete, sign and deliver to Bank a written request for advance
(referred to herein as a "Request for Advance" or a "request for
disbursement") in the form of Exhibit "E". Bank may at its option require
that such requests be approved by the Investor Member;

(b) Each request for disbursement shall be supported by such
receipts, invoices and supporting documents as may be reasonably
required by Bank;

(c) Each Request for Advance shall be funded and deposited in
the Loan Account in the order described in Section 2.1, and shall be made
by Bank within ten (10) Business Days after the satisfaction of Sections
6.1 and 6.2, with respect to that disbursement. Borrower shall not submit
more than one Request for Advance of a disbursement of the Capital
Contributions then on deposit with Bank or of an advance under the Note
in any calendar month. Bank may approve funding of less than the amount
requested if the Bank, in its sole and reasonable discretion, disagrees or
objects to a portion of the amounts requested by Borrower in any Request
for Advance.

(d) Each Request for Advance shall include a request for any
expenses for which Bank is to be reimbursed (including, without limitation,
reasonable inspection fees of the construction consultant), and a request
for amounts to be advanced to pay interest on and under the Loan.

(e) Note advances shall be made to one or more of the
following: Borrower (into the Loan Account or by such other means as
acceptable to Bank and Borrower); or to Bank to pay amounts due to it.
The execution of this Agreement by Borrower constitutes an irrevocable direction and authorization for Bank to so disburse the proceeds of the Note. Bank may rely on requests for disbursements made by each Agent to Request Disbursements (whether or not joined in by the Investor Member or any other Person).

6.4 Delivery of Requests for Payments. Notwithstanding anything herein to the contrary, copies of all requests for payment made by the Contractor (or any of its subcontractors) to Borrower (and all materials submitted in connection with the request) shall be promptly submitted to Bank (even if the requested payment, in whole or in part, is not to be paid with Capital Contributions or the proceeds of the Note).

6.5 Obligation for Further Disbursements. No disbursement made hereunder shall constitute a waiver of any condition precedent to the obligation of Bank to make any further disbursement or preclude Bank from thereafter declaring the failure of Borrower to satisfy such condition precedent (after satisfaction of any applicable requirements of grace, notice, or both) to be an Event of Default. At Bank's sole option, any such condition precedent may be waived by Bank, in whole or in part, at any time. All conditions precedent to Bank's obligations to make disbursements are imposed solely for the benefit of Bank, and no other party may require any such condition precedent or be entitled to assume that Bank will refuse to make any disbursement in the absence of strict compliance with such condition precedent.

6.6 Conditions to Final Disbursement for Retainage. Except as hereafter provided, advances of the Note for payment of budgeted items are to be disbursed by Bank subject to a holdback in an aggregate amount equal to the sum of the Retainage. Subject to the further terms hereof, Bank shall not be obligated to make the final advances under the Note to pay Retainage until all of the following conditions have been fully satisfied (with proof thereof being furnished in form and sufficiency reasonably acceptable to Bank):

(a) Thirty-one (31) days have elapsed after the later of (i) "completion" of the Improvements, as defined in and required by Section 53.106 of the Texas Property Code, or (ii) the date of completion as set forth in an Affidavit and Certificate of Completion (the "Affidavit of Completion"), filed with the county clerk of the county where the Land is located, executed by Borrower, the Contractor, and Architect (if and to the extent required by Bank), in the form of Exhibit "G" (or a certificate or affidavit in such other form which complies with Section 53.106 of the Texas Property Code and is otherwise acceptable to Bank), or (iii) the date Borrower has otherwise fully and completely satisfied the requirements of Section 53.106 of the Texas Property Code, including, without limitation, providing a copy of any such affidavit to all parties, and within the time periods, required by such Section 53.106.
(b) Bank shall be furnished with, and shall have approved, such approval not to be unreasonably delayed, withheld or conditioned, fully executed counterparts, as appropriate, of the following:

(i) Evidence that all applicable Requirements of Law have been satisfied, including, without limitation, (w) receipt by Borrower of all necessary Governmental Permits and other licenses, certificates, and permits with respect to the completion, use, occupancy, and operation of the Improvements, together with evidence satisfactory to Bank that such licenses, certificates, and permits are in full force and effect and have not been revoked, canceled, or modified, it being specifically agreed that Bank shall have received a certified copy of the final Certificate of Occupancy (as applicable), issued by the requisite municipal authority, evidencing the ability to legally occupy the Premises, which must be unqualified and unconditional, (x) such evidence as Bank may request that Borrower is in compliance with the TCHFC Loan Documents (and each is in full force and effect), (y) such evidence as Bank may request that Borrower is in compliance with the requirements of the Operating Agreement (and is in full force and effect) and (z) such evidence as Bank may reasonably request to show that the Improvements and their use comply fully with any and all applicable zoning, subdivision, building, and environmental requirements (such evidence shall include, without limitation, material to establish that the number of parking spaces available on the Land is sufficient to comply with all codes and ordinances then applicable, or other applicable Governmental Authority and that all fire systems in the Improvements are installed, operational, and sufficient to comply with such codes and ordinances of the appropriate Governmental Authority);

(ii) If required by Bank, an as-built survey, approved by Bank, showing the location of the Improvements and showing no encroachment by any of the Improvements upon any boundary line, easement, building setback line, or other restricted area, and shall reflect there is public access and shall contain flood plain disclosures. The survey must be dated, signed, and stamped by a surveyor certified in Texas;

(iii) An Affidavit of Completion, in the form of Exhibit "G", executed by Borrower, Architect, and Contractor (or a certificate or affidavit in such other form which complies with Section 53.106 of the Texas Property Code and is
otherwise acceptable to the Bank), and filed with the county clerk of the county in which the Land is located;

(iv) An affidavit of bills paid, in a form acceptable to Bank, executed by Contractor, Architect, and such other Persons who have supplied materials or labor as Bank may require to satisfy itself that the Improvements (and all other improvements to the Land completed through the date of any such affidavit) have been completed lien-free and that the costs of all materials furnished and labor performed in connection with such construction have been paid in full subject to Retainage;

(v) Evidence of continuing insurance coverage in accordance with Section 4.1(d) and Exhibit "L";

(vi) Such endorsements to the Title Insurance Policy as Bank may reasonably request;

(vii) Such releases and waivers of lien as Bank may reasonably request;

(viii) Borrower shall have provided such releases and waivers of lien as Bank may reasonably request, which shall in any event include, without limitation, a fully executed (by Borrower, Architect, and Contractor) AIA Form G706 (Contractor's Affidavit of Payment of Debts), AIA Form G704, and AIA Form G706a (Contractor's Affidavit of Release of Liens);

(ix) If required by Bank, a complete set of "as-built" plans and specifications, certified as accurate in all material respects by the Contractor; and

(x) Such other evidence or information concerning completion as Bank shall reasonably request.

(c) All representations and warranties made by Borrower in this Agreement shall be true and correct in all material respects as of the date of each advance.

(d) No Default or Event of Default shall have occurred and be continuing.

(e) All of the foregoing conditions listed in this Section shall have been fully and completely satisfied on or before the Bank's Required Completion Date.
6.7 Conversion. Bank shall have no obligation to convert the Loan to a permanent loan for the Permanent Term by delivering the Conversion Certificate unless each of the following are fully and completely satisfied on or before the latest date for the Conversion Date (as set forth in the definition of Conversion Deadline):

(a) Lease Stabilization shall have occurred and the balance of the Note shall have been reduced (as necessary) to the amount of the Permanent Mortgage Loan Commitment, or such lesser amount reasonably determined by Bank which, based upon the net operating income of the Premises, would be sufficient to support the Loan at the applicable rate of interest, with a minimum debt service coverage ratio (calculated in a manner satisfactory to Bank) of 1.15 to 1.0 (this amount is currently estimated to be, but shall not be an amount in excess of $2,700,000.00 for the Loan, but is subject to achieving the debt service coverage ratio required by the Operating Agreement for the funding of the fourth Capital Contribution set forth in Exhibit "H"), and all unpaid and accrued interest shall have been paid;

(b) Bank shall have received and approved (in Bank's sole and reasonable discretion) each of the following at least ten (10) days prior to the Conversion Date which approval shall not be unreasonably withheld, delayed or conditioned;

(i) a complete set of as-built Plans;

(ii) an updated ALTA/ASCM as-built survey of the Premises, performed in accordance with the requirements of Exhibit "M";

(iii) an endorsement to the title policy insuring the Mortgage, bringing the effective date of the policy to the Conversion Date, with no additional exceptions other than Permitted Exceptions and such other items as may be approved by Bank in writing (or a new title policy on a form reasonably satisfactory to Bank if such endorsement is not available);

(iv) a final report from Bank's construction consultant stating that the Improvements were satisfactorily completed in accordance with the Plans;

(v) current financial statements for Borrower;

(vi) evidence of all insurance required at time of conversion, as set forth in this Agreement and in the other Loan Documents;

(vii) current, within thirty (30) days of the Conversion Date, Certificates of Fact and Account Status for Borrower; and
(viii) a current certified project rent roll for the Premises and most current balance sheet and income statement for the property.

(c) No Default or Event of Default shall have occurred and be then existing;

(d) Borrower shall have fully and timely satisfied the requirements of Section 6.6, including, without limitation, providing Bank with permanent certificates of occupancy; if available from the applicable Governmental Authority, for all units of the Premises and the AIA Form G704;

(e) Borrower shall be deemed to have reaffirmed all of the representations and covenants contained in the Loan Documents;

(f) Borrower shall have established the replacement reserve account required by this Agreement and/or the Replacement Reserve and Security Agreement, and made all requisite deposits with respect thereto;

(g) The Operating Reserve and all other reserves and escrows (to the extent required by Bank in this Agreement and by the Investor Member in the Operating Agreement to have then been funded hereunder shall have been fully funded) (proof of payment of insurance and taxes for the next twelve months may be provided in place of the required escrow);

(h) Borrower shall have executed and delivered to Bank such other information, documents, and certificates as Bank may reasonably request in connection with the conversion of the Loan;

(i) Borrower shall have reimbursed Bank for all of its reasonable costs and expenses related to the conversion of the Loan to the permanent phase; and

(j) Borrower shall not have received any written notice of any violation of any Requirements of Law which has not been cured.

6.8 Construction Consultant. The Investor Member will retain the services of a construction consultant on its own behalf and on behalf of the Bank in order to monitor the progress of the development of the Improvements (In such event, Bank may, at its option, require a satisfactory report from such construction consultant, confirming, among other things, all requests for reimbursement for labor and services to the Premises have in fact been so provided, as a condition precedent for an approval of a disbursement of the Capital Contributions then on deposit with Bank or an advance under the Note. Borrower shall cooperate with the construction consultant and shall cause Contractor, each subcontractor, and the employees of each of them to cooperate with the construction consultant and, upon request, shall furnish the construction consultant whatever the construction consultant may reasonably consider necessary or
useful in connection with the performance of the construction consultant’s duties. Without limiting the generality of the foregoing, Borrower shall furnish or cause to be furnished upon request such items as working details, the plans and specifications and details thereof, samples of materials, licenses, permits, certificates of public authorities, and copies of the contracts between Borrower and Contractor.

6.9 No Liability For Tax Consequences. Bank shall not be responsible or liable in any way for any tax consequences to any Person resulting from advances authorized or made by Bank in accordance with the terms of this Agreement.

6.10 Consent to Sharing of Information. Notwithstanding anything herein to the contrary, Borrower acknowledges and consents to the Bank providing information (including without limitation, certain of the information provided pursuant to Sections 6.1, 6.2, 6.3, and 6.6), to the Credit Agency, to Bank’s construction consultant, or to any potential participant or investor in a Loan.

ARTICLE VII - DEFAULTS AND REMEDIES

7.1 Events of Default. Each of the following shall constitute an Event of Default under this Agreement:

(a) Monetary Default. The failure to pay any fee or payment under this Agreement, a Note, any of the other Obligations, or any of the other Loan Documents, which is not paid within ten (10) days after it is due;

(b) Non-Monetary Default. A default by Borrower or Guarantor in the due observance or performance of any of their respective obligations under this Agreement and the other Loan Documents, which is not fully cured by Borrower, Guarantor, or the Investor Member (or any successors or assigns) within thirty (30) days after written notice thereof is provided to Borrower, Guarantor, and the Investor Member by Bank; provided that the foregoing notice and opportunity to cure in this subsection (b) will not be required for monetary defaults covered by Section 7.1(a) or for any other Event of Default specifically enumerated in another subsection of this Section 7.1 (the occurrence of any such event and continuation beyond any applicable notice, cure or grace period shall in and of itself constitute an Event of Default).

(c) Misrepresentations. Any representation or warranty made by Borrower or Guarantor in any of the Loan Documents proves to have been untrue when made in any material respect or any Financial Statements or certificate of Borrower or Guarantor furnished or made to the Bank as an inducement for Bank agreeing to enter in to this Agreement, or in accordance with the terms of this Agreement, proves to have been untrue in any material adverse respect as of the date the facts therein set forth were stated or certified;
(d) **TCHFC Loan.** A default by Borrower under and in connection with the payment and/or performance of any of the TCHFC Loan Documents, which is not fully cured or waived within any applicable notice or grace period, or the reduction of the TCHFC Loan to be used to pay budgeted items, or the modification or the amendment in the timing or manner of funding of a TCHFC Loan under the TCHFC Loan Documents which would increase the interest rate or amount of hard pay amortization;

(e) **Failure to Comply with Requirements of Law.** Failure of the construction or development of the Improvements or any materials for which an advance has been requested to comply in all material respects with any Requirement of Law, and such failure shall continue for thirty (30) days after written notice thereof is provided by Bank to Borrower;

(f) **Failure to Satisfy Conditions to Closing.** Borrower shall be unable to fully satisfy any of the conditions listed in Section 6.1 (in a timely manner), even if Bank has agreed to close the transaction evidenced by this Agreement and has made any advances of the Loan (unless Bank has agreed to waive or defer any such condition in writing);

(g) **Failure to Satisfy Conditions to Advance.** In connection with any request made under Section 6.2 for an advance of proceeds of the Note or an approval of a disbursement of the Capital Contributions then on deposit with Bank, Borrower shall be unable to fully satisfy any of the conditions to the advance listed in this Agreement, and such failure is not either waived by the Bank or fully cured within 30 days after notice thereof is provided by Bank to Borrower;

(h) **Conversion.** Failure by Borrower to fully and completely satisfy (or cause to be fully and completely satisfied) all of the conditions listed in Section 6.7 prior to the Conversion Deadline (or as may be extended pursuant hereto), unless any such condition is waived in writing by Bank;

(i) **Lien on Fee Interest.** Any lien or encumbrance is placed (voluntarily or involuntarily) on the fee interest in the Land or the Improvements, except in favor of Bank or otherwise permitted by the terms of this Agreement, unless that lien or encumbrance is released or removed within 30 days after notice thereof is provided by Bank to Borrower;

(j) **Completion.** The development of the Improvements is not substantially completed by the Bank's Required Completion Date and in accordance with all Requirements of Law (including all requirements for the preservation of the Tax Credits) and such failure is not fully cured within thirty (30) days after written notice thereof is provided by Bank to Borrower;
(k) **Bank Determination.** A reasonable determination by Bank (or its construction consultant) that the development and construction of the Improvements cannot be completed by the Bank's Required Completion Date and in accordance with all Requirements of Law (including all requirements for ensuring the preservation of the Tax Credits), or any other conditions set forth in Section 6.6 cannot be fully completed and satisfied on or before the Bank's Required Completion Date (regardless of whether or not as a result of any casualty or condemnation), and any such situation is not corrected in a manner satisfactory to Bank within thirty (30) days after written notice thereof is provided by Bank to Borrower;

(l) **Equity.** (i) Failure of the Investor Member to make any scheduled installment of the Capital Contribution as and when required to do so under the Operating Agreement and such failure is not fully cured within any applicable grace or cure period provided for in the Operating Agreement, or (ii) any reduction (other than as a result of the application of standard tax credit adjustment provisions in the Operating Agreement) in the amount of the Capital Contribution or the amount of any installment of the Capital Contribution, or any change to the conditions to the funding of the Capital Contribution or any installment thereof (other than as a result of a waiver of any such conditions), or any portion thereof (under the terms of the Operating Agreement or otherwise), which are not consented to by Bank in writing, which such consent shall not be unreasonably withheld, conditioned or delayed;

(m) **Liquidation or Dissolution.** Borrower (or one of its managing members) or the Investor Member shall dissolve or liquidate, be consolidated into any other entity, modify or amend its organizational documents (except as otherwise permitted under the Loan Documents, including, without limitation, Section 5.1(i) hereof), or fail to remain in good standing in the State of Texas, without the prior written consent of Bank; and such situation is not remedied within 30 days after written notice thereof is provided by Bank to Borrower;

(n) **Death or Legal Incapacity.** The death or legal incapacity of a Guarantor, and the failure of Borrower to provide Bank with a replacement guarantor acceptable to Bank within ninety (90) days after the occurrence of any such death or legal incapacity, or event;

(o) **Failure to Observe Construction Contract.** Failure of Borrower or Contractor to perform, observe, or comply with any of the terms, covenants, conditions, or provisions of the applicable Construction Contract within 30 Business Days after written notice thereof is provided by Bank to Borrower; provided, however, that in the case of such a failure by the Contractor, if Borrower is diligently and in good faith pursuing all appropriate remedies under the pertinent Construction Contract relating to
such Contractor's failure thereunder and Borrower terminates the Construction Contract in good faith within thirty (30) days after the occurrence of such failure, then Borrower shall not be deemed to be in default under this Agreement if another Contractor satisfactory to Bank is selected by Borrower and placed under contract with Borrower within sixty (60) days after terminating said defaulting Contractor and such substitute Contractor promptly proceeds to fully cure the defaulting Contractor's default and to construct the Improvements in accordance with the Budget and the plans and specifications provided to Bank for the Improvements, in a diligent manner and in accordance with this Agreement;

(p) **Uninsured Casualties.** If any act or occurrence of any kind or nature (including any casualty) for which insurance was not obtained (or was not obtainable) shall result in material damage to or material loss or material destruction of a material portion of the Improvements and such loss or damage is not fully repaired or replaced within ninety (90) days after such occurrence, or such longer period as is necessary and reasonably acceptable to Bank;

(q) **Voluntary Filings.** Borrower, Guarantor, or the Investor Member shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of it or all or a substantial part of its assets, (ii) file a voluntary petition commencing a bankruptcy or other insolvency proceeding, (iii) make a general assignment for the benefit of creditors, (iv) be unable, or admit in writing its inability, to pay its debts generally as they become due, or (v) file an answer admitting the material allegations of a petition filed against it in a bankruptcy or other insolvency proceeding;

(r) **Involuntary Filings.** An order, judgment, or decree shall be entered against Borrower, Guarantor, or the Investor Member by any court of competent jurisdiction or by any other duly authorized authority, on the petition of a creditor or otherwise, granting relief in a bankruptcy or other insolvency proceeding or approving a petition seeking reorganization or an arrangement of its debts or appointing a receiver, trustee, conservator, custodian or liquidator of it or all or any substantial part of its assets and such order, judgment or decree shall not be dismissed or stayed within 90 days;

(s) **Levy.** The levy against any significant portion of the property of Borrower or Guarantor or any execution, garnishment, attachment, sequestration, or other writ or similar proceeding which is not permanently dismissed or discharged within 90 days after the levy;

(t) **Work Stoppage.** The failure to comply with the terms and provisions of the fourth sentence of Section 4.1(b).
(u) **Judgments.** A final and non-appealable order, judgment or decree, which is uninsured in an amount in excess of $150,000.00, shall be entered against Borrower or Guarantor, and such order, judgment or decree shall not be paid, reserved for Bank (in a manner acceptable to Bank), dismissed, or stayed within 90 days;

(v) **Challenges.** Borrower, a Guarantor, or their representatives and affiliates shall challenge or contest in any action, suit, or proceeding the validity or enforceability of this Agreement or any of the other Loan Documents, the legality or enforceability of any of the Obligations or the perfection or priority of any lien or security interests granted to Bank;

(w) **Fraudulent Activities.** Borrower or a Guarantor shall have (i) concealed, removed, or diverted, or permitted to be concealed, removed or diverted, any part of its property, with intent to hinder, delay or defraud its creditors or any of them; (ii) made or suffered a transfer of any of its property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or (iii) shall have suffered or permitted, while insolvent, any creditor to obtain a lien upon any of their respective property through legal proceedings or otherwise which is not vacated within 60 days from the date thereof;

(x) **Lien Priority.** The liens and/or security interests granted in any Loan Document shall not constitute a first and prior lien and/or security interest upon the collateral described therein, subject only to the Permitted Exceptions or otherwise permitted by this Agreement, and such circumstance shall not be fully cured in a manner reasonably acceptable to the Bank within 30 days after written notice thereof is provided by Bank to Borrower; and

(y) **Tax Credit Allocation.** A reasonable determination by Bank, or its counsel, that Borrower has failed to satisfy any applicable Requirements for obtaining and maintaining the Low Income Housing Tax Credit for the Affordable Units.

**7.2 Termination of Obligations.** Any obligation of Bank under this Agreement shall immediately and automatically cease and terminate upon the occurrence of a Default or an Event of Default unless and until Bank shall reinstate the same in writing, which reinstatement Bank agrees to provide at Borrower's request and expense if that Default or Event of Default is cured in a timely manner or in a manner otherwise satisfactory to Bank.

**7.3 Rights and Remedies.** During the continuation of an Event of Default, Bank may, at its option, do any one or more of the following:

(a) **Acceleration.** Bank, at its option and without any notice of intent to accelerate, notice of acceleration, or other notice or demand, may
declare the entire principal amount of the Note then outstanding and the
interest accrued thereon immediately due and payable, and the said entire
principal, interest and all other amounts owing thereunder shall thereupon
become immediately due and payable without presentment, demand, protest, notice of protest or other notice of default or dishonor of any kind,
all of which are hereby expressly waived by Borrower.

(b) **Additional Rights.** Bank shall have, in addition to the rights
and remedies given it in this Agreement and the other Loan Documents
(including, without limitation, the foreclosure of the Mortgage), all of the
rights and remedies allowed by all applicable ordinances, statutes, rules,
regulations, orders, injunctions, writs or decrees of any governmental or
political subdivision or agency thereof, or any court or similar entity
established by any such subdivision or agency.

(c) **Enter on Premises.** At the risk, cost, and expense of
Borrower: (i) enter upon and take possession of the Premises and the
materials and equipment owned by Borrower being used in the
development of the Improvements; (ii) take such action as Bank shall in its
reasonable judgment deem appropriate to protect the Premises; and (iii)
take such action as Bank shall in its reasonable judgment deem
appropriate to continue construction of the Improvements with such
changes therein as Bank may elect to make. If Bank shall elect to
continue construction, Bank may: (v) assume or reject any construction or
other contracts made by Borrower in connection with the construction or
operation of the Improvements; (w) engage or employ contractors,
subcontractors, architects, engineers and others for the construction of the
Improvements; (x) pay, settle or compromise existing or future bills or
claims relating to the development of the Improvements or the Premises
or affecting title thereto; (y) take or refrain from taking such other action
(including, without limitation, discontinuing construction), in its name or in
the name of Borrower, as Bank in its reasonable judgment may determine,
and (z) to enforce the right to payment of Capital Contributions under the
Operating Agreement. All reasonable costs and expenses incurred by
Bank in taking and protecting the Premises and in constructing the
Improvements shall be paid by Borrower to Bank upon demand, with
interest at the rate provided in the Note from the date of disbursement to
the date of payment to Bank, and the payment of such sums shall be
secured by the Mortgage and the other Loan Documents. Bank shall have
no obligation to take any of the foregoing actions, and if Bank should do
so, it shall have no liability to Borrower or Guarantor for the sufficiency of
any such actions or otherwise, provided such actions are taken in good
faith.

(d) **Tax Credits.** The parties hereby acknowledge and agree
that the Tax Credits are an inseparable benefit of ownership of the
Premises which is transferred with the transfer of ownership of the

66
Premises and that the Tax Credits may not be transferred or assigned by Bank separately from its security interest in the Premises nor by Borrower and its members to any other Person separately from the Borrower and its members' ownership of the Premises. In the event that the Bank (or its designee) obtains title to and ownership of the Premises, the Borrower (or the Investor Member) shall have no right to claim the Tax Credits which are generated by the Premises from and after the date on which the Bank (or its designee) obtains title to and ownership of the Premises.

(e) **Curative Action.** Bank may (but is not in any way obligated) for and on behalf of Borrower (and its managing members) cure any default or event of default under the Operating Agreement (and the agreements issued pursuant thereto).

(f) **Bank Offset.** As further security for the Note, the Obligations, and all other indebtedness which may at any time be owing by Borrower to the holder of the Note, whether such obligations and indebtedness are incurred directly or acquired from third parties by Bank or any other holder of the Note, Borrower grants to Bank or any other holder of the Note a lien, security interest, and contractual right of setoff in and to the Loan Account and all other deposits (general or special, time or demand) of Borrower now or at any time hereafter held or received by or in transit to or coming within the custody or control of Bank or any other holder of the Note, including without limitation, all certificates of deposit and other accounts, irrespective of whether such certificates or accounts have matured and whether the exercise of such right of setoff results in loss of interest or other penalty under the terms of the certificate or agreement. Bank or any holder hereof shall have a first lien and security interest on all deposits and other sums at any time credited by or due from Bank or any holder of the Note to Borrower as collateral security for the payment of the Note, and Bank or other holder hereof, at its option and after acceleration of the maturity of the Note, however said maturity may be brought about, may without notice and without any liability, hold all or any part of any such deposits or other sums until all sums owing on the Note and all other indebtedness owing by Borrower to the holder of the Note have been paid in full and all other obligations have been performed in full and/or apply or set off all or any part of any such deposits or other sums credited by or due from Bank or any holder of the Note to or against any sums due on the Note in any manner and in any order or preference which Bank or other holder hereof, at its sole discretion, chooses. The foregoing rights of Bank are in addition to and cumulative of all other rights and remedies (including, without limitation, the liens, security interests and rights of setoff) which Bank may have.

(g) **Other Rights.** In addition to the other rights and remedies available to Bank, upon discovery by Bank of any material deviations from the Plans not otherwise expressly permitted by the terms of this
Agreement, or of any material defective or unworkmanlike labor or materials being used in the construction of the Improvements, Bank may immediately order stoppage of construction and demand that any unsatisfactory work be replaced and that the condition be corrected, whether or not any unsatisfactory work has already been incorporated into the Improvements. After issuance of such an order in writing, the condition shall be corrected or commenced within thirty (30) days from the date of stoppage by Bank, subject to Excusable Delays. Bank shall have the right to withhold all further advances of the Loan until the condition is corrected and no other work shall be done on the Improvements without the prior written consent of Bank unless, and until, such condition has been fully corrected.

7.4 Due on Sale. Except as permitted by Section 5.1(f) and 5.1(l) and except for Approved Leases, or as otherwise specifically permitted under the Loan Documents, except for Approved Leases, if Borrower shall sell, convey, encumber, assign or transfer all or part of its interest in the Premises or any interest therein without the prior written consent of Bank, Bank may, at Bank's option, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration of or other notice, or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner on the Note and other Obligations, declare the Note and other Obligations to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment or transfer, and upon such declaration the entire unpaid balance of the Note and other Obligations shall be immediately due and payable.

7.5 Notice and Cure Rights of Investor Member. Notwithstanding anything to the contrary contained herein, the Bank agrees to accept performance on the part of the Investor Member, or any of its Affiliates as though the same had been performed by the Borrower under any of the Loan Documents. The Bank will allow the Investor Member and its Affiliates ten (10) days after giving the Investor Member notice to cure a monetary default under the Loan Documents (other than the payment due at maturity) and except as to the Borrower's filing of a voluntary bankruptcy petition, up to thirty (30) days after giving the Investor Member notice to cure of any non-monetary default under the Loan Documents, provided, however, that in the event of a non-monetary default that is not susceptible to being cured within such thirty (30) day period, the Bank will allow the party offering cure an additional period of up to sixty (60) days to cure such default, provided that the cure of such default has commenced and the person offering the cure is continuously proceeding to cure such default through the end of the sixty (60) day period. If the Investor Member, or any of its Affiliates makes any such payment or otherwise offers cure of a default, the Bank will accept or reject such action as curing such default on the same basis as if payment or cure were made directly by the Borrower. Investor Member shall have no obligation to cure any Default or Event of Default hereunder.
ARTICLE VIII - MISCELLANEOUS

8.1 Bank Approvals. All surveys, appraisals, insurance policies, construction contracts and subcontracts, leases, plans and specifications, legal opinions, requests for disbursement, and other Loan Documents and items required for the Loan shall have been approved by the Bank in all material respects (Bank may, at its option, condition any such approval on the approval by the Investor Member).

8.2 No Third Party Beneficiaries. This Agreement is for the sole protection and benefit of Bank and Borrower, and no other person or entity shall have any right as a third party beneficiary hereunder or any right to bring an action hereon or claim the proceeds of the Loan.

8.3 No Waiver. No failure on the part of Bank to exercise any right, option, privilege, or remedy available to Bank shall operate as a waiver thereof, nor shall any single or partial exercise or waiver of any such right, option, privilege, or remedy preclude any other or further exercise thereof to its fullest extent or the exercise of any other right, option, privilege, or remedy.

8.4 Notices. Notices, requests, demands and other communications which any party is required or may desire to give to any other party under any provision of this Agreement and the other Loan Documents must be in writing and delivered to the other party at the address set forth in the first paragraph of this Agreement (or to such other address as any party may designate by written notice to the other party). Each such notice, request, demand or other communication shall be deemed given or made as follows: If sent by mail, upon the earlier of the date of receipt or five (5) days after deposit in the U.S. Mail, first class postage prepaid; and if sent by any other means, upon delivery. Copies of all notices, requests, demands and other communications provided by Bank to Borrower pursuant to this Agreement and the other Loan Documents by Bank will be simultaneously provided to the Investor Member at Wells Fargo Affordable Housing Community Development Corporation, One Wells Fargo Center, 301 South College St., TW17, MAC: D1053-170, Charlotte, NC 28228, Attention: Director of Tax Credit Asset Management, and to Kutak Rock LLP, 1650 Famam Street, Omaha, NE 68102, Attn: Judy Crosby; and to Guarantor at its address provided for in Guaranty, and shall be simultaneously provided to Borrower's counsel at Shutts & Bowen, LLP, 201 South Biscayne Blvd., Suite 1500, Miami, Florida 33131, Attention: Gary Cohen or Robert Cheng (Bank acknowledges and agrees that Investor Member and Guarantor may cure on behalf of Borrower all defaults under this Agreement and the other Loan Documents within the applicable period provided). Each such notice, request, demand and communication shall be deemed delivered, given or made as follows: If sent by mail, upon the earlier of the date or receipt or five (5) days after deposit in the U.S. Mail, certified, postage prepaid and return receipt requested; and if sent by any other means, upon delivery or refusal of delivery. Notwithstanding anything herein to the contrary, Bank shall provide the Investor Member with copies of all notices of Default and Event of Default provided to Borrower under this Agreement and other Loan Documents simultaneously with the giving of any such notice to Borrower, and Investor Member and its Affiliates shall be entitled to cure any such
Default or Event of Default for and on behalf of Borrower within any applicable grace or cure period.

8.5 Transfer of Rights. Borrower shall not assign or otherwise transfer this Agreement or the Loan Documents, in whole or in part, without the prior written consent of Bank. Bank may create and sell participation interests in the Loan or otherwise assign or transfer this Agreement and the Loan Documents as provided in Section 8.23 hereof, in whole or in part, at any time and in the event of an assignment or transfer by Bank, the term "Bank" shall include any such assignee or transferee to the extent of the interest assigned or transferred. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors, personal representatives, and assigns.

8.6 Severability. The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision herein, and the invalidity or unenforceability of any provision of any Loan Document to any person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

8.7 Advertising. Bank shall have the right at its sole cost and expense to erect one or more signs on the Premises advertising its financing of the improvements, provided that the same complies with all Requirements of Law, including any applicable ordinances.

8.8 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND APPLICABLE UNITED STATES FEDERAL LAW. JURISDICTION AND VENUE FOR CLAIMS BROUGHT IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN TEXAS.

8.9 Other Advances. Borrower and Bank acknowledge and agree that in the future, Borrower may apply for and Bank may agree to fund additional loans to Borrower. Borrower and Bank agree that all existing and hereafter created loans and other advances from Bank, or any of its predecessors or successors in interest, to Borrower, whether or not such loans are particularly described in this Agreement, as may be amended from time to time, shall constitute Obligations for purposes of this Agreement and shall be subject to the terms, provisions, covenants, and agreements set forth in this Agreement (except that the Mortgage shall only secure those Obligations described therein). Nothing herein shall constitute an offer or commitment by Bank to make any such additional loan.

8.10 No Duty or Special Relationship. Borrower acknowledges that Bank has no duty to Borrower with respect to the loan transactions set forth in this Agreement except as expressly provided for in this Agreement and the other Loan Documents, and acknowledge that no fiduciary, trust, or other special relationship exists between Bank and Borrower.
8.11 Other Remedies Not Required. Borrower may be required to pay the Note in full without the assistance of any other party, or any collateral or security for the Note. Bank shall not be required to mitigate damages, file suit, or take any action to foreclose, proceed against or exhaust any collateral or security in order to enforce payment of the Note.

8.12 NO CONTROL BY BANK. BORROWER AGREES AND ACKNOWLEDGES THAT ALL OF THE COVENANTS AND AGREEMENTS PROVIDED FOR AND MADE BY BORROWER IN THIS AGREEMENT AND IN THE OTHER LOAN DOCUMENTS ARE THE RESULT OF EXTENSIVE AND ARMS-LENGTH NEGOTIATIONS BETWEEN BORROWER AND BANK. BANK'S RIGHTS AND REMEDIES PROVIDED FOR IN THIS AGREEMENT AND IN THE OTHER LOAN DOCUMENTS ARE INTENDED TO PROVIDE BANK WITH A RIGHT TO OVERSEE BORROWER'S ACTIVITIES AS THEY RELATE TO THE LOAN TRANSACTIONS PROVIDED FOR IN THIS AGREEMENT, WHICH RIGHT IS BASED ON BANK'S VESTED INTEREST IN BORROWER'S ABILITY TO PAY THE NOTE AND PERFORM THE OTHER OBLIGATIONS. NONE OF THE COVENANTS OR OTHER PROVISIONS CONTAINED IN THIS AGREEMENT SHALL, OR SHALL BE DEEMED TO, GIVE BANK THE RIGHT OR POWER TO EXERCISE CONTROL OVER, OR OTHERWISE IMPAIR, THE DAY-TO-DAY AFFAIRS, OPERATIONS, AND MANAGEMENT OF BORROWER.

8.13 Commitment Rendered. The obligations of Bank, if any, under the Commitment, as may have been extended, are fully and completely satisfied, replaced, and superseded by the execution and delivery of the Loan Documents.

8.14 No Partnership. Nothing herein is intended, nor shall it be deemed or construed as, to create a partnership, joint venture, or common interest in profits or income between Borrower and Bank, or to make Bank in any way responsible for the debts or losses of Borrower or with respect to the collateral described in the Loan Documents. Borrower and Bank disclaim any sharing of liabilities, losses, costs or expenses.

8.15 Release of Liens. Each Note may represent advancing credit indebtedness. Accordingly, regardless of whether the balance outstanding under the Note or anything in any Loan Document to the contrary, the Note and Loan Documents (and liens and security interests granted thereunder) shall continue in full force and effect until Bank shall execute a release thereof (which will be provided upon the full and final payment of the Obligations and provided Bank has no funding commitments under this Agreement).

8.16 Renewal of Indebtedness. All provisions of this Agreement relating to the Note shall apply with equal force and effect to each and all promissory notes hereafter executed which in whole or in part represent a renewal, extension, or rearrangement of any part of the indebtedness originally represented by the Note, provided that nothing herein shall constitute a commitment or offer by Bank to such a renewal, extension or rearrangement, other than as expressly set forth herein.
8.17 Counterparts. This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one counterpart be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

8.18 Controlling Agreement. Borrower and Bank intend to conform strictly to the applicable usury laws. All agreements between Bank and Borrower (or any other party liable with respect to any indebtedness under this Agreement and the other Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest contracted for, charged, or received under the Note otherwise exceed the Maximum Rate. If, from any possible development of any document, interest would otherwise be payable to Bank in excess of the Maximum Rate, any such construction shall be subject to the provisions of this Section and such document shall be automatically reformed and the interest payable to Bank shall be automatically reduced to the Maximum Rate, without the necessity of execution of any amendment or new document. If Bank shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Rate, an amount equal to the amount which would have been excessive interest shall at the option of Bank, be refunded to Borrower or applied to the reduction of the principal amount owing hereunder in the inverse order of its maturity and not to the payment of interest. The right to accelerate maturity of the Note or any other indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Bank does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Bank shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Rate.

8.19 NO ORAL AGREEMENT. THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF.

8.20 JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT
NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

8.21 Bank Consent. Whenever Bank is required under this Agreement or any of the other Loan Documents to provide its consent or approval, such consent or approval (or the denial of such consent or approval, as the case may be) shall not be unreasonably withheld or conditioned and shall be given within a reasonable time after its receipt of the request therefor, taking into consideration the circumstances of the request.

8.22 Governing Documents. Except as otherwise expressly provided, all irreconcilable inconsistencies or conflicts between the terms of this Agreement with the terms of any other Loan Document shall be governed and controlled by the terms of this Agreement.

8.23 Participations. Borrower acknowledges and agrees that Bank may provide any information Bank may have about Borrower or about any matter relating to this Agreement to Bank, its parent, its subsidiaries, its affiliates or their successors, or to any one or more purchasers or potential purchasers of a Note. Borrower agrees that Bank may at any time sell, assign or transfer one or more interests or participations in all or any part of its rights or obligations in a Note to one or more purchasers whether or not related to Bank. Borrower authorizes Bank to disseminate any information it has pertaining to the Loan, including, without limitation, credit information on Borrower, any of its principals, or any other party liable, directly or indirectly for the Note, to any such assignee or participant or prospective assignee or participant. Borrower shall execute, acknowledge, and deliver any and all instruments reasonably requested by Bank to satisfy such assignee or participant that the Loan are outstanding in accordance with the terms and provisions of the Note and the Loan Documents.

8.24 Placement of Restrictive Covenants. Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, Borrower shall be permitted to execute any restrictive covenants or restrictions which Borrower is required to enter into by the Credit Agency for issuance of Form 8609 with respect to the Premises if and to the extent Borrower has notified Bank thereof in writing prior to Borrower's execution thereof. All such documents described in this Section 8.24 are herein collectively called the "Restriction and Easement Documents". Once any of such Restriction and Easement Documents are approved by Bank, Bank shall subordinate its liens and security interests with respect to the Premises (including without limitation, the lien and security interest created by the Mortgage) to such Restriction and Easement Document in a manner reasonably acceptable to Bank, the Credit Agency, and their respective counsel. Such subordination shall provide that
Bank is subject to the limitations on evictions, terminations of tenancy, and increases in
rents for the three year period following acquisition of the Land by Bank or its successor
or assigns by foreclosure (or instrument in lieu of foreclosure), as set forth in Section
42(h)(6)(E)(ii) of the Internal Revenue Code, as amended.

8.25  **No Offset.** All payments due by Borrower to Bank under the Loan
Documents are to be made by the Borrower without offset or other reduction.

8.26  **RECOGNITION. BORROWER HAS BEEN ADVISED BY BANK**
**TO SEEK THE ADVICE OF AN ATTORNEY AND AN ACCOUNTANT IN**
**CONNECTION WITH THE COMMERCIAL LOAN EVIDENCED BY THE NOTE; AND**
**BORROWER HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF AN**
**ATTORNEY AND ACCOUNTANT OF BORROWER'S CHOICE IN CONNECTION**
**WITH THE COMMERCIAL LOAN EVIDENCED BY THE NOTE.**

8.27  **Increased Costs.** If, after the Closing Date, any law, regulation or
change in any law or regulation or in the interpretation thereof, or any ruling, decree,
judgment, guideline, directive or recommendation (whether or not having the force of
law) by any regulatory body, court, central bank or any administrative or Governmental
Authority charged or claiming to be charged with the administration thereof (including,
without limitation, a request or requirement which affects the manner in which the Bank
allocates capital resources to its commitments including its obligations hereunder) shall
either (a) impose upon, modify, require, make or deem applicable to the Bank or any of
its affiliates, subsidiaries or participants any reserve requirement, special deposit
requirement, insurance assessment or similar requirement against or affecting the Loan,
or (b) subject the Bank or any of its affiliates, subsidiaries or participants to any tax,
charge, fee, deduction or withholding of any kind whatsoever in connection with the
Loan, or change the basis of taxation of the Bank or any of its affiliates, subsidiaries or
participants (other than a change in the tax payable by the Bank or any of its affiliates,
subsidiaries or participants based on the overall income of the Bank or such other
Person), or (c) impose any condition upon or cause in any manner the addition of any
supplement to or increase of any kind to the Bank's or an affiliate's, subsidiary's or
participant's capital or cost base for issuing or owning a participation in the Loan, which
results in an increase in the capital requirement supporting the Loan, or (d) impose
upon, modify, require, make or deem applicable to the Bank or any of its affiliates,
subsidiaries or participants any capital requirement, increased capital requirement or
similar requirement, such as the deeming of the Loan to be an asset held by the Bank
or any of its affiliates, subsidiaries or participants for capital adequacy calculation or
other purposes (including, without limitation, a request or requirement which affects the
manner in which the Bank or any participant allocates capital resources to its
commitments including its obligations hereunder or under the Loan), and the result of
any events referred to in (a), (b), (c) or (d) above shall be to increase the costs in any
way to the Bank or any affiliate, subsidiary or participant of issuing, maintaining or
participating in the Loan, or reduce the amounts payable by Borrower hereunder or
reduce the rate of return on capital, as a consequence of the issuing, maintaining or
participating in the Loan, to a level below that which the Bank, its affiliates, subsidiaries
or participants could have achieved but for such events; then and in such event
Borrower shall, promptly upon receipt of written notice to Borrower by the Bank of such increased costs and/or decreased benefits, pay within 30 days of demand thereof to the Bank all such additional amounts which, in the Bank’s or participant’s sole good faith calculation as allocated to the Loan, shall be sufficient to compensate it for all such increased costs and/or decreased benefits, all as certified by the Bank or such participants in said written notice to Borrower. Such certification shall be accompanied by information concerning the calculation of such increased costs and/or decreased benefits and shall be conclusive and binding on the parties hereto, absent manifest error. In determining such amount, the Bank or any participant may use any reasonable averaging or attribution methods.

8.28 Business Loans. Borrower warrants and represents to Bank, and to all other holders of any debt evidenced by the Note, that the Loan is and shall be for business, commercial, investment or other similar purpose and not primarily for personal, family, household or agricultural use, as such terms are used in Chapter One of the Texas Credit Code. Borrower does not expect to occupy any property covered by the Mortgage.

8.29 USA Patriot Act Notification. The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual, Bank will ask for Borrower’s name, taxpayer identification number, residential address, date of birth, and other information that will allow Bank to identify Borrower, and, if Borrower is not an individual, Bank will ask for Borrower’s name, taxpayer identification number, business address, and other information that will allow Bank to identify Borrower. Bank may also ask, if Borrower is an individual, to see Borrower’s driver’s license or other identifying documents, and, if Borrower is not an individual, to see Borrower’s legal organizational documents or other identifying documents.

Without limiting the foregoing, Bank hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Bank to identify the Borrower in accordance with the Act.
8.30 WAIVER OF SPECIAL DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY HEREUNDER SHALL ASSERT, AND EACH PARTY HERETO HEREBY WAIVES, ANY CLAIM AGAINST THE OTHER PARTY BANK, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

8.31 Termination of Agreement. Upon the full and complete satisfaction or waiver on or before the Conversion Deadline of all terms and conditions of Section 6.7 of this Agreement, Bank shall promptly deliver to the Borrower the Conversion Certificate. This Agreement shall terminate upon the Conversion Date and the delivery of the Conversion Certificate; provided that all other Loan Documents shall remain in full force and effect except for those Loan Documents which will terminate by their terms upon the delivery of the Conversion Certificate (and all references in the other Loan Documents, which will not terminate on the Conversion Date to defined terms in this Agreement shall still be applicable to those terms as defined in this Agreement, notwithstanding the termination of this Agreement).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
In Witness Whereof, the parties have duly executed this Agreement under seal as of the day and year first above written.

"BORROWER"

ART AT BRATTON'S EDGE, LLC, a Florida limited liability company

By: Wolfpack Bratton's, LLC, a Florida limited liability company, its administrative member

By: ________________________________

Louis W. F. Polar, President
“BANK”

Community Bank of Texas, N.A., a national banking association

By: ________________________________

Mahesh S. Aiyer,
Executive Vice President
EXHIBIT “A”

INDIVIDUALS REQUESTING DISBURSEMENTS

David O. Deutch
Louis Wolfson III
Lisa Stephens
**EXHIBIT “B”**

**BUDGET**

### ART AT BRACKE’S RIDGE

#### CONSTRUCTION DRAW SCHEDULE

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### TOTAL SOURCES:

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<th>15,000,000</th>
<th>17,000,000</th>
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<th>21,000,000</th>
<th>23,000,000</th>
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<td>Insurance - Later</td>
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</tbody>
</table>

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**TOTAL SOURCES:**

- **Art at Bracke’s Ridge:** $10,000,000
- **132 Workforce-Conceptual:** $2,100,000
- **Truss Delivery Corp:** $100,000
- **Deferred Development Fee:** $127,000

**TOTAL LENDERS:**

- **Bank:** $3,890,000
  - **Sources:** $50,000
  - **Uses:** $3,840,000
  - **Analysis Loan:** $1,750,000
  - **Bank Construction Loan:** $1,000,000

**ENDING CASH:**

- $1,750,000

**CONSTRUCTION/LOAN INTEREST EXPENSE:**

- **Total Loan Interest:** $3,840,000

**COM FROM BANK BALANCE:**

- **Construction Loan Balance:** $3,840,000

**TOTAL DEBT:**

- **% of Completion:** 0.00%
- **% of Completion:** 9.00%

**TAX CREDIT LIMIT DELIVERY:**

- **Tax Rate Limit Delivery:** 90.00%
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**TOTAL SOURCES:**

100% comp

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**TOTAL USES:**

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</table>
EXHIBIT “C”

AFFIDAVIT OF NO LIENS

BEFORE ME, a Notary Public, on this _____ day of __________, 2015, personally came and appeared the undersigned, in his capacity described in Section 1 below and not individually, who, after being by me duly sworn and deposed, stated as follows:

1. The undersigned, President of Wolfpack Bratton’s, LLC, a Florida limited liability company, administrative member of Art at Bratton’s Edge, LLC, a Florida limited liability company ("Borrower").

2. Reference is made to the loans to be made to Borrower by COMMUNITYBANK OF TEXAS, N.A., a national banking association ("Bank") in accordance with the terms and provisions of the Credit Support and Funding Agreement (the “Loan Agreement”), of even date herewith, by and between Borrower and Bank, which are to be secured by, among other things, the leasehold interest in the tract of land (the “Land”) located in Travis County, Texas, which is described by metes and bounds on the attached Exhibit “A”.

3. As of the date of this Affidavit, to the best knowledge of the undersigned, all labor and services performed on or with respect to the Land (and all buildings located thereon) prior to the date hereof, have been paid and performed in full and Borrower has obtained a lien waiver from and on behalf of all contractors and other entities who have performed all such work.

4. This Affidavit is executed by the undersigned on behalf of the administrative member of Borrower with the express knowledge and understanding that the representations made herein are made for the purpose of inducing Bank to advance the funds pursuant to the terms of the Loan Agreement, and that but for this Affidavit, the Bank would not advance such funds.

EXECUTED as of the date first above written.

ART AT BRATTON’S EDGE, LLC, a Florida limited liability company

By: Wolfpack Bratton’s, LLC, a Florida limited liability company, its administrative member

By: ____________________________
Louis Wolfson III,
President
BEFORE ME, the undersigned authority, on this day personally appeared Louis Wolfson III, President of Wolfpack Bratton's, LLC, a Florida limited liability company, on behalf of said limited liability company as administrative member of ART AT BRATTON'S EDGE, LLC, a Florida limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of __________, 2015.

__________________________
NOTARY PUBLIC in and for The State of ______________
EXHIBIT "D"

WAIVER OF LIEN TO DATE

[FORMS FOLLOW THIS PAGE]
CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project ____________________________

Job No. ____________________________

On receipt by the signer of this document of a check from ____________________ (maker of check) in the sum of $_________ payable to ____________________ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of ____________________ (owner) located at ____________________ (location) to the following extent: ____________________ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to ____________________ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date ____________________________

__________________________________ (Company name)

By _______________________________ (Signature)

______________________________ (Title)

STATE OF TEXAS

COUNTY OF ____________________________

This instrument was acknowledged before me on this ______ day of ________, 20___ by
______________________________ (name), ____________________ (job title) of
______________________________ (company name).

______________________________

NOTARY PUBLIC, STATE OF TEXAS
CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project ____________________________
Job No. ____________________________

On receipt by the signer of this document of a check from _______________________ (maker of check) in the sum of $__________, payable to _______________________ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with any state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _______________________ (owner) located at _______________________ (location) to the following extent: _______________________ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _______________________ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materials, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date ____________________________

________________________________ (Company name)

By ____________________________ (Signature)

________________________________ (Title)

STATE OF TEXAS §

COUNTY OF __________ §

This instrument was acknowledged before me on this ______ day of ________, 20___, by _______________________ (name), _______________________ (job, title) of _______________________ (company name).

NOTARY PUBLIC, STATE OF TEXAS
NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project __________________________

Job No. __________________________

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to __________________________ (person with whom signer contracted) on the property of __________________________ (owner) located at __________________________ (location) to the following extent: __________________________ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date __________________________

________________________________________ (Company name)

By _____________________________________ (Signature)

________________________________________ (Title)

STATE OF TEXAS

COUNTY OF ____________________________

This instrument was acknowledged before me on this _____ day of ____________, 20___, by

________________________________________ (name), __________________________ (job title) of

________________________________________ (company name).

________________________________________

NOTARY PUBLIC, STATE OF TEXAS
NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project

Job No.

The signer of this document has been paid and has received a progress payment in the sum of $_______ for all labor, services, equipment, or materials furnished to the property or to ________________________________________________ (person with whom signer contracted) on the property of ________________________________________________ (owner) located at ________________________________________________ (location) to the following extent: ________________________________________________ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to ________________________________________________ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date ________________

______________________________________________ (Company name)

By ___________________________________________(Signature)

______________________________________________ (Title)

STATE OF TEXAS

COUNTY OF

This instrument was acknowledged before me on this ____ day of _____________, 20____ by
__________________________________________ (name), _____________________________ (job title) of
__________________________________________ (company name).

NOTARY PUBLIC, STATE OF TEXAS
EXHIBIT "E"

REQUEST FOR ADVANCE

(LETTERHEAD OF BORROWER)

Date: __________________

CommunityBank of Texas, N.A.
5999 Delaware
Beaumont, Texas 77706-7607
("Bank")

Re: Request for Advance to Pay Costs Under Credit Support and Funding Agreement (the "Loan Agreement") dated as of July 1, 2015, between Art at Bratton's Edge, LLC ("Borrower") and Bank

Ladies and Gentlemen:

Borrower hereby requests an advance under the Loan Agreement to pay costs heretofore incurred in connection with construction and development of the Premises as contemplated therein, in the amount of $____________. All terms used herein shall have the same meanings ascribed to them in the Loan Agreement, except as otherwise provided herein.

The costs to be paid from the proceeds of such advance are for the items listed on the continuation page(s) attached. To the extent that the advance will be used to pay a Contractor, an application and certificate for payment for each Contractor to be paid is also attached.

The status of costs for the Improvements is as follows:

(a) Original projected costs $____________
(b) Additions to date hereof $____________
(c) Deductions to date hereof ($________)
(d) Current projection of costs $____________
(e) Total certified to date, including amount of this certificate ($________)
(f) Unpaid balance of projected costs (amount yet to be certified) $____________

The status of available funds under the Loan Agreement is as follows:

E-1
Total Loan and Capital Contributions (to date) $__________

Less: Total costs certified to date, including amount of this certificate (from line (e) above) ($__________)

Balance to be advanced pursuant to Loan Agreement $__________

The equity required to complete the project is as follows:

Current projection of costs $__________

Less: Total costs certified to date (from (h) above) ($__________)

Less: Balance to be advanced pursuant ($__________) to Loan Agreement (from (i) above)

Total equity required $__________

Borrower hereby represents and warrants as follows:

(a) The amount above requested has actually been incurred in connection with the construction and development of the Premises and no previous advances have been made under the Loan Agreement to pay any of the costs for which Borrower hereby requests this advance;

(b) The representations and warranties set forth in the Loan Agreement are true and correct in all material respects as of the date this Request for Advance is submitted to Bank;

(c) Except as may be set forth on Schedule 1 to this Request for Advance, all equipment, supplies and materials acquired or Improvements which are not affixed to or incorporated into the Improvements are stored on the Premises; and

(d) No Default or Event of Default has occurred under the Loan Agreement which has not been waived by Bank or cured to the satisfaction of Bank;

With respect to the items described on Schedule 1 to this Request for Loan Advance, the following is attached to this Request for Advance:
(a) With respect to items stored in a bonded warehouse in accordance with and subject to the terms and provisions of the Loan Agreement, an original warehouse receipt covering such items; and

(b) With respect to items not stored in a bonded warehouse in accordance with and subject to the terms and provisions of the Loan Agreement, a written certificate signed by Borrower certifying as to the location of all such items. Such items shall be insured by companies, on forms and in amounts, satisfactory to Bank. Each such location must be acceptable to Bank and such items must be stored under adequate safeguards acceptable to Bank to minimize the possibility of loss, theft, damage or commingling of other property.

Very truly yours,

ART AT BRATTON'S EDGE, LLC, a Florida limited liability company

By:   Wolfpack Bratton's, LLC, a Florida limited liability company, its administrative member

By:   ________________
   Louis Wolfson III,
   President

THE STATE OF   $§
COUNTY OF   $§

BEFORE ME, the undersigned authority, on this day personally appeared Louis Wolfson III, President of Wolfpack Bratton's, LLC, a Florida limited liability company, on behalf of said limited liability company as administrative member of ART AT BRATTON'S EDGE, LLC, a Florida limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of __________, 2015.

NOTARY PUBLIC in and for The State of ________________
EXHIBIT “F”

AFFIDAVIT OF COMMENCEMENT

THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared

as _____________ of Wolfpack Bratton’s, LLC, a
Florida limited liability company, administrative member of Art at Bratton’s Edge, LLC, a
Florida limited liability company ("Owner"), and

____________________ of PINROC CONSTRUCTION, LLC ("Original Contractor"),
known to me to be the persons whose names are subscribed below, and who, being by
me first duly sworn, did each on his or her oath state as follows:

(a) The Owner is the owner of a leasehold interest in the real property (the
"Land") situated in Travis County, Texas, more particularly described in Exhibit "A",
attached hereto and made a part hereof for all purposes, on which building and other
related improvements (the "Improvements") are being constructed or renovated.

(b) The address of Owner is:

Art at Bratton’s Edge, LLC
421 West 3rd Street, Suite 1504
Austin, Texas 78701

(c) The address of Original Contractor is:

Pinroc Construction, LLC
6636 N. Riverside Dr., Suite 500-A
Fort Worth, Texas 76137
Attention: Felix Braverman

(d) The name and address of any other original contractor, presently known,
after reasonable inquiry, to the Affiants, to the Owner or to the Original Contractor, that
is furnishing, or will furnish, labor, service, or materials, for the construction of the
Improvements, and the nature of such labor, service or materials, is as follows:

____________________

____________________

(e) Work on the Improvements (including the first delivery of materials and
equipment to the Land in connection with the Improvements) actually commenced on

____________________, 20__ at ____ o’clock __.m.
(f) This affidavit has been jointly made by Owner and Original Contractor by and through an authorized representative of each, the same being the undersigned Affiants. This affidavit may be executed in identical counterparts, each of which shall be deemed an original, and all of which, collectively, shall constitute one affidavit.

EXECUTED this __________ day of ____________________, 20__.

AFFIANTS:

ART AT BRATTON’S EDGE, LLC, a Florida limited liability company

By: Wolfpack Bratton’s, LLC, a Florida limited liability company, its administrative member

By: ______________________________________
    Louis Wolfson III,
    President

THE STATE OF ___________ §

COUNTY OF ____________ §

BEFORE ME, the undersigned authority, on this day personally appeared Louis Wolfson III, President of Wolfpack Bratton’s, LLC, a Florida limited liability company, on behalf of said limited liability company as administrative member of ART AT BRATTON’S EDGE, LLC, a Florida limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of ____________, 2015.

_________________________________________________________________

NOTARY PUBLIC in and for The State of ____________
THE STATE OF TEXAS §
COUNTY OF §

SUBSCRIBED AND SWORN BEFORE ME, on this ___ day of ____________, 2015, by ____________________, __________________ of WILLIAM TAYLOR & CO., INC., a Texas __________________, on behalf of said __________________.

__________________________________________________
Notary Public, State of Texas

After recording return to:

__________________________________________________

__________________________________________________
EXHIBIT "G"

AFFIDAVIT AND CERTIFICATE OF COMPLETION

THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE US, the undersigned authorities, on this day personally appeared ___________________________________ of ___________________________________ ("Architect"),

__________________________________________ of Wolfpack Bratton's, LLC, a Florida limited liability company, administrative member of Art at Bratton's Edge, LLC, a Florida limited liability company ("Owner"), known by us to be the persons whose names are subscribed below, and who, being by first duly sworn, did on their oath state and certify as follows:

1. Owner, whose address is 421 West 3rd Street, Suite 1504, Austin, Texas 78701, is the owner of a leasehold interest in the real property situated in Augusta, Travis County, Texas, more particularly described on Exhibit "A", on which real property certain Improvements (herein so called) were constructed and furnished under the original contract with the Original Contractor, whose address is ___________________________________.

2. The Improvements under the original contract between the Owner and the Original Contractor (including all on-site and off-site Improvements) have been completed in accordance with the approved Plans and Specifications listed on the attached Exhibit "B".

3. To the best of their knowledge, (a) the Premises complies with all applicable restrictive covenants, building codes, permit requirements, and all other applicable laws, ordinances, codes, rules and regulations and (b) no hazardous or toxic substances or materials, as defined under any state, local or federal law have been used on-site in constructing the Improvements or incorporated into the Premises, other than in compliance with applicable law.

4. To the best of their knowledge, all utility services necessary for the proper operation of the Improvements for its intended purpose are connected to and in sufficient capacity at the Premises, including water supply, storm and sanitary sewer facilities and gas (if the Plans and Specifications require the Improvements to be served by gas), electricity and telephone facilities.

5. To the best of our knowledge, the condition of the soil of the Premises is adequate to support the Improvements.
6. To the best of our knowledge, the Improvements are ready for immediate occupancy (in the case of Owner, this statement being made to the best of Owner's knowledge).

7. Borrower did and does hereby additionally state and certify as follows: All roads, easements and rights-of-way necessary for the utilization of the Premises for its intended purposes have been completed or acquired.

AFFIANT "ARCHITECT":

________________________________________

SUBSCRIBED AND SWORN BEFORE ME, on this ___ day of 
________________, 201__, by ________________________, a 
________________________, on behalf of said __________________.

Notary Public, State of __________________

AFFIANT "ORIGINAL CONTRACTOR":

________________________________________

By: ________________________________
Name: ______________________________
Title: ______________________________

SUBSCRIBED AND SWORN BEFORE ME, on this ___ day of 
________________, 201__, by ________________________, 
________________________, of ________________________, a 
________________________, on behalf of said __________________.

Notary Public, State of __________________
AFFIANT "OWNER":

ART AT BRATTON'S EDGE, LLC, a Florida limited liability company

By: Wolfpack Bratton's, LLC, a Florida limited liability company, its administrative member

By: __________________________

Louis Wolfson III,
President

THE STATE OF ____________  §

COUNTY OF _______________  §

BEFORE ME, the undersigned authority, on this day personally appeared Louis Wolfson III, President of Wolfpack Bratton's, LLC, a Florida limited liability company, on behalf of said limited liability company as administrative member of ART AT BRATTON'S EDGE, LLC, a Florida limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of __________, 2015.

________________________________________
NOTARY PUBLIC in and for The State of ____________
### EXHIBIT “H”

**CONTRIBUTION SCHEDULE**

<table>
<thead>
<tr>
<th>Contribution</th>
<th>Event 1</th>
<th>Amount to be Contributed</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Closing Date</td>
<td>$3,880,412</td>
<td>First to reimburse Investor Member for due diligence and closing costs, then to pay developer fees of $300,000, then to pay budgeted project items (other than deferred items)</td>
</tr>
<tr>
<td>Second</td>
<td>50% Completion</td>
<td>$3,880,412</td>
<td>To pay costs of construction</td>
</tr>
<tr>
<td>Third</td>
<td>95% Completion</td>
<td>$2,528,095</td>
<td>To pay the Loan down to the amount of the Permanent Mortgage Loan Commitment (or such lesser amount for Lease Stabilization), then to pay the budgeted costs relating to a pending draw, then to pay $300,000 of developer fees</td>
</tr>
<tr>
<td>Fourth</td>
<td>Stabilization/Conversion</td>
<td>$797,972</td>
<td>To pay the Loan down to amount of the Permanent Mortgage Loan Commitment (or such lesser amount needed for Lease Stabilization), as needed, then to fund $202,000 to Operating Reserve as required by the Operating Agreement, then to pay developer fees of $595,972</td>
</tr>
</tbody>
</table>

**TOTAL** | | $11,086,891 |

---

1/ The funding, timing and amount of the contributions will be made in accordance with the terms and conditions of the Operating Agreement.
EXHIBIT "I"

ADDITIONAL ITEMS TO BE DELIVERED

1. **PREMISES DEVELOPMENT ITEMS**

2. Census Tract

3. Market Study or any market survey data prepared by borrower (Appraisal if available)

4. Pro forma operating statement and history if applicable (2 years)

5. Site Plan, Floor Plan/Unit Configuration with dimensions, and Elevations

6. Preliminary Budget & Cost Breakdown and Projected Draw Schedule (including calculation of interest payable)

7. Sources and Uses of Funds

8. Tax Credit Application/Proposal (if applicable)

9. Development timing assumptions including company closing, Loan closing, construction completion, qualified occupancy, projected lease-up schedule and estimated date of permanent loan funding.

B. **FINANCIAL & REFERENCE INFORMATION**

**BORROWER:**

10. Organizational structure of Borrower

11. Current Financial Statement to include cash flow, contingent liabilities

12. 2 years historical financial statements

13. Projected cash flow for one year

14. Tax ID Number or Social Security Number
PRINCIPALS/GUARANTOR

15. Current Financial Statement to include cash flow, contingent liabilities & statement of real estate owned (signed)

16. 2 years historical financial statements

17. Projected cash flow for one year

18. Current ongoing projects plus any future contemplated projects (need future projects only)

19. Status of current projects

20. Tax ID Number or Social Security Number

C. CONTRACTOR

21. Profile including past projects

22. Current financial statements, to include cash flow, contingent liabilities of statement of real estate owned (signed)

D. PROPERTY MANAGER

23. Property Management Agreement including marketing plan

24. Samples of property management reports and tenant leases

25. History of state and federal audits on projects under management

E. NONPROFIT INVOLVEMENT (IF APPLICABLE)

26. Resume of nonprofit member

27. Description of previous and future project involvement

28. IRS Determination letter

29. Financial Statements
EXHIBIT "J"

LOW-INCOME HOUSING TAX CREDIT ALLOCATION

2014 Carryover Allocation Agreement

2014 CARRYOVER ALLOCATION AGREEMENT

(The Owner named below must be the actual ownership entity, itself, not a General Partner or an Affiliate)

Development
Name: Art at Bratton's Edge (the "Development")
TDHCA #: 14226

Development Address or Description of Location: 1 Southeast corner of Long Vista Dr. and Bratton Ln.

City: Austin County: Travis State: TX Zip: 78728

Development Type: New Construction

Building Identification Numbers (BINs) Reserved for this Development: TX-14-22601 through TX-14-22699

The Texas Department of Housing and Community Affairs (the "Department") hereby issues this Carryover Allocation of 2014 tax credit authority in the annual amount of $1,056,000 3 pursuant to Section 42(h)(1)(E) or (F) of the Internal Revenue Code of 1986, as amended (the "Code"). The allocation is subject to the terms and conditions stated in the Commitment Notice and Carryover Allocation Manual, and all representations and undertakings set forth in the Application on which the allocation is based, the violation of any of which shall be cause for the cancelation of this Carryover Allocation.

ART AT BRATTON'S EDGE, LLC, a Florida limited liability company, 4 (the "Owner") hereby certifies that each building for which this allocation is being made does or will meet the requirements of Section 42(h)(1)(E)(ii) of the Code (for a project which includes one building) or Section 42(h)(1)(F) of the Code (for a project which includes more than one building) and Treasury Regulation 1.42-6. The Owner hereby certifies that no later than the date that is one year after the effective date of the Carryover Allocation, the Owner will have incurred expenditures amounting to more than 10% of $12,355,872, 5 which is the Owner’s reasonably expected basis in the Development for purposes of Treasury Regulation 1.42-6. The effective date of the Allocation is the date this Carryover Allocation Agreement is executed by the Department. For the purpose of meeting the requirements of the 2014 Qualified Allocation Plan and Uniform Multifamily Rules (10 TAC Chapters 11 and 10), the Owner agrees that documentation of expenditures comprising more than 10% of said reasonably expected basis will be submitted to the Department by July 1, 2015.

The Owner understands and agrees that this allocation is subject to fulfilling the requirements of the Construction Status Report as set forth in the 2014 Uniform Multifamily Rules, §10.402(h). The

1 For multiple sites, reference "Exhibit A" and attach a list of addresses or descriptions of the locations as the exhibit.

2 The Development Type must be new construction, rehabilitation or acquisition/rehabilitation, only. Determine the appropriate carryover classification in consultation with your attorney or CPA.

3 The figure entered here should be consistent with the figure reflected in the 2014 HTC Commitment Notice.

4 The Development Owner must be legally formed or the carryover allocation is not valid. DO NOT use the name of a General Partner, Affiliate or any name other than the name of the organization that is the Development Owner.

5 The allocation must be justified by the amount of the reasonably expected basis.

6 Treasury Regulation 1.42-6(a)(2) refers to a 6-month period that does not reflect the Code's current one-year period for meeting the 10% of-basis requirement.

J-1

HOU 408333448w8
Owner agrees to submit promptly to the Department a copy of each inspection report conducted by the lender(s) and/or equity investor as the reports become available.

The Owner hereby certifies that each building for which this allocation is made will be placed in service no later than December 31, 2016. For purposes of Section 42 of the Code, a newly constructed building is not "in service" until at least one unit in such building has been completed and certified by the appropriate local authority or registered architect as ready for occupancy. Notwithstanding the foregoing, if any building in the Development, including a rehabilitation Development, does not have all units completed and certified by the appropriate local authority or registered architect as ready for occupancy by December 31, 2016, this Carryover Allocation with respect to such building will be canceled and no Form 8609 issued with respect thereto. The Department may waive the requirement that all units be certified as ready for occupancy for good cause, but the requirement that at least one unit in each building be certified as ready for occupancy may not be waived. No extension of the deadline to place in service can be made by the Department. Upon completion of the Development or any building therein, the Department may undertake, at the expense of the Owner, such inspection(s) and/or financial audit(s) as it deems desirable in order to verify that the Development was constructed or rehabilitated according to the representations contained in the Application and that reported expenditures were actually incurred. The Department also may require that additional work be done if necessary to meet housing quality standards or other deficiencies noted in the inspection.

All owners that receive a 2014 Carryover Allocation must request issuance of IRS Forms 8609 upon the filing of cost certification documentation as required by the Department’s Post Carryover Activities Manual, as in effect at the time of filing. The documentation must be filed no later than January 15, following the first year of the credit period.

The Owner hereby agrees and acknowledges that all requirements stated in the Post Carryover Activities Manual for receiving IRS Forms 8609 must be met to the satisfaction of the Department before such forms will be issued with respect to the Development. The Owner hereby further agrees and acknowledges that all conditions, restrictions, and obligations in addition to those applicable under Code Section 42, which the Owner undertook in applying for this Carryover Allocation, are incorporated herein and to the extent appropriate, will be reflected in a Declaration of Land Use Restrictive Covenants (the "Declaration") with respect to the Development. Such Declaration will also incorporate provisions requiring compliance with the Internal Revenue Code and with Chapter 2306, Texas Government Code (the "Act"), including but not limited to requirements for: annual reporting and periodic inspections; payments of the fees, charges and expenses of the Department in connection with its monitoring and compliance activities under the Code and the Act; management, operating, maintenance and repair standards for the Development; tenant selection and income certification; limitations on rents, charges, and fees payable by tenants; and development cost controls and management selection. The Owner hereby acknowledges that any rule or requirement applicable to the Development Owner, Application, award, or allocation and any representation made in the Application, as may be amended from time to time, or other materials provided to the Department in connection with the Application may be included in the Declaration and the Development Owner agrees (i) to execute such Declaration in substantially similar form to that provided, subject to such modifications as may be required by the Department, in its reasonable discretion, in order to reflect changes in federal or state law, and policy or program requirements, and (ii) to abide by all the terms and conditions contained in the Declaration. Any failure to comply with the terms of any such conditions, restrictions, or obligations
prior to issuance of IRS Forms 8609 with respect to the Development may be cause for cancelation or modification of this Carryover Allocation by the Department and such other action as the Department determines to be appropriate.

The Owner hereby acknowledges that it has thoroughly reviewed and agrees to abide by all terms and conditions stated in the Qualified Allocation Plan and Uniform Multifamily Rules, Commitment Notice, and 2014 Carryover Allocation Procedures Manual. The Owner hereby agrees to the return of any unused credit authority at the time of final allocation should the Department determine that a reduction in the credit amount is appropriate in accordance with the Department’s rules and under Section 42(m)(2).

Applicable Percentage Election

☐ The Owner hereby irrevocably elects, pursuant to Section 42(h)(1)(A)(ii) of the Code, to fix the applicable credit percentage for the Development as the percentage prescribed by the Secretary of the Treasury for the month in which this Carryover Allocation Agreement was executed by BOTH the Owner and the Department. The Department and the Owner acknowledge that this Carryover Allocation constitutes an agreement binding upon the Department, the Owner, and all successors in interest to the Owner as owners of the Development, subject to compliance by the Owner with the requirements of Section 42 of the Code and the requirements of the Department. Owners are advised to review IRS notice 2008-106 and subsequent changes in law related to the applicable credit percentage.

Eligible Basis Boost

☒ The Texas Department of Housing and Community Affairs (the “Department”) has determined that the Development is not receiving an allocation of credit dollar amount in excess of the amount required for its financial feasibility, and has further determined that the development is eligible for an increase in the eligible basis of the development by up to 30% (a “Basis Boost”) as authorized and permitted by Section 42(d)(5)(B) of the Code, and Title 10 of the Texas Administrative Code Section 11.4(c).

Nonprofit Set-Aside

☐ If this box is checked, this Carryover Allocation is being made pursuant to the Department’s set-aside of credit authority for “qualified nonprofit organizations” within the meaning of Section 42(h)(5)(C) of the Code. Throughout the Compliance Period applicable to the Development under the Code and the Declaration, such a qualified nonprofit organization shall own an interest in the Development, have “control” of the Development pursuant to Section 11.5(1) of the QAP, and materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Development. The qualified nonprofit organization designated to meet such obligation with respect to the Development is . As of the date hereof, and based solely on representations, covenants, and warranties of the Owner, and other information previously submitted to the Department by the Owner, the Department has determined such nonprofit organization not to be "affiliated with or controlled by a for-profit organization" for purposes of Section 42(h)(5)(C)(ii) of the Code. In the event that any such representations, covenants, warranties and/or information is determined to have been false, materially misstated or materially misleading when made, or if subsequent events render such representations, covenants, warranties and/or information false or misleading in any material way, then the Department, at its option, may determine the issue of control with respect to Section 42(h)(5)(C)(ii), and such
determination shall be grounds for cancellation of this Carryover Allocation and any and all such other action as the Department may deem appropriate.

This Carryover Allocation is issued to the Owner indicated in the related Commitment Notice. If the Commitment Notice was issued to a party other than the Owner, the Commitment Notice contemplated a subsequent transfer to the Owner of all benefits and burdens associated with the commitment. This Carryover Allocation serves to acknowledge the transfer.

Any other transfer of the allocation will be subject to approval by the Department at its discretion. The Owner hereby agrees and acknowledges that it will request prior written approval from the Executive Director of the Department in writing for any intended transfer of the Development or change in actual control of the Development for which this Carryover Allocation is made prior to such transfer or change in control. Further, any purchaser which intends to acquire the Development with respect to which this allocation is made and to make use of this Carryover Allocation will be required to request approval from the Department of the intended acquisition of the Development and to supply the Department with any documentation which it may require, in its sole discretion. The approval of any such transfer by the Department does not constitute a representation to the effect that such transfer is permissible under the Code or without adverse consequences hereunder.

The Owner agrees that it will inform and seek the Department’s approval for any changes in the number of units, unit mix, unit sizes, design changes or any other material changes to the Development prior to making the changes. Unapproved changes may result in the reduction or loss of credits or in the cancellation of this Carryover Allocation. The Owner hereby agrees that the Owner or management company will attend at least five hours of fair housing training on management and leasing issues, and the Architect or Engineer will attend at least five hours of training on fair housing design prior to the deadline for submitting 10% Test documentation.

In issuing this Carryover Allocation, the Department has relied upon the information submitted to it by the Owner. If Owners or Affiliates are found to be in violation of any rule regarding the Application or any rule regarding actions performed prior or subsequent to submission of the Application, specifically including actions that would have resulted in the ineligibility of the Owner or Affiliate to participate in the Application process, this Carryover Allocation may be canceled at the discretion of the Department. The Department makes no representations concerning or guaranteeing the Owner’s eligibility to receive the credit stated herein; such determination rests with the Internal Revenue Service based upon the actions and determinations of the Owner in light of all applicable laws, regulations and rulings.

The Owner expressly acknowledges that this Carryover Allocation is subject to downward adjustment in accordance with the Department’s rules in connection with the Department’s performing the review required by Internal Revenue Code §42(m)(2).

Under penalty of perjury, I certify that individually and on behalf of the Owner, on whose behalf I represent and warrant I am authorized to act, the information and the statements in this Carryover Allocation Agreement are true and accurate:
EXECUTED to be effective as of the last date written below.

DEVELOPMENT OWNER:

ART AT BRATTON’S EDGE, LLC, a Florida limited liability company

By: WOLFPACK BRATTON’S, LLC, a Florida limited liability company, its administrative member

By: Louis Wolfson III, President

Owner’s Federal Taxpayer or Employer Identification Number (TIN or EIN): 47-1690888

Owner Address: 421 West 3rd St, Ste. 1504 City: Austin State: TX Zip: 78701

Email: lisa@salgebrock.com Email: ajcarpen@gmail.com Phn: 352.213.8700

THE STATE OF FLORIDA

COUNTY OF MIAMI-DADE

BEFORE ME, the undersigned, a Notary Public in and for the State of Florida, on this day personally appeared Louis Wolfson III, known to me to be President of WOLFPACK BRATTON’S, LLC, a Florida limited liability company, administrative member of ART AT BRATTON’S EDGE, LLC, a Florida limited liability company, the limited liability company that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of said limited liability company, and that he executed the same as the act of such limited liability company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21st day of October, 2014.

(Seal)

JACLYN GAGO
My Commission Expiration: August 01, 2017
Notary Public, State of Florida

1 DO NOT use the taxpayer identification number of a General Partner, Affiliate or any organization or Person other than the organization that is the Development Owner.
Acknowledged, agreed, and accepted:

DEPARTMENT:

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

By: ______________________
Jean Marie Latsha, Director of Multifamily Finance
221 E. 11th Street, Austin, Texas 78701
Department Taxpayer Identification Number: 74-2610542

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Jean Marie Latsha, duly authorized representative of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, on behalf of such agency.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 17th day of December, 2014.

(Seal)

MIGUEL ARROYO
Notary Public, State of Texas
OCTOBER 24, 2015

Notary Public, State of Texas
EXHIBIT "K"

CONVERSION CERTIFICATE

____________________, 201

Art at Bratton's Edge, LLC
4230 LBJ Freeway, Suite 414
Austin, Texas 75244

Re: Credit Support and Funding Agreement (the "Agreement") dated as of
July 1, 2015, by and between Art at Bratton's Edge, LLC (the "Borrower")
and CommunityBank of Texas, N.A.

To whom it may concern:

All requirements under Section 6.7 of the Agreement have been satisfied or
waived as of the date of this Certificate.

COMMUNITYBANK OF TEXAS, N.A., a
national banking association

By: __________________________
Name: _________________________
Title: __________________________

K-1
EXHIBIT “L”

COMMUNITY BANK OF TEXAS, N.A.
INSURANCE STANDARDS

BUILDER’S RISK INSURANCE FOR NEW CONSTRUCTION AND REHABS:

Prior to closing, Community Bank of Texas, N.A., or their representative, must receive evidence of Builder’s Risk insurance in the form of an ACORD 28 accompanied by a complete copy of the policy, or policies, and all related endorsements and policy change requests evidencing the following items:

- Carrier must be rated A- VIII or better by AM Best Company
- Borrowing entity must be a Named Insured
- Special Form / All-Risk coverage (vandalism and malicious mischief cannot be excluded)
- Completed Value / Non-reporting Form
- Partial Occupancy permitted (coverage cannot be voided if the property is partially occupied prior to 100% completion)
- Replacement Cost valuation
- Hard Cost limit equal to 100% of the property's replacement value at completion. Maximum Hard Cost deductible shall be $10,000.
- 12 months of Delayed Income coverage is required for loans under $10,000,000. For loans $10,000,000 and greater, 18 months of Delayed income is required. Maximum Delayed Income deductible shall be $10,000, or 7 days waiting period.
- Soft Cost coverage in an amount no less than 10% of the Hard Cost limit. Soft Costs must include but do not need to be limited to: Insurance costs, Real Estate Taxes, Debt Service/Interest, Architect and Engineer's fees. Maximum Soft Cost deductible shall be $10,000, or 7 days waiting period.
- Materials in Transit and Materials Stored Off-Site must be included. The sublimit must be $250,000 or greater.
- If a blanket limit applies, please provide a copy of the Schedule of Locations and Values in spreadsheet format. Please include the city, state, zip, flood zone, and total insured value of each location on the policy.
- Protective safeguard endorsements or provisions are prohibited.
- No coinsurance on Hard Cost, Soft Cost, or Delayed Income coverage. If coinsurance provisions apply, an Agreed Value endorsement must be added to the policy.
- Terrorism coverage (TRIPRA) is required at Community Bank's discretion.
- Equipment Testing coverage is required where boilers and/or centralized HVAC systems will be installed. If the coverage is provided on a separate policy from the Property, please include evidence of a Joint Loss Agreement. The required limit is equal to the replacement cost of the building housing the equipment. Delayed Income coverage specifically relating to Equipment Testing coverage is required. No coinsurance is permitted.

L-1
• Wind/Hail and Named Windstorm coverage is required for all loans. In coastal areas, the Named Windstorm deductible can be increased from $10,000 to 3% of the total insured value. Delayed Income coverage specifically relating to Wind/Hail and Named Windstorm coverage is required.

• Flood coverage is required for any property located in a Special Flood Hazard Area (SFHA) as identified by FEMA (Flood Zones A or V). When Flood coverage is required, the limit must equal the full replacement cost of the property at completion (primary coverage provided through the National Flood Insurance Program, excess coverage provided by an excess insurer). Delayed Income coverage specifically relating to Flood coverage is required. The maximum NFIP deductible should be $3,000 per building. The maximum Flood deductible for excess and Business Income coverage must be approved by CommunityBank of Texas, N.A.

• Earthquake coverage is required in seismic zones 3 and 4 for properties with a PML (SEL) of 18% or greater. When Earthquake coverage is required, the limit must equal the full replacement cost of the property. Earthquake deductibles must be 5% or less. Delayed Income coverage specifically relating to Earthquake coverage is required.

• Ordinance & Law coverage may be required for rehabs. When Ordinance and Law coverage is required, Coverage A (Loss of Value to the Undamaged Portion of the Building) must be included within the building limit, Coverage B (Demolition) and Coverage C (Increased Cost of Construction) must each be included for 10% of the building limit. If a combined limit is written for Coverages B and C that limit must be 20% of the building limit.

• The policy must contain language whereby the right of subrogation can be waived in writing prior to a loss. The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US wording in standard ISO property policies is sufficient.

• CommunityBank of Texas, N.A. must be the first Mortgagee with respect to Hard Costs and Loss Payee with respect to Delayed Income and Soft Costs exactly as follows:

  CommunityBank of Texas, N.A.
  its Successors and/or Assigns
  5999 Delaware Street
  Beaumont, TX 77706-7607

**PROPERTY INSURANCE FOR EXISTING STRUCTURES:**

Prior to closing, CommunityBank of Texas, N.A., or their representative, must receive evidence of Property insurance in the form of an ACORD 28 accompanied by a complete copy of the policy, or policies, and all related endorsements and policy change requests evidencing the following items:

• Carrier must be rated A- VIII or better by AM Best Company
• Borrowing entity must be a Named Insured
• Special Form / All-Risk coverage
• Replacement Cost valuation
• Building limit equal to 100% of the property’s replacement value. Maximum deductible shall be $10,000.
• 12 months of Business Income coverage is required for loans under $10,000,000. For loans $10,000,000 and greater, 18 months of Business Income is required.
90-day Extended Period of Indemnity is required for loans $5,000,000 and above. Maximum deductible shall be $10,000, or 7 days waiting period.
- If a blanket limit applies, please provide a copy of the Schedule of Locations and Values in spreadsheet format. Please include the city, state, zip, flood zone, and total insured value of each location on the policy.
- Protective endorsements or provisions are prohibited.
- No coinsurance on Building or Business Income coverage. If coinsurance provisions apply, an Agreed Value endorsement must be added to the policy.
- Terrorism coverage (TRIPRA) is required at CommunityBank’s discretion.
- Boiler & Machinery / Equipment Breakdown coverage is required where boilers and/or centralized HVAC systems appear. If the coverage is provided on a separate policy from the Property, please include evidence of a Joint Loss Agreement. The required limit is equal to the replacement cost of the building housing the equipment. Business Income coverage specifically relating to Boiler & Machinery coverage is required. No coinsurance is permitted.
- Wind/Hail and Named Windstorm coverage is required for all loans. In coastal areas, the Named Windstorm deductible can be increased from $10,000 to 3% of the total insured value. Business Income coverage specifically relating to Wind/Hail and Named Windstorm coverage is required.
- Flood coverage is required for any property located in a Special Flood Hazard Area (SFHA) as identified by FEMA (Flood Zones A or V). When Flood coverage is required, the limit must equal the full replacement cost of the property (primary coverage provided through the National Flood Insurance Program, excess coverage provided by an excess insurer). Business Income coverage specifically relating to Flood coverage is required. The maximum NFIP deductible should be $3,000 per building. The maximum flood deductible for excess and Business Income coverage must be approved by CommunityBank of Texas, N.A.
- Earthquake coverage is required in seismic zones 3 and 4 for properties with a PML (SEL) of 18% or greater. When Earthquake coverage is required, the limit must equal the full replacement cost of the property. Earthquake deductibles must be 5% or less. Business Income coverage specifically relating to Earthquake coverage is required.
- Ordinance & Law coverage is required for properties that are determined to be legally nonconforming with respect to current zoning regulations. When Ordinance and Law coverage is required, Coverage A (Loss of Value to the Undamaged Portion of the Building) must be included within the building limit, Coverage B (Demolition) and Coverage C (Increased Cost of Construction) must each be included for 10% of the building limit. If a combined limit is written for Coverages B and C that limit must be 20% of the building limit.
- The policy must contain language whereby the right of subrogation can be waived in writing prior to a loss. The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US wording in standard ISO property policies is sufficient.
- CommunityBank of Texas, N.A. must be the first Mortgagee with respect to Property and Loss Payee with respect to Business Income exactly as follows:

CommunityBank of Texas, N.A.
its Successors and/or Assigns
5999 Delaware Street
Beaumont, TX 77706-7607
LIABILITY INSURANCE:

Prior to closing, CommunityBank of Texas, N.A., or their representative, must receive evidence of Liability insurance in the form of an ACORD 25 accompanied by complete copies of the GL and Umbrella policies, and all related endorsements and policy change requests evidencing the following items:

- Carriers must be rated A- VIII or better by AM Best Company
- Borrowing entity must be a Named Insured
- Commercial General Liability policy with minimum limits of $1,000,000 each occurrence and $2,000,000 in the aggregate.
- If more than one location is insured on the CGL policy, the aggregate limit must apply on a per location basis.
- Excess Liability policy in an amount determined by loan size:
  - For loans under $3,000,000, $2,000,000 of Umbrella coverage is required.
  - For loans between $3,000,000 and $5,000,000, $3,000,000 of Umbrella coverage is required.
  - For loans between $5,000,000 and $10,000,000, $5,000,000 of Umbrella coverage is required.
  - For loans between $10,000,000 and $15,000,000, $10,000,000 of Umbrella coverage is required.
  - For loans between $15,000,000 and $25,000,000, $15,000,000 of Umbrella coverage is required.
  - For loans above $25,000,000, $25,000,000 of Umbrella coverage is required.
- All liability policies must provide for claims to be made on an occurrence basis.
- All liability policies must have a deductible or retention of $10,000 or less.
- CommunityBank of Texas, N.A. must be an Additional Insured on the CGL policy. Additional Insured form CG2018 – Additional Insured Mortgagee, Assignee, or Receiver (or equivalent) should be used. On rehab or construction loans, the CG2026 – Additional Insured Designated Person or Organization should be used if the CG2018 excludes construction activities.
  CommunityBank of Texas, N.A.
  its Successors and/or Assigns
  5999 Delaware Street
  Beaumont, TX 77706-7607
- On construction loans, it is important to note the borrowing entity must maintain a CGL policy. OCP policies are not accepted.
- On construction loans, the General Contractor must maintain their own CGL ($1,000,000/$2,000,000) and Umbrella ($5,000,000) coverage under which both the borrowing entity and Community Bank of Texas, N.A. are Additional Insureds. The borrowing entity should be listed on Form CG2010 11/85 – Additional Insured Owners, Lessees, or Contractors, or CG2026 - Designated Person or Organization. CommunityBank of Texas, N.A. should be listed on Form CG2018 or CG2026. The General Contractor's CGL policy must include Products and Completed Operations.

GENERAL INFORMATION:

Insurance cannot be approved with Acord forms alone. Because Acord forms state they are issued as a matter of information only and confer no rights upon the mortgagee, they must be accompanied by complete copies of the policies and all related endorsements and policy change requests. Only if a new policy has not been issued by the carrier can a binder be
accepted.

All policies must provide the mortgagee, CommunityBank of Texas, N.A., with 30 days notice of
cancellation (less than 30 days notice is acceptable for non-payment only).

Should a borrowing entity have employees, that entity must maintain statutory Workers’
Compensation limits and no less than $500,000 of Employer’s Liability coverage.

Other special insurance policies depending on the characteristics of the property and loan may
be required at CommunityBank’s discretion. Those coverages may include, but are not limited
to Sinkhole, Mine Subsidence, Mudslide, Environmental, Auto Liability, Professional Liability,
and Employee Dishonesty.

For escrow purposes, a paid receipt or invoice must accompany the evidence of insurance
showing the premium paid to date and the outstanding premium that remains unpaid.
EXHIBIT "M"

SURVEY REQUIREMENTS

TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: The items of Table A must be negotiated between the surveyor and client. It may be necessary for the surveyor to qualify or expand upon the description of these items (e.g., in reference to Item 6(b), there may be a need for an interpretation of a restriction). The surveyor cannot make a certification on the basis of an interpretation or opinion of another party. Notwithstanding Table A Items 5 and 11(b), if an engineering design survey is desired as part of an ALTA/ACSM Land Title Survey, such services should be negotiated under Table A, Item 22.

If checked, the following optional items are to be included in the ALTA/ACSM LAND TITLE SURVEY, except as otherwise qualified (see note above):

1. ___ Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by existing monuments or witnesses.

2. ___ Address(es) if disclosed in Record Documents, or observed while conducting the survey.

3. ___ Flood zone classification (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent) depicted by scaled map location and graphic plotting only.

4. ___ Gross land area (and other areas if specified by the client).

5. ___ Vertical relief with the source of information (e.g. ground survey or aerial map), contour interval, datum, and originating benchmark identified.

6. ___ (a) Current zoning classification, as provided by the insurer.

___ (b) Current zoning classification and building setback requirements, height and floor space area restrictions as set forth in that classification, as provided by the insurer. If none, so state.

7. ___ (a) Exterior dimensions of all buildings at ground level.

___ (b) Square footage of:

___ (1) exterior footprint of all buildings at ground level.

___ (2) other areas as specified by the client.

___ (c) Measured height of all buildings above grade at a location specified by the client. If no location is specified, the point of measurement shall be identified.

8. ___ Substantial features observed in the process of conducting the survey (in addition to the improvements and features required under Section 5 above) such as parking lots, billboards, signs, swimming pools, landscaped areas, etc.
9. ___ Striping, number and type (e.g. handicapped, motorcycle, regular, etc.) of parking spaces in parking areas, lots and structures.

10. ___ (a) Determination of the relationship and location of certain division or party walls designated by the client with respect to adjoining properties (client to obtain necessary permissions).

   ___ (b) Determination of whether certain walls designated by the client are plumb (client to obtain necessary permissions).

11. ___ Location of utilities (representative examples of which are listed below) existing on or serving the surveyed property as determined by:

   ___ (a) Observed evidence.

   ___ (b) Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources (with reference as to the source of information).

      - Railroad tracks, spurs and sidings;
      - Manholes, catch basins, valve vaults and other surface indications of subterranean uses;
      - Wires and cables (including their function, if readily identifiable) crossing the surveyed property, and all poles on or within ten feet of the surveyed property. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the dimensions of all encroaching utility pole crossmembers or overhangs; and
      - utility company installations on the surveyed property.

   Note - With regard to Table A, item 11(b), source information from plans and markings will be combined with observed evidence of utilities to develop a view of those underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely and reliably depicted. Where additional or more detailed information is required, the client is advised that excavation may be necessary.

12. ___ Governmental Agency survey-related requirements as specified by the client, such as for HUD surveys, and surveys for leases on Bureau of Land Management managed lands.

13. ___ Names of adjoining owners of platted lands according to current public records.

14. ___ Distance to the nearest intersecting street as specified by the client.

15. ___ Rectified orthophotography, photogrammetric mapping, airborne/mobile laser scanning and other similar products, tools or technologies as the basis for the showing the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor shall (a) discuss the ramifications of such methodologies (e.g. the potential precision and completeness of the data gathered thereby) with the insurer, lender and client prior to the performance of the survey and, (b) place a note on the face of the survey explaining the source, date, precision and other relevant qualifications of any such data.

16. ___ Observed evidence of current earth moving work, building construction or building additions.
17. Proposed changes in street right of way lines, if information is available from the controlling jurisdiction. Observed evidence of recent street or sidewalk construction or repairs.

18. Observed evidence of site use as a solid waste dump, sump or sanitary landfill.

19. Location of wetland areas as delineated by appropriate authorities.

20. (a) Locate improvements within any offsite easements or servitudes benefitting the surveyed property that are disclosed in the Record Documents provided to the surveyor and that are observed in the process of conducting the survey (client to obtain necessary permissions).

(b) Monuments placed (or a reference monument or witness to the corner) at all major corners of any offsite easements or servitudes benefitting the surveyed property and disclosed in Record Documents provided to the surveyor (client to obtain necessary permissions).

21. Professional Liability Insurance policy obtained by the surveyor in the minimum amount of $__________ to be in effect throughout the contract term. Certificate of Insurance to be furnished upon request.

22. ________________________________

Adopted by the Board of Governors, American Land Title Association, on November 13, 2010.
American Land Title Association, 1828 L St., N.W., Suite 705, Washington, D.C. 20036.

Adopted by the Board of Directors, National Society of Professional Surveyors, on November 15, 2010.
National Society of Professional Surveyors, Inc., a member organization of the American Congress on Surveying and Mapping, 6 Montgomery Village Avenue, Suite 403, Gaithersburg, MD 20879.
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name Art at Bratton's Edge

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Letter to CommunityBank requesting to add 811 units.

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 18, 2019

Mr. Stephen Rose  
Executive Vice President  
CommunityBank of Texas  
9 Greenway Plaza, Ste. 110  
Houston, TX 77046  

Re: 811 Units – Art at Bratton’s Edge  

Dear Stephen:

Per the 2019 TDHCA Qualified Allocation Plan, we are hereby submitting a request for your consideration to add ten 811 program units at Art at Bratton’s Edge, in Austin, Texas.

Under the Deed of Trust for Bratton’s Edge, the Borrower has an obligation to not allow any liens or encumbrances other than the Permitted Encumbrances. The addition of 811 units would require a new Extended Use Agreement be recorded and as such, this requires the lender’s consent. Since lease up Art at Bratton’s Edge has maintained on average better than 95% occupancy and does not require additional subsidy units to maintain its occupancy.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 352-213-8700.

Sincerely,

Megan D. Lasch  
President

5501-A Balcones Dr., #302 Austin, Texas 78731
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(iii)

Existing Development Name: Art at Bratton's Edge

iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from CommunityBank denying the request to add 811 units.

ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.
February 25, 2019

Ms. Megan D. Lasch  
President  
O-SDA Industries  
5501-A Balcones Dr., #302  
Austin, Texas 78731

RE: Art at Bratton’s Edge, Austin, Texas

Dear Megan,

It is my understanding that per the 2019 Qualified Allocation Plan, TDHCA is requiring tax credit award applicants request additional Section 811 unit set-aside/property encumbrances on their prior 9% tax credit properties. Specific to this letter, CommunityBank of Texas is currently providing permanent debt financing to Art at Bratton’s Edge, LLC for Art at Bratton’s Edge, a 76-unit LIHTC family development located in Austin, Texas.

CommunityBank of Texas underwrote the subject Art at Bratton’s Edge development based on information and due diligence leading up to loan approval and ultimate loan closing in July 2015. The inclusion of additional Section 811 units would require additional feasibility underwriting, including but not limited to increased operational expenses. As such, it is our preference to not change the unit profile mix at the property at this time; and hereby, we respectfully decline your request.

Feel free to contact me if I could be of further assistance.

Sincerely,

[Signature]

Stephen W. Rose  
EVP, CommunityBank of Texas, N.A.  
9 Greenway Plaza, Suite 110  
Houston, Texas 77046  
713-308-5754  
srose@communitybankoftx.com
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet

Introduction

The purpose of this Packet is to formalize the process by which an Applicant establishes its lack of legal authority to commit Section 811 PRA Program Units in a Development as described pursuant to 10 TAC §11.9(c)(6)(A) of the Qualified Allocation Plan ("QAP").

This Packet is required only if all of the following conditions are true:

1) An Applicant is selecting points under Tenant Populations with Special Housing Needs pursuant to 10 TAC §11.9(c)(6) AND

2) An Applicant is seeking to establish its lack of legal authority where an Applicant or Affiliate Owns or Controls an Existing Development that otherwise meets the criteria established by 10 TAC §11.9(c)(6)(B) of the QAP.

One Packet must be submitted for each Existing Development for which the Applicant or Affiliate is seeking a determination that the needed legal authority is lacking and that the Development can be excluded from consideration.

Instructions: Complete the Questionnaire on page 2 of this packet, then complete the fields on each of the subsequent form cover pages, and attach the denoted documentation for each item behind each included cover pages. Submit each Packet, including Attachments in PDF format and include bookmarks for each item. The Packet must be saved and uploaded as one standalone file to the Serv-U folder associated with each 2019 Multifamily Application.

This Packet and all supporting documentation must be uploaded to the Department’s Serv-U system at the same time as, but as a separate document from, the Application. Refer to the Multifamily Programs Procedures Manual posted at [http://www.tdhca.state.tx.us/multifamily/applyfunds.htm](http://www.tdhca.state.tx.us/multifamily/applyfunds.htm) for an explanation of the process to set-up a Serv-U Account if needed.

Questions about this Packet may be submitted to Spencer Duran: spencer.duran@tdhca.state.tx.us
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet Questionnaire

2019 Uniform Multifamily Application #19276 & 19295 & 19288

1) Selecting Points under 10 TAC §11.9(c)(6)?
   □ No – STOP. PACKET SUBMISSION NOT NEEDED
   ☑ Yes – CONTINUE TO QUESTION 2

2) To obtain Points under 10 TAC §11.9(c)(6), Applicants must first attempt to meet the requirements in §11.9(c)(6)(B).
   Does the Applicant Own or Control and Existing Development that appears on the List of Qualified Existing Developments?
   □ No – STOP. PACKET SUBMISSION NOT NEEDED
   ☑ Yes – CONTINUE TO QUESTION 3

3) Is the Applicant seeking to establish its lack of legal authority where an Applicant Owns or Controls an Existing Development that appears on the List of Qualified Existing Developments?
   □ No - STOP. PACKET SUBMISSION NOT NEEDED
   ☑ Yes – CONTINUE TO QUESTION 4

4) Can the Applicant provide all three of the following items listed under §11.9(c)(6)(A)(i)-(iii)?
   □ No - STOP. PACKET SUBMISSION NOT NEEDED
   ☑ Yes – CONTINUE TO COVER PAGES

   (i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement);

   (ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program); AND

   (iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party identified in (ii) that they are denying an Existing Development from participation).
2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name Aria Grand

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: Second Amended & Restated Operating Agreement

Provide the name of the Third Party: Boston Capital Corporation

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: Section 6.2 Restrictions on Authority - para a(x) and a(xiii); Section 6.5 Duties and Obligations - para p

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: 49-50, 56 and definitions on page 3, 20, 22 & 23

ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.
ARIA GRAND, LLC

SECOND AMENDED AND RESTATED OPERATING AGREEMENT

Dated as of September 1, 2018
# TABLE OF CONTENTS

ARTICLE I DEFINED TERMS ......................................................................................................1

ARTICLE II NAME AND BUSINESS .........................................................................................27
2.1 Name; Continuation .......................................................................................................27
2.2 Office and Registered Agent ..........................................................................................27
2.3 Purpose ...........................................................................................................................27
2.4 Term and Dissolution .....................................................................................................27
2.5 Nature of Company Interests .........................................................................................28

ARTICLE III MORTGAGE, REFINANCING AND DISPOSITION OF PROPERTY ..............29
3.1 Personal Liability ...........................................................................................................29
3.2 Refinancings; Permanent Loan Documents ...................................................................29
3.3 Sale of Assets .................................................................................................................29
3.4 Real Estate Commissions ...............................................................................................30
3.5 Sale of the Apartment Complex ....................................................................................30
3.6 Investor Provisions ........................................................................................................31

ARTICLE IV MEMBERS; CAPITAL ..........................................................................................33
4.1 Capital and Capital Accounts .......................................................................................33
4.2 Managing Members and Class B Special Member .........................................................34
4.3 Non-Managing Members ...............................................................................................34
4.4 Liability of the Non-Managing Members ......................................................................35
4.5 Special Rights of the Special Member ...........................................................................35
4.6 Meetings .........................................................................................................................36

ARTICLE V CAPITAL CONTRIBUTIONS OF THE INVESTMENT MEMBER AND THE SPECIAL MEMBER ................................................................................................38
5.1 Payments .................................................................................................................. ......38
5.2 Return of Capital Contributions .....................................................................................44

ARTICLE VI RIGHTS, POWERS AND DUTIES OF MANAGING MEMBER ...............48
6.1 Authorized Acts .............................................................................................................48
6.2 Restrictions on Authority ...............................................................................................49
6.3 Personal Services; Other Business Ventures .................................................................52
6.4 Business Management and Control ...............................................................................52
6.5 Duties and Obligations ...................................................................................................53
6.6 Representations and Warranties ....................................................................................57
6.7 Liability on Mortgages ....................................................................................................61
6.8 Indemnification of the Managing Member ....................................................................62
6.9 Indemnification of the Company and the Non-Managing Members .........................63
6.10 Operating Deficits .......................................................................................................63
6.11 Obligation to Complete the Construction of the Apartment Complex .......................64
6.12 Certain Payments to the Managing Member and Others ............................................65
6.13 Delegation of Managing Member Authority ...............................................................66
6.14 Assignment to Company .................................................................................................66
12.9 Review of Compliance ................................................................. 101
12.10 Inspections ............................................................................. 102

ARTICLE XIII GENERAL PROVISIONS ......................................................... 103
13.1 [Intentionally Deleted] .............................................................. 103
13.2 Amendments to Articles .......................................................... 103
13.3 Notices ..................................................................................... 103
13.4 Word Meanings ....................................................................... 104
13.5 Binding Effect ......................................................................... 104
13.6 Applicable Law ........................................................................ 104
13.7 Counterparts ........................................................................... 104
13.8 Financing Regulations .............................................................. 104
13.9 Separability of Provisions ......................................................... 105
13.10 Paragraph Titles .................................................................... 105
13.11 Amendment Procedure ......................................................... 105
13.12 Extraordinary Non-Managing Member Expenses .................. 105
13.13 Time of Admission .............................................................. 105
13.14 Tax Shelter Provisions .......................................................... 106
ARIA GRAND, LLC
SECOND AMENDED AND RESTATED OPERATING AGREEMENT

This SECOND AMENDED AND RESTATED OPERATING AGREEMENT dated as of September 1, 2018, is by and among O-SDA ARIA, LLC, a Texas limited liability company (“O-SDA” or the “Managing Member”), LDG MULTIFAMILY, LLC, a Kentucky limited liability company (the “Class B Special Member”), BOSTON CAPITAL DIRECT PLACEMENT, A LIMITED PARTNERSHIP, a Massachusetts limited partnership (“BCDP” or the “Investment Member”) and BCCC, INC., a Massachusetts corporation (“BCCC” or the “Special Member” and together with BCDP, the “Non-Managing Members”).

Preliminary Statement

ARIA GRAND, LLC (the “Company”) was formed as a limited liability company under the Act pursuant to a Company Agreement dated August 22, 2017 (the “Original Agreement”) by and between O-SDA and MEGAN D. LASCH, an individual resident of the State (“Lasch”), and a Certificate of Formation filed in the Filing Office on August 14, 2017 (the “Articles”).

The Original Agreement was amended and restated pursuant to that certain First Amended and Restated Operating Agreement dated as of August 22, 2017, pursuant to which Lasch withdrew from the Company and the Investment Member was admitted as an investment member of the Company (the “Existing Operating Agreement”).

The parties desire to amend and restate the Existing Operating Agreement to (i) admit the Special Member and the Class B Special Member as Members, (ii) reaffirm O-SDA as the Managing Member, and (iii) set out more fully the rights, obligations and duties of the Members.

NOW, THEREFORE, it is agreed and certified, and the Existing Operating Agreement is hereby amended and restated in its entirety, as follows:

ARTICLE I
Defined Terms

The defined terms used in the Agreement shall have the meanings specified below:

“Act” means the Texas Business Organizations Code, as amended, as in effect in the State.

“Actual Credit” means, with respect to a particular Fiscal Year, the total amount of Tax Credit properly allocable by the Company to the Investment Member for such Fiscal Year. The Actual Credit shall be retroactively revised if the amount of Tax Credit properly allocable to the Investment Member is revised as the result of an audit or is recaptured.

“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:
(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provisions of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), respectively; and


The foregoing definition of Adjusted Capital Account Deficit and the application of such term in the manner provided in Section 10.4(b)(x) is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

“Admission Date” means the first date on which all parties hereto shall have executed this Agreement.

“Adverse Consequences” means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses and fees, including court costs and reasonable attorneys’ fees and expenses.

“Affiliate” means as to a specified Person, (i) such Person; (ii) each member of the Immediate Family of such Person; (iii) each legal representative, successor or assignee of any Person referred to in the preceding clauses (i) or (ii); (iv) each trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) or (ii); or (v) any other Person (a) who directly or indirectly controls, is controlled by, or is under common control with such Person, (b) who is an officer of, director of, partner in or trustee of, or serves in a similar capacity with respect to, such Person or of which such Person is an officer, director, partner or trustee, or with respect to which such Person serves in a similar capacity, (c) who, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of such Person or of which such Person is directly or indirectly the owner of ten percent (10%) or more of any class of equity securities, (d) who is an officer, director, general partner, trustee or holder of ten percent (10%) or more of the voting securities or beneficial interests of any Person referred to in the foregoing clauses (v) (b) or (v) (c), or (e) who, whatever such Person’s title, performs functions for such Person or any Affiliate of such Person similar to a Chairman or member of the Board of Directors, or executive officer such as the President, Executive Vice President or Senior Vice President, Corporate Secretary, or Treasurer, or any Person holding a five percent (5%) or more equity interest in such Person, or any Person having the power to direct or cause the direction of such Person whether through the ownership of voting securities, by contract or otherwise. An Affiliate of any Investment Member or of any Special Member does not include an employee of a Person or a Person who is a partner in a partnership or joint venture with any Investment Member or any other Affiliate of any Investment Member if such Person is not otherwise an Affiliate of any Investment Member or any Special Member. For purposes of this definition, the term Affiliate shall not be deemed to include any law firm (or member or associate or employee thereof) providing legal services to any Investment Member, any Special Member, the Managing Member, the Class B Special Member or any Affiliate of any of them.
“AFR” means the long-term annually-compounding “applicable federal rate” as defined and determined in the manner set forth in Section 1274 of the Code.

“After-Tax Basis” means with respect to any payment to be received by a Person (or, in the case of a pass-through entity, the partners or members of such Person), the amount of such payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all Taxes (net of any current credits, deductions or other tax benefits arising from the payment by such Person (or its partners or members) of any amount, including Taxes, for which the payment to be received is made) imposed currently on such Person by the Internal Revenue Service or any other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment received. For the purposes of this definition, and for purposes of any payment to be made to a Person (or its partners or members) on an After-Tax Basis, it shall be assumed that federal, state and local taxes are payable at the highest combined marginal federal and state statutory income tax rate (taking into account the deductibility of state income taxes for federal income tax purposes) applicable to corporations from time to time.

“Agency” means the Credit Agency or any other Governmental Authority with jurisdiction over the Apartment Complex, or the business and operations of the Company.

“Agreed-Upon Set-Aside” means the set aside tests agreed upon by the Company whereby (i) six (6) of the units in the Apartment Complex must be occupied by individuals with incomes equal to 30% or less of area median income, as adjusted for family size, (ii) twenty-four (24) of the units in the Apartment Complex must be occupied by individuals with incomes equal to 50% or less of area median income, as adjusted for family size, (iii) thirty (30) of the units in the Apartment Complex must be occupied by individuals with incomes equal to 60% or less of area median income, as adjusted for family size, (iv) seven (7) of the units in the Apartment Complex must be Permanent Supportive Housing Units, (v) if requested by TDHCA, up to seven (7) of the units in the Apartment Complex will be Section 811 Units (which Section 811 Units also shall qualify as Permanent Supportive Housing Units and count toward the Permanent Supportive Housing Unit set-aside in (iv)), or (vi) such other set aside test agreed upon by the Company with the approval of the Special Member, the Lender and the Agency.

“Agreement” means this Second Amended and Restated Operating Agreement of the Company, including Schedule A, as amended from time to time.

“AHFC” means the Austin Housing Finance Corporation, a Texas public, nonprofit corporation organized and operated under Chapter 394 of the Texas Local Government Code, and its successors and assigns.

“AHFC Loan” means the construction and permanent loan, in the aggregate original principal amount of $1,500,000, provided by AHFC to the Company pursuant to the terms of the AHFC Loan Documents. The AHFC Loan is evidenced by the AHFC Loan Note and is secured by the AHFC Loan Mortgage. The AHFC Loan has a term of 42 years and bears no interest. All payments of principal and interest on the AHFC Loan will be deferred until its maturity date. Provided the Company does not violate any of the terms and conditions of the AHFC Loan
Agreement, the unpaid principal and accrued, unpaid interest and other charges on the AHFC Loan may be forgiven by AHFC on the maturity, in AHFC’s sole and absolute discretion.

“AHFC Loan Agreement” means the Rental Housing Development Assistance Program Loan Agreement entered into between AHFC and the Company, as may be amended.

“AHFC Loan Documents” means the AHFC Loan Agreement, the AHFC Loan Note, the AHFC Loan Mortgage, the AHFC Regulatory Agreement, and all other documents executed or to be executed by the Company in connection with the AHFC Loan upon the Consent of the Special Member.

“AHFC Loan Mortgage” means the Deed of Trust and Security Agreement and Financing Statement recorded as a second-priority lien against the Apartment Complex as security for the obligations of the Company under the AHFC Loan Documents.

“AHFC Loan Note” means the Promissory Note in the aggregate original principal amount of $1,500,000 executed by the Company in favor of AHFC as evidence of the Company’s obligations under the AHFC Loan Documents.

“AHFC Regulatory Agreement” means the Restrictive Covenant Running with the Land entered into by the Company and impressing the Apartment Complex with certain covenants and restrictions as a result of entering into the AHFC Loan Agreement.

“Allocation Regulations” means the Treasury Regulations issued under Sections 704(b) and 752 of the Code, as the same may be modified or amended from time to time. In the event that the Allocation Regulations are revised or amended subsequent to the date of this Agreement, references herein to sections or paragraphs of the Allocation Regulations shall be deemed to be references to the applicable sections or paragraphs of the Allocation Regulations as then in effect.

“Anti-Corruption Laws” means all laws, rules, statutes, codes and regulations of any governmental entity, applicable to the Managing Members, their Affiliates or the Company, concerning or relating to corruption or bribery, including laws prohibiting an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value, to anyone, while knowing or believing that all or some portion of the money or thing of value will be offered, given, promised to, or retained by a Government Official, or any other person, for the purpose of obtaining or retaining business, securing any improper advantage or the improper performance of that person's or Government Official's function, or misuse of that person's or Government Official's position.

“Apartment Complex” means the real property located in Austin, Travis County, Texas, as more fully described in Exhibit A attached hereto, together with (i) all buildings and other improvements constructed or to be constructed thereon, including the Low Income Units and the Market Rate Units, and (ii) all furnishings, equipment and personal property located thereon or otherwise covered by the Mortgages.

“Applicable Percentage” has the meaning set forth in Section 42(b) of the Code.
“Applied Amounts” shall have the meaning set forth in Section 6.10.

“Articles” shall have the meaning set forth in the Preliminary Statement.

“Asset Management Fee” means the fee payable to BCDP or an Affiliate thereof pursuant to the provisions of Section 6.12(b).

“Assignee” shall have the meaning set forth in Section 4.1(c).

“Auditors” means Tidwell Group, or such other firm of independent certified public accountants, which accountants must be registered with the Public Company Accounting Oversight Board, as may be engaged by the Managing Member with the Consent of the Special Member for the purposes of preparing the Company’s income tax returns, auditing the books and records of the Company and certifying financial reports of the Company.

“BCCC” means BCCC, Inc., a Massachusetts corporation, and its successors and assigns.

“BCDP” means Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, and its successors and assigns.

“Best Knowledge” shall mean and include, in the case of a specified Person, (i) actual knowledge and (ii) that knowledge which a prudent businessperson (including, in the case of an Entity, the general or managing partners, officers, directors and key employees of such Entity) should have obtained in the management of his or her business affairs after making due inquiry and exercising due diligence with respect thereto. In connection therewith, the knowledge (both actual and constructive) of any general or managing partner, director, officer or key employee of an Entity shall be deemed to be the knowledge of the Entity.

“Bonus Depreciation” means any increased cost recovery deductions allowed under Section 168(k) of the Code for the year certain qualified property of the Company is placed in service.

“Capital Account” has the meaning set forth in Section 4.1(b).

“Capital Contribution” means the total value of cash or property contributed and agreed to be contributed to the Company by each Member, as set forth in Schedule A. Any reference in this Agreement to the Capital Contribution of a then Member shall include a Capital Contribution previously made by any prior Member for the Interest of such then Member.

“Capital Contribution Account” has the meaning set forth in the First Mortgage Loan Agreement.

“Capital Proceeds” means the proceeds of a Capital Transaction less (a) all reasonable costs and expenses incurred by the Company in connection with the applicable Capital Transaction giving rise to such proceeds, (b) all principal and interest payments and other sums paid on or with respect to any indebtedness of the Company, required to be paid in connection with such Capital Transaction (but not including any Subordinated Loans, Voluntary Loans,
unpaid Development Fee or amounts under a Deferred Development Fee Note and other fees payable to the Members), and (c) any Operating Expenses then due and payable and for which there are insufficient Cash Receipts to pay. Capital Proceeds shall include all principal and interest payments with respect to any note or other obligation received by the Company in connection with the applicable Capital Transaction.

“Capital Transaction” means a refinancing of any Company indebtedness or a sale, exchange, eminent domain taking, damage or destruction (whether insured or uninsured), insured title defect or other disposition of all or any portion of the Apartment Complex (other than an event generating proceeds of any business or rental interruption insurance), but excluding the payment of Capital Contributions.

“Carryover Allocation” means a valid and enforceable carryover allocation for 2017 Tax Credits issued by the Credit Agency to the Company in the annual amount of not less than $1,204,400 in the aggregate of Tax Credits.

“Carryover Certification” means the issuance, in a form and in substance satisfactory to the Investment Member, of the certification of the Auditors and all supporting documentation that, with respect to the carryover allocation of 2017 Tax Credits, as of May 11, 2018 (or, if extended in writing by the Agency, as of a date no later than twelve (12) months after the date of such carryover allocation), the Company had incurred capitalizable costs with respect to the Apartment Complex of at least ten percent (10%) of the Company’s reasonably expected basis in the Apartment Complex as of December 31, 2019, so that each building in the Apartment Complex constitutes a “qualified building” for the purposes of Section 42(h)(1)(E)(ii) of the Code.

“Cash Available for Debt Service Requirements” for any period, means the excess of (i) all cash actually received by the Company on a cash basis from normal operations during such period, including but not limited to rental revenues and, to the extent applicable, government subsidy payments (although those portions of a subsidy payment(s) that are in excess of Section 42 maximum allowable rents or achievable rents as verified in writing by the Investment Member shall not be included, except for payments actually received pursuant to a project-based Section 8 Housing Assistance Payment Contract with a term of greater than 15 years entered into with the Consent of the Special Member), but specifically excluding the proceeds of insurance (other than business or rental interruption insurance), loans, Capital Transactions or Capital Contributions over (ii) the greater of (x) all cash requirements of the Company properly allocable to such period of time on an accrual basis (not including distributions to Members out of Cash Flow of the Company or fees payable from Cash Flow) and, on an annualized basis, all projected expenditures, including those of a seasonal nature, which might reasonably be expected to be incurred on an unequal basis during a full annual period of operation as determined by the Auditors but specifically excluding Debt Service Requirements or (y) the Investment Member’s underwritten expenses, as shown on Schedule B attached hereto and increased by 3% per annum (or any portion thereof) from and after the Admission Date (notwithstanding the foregoing, expenses shall be adjusted to be the lesser of underwritten expenses or actual expenses with respect to real estate taxes and insurance). For purposes of this definition, (A) cash requirements of the Company shall include to the extent not otherwise covered above, full funding of reserves (including, without limitation, funding of the Replacement Reserve), insurance, utilities, fees not
payable pursuant to Section 10.2 hereof, normal repairs, real estate taxes at fully assessed levels assuming a fully improved property and necessary capital improvements and (B) if free rent or other rental concessions shall have been granted to tenants, the calculation of rental revenues under clause (i) of the preceding sentence shall be adjusted so that the effect of such concessions is amortized equally over the term of all leases (excluding renewal periods) to which it applies.

“Cash Expenditures” means all disbursements of cash during a specified Fiscal Year (other than distributions to Members), including, without limitation, payment of operating expenses, payment of principal and interest on any Company indebtedness (other than payments of principal and interest on any Subordinated Loans, Voluntary Loans or any Mortgage Loans made to the Company the debt service on which is payable solely from Cash Flow), the cost of repairs to the Apartment Complex, the full funding of reserves by the Managing Member and the payment of any fees other than the Asset Management Fee, the Company Management Fee, the Incentive Management Fee and the Development Fee. In addition, except for a net increase resulting from interest earnings, the net increase during such Fiscal Year in any escrow account or reserve maintained by or for the Company shall be considered a Cash Expenditure during such Fiscal Year. The term Cash Expenditures shall not include Development Costs. Cash Expenditures payable to Members or Affiliates of Members shall be paid after Cash Expenditures payable to third parties.

“Cash Flow” means the excess of Cash Receipts over Cash Expenditures. Cash Flow shall be determined separately for each Fiscal Year or portion thereof.

“Cash Receipts” means all cash receipts of the Company from whatever source derived other than from Capital Contributions used to pay Development Costs, the proceeds of Mortgage Loans used to pay Development Costs, and Capital Transactions, including, without limitation, rental revenues and government subsidy payments. In addition, the net reduction in any Fiscal Year in the amounts of any escrow account or reserve maintained by or for the Company (including, without limitation, the Operating Reserve and the Replacement Reserve) shall be considered a cash receipt of the Company for such Fiscal Year. Notwithstanding the foregoing, at the election of the Managing Member, Cash Receipts received near the end of a Fiscal Year and intended for use in meeting the Company’s obligations (including the cost of acquiring assets or paying debts or expenses) in the subsequent Fiscal Year shall not be deemed to be received until such following Fiscal Year.

“City” means the City of Austin, Texas.

“Class B Special Member” means LDG Multifamily, LLC, a Kentucky limited liability company.

“Class Contribution” means the aggregate Capital Contributions of all members of a particular class of Members (i.e., the Managing Member, the Class B Special Member, the Investment Member, the Special Member or any Substituted Non-Managing Member).

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations (permanent and temporary) issued thereunder. References herein to any Code section shall include any successor provisions.
“Commencement Date” means the first day of the month in which the Admission Date occurs.

“Company” means the limited liability company continued pursuant to this Agreement.

“Company Management Fee” shall have the meaning set forth in Section 6.12(c).

“Competitive Real Estate Commission” means that real estate or brokerage commission paid for the purchase or sale of the Apartment Complex or other Company property which is reasonable, customary and competitive in light of the size, type and location of the Apartment Complex or other property.

“Completion Date” means the later of: (i) the date the Investment Member shall have received copies of all requisite certificates or permits permitting occupancy of 100% of the apartments units in the Apartment Complex as issued by each Agency having jurisdiction; provided, however, that if such certificates or permits are of a temporary nature, the Completion Date shall not be deemed to have occurred unless the Managing Member certifies to the Investment Member that any work remaining to be completed is for so-called “punch list items” and the Managing Member knows of no reason why permanent certificates of occupancy will not be issued upon completion of such “punch list items”; (ii) the date the Investment Member shall have received the Substantial Completion Certificate, Estoppel Letters and a Contractor Pay-Off Letter and lien waivers in form acceptable to the Special Member (which Contractor Pay-Off Letter and lien waivers may be received simultaneously with the payment of the Fifth Installment); (iii) the date as of which the Inspecting Consultant certifies that the work to be performed by the Contractor under the Construction Contract is substantially complete, which certification shall be made on AIA Form G704 or other form reasonably acceptable to the Special Member; and (iv) delivery and installation in the Apartment Complex of all necessary and appropriate fixtures, equipment and personal property, including, without limitation, installation of all required appliances in the residential units in the Apartment Complex has occurred. Any representation by the Managing Member under this Agreement that the Completion Date has occurred shall be subject to confirmation by the Special Member pursuant to a physical inspection of the Apartment Complex; provided, however, that in the event that the Special Member does not make such physical inspection of the Apartment Complex within ten (10) business days after having received a written representation of the Managing Member that the Completion Date has occurred, then the Special Member will be deemed to have waived the physical inspection requirement.

“Compliance Period” means the fifteen (15)-year period commencing with the first year of the Credit Period.

“Consent of the Investment Member” means the prior written consent or approval of the Investment Member which, unless otherwise specifically provided herein, may be given or withheld in its sole discretion. The Consent of the Investment Member shall be exercised by and through the Special Member, acting in the name and on behalf of the Investment Member.
“Consent of the Special Member” means the prior written consent or approval of the Special Member which, unless otherwise specifically provided herein, may be given or withheld in its sole discretion.

“Construction Contract” means the construction contract dated as of September 12, 2018, by and between the Contractor and the Company, as amended.

“Construction Permitting Date” means the first date upon which the Company shall have received the Requisite Approvals for the commencement of the construction and operation of the Apartment Complex in accordance with the Plans and Specifications therefor.

“Consumer Price Index” means the Consumer Price Index for All Urban Consumers, All Cities, for All Items (base 1982-84 = 100) published by the United States Bureau of Labor Statistics. In the event such index is not in existence when any determination relying on such index under this Agreement is to be made, the most comparable governmental index published in lieu thereof shall be substituted therefor.

“Contractor” means, together, (i) Austin Affordable Housing Corporation, a Texas nonprofit corporation, in its capacity as general contractor, and (ii) Skybeck Construction, L.L.C., a Texas limited liability company, and its successors, in its capacity as prime subcontractor.

“Contractor Pay-Off Letter” means a letter in form and substance reasonably satisfactory to the Special Member delivered by the Contractor to the Company which certifies that (i) all amounts due to the Contractor from the Company have been paid, (ii) the Company is not in default under the Construction Contract and (iii) the Contractor has paid in full each materialman and subcontractor who performed work on the Apartment Complex.

“Controlling Managing Member” shall have the meaning set forth in Section 6.4(a).

“Cost Certification” means the date upon which each Non-Managing Member shall have received the written certification of the Auditors, in a form and in substance satisfactory to the Special Member, as to the itemized amounts of the construction and development costs of the Apartment Complex and the Actual Credit pertaining to each building in the Apartment Complex.

“Credit Agency” means the Texas Department of Housing and Community Affairs, and its successors.

“Credit Period” has the meaning set forth in Section 42(f)(1) of the Code and shall also include the first year after the end of the period described in Section 42(f)(1) of the Code with respect to Tax Credits that are available in such year pursuant to Section 42(f)(2)(B) of the Code.

“Debt Service Coverage Ratio” means, for any period with each month considered individually, a fraction, the numerator of which is the Cash Available for Debt Service Requirements with respect to such period and the denominator of which is the Debt Service Requirements for such period. The achievement by the Company of a specified Debt Service Coverage Ratio shall be confirmed by the Auditors and shall be subject to the approval of the
Special Member, which shall not be unreasonably withheld, provided, however, that no objection by the Special Member to the determination of the Auditors shall be valid unless the Managing Member is notified of such objection, and the specific reasons therefor, within seven (7) business days following the receipt by the Special Member of the Auditor’s determination letter and in the event that the Special Member does not so notify the Managing Member within such seven (7) business day period, the Special Member will be deemed to have waived its right to object to such determination; provided, however, such deemed waiver shall not be presumed unless the Managing Member shall have first sent a second notice to the Special Member or otherwise confirmed that the first notice was timely received by the Special Member.

“Debt Service Requirements” means for any period, all debt service, reserve, mortgage insurance premium, tax and insurance escrows and/or other cash requirements imposed with respect to the Mortgage or any other indebtedness (except for the Subordinated Loans or any Mortgage Loans made to the Company the debt service on which is payable solely from Cash Flow and Voluntary Loans) properly allocable to such period of time on an annualized accrual basis as determined by the Auditors. To the extent the relevant period includes any period prior to Permanent Mortgage Commencement, Debt Service Requirements for such period shall be computed by adding to the foregoing amounts the amount (if any) by which the debt service on such Permanent Loan for such period beginning after principal amortization has commenced exceeds the actual debt service on such Permanent Loan (and any previous Mortgage Loan which may have then been in place) for the relevant period.

“Deferred Development Fee Note” shall have the meaning set forth in the Development Agreement.

“Deficit Restoration Obligation” shall have the meaning set forth in Section 10.3(c).

“Defined Mortgagee” shall have the meaning set forth in Section 3.6.

“Designated Net Worth Requirements” means as of the date of determination, such standards or criteria (relating to net worth or other characteristics) as may be approved by the Special Member, provided, however, that the conditions of this definition shall be deemed to be fully satisfied if the Managing Member and the Guarantor maintains at all times an aggregate net worth of not less than $5,000,000 and unrestricted liquid assets of not less than $1,000,000.

“Developer” means, together, O-SDA Industries, LLC, a Texas limited liability company, and Saigebrook Development, LLC, a Florida limited liability company.

“Development Agreement” means the Amended and Restated Development Agreement, dated as of September 1, 2018, by and between the Developer and the Company.

“Development Costs” means any and all costs and expenses necessary to (i) cause the construction of the Apartment Complex to be completed, in a good and workmanlike manner, free and clear of all mechanics’, materialmen’s or similar liens, in accordance with the Plans and Specifications, (ii) equip the Apartment Complex with all necessary and appropriate fixtures, equipment and articles of personal property (including, without limitation, refrigerators and ranges), (iii) obtain all required certificates of occupancy for the apartment units and other space in the Apartment Complex, (iv) pay the Development Fee (other than the portion thereof

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evidenced by the Deferred Development Fee Note, if any), (v) finance the construction of the Apartment Complex and achieve Rental Achievement in accordance with the provisions of the Project Documents, (vi) discharge all Company liabilities and obligations arising out of any casualty generating insurance proceeds for the Company prior to Rental Achievement, (vii) fund any Company reserves required hereunder or under any of the Project Documents, (viii) repay and discharge the First Mortgage Loan (or pay such loan down to the permitted amount of the Permanent Loan), and (ix) pay any other costs or expenses necessary to achieve the Completion Date and Rental Achievement.

“Development Fee” means the fees and overhead payable by the Company to the Developer pursuant to the terms of the Development Agreement for its services in connection with the development and construction of the Apartment Complex.

“Disposition” (including the forms Dispose and Disposing) means, as to a specified Member, the assignment, sale, transfer, exchange or other disposition of all or any part of its Interest.

“Due Diligence Recommendations” means those developmental recommendations set forth on Exhibit C hereto.

“Economic Risk of Loss” has the meaning set forth in Treasury Regulation Section 1.752-2.

“Elective DRO” shall have the meaning set forth in Section 10.3(c).

“Eligible Basis” has the meaning set forth in Section 42(d) of the Code.

“Entity” means any Person, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

“Environmental Law” means and includes any federal, state and local laws, statutes, rules, regulations and ordinances pertaining to the protection of the environment or otherwise pertaining to public health or employee health and safety, including but not limited to, CERCLA, the Clean Air Act, the Federal Water Pollution Control Act (Clean Water Act), the Toxic Substance Control Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Emergency Planning and Community Right to Know Act, the Occupational Safety and Health Act of 1970, and the Hazardous Materials Transportation Act.

“Estoppel Letter” means an estoppel letter in form and substance reasonably satisfactory to the Special Member delivered to the Company from each Lender which certifies as to each Mortgage Loan (i) that there is no default ongoing pursuant to the Mortgage Loan Documents, (ii) the amounts of interest and principal paid on such Mortgage Loan to date and (iii) the outstanding principal balance of such Mortgage Loan.

“Event of Bankruptcy” means with respect to any Person,
(i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(ii) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by him to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his property, or the making by him of any assignment for the benefit of creditors, or the taking of corporate action by the Person in furtherance of any of the foregoing;

(iii) the commencement against such Person of an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, which has not been vacated, discharged or bonded within sixty (60) consecutive days;

(iv) the admission of such Person of his or its inability to pay his or its debts as they become due; or

(v) such Person becoming “insolvent” by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to the federal bankruptcy laws (as now or hereafter constituted) or any other applicable federal or state bankruptcy, insolvency or similar law.

“Extended Use Agreement” means the extended use housing commitment to be executed by the Company in accordance with the requirements of the Credit Agency and the provisions of Section 42(h)(6)(A) of the Code.

“50% Completion Date” means the date that fifty percent (50%) of the projected hard construction costs for the completion of the Apartment Complex have been incurred by the Company.

“Filing Office” means the Office of the Secretary of State of the State of Texas.


“First Mortgage Loan” means the construction-to-permanent loan in the principal amount of up to $8,400,000 made or to be made by the First Mortgage Lender to the Company pursuant to the terms of the First Mortgage Loan Documents. The First Mortgage Loan has a construction phase of 30 months (subject to one, 6-month extension) during which time the First Mortgage Loan will bear a variable rate of interest equal to the greater of (i) the prime rate minus 0.25% or (ii) 4.25% per annum. Interest-only payments will be made on the First Mortgage Loan monthly in arrears throughout the construction phase of the First Mortgage Loan. Upon satisfaction of certain conditions set forth in the First Mortgage Loan Documents, the First
Mortgage Loan will convert to its permanent phase in the maximum principal amount of $4,000,000. During the permanent phase of the First Mortgage Loan, the First Mortgage Loan will bear fixed interest at a rate equal to 5.85% per annum. The permanent phase of the First Mortgage Loan will have a term of 15 years, and monthly payments of principal and interest will be made on the First Mortgage Loan based on a 35-year amortization schedule. Upon maturity of the First Mortgage Loan, all outstanding principal and accrued but unpaid interest will be unconditionally due and payable in full by the Company.

“First Mortgage Loan Agreement” means that certain Credit Support and Funding Agreement (Construction to Permanent) by and between the Company and the First Mortgage Lender.

“First Mortgage Loan Documents” means the First Mortgage Loan Agreement, the First Mortgage Loan Mortgage, the First Mortgage Loan Note, and all other documents executed and/or delivered in connection with the First Mortgage Loan.

“First Mortgage Loan Mortgage” means that certain Multifamily Construction and Permanent Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing recorded as a first-priority lien against the Apartment Complex as security for the obligations of the Company under the First Mortgage Loan Documents.

“First Mortgage Loan Note” means that certain Promissory Note executed by the Company in favor of the First Mortgage Lender as evidence of the Company’s obligations under the First Mortgage Loan Documents.

“Fiscal Year” means the twelve (12)-month period which begins on the first day of January and ends on the thirty-first day of December of each calendar year (or ends on the date of final dissolution for the year in which the Company is wound up or dissolved).

“Government Official” means an officer, employee or official of a governmental, government owned or controlled entity, political party or public international organization, or a candidate for political office.

“Governmental Authority” means the City, the Credit Agency or any other federal, state or local governmental authority having jurisdiction over the particular matter to which reference is being made.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managing Member, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;
(b) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Allocation Regulations; provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company and the Consent of the Investment Member to such adjustments shall have been received;

(iii) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Allocation Regulations and Section 4.1 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (iv) to the extent that the Managing Member determines (with the Consent of the Investment Member) that an adjustment pursuant to clause (ii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section (i), (ii) or (iv) hereof, such Gross Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Profits or Losses.

“GSE” means Fannie Mae and/or Federal Home Loan Mortgage Corporation, and their successors.

“Guarantors” means, jointly and severally, Megan D. Lasch, Chris Dischinger, O-SDA Industries, LLC, a Texas limited liability company, and LDG Multifamily, LLC, a Kentucky limited liability company, and each of their successors.

“Guaranty” means the Guaranty, dated as of September 1, 2018, of the Guarantors of certain of the obligations of the Managing Member hereunder and of the Developer as set forth in the Development Agreement, as amended.

“Hazardous Material” has the collective meanings given to the terms “hazardous material”, “hazardous substances”, “hazardous wastes”, “toxic substances”, “toxic waste” and analogous terms, in (i) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended, (ii) the Hazardous Materials Transportation Act, as amended, 39 U.S.C. Section 1801 et seq., (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., (iv) any similar applicable state or local law, or (v) any regulation adopted or publication promulgated pursuant to any such law, or Environmental Law, and to the term “radioactive materials” in the context of the Atomic Energy Act, 28 U.S.C. Sec. 2344, and also includes any meanings given to such terms in any...
similar state or local statutes, ordinances, regulations or by-laws. The term Hazardous Material also includes oil and any other substance known to be hazardous.

“HUD” means the Department of Housing and Urban Development of the United States of America and its successors.

“Immediate Family” means with respect to any Person, such Person’s spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children, children-in-law, grandchildren and grandchildren-in-law.

“In Balance” means, during the construction period, the then undisbursed portion of the Capital Contributions to be disbursed in accordance with this Agreement during the construction period plus the undisbursed proceeds of the Mortgage Loans or other construction period financing and Cash Flow, equals or exceeds the amount necessary to pay all work done and not theretofore paid for or to be done in connection with the completion of the construction of the Apartment Complex in accordance with the Construction Contract or otherwise to be incurred in connection with completion of the Apartment Complex. After the Completion Date, “In Balance” means, the then undisbursed portion of the permanent sources contained in the financial forecasts prepared by the Investment Member as of the Admission Date equals or exceeds the remaining costs of the Apartment Complex, including repayment of any construction-period financing.

“Incentive Management Agreement” means the agreement by and between the Company, the Class B Special Member, and the Managing Member which provides for the payment of the Incentive Management Fee.

“Incentive Management Fee” means the fee payable under the Incentive Management Agreement to the Managing Member for supplemental services provided with respect to the Apartment Complex.

“Initial Adjustment Date” shall have the meaning set forth in Section 5.1(e).

“Initial Compliance Audit” shall have the meaning set forth in Section 12.7(n).

“Initial Full Occupancy Date” means the first date on which the Investment Member shall have received documentation evidencing that (i) not less than 100% of the Low Income Units in the Apartment Complex shall have been leased to and shall have been initially occupied by tenants on such date meeting the terms of the Minimum Set-Aside Test under executed leases at rentals meeting the requirements of the Rent Restriction Test such that all such units qualify for the Tax Credit and (ii) not less than 95% of the apartment units in the Apartment Complex are then physically occupied by tenants.

“Initial Reserve Amount” shall have the meaning set forth in Section 6.5(e)(ii).

“Inspecting Consultant” means the consultant retained by any Lender (including, without limitation, the First Mortgage Lender) or the Company with the Consent of the Special Member to monitor the progress of the construction of the Apartment Complex and to certify as to the completion of such construction.
“Installment” means an installment of the Investment Member’s Capital Contribution paid or payable to the Company pursuant to Section 5.1.

“Insurance Requirements” means the insurance which the Managing Member is required to cause the Company to maintain during the term of the Company as set forth on Exhibit D hereto.

“Interest” means the entire interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled hereunder and the obligation of such Member to comply with the terms of this Agreement.

“Invested Amount” means (i) as to the Investment Member, an amount equal to its paid-in Capital Contribution divided by 0.85 and (ii) as to any other Member, an amount equal to its paid-in Capital Contribution.

“Investment Increased Basis Amount” has the meaning set forth in Section 5.1(g).

“Investment Member” means BCDP and any Person or Persons who replace it as Substituted Investment Member.

“Lender” means any Person (other than the Managing Member or its Affiliates) who makes a loan to the Company, whether or not such loan is secured by a Mortgage, or the successors and assigns of such Person in such capacity.

“Liquidating Event” shall have the meaning set forth in Section 2.4.

“Low Income Units” means any or all of the (sixty) 60 dwelling units in the Apartment Complex which are to be held for occupancy by the Company in such manner as to qualify such units as qualified low-income housing units under Section 42(i)(3) of the Code.

“Management Agent” means Accolade Property Management, Inc., a Texas corporation, in its capacity as the initial management and rental agent for the Apartment Complex, and any successor management and rental agent designated or appointed at any time.

“Management Agreement” means the agreement between the Company and the Management Agent providing for the management of the Apartment Complex.

“Management Fee” means the Management Fee to which reference is made in Section 11.1.

“Managing Member” means O-SDA, and any Person who becomes a Managing Member as provided herein, in its capacity as a managing member of the Company. At any and all times where there is more than one Managing Member, the term Managing Member shall mean such Managing Members.

“Managing Member’s Special Capital Contribution” shall have the meaning set forth in Section 4.2(c).
“Market Rate Units” means any or all of the ten (10) dwelling units in the Apartment Complex that are intended for rental at market rates and are not subject to affordability restrictions under the Regulatory Agreements.

“Material Agreement” means any agreement to which the Company is a party or to which the Apartment Complex is subject, the termination of which would have a material adverse impact on the Apartment Complex or the business and operations of the Company.

“Material Event” means the occurrence of any of the following events:

(i) a material breach by a Managing Member or Guarantor (or any of their Affiliates) in the performance of any of its obligations under this Agreement, or any of the Material Agreements;

(ii) a Terminating Event as to any Managing Member or an Event of Bankruptcy as to the Company or any Guarantor, or prior to the Completion Date, the Developer;

(iii) a material violation by any Managing Member of its fiduciary duties as a Managing Member of the Company;

(iv) a violation by any Managing Member of any law, regulation or order applicable to the Managing Member or the Company which has or may have a material adverse effect on the Company or the Apartment Complex;

(v) a material breach by the Company or any Managing Member (or any of their respective Affiliates) under any Project Document or other material agreement or document affecting the Company or the Apartment Complex;

(vi) the failure to achieve the Completion Date by April 1, 2020;

(vii) the failure to begin the Credit Period for all buildings in the Apartment Complex not later than calendar year 2020;

(viii) the commencement of foreclosure proceedings with respect to any Mortgage, which have not been withdrawn or dismissed within thirty (30) days after the date of such commencement;

(ix) the failure of the Managing Member to make any payment required to be made to the Investment Member pursuant to the provisions of Section 5.1(e) or (f); or

(x) the fraud, bad faith, gross negligence, violation of Anti-Corruption Laws or willful misconduct by a Managing Member; or

(xi) a final determination by the Tax Accountants that the Investment Member shall be allocated less than 70% of the Projected Credit during the Credit Period; provided however that, after Rental Achievement, this subsection (xi) shall continue to be
effective only if the Managing Member is in default of its obligations under Section 5.1 or 6.10.

Notwithstanding anything to the contrary contained herein, a Material Event shall not be deemed to have occurred pursuant to clauses (i) or (iv) or (v) of this definition unless the Managing Members are first provided with notice and not less than thirty (30) days’ opportunity to cure such event, provided however that, if such events cannot be cured within such thirty (30) day period but the Managing Members are diligently pursuing such cure and the event is of the type that can reasonably be cured with the granting of additional time, the Investment Member shall grant additional time for the Managing Members to cure such event, provided, however, that in no event will such additional time exceed an additional ninety (90) days. In addition, a Material Event shall not be deemed to have occurred pursuant to clause (ix) of this definition unless the Managing Members are first provided with notice and ten (10) days to cure such event.

“Member” means any Managing Member, Non-Managing Member, or Class B Special Member.

“Minimum Set-Aside Test” means the set aside test selected by the Company pursuant to Section 42(g) of the Code whereby at least 40% of the units in the Apartment Complex must be occupied by individuals with incomes equal to 60% or less of area median income, as adjusted for family size.

“Mortgage” means any mortgage indebtedness of the Company evidenced by any Note and secured by any mortgage on the Apartment Complex from the Company to any Lender; and, where the context admits, the term “Mortgage” shall mean and include any of the mortgages securing said indebtedness and any other documents pertaining to said indebtedness which were required by the Lender as a condition to making such Mortgage Loan. In case any Mortgage is replaced by any subsequent mortgage or mortgages, such term shall refer to any such subsequent mortgage or mortgages. The term “mortgage” means any mortgage, mortgage deed, deed of trust, deed to secure debt or any similar security instrument, and “foreclose” and words of like import include the exercise of a power of sale under a mortgage or comparable remedies.

“Mortgage Loan” means a loan to the Company made by any Lender and secured by a Mortgage.

“Mortgage Loan Documents” means the First Mortgage Loan Documents, the AHFC Loan Documents, and/or the Permanent Loan Documents, as the context may require.

“New Allocation” shall have the meaning set forth in Section 10.5(b).

“Non-Managing Members” means the Investment Member, the Special Member and any Substituted Non-Managing Member.

“Nonrecourse Debt” or “Nonrecourse Liability” means any indebtedness for which none of the Members has any Economic Risk of Loss other than through his or its interest in the Company property securing such indebtedness, as defined in Section 1.752-1(a)(2) of the Allocation Regulations.
“Nonrecourse Deductions” has the meaning set forth in Section 1.704-2(b)(1) of the Allocation Regulations.

“Note” means and includes any Note from the Company to a Lender evidencing a Mortgage Loan, and shall also mean and include any Note supplemental to said original Note issued to a Lender or any Note issued to a Lender in substitution for any such original Note.

“Operating Deficit” means, for any specified period of time, the amount by which the Cash Receipts of the Company are less than the amount necessary to pay all Cash Expenditures of the Company.

“Operating Profits or Losses” means, with respect to any Fiscal Year, the Profits or Losses of the Company for such Fiscal Year other than Profits or Losses from a Capital Transaction.

“Operating Reserve” shall have the meaning set forth in Section 6.5(e)(ii).

“Original Agreement” has the meaning set forth in the Preliminary Statement.

“Partner Nonrecourse Debt” has the meaning set forth in Section 1.704-2(b)(4) of the Allocation Regulations.

“Partner Nonrecourse Debt Minimum Gain” has the meaning set forth in Sections 1.704-2(i)(2) and (3) of the Allocation Regulations.

“Partner Nonrecourse Deductions” has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Allocation Regulations.

“Partnership Minimum Gain” has the meaning set forth in Section 1.704-2(d) of the Allocation Regulations.

“Payment Certificate” shall have the meaning set forth in Section 5.1(b)

“Percentage Interests” means the interests of the Members in Profits and Losses, tax-exempt income, non-deductible, non-capitalizable expenditures and Tax Credits, as set forth in Schedule A.

“Permanent Lender” means the First Mortgage Lender, AHFC, or any other Lender providing permanent financing for the Apartment Complex who has been approved by the Special Member and the Managing Member, except as otherwise provided in Section 3.2.

“Permanent Loan” means the First Mortgage Loan, the AHFC Loan, and any other permanent loan provided by the Permanent Lender to the Company pursuant to the terms of the Permanent Loan Documents and approved by the Special Member.

“Permanent Loan Conditions” means, with respect to a proposed Permanent Loan (other than the AHFC Loan), that (a) such Permanent Loan (i) has a term of not less than fifteen (15) years, (ii) has an amortization schedule not longer than thirty-five (35) years, (iii) is in a principal
amount of not more than $4,000,000 and (b) when such Permanent Loan is in place, the Debt Service Coverage Ratio of the Company is projected to be not less than 1.15 to 1.00, assuming annual operating expenses of the greater of (x) actual expenses or (y) the Investment Member’s underwritten expenses, as shown on Schedule B attached hereto (adjusted for actual expenses for real estate taxes and insurance), per year; except that, for purposes of determining if the Debt Service Coverage Ratio requirement has been satisfied in accordance with the preceding clause, the amount of the Company’s income pursuant to clause (i) of the first sentence in the definition of Cash Available for Debt Service Requirements shall not exceed the amount of income that could be achieved with the greater of actual vacancy or a 7% vacancy rate. Satisfaction of the Permanent Loan Conditions shall be determined by the Special Member, in its sole discretion.

“Permanent Loan Documents” means the Permanent Note, the Permanent Mortgage and all other documents executed and/or delivered in connection with the Permanent Loan subject to the Consent of the Investment Member including, without limitation, the First Mortgage Loan Documents and the AHFC Loan Documents.

“Permanent Mortgage” means the Mortgage securing the Company’s obligations under the Permanent Note.

“Permanent Mortgage Commencement” means, after the Completion Date, (i) the payment and discharge of the First Mortgage Loan (or the conversion of such loan to its permanent phase on the Permanent Loan Conditions, including the payment of any principal reduction amount required in connection therewith), (ii) the full disbursement of and commencement of the amortization of each Permanent Loan (other than the First Mortgage Loan), and (iii) the execution and delivery of the Permanent Loan Documents.

“Permanent Note” means the First Mortgage Loan Note, the AHFC Loan Note, and any other Note to be executed by the Company to evidence its obligations with respect to the Permanent Loan, which Note shall be secured by the Permanent Mortgage.

“Person” means any individual or Entity.

“Plans and Specifications” means the plans and specifications for the construction of the Apartment Complex, including, without limitation, specifications for materials, and all properly approved amendments and modifications thereof.

“Prime Rate” means the rate of interest announced from time to time by The Wall Street Journal as its base rate.

“Profits or Losses” shall have the meaning set forth in Section 10.4(b)(v).

“Project Documents” means and includes the Mortgage Loan Documents, this Agreement, the Development Agreement, any Deferred Development Fee Note, the Extended Use Agreement, the Guaranty, the Incentive Management Agreement, the Management Agreement, the Purchase Option, the Section 811 Participation Agreement (and, if applicable, the Section 811 RAC and the Section 811 Use Agreement), the Regulatory Agreements, all other instruments delivered to (or required by) any Lender and all other documents relating to the
“Projected Credit” means with respect to a particular Fiscal Year, the total amount of Tax Credit projected to be allocable by the Company to the Investment Member for such Fiscal Year, and shall be as follows: $77,375 for 2019, $1,113,959 for 2020, $1,204,280 per annum for each of the Fiscal Years 2021 through 2028 (inclusive), $1,126,905 for 2029, and $90,321 for 2030, provided, however, that the Projected Credit for 2029 shall be reduced by the amount, if any, by which the Actual Credit for 2019 exceeds $77,375 and the Projected Credit for 2030 shall be reduced by the amount, if any, by which the Actual Credit for 2020 exceeds $1,113,959 and provided further that upon the occurrence of any of the events described in Section 5.1(e), the Projected Credit shall thereafter be the Revised Projected Credit.

“Projected Rents” means the rents described in Exhibit B attached hereto and made a part hereof.

“Purchase Option” means that certain Purchase Option Agreement dated as of September 1, 2018, by and among the Managing Members, the Class B Special Member, the Company, and the Non-Managing Members, as amended.

“Qualified Basis” has the meaning set forth in Section 42(c) of the Code.

“Qualified Income Offset Item” means (1) an allocation of loss or deduction that, as of the end of each year, reasonably is expected to be made (a) pursuant to Section 704(e)(2) of the Code to a donee of an interest in the Company, (b) pursuant to Section 706(d) of the Code as the result of a change in any Member’s Interest, or (c) pursuant to Treasury Regulation Section 1.751-1(b)(2)(ii) as the result of a distribution by the Company of unrealized receivables or inventory items and (2) a distribution that, as of the end of such year, reasonably is expected to be made to a Member to the extent it exceeds offsetting increases to such Member’s Capital Account which reasonably are expected to occur during or prior to the Company taxable year in which such distribution reasonably is expected to occur.

“Recapture Amount” shall have the meaning set forth in Section 10.6.

“Recapture Event” shall have the meaning set forth in Section 10.6(a).

“RECD” means the Rural Economic Community and Development office of the United States Department of Agriculture.

“Recourse Obligations” shall have the meaning set forth in Section 10.4(b)(i).

“Reduction Amount” shall have the meaning set forth in Section 5.1(f).

“Reduction Year” shall have the meaning set forth in Section 5.1(f).

“Regulations” means the rules and regulations applicable to the Apartment Complex or the Company of the Credit Agency, and any Governmental Authority having jurisdiction over the Company and/or the Apartment Complex.
“Regulatory Agreements” means any regulatory agreements, affordability restrictions, restrictive covenants or other similar documents entered or to be entered into between or by the Company and/or for the benefit of any Mortgage Lender or Governmental Agency with respect to the Apartment Complex, including, without limitation, the Extended Use Agreement and, if applicable, the Section 811 Use Agreement.

“Related Person” means a Person related to a Member within the meaning of Treasury Regulation Section 1.752-4(b).

“Remaining Interest” shall have the meaning set forth in Section 7.4(d).

“Rent Restriction Test” means the test pursuant to Section 42 of the Code whereby the gross rent charged to tenants of the low-income units in the Apartment Complex may not exceed thirty percent (30%) of the qualifying income levels.

“Rental Achievement” means the first time following three (3) consecutive full calendar months of operations after Permanent Mortgage Commencement (with each month considered individually) that (i) at least 90% of the dwelling units in the Apartment Complex are occupied by tenants actually paying rents pursuant to an executed lease with an initial term of at least six (6) months; and (ii) the Apartment Complex generates a 1.15 to 1.00 Debt Service Coverage Ratio; except that, for purposes of computing the Debt Service Coverage Ratio to determine if Rental Achievement has occurred, the Company’s income shall be determined using the greater of actual vacancy or a 7% vacancy rate and assuming that principal amortization has commenced on the Permanent Loan.

“Replacement Reserve” shall have the meaning set forth in Section 6.5(e).

“Repurchase Amount” shall have the meaning set forth in Section 5.2(a).

“Repurchase Event” shall have the meaning set forth in Section 5.2(a).

“Required Sale Notice” has the meaning set forth in Section 3.5(b).

“Requisite Approvals” means any required approvals of each Lender and Agency to an action proposed to be taken by the Company.

“Revised Projected Credit” has the meaning set forth in Section 5.1(e).

“Schedule A” means Schedule A to this Agreement, as amended from time to time.

“Section 811 Participation Agreement” means the Section 811 Project Rental Assistance Demonstration Program Owner Participation Agreement dated September 18, 2017 by and between the Company and TDHCA pursuant to which the Company has agreed that, if requested by TDHCA at any time during the term of the Section 811 Participation Agreement, the Company will enter into the Section 811 RAC and accept eligible referrals to the Section 811 Units pursuant to TDHCA’s “Section 811 Project Rental Assistance” program.
“Section 811 RAC” means the Rental Assistance Agreement that may be entered into by the Company and TDHCA, if requested by TDHCA, pursuant to which TDHCA will agree to provide project-based rental assistance to the Company under Section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, with respect to seven (7) units at the Apartment Complex that may be restricted at 50% or 60% of the established median gross income and occupied by Eligible Tenants (as defined in the Section 811 RAC) for a term of not less than fifteen (15) years.

“Section 811 Units” means any one or more of the seven (7) dwelling units in the Apartment Complex eligible to receive project-based rental assistance under TDHCA’s “Section 811 Project Rental Assistance” program and which will be reserved for occupancy in accordance with the terms of the Section 811 Participation Agreement and, if applicable, the Section 811 RAC and the Section 811 Use Agreement.

“Section 811 Use Agreement” means the Use Agreement that may be entered into by the Company, if requested by TDHCA, pursuant to which the Company will agree to accept the Section 811 RAC and eligible referrals to the Section 811 Units for a term of not less than fifteen (15) years (subject to Congressional appropriations).

“Service” means the Internal Revenue Service.

“75% Completion Date” means the date that seventy-five percent (75%) of the projected hard construction costs for the completion of the Apartment Complex have been incurred by the Company.

“Share of Partner Nonrecourse Debt Minimum Gain” means, for each Member an amount equal to his or its “share of partner nonrecourse debt minimum gain” as determined in accordance with Section 1.704-2(i)(5) of the Allocation Regulations.

“Share of Partnership Minimum Gain” means for each Member, an amount equal to his or its “share of partnership minimum gain” as determined in accordance with Section 1.704-2(g) of the Allocation Regulations.

“Site” has the meaning given to it in the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended, and shall also include any meaning given to it in any similar state or local statutes, ordinances, regulations or by-laws.

“Special Member” means BCCC, and any Person who becomes a Special Member as provided herein, in its capacity as a special member of the Company, but expressly not including the Class B Special Member.

“Specified Proceeds” means (i) the proceeds of all Mortgage Loans, (ii) the net rental income, if any, generated by the Apartment Complex prior to Rental Achievement which is permitted by the Lenders to be applied to the payment of Development Costs, (iii) the Capital Contributions of the Non-Managing Members, (iv) the Capital Contributions of the Managing Members and the Class B Special Member in the amounts set forth in Schedule A as of the date hereof, (v) any insurance proceeds arising out of casualties occurring prior to Rental
Achievement, and (vi) all other sources of funds including net rental income available to the Company prior to Rental Achievement, not specifically earmarked for other purposes.

“State” means the State of Texas.

“State Designation” means the date on which the Company receives an allocation for the Apartment Complex in proper form pursuant to Section 42 of the Code from the Credit Agency of 2017 Tax Credits, as evidenced by the execution by or on behalf of the Credit Agency of one or more Form(s) 8609.

“Subordinated Loan” means any loan made by the Managing Member to the Company pursuant to Section 6.5(e)(i), Section 6.10 or any other provision of this Agreement which specifies advances to be made as a Subordinated Loan. Subordinated Loans shall not bear interest.

“Subordinated Loan Cap” shall have the meaning set forth in Section 6.10.

“Subordinated Loan Period” shall have the meaning set forth in Section 6.10.

“Substantial Completion Certificate” means the certificate to be issued by the project architect on or after the Completion Date in the form attached hereto as Exhibit E.

“Substituted Investment Member” has the same meaning as Substituted Non-Managing Member when such term is applied solely to the Investment Member.

“Substituted Non-Managing Member” means any Person who is admitted to the Company as Non-Managing Member under Section 8.2 or acquires the Interest of a Non-Managing Member pursuant to Section 5.2.

“Syndication Expenses” means all expenditures classified as syndication expenses pursuant to Treasury Regulation Section 1.709-2(b). Syndication Expenses shall be taken into account under this Agreement at the time they would be taken into account under the Company’s method of accounting if they were deductible expenses.

“Tax” or “Taxes” means any and all liabilities, losses, expenses and costs that are, or are in the nature of, taxes, fees or other governmental charges, including interest, penalties, fines and additions to tax imposed by the Internal Revenue Service or any other taxing authority.

“Tax Accountants” means CohnReznick LLP of Bethesda, Maryland or such other firms of independent certified public accountants as may be engaged by the Special Member to review the Company income tax returns.

“Tax Credit” means the low-income housing tax credit described in Section 42 of the Code.

“TDHCA” means the Texas Department of Housing and Community Affairs, in its capacity as the agency designated by the State to allocate Tax Credits.
“Terminating Event” means the death or permanent disability of, or a final determination by a court of competent jurisdiction of insanity or incompetence as to, an individual Managing Member (unless the Consent of the Special Member to a substitute Managing Member is received, and such substitute Managing Member is admitted to the Company by the first to occur of (i) the sixtieth (60th) day following such event or (ii) such earlier date as is necessary to prevent a dissolution of the Company under the Act), an Event of Bankruptcy or dissolution of a Managing Member, the transfer of all or any portion of its Company Interest by a Managing Member, or the voluntary or involuntary Withdrawal of the Managing Member from the Company. For purposes of the foregoing, an individual Managing Member shall be deemed to be permanently disabled if he or she becomes disabled during the term of this Agreement through any illness, injury, accident or condition of either a physical or psychological nature and, as a result, is unable to perform substantially all of his or her duties and responsibilities hereunder for one hundred twenty (120) days during any period of three hundred sixty-five (365) consecutive calendar days. Involuntary withdrawal shall occur whenever a Managing Member may no longer continue as a Managing Member by law or pursuant to any terms of this Agreement. In the case of a Managing Member which is an Entity, a transfer of a majority of the voting stock (or other beneficial interest) of the Managing Member to a Person who is not an Affiliate of the Managing Member or any Entity constituting the Managing Member shall be deemed to be a Terminating Event.

“Termination Notice” has the meaning set forth in Section 3.5(a).

“Title Policy” means the owner’s title insurance policy, or at the option of the Special Member an endorsement thereto, with an effective date on or after the date hereof, in the amount of not less than $17,328,905, issued by First American Title Insurance Company to the Company, evidencing the Company’s ownership of the Apartment Complex subject only to such exclusions, exceptions, conditions and stipulations as may be approved by the Special Member in its sole discretion and endorsed at a minimum with a non-imputation endorsement, an access endorsement (to be obtained after the Completion Date), a comprehensive endorsement and a same as survey endorsement.

“Treasury Regulations” means the Income Tax Regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“25% Completion Date” means the date that twenty-five percent (25%) of the projected hard construction costs for the completion of the Apartment Complex have been incurred by the Company.

“Upward Timing Amount” has the meaning set forth in Section 5.1(g).

“Vessel” has the meaning given to it in the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended, and shall also include any meaning given to it in any similar state or local statutes, ordinances, regulations or by-laws.

“Voluntary Loans” shall have the meaning set forth in Article IX.
“Withdrawal” (including the forms Withdraw, Withdrawing and Withdrawn) means, as to a Managing Member, the occurrence of death, adjudication of insanity or incompetence, Event of Bankruptcy, dissolution, liquidation, or voluntary or involuntary withdrawal or retirement from the Company for any reason, including whenever a Managing Member may no longer continue as a Managing Member by law or pursuant to any terms of this Agreement. Withdrawal also shall mean the sale, assignment, transfer or encumbrance by a Managing Member of its interest as a Managing Member. A Managing Member which is a corporation, limited liability company or partnership shall be deemed to have sold, assigned, transferred or encumbered its interest as a Managing Member in the event (as a result of one or more transactions) of any sale, assignment or other transfer or encumbrance of a controlling interest in such a Managing Member or of any general partner, manager or managing member interest in a Managing Member that is a partnership or limited liability company to a Person who is not an Affiliate of the Person transferring the interest in question. Further, a Managing Member shall be deemed to have sold, conveyed, transferred or encumbered its interest as a Managing Member hereunder if transfers of direct or indirect ownership interests further down the ownership chain of a Managing Member effectively accomplish the transfer of a controlling interest as set forth in the preceding sentence. For purposes of this definition of Withdrawal, the term “controlling interest” shall mean (x) the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise or, (y) without regard to such power to direct management and policies the interest being transferred constitutes ownership of 25% or more of the entity in question. For the avoidance of doubt, a “Withdrawal” shall not have occurred if (A) an equity owner transfers any interest to a revocable trust whereby such transferor is the sole trustee of such revocable trust, to the estate of such transferor, or to any entity that has no voting power over the equity interest transferred, regardless of the percentage interest transferred, or (B) if Megan D. Lasch conveys any direct or indirect interests in the Managing Member to a trust for the benefit of her spouse or children whereby Megan D. Lasch or Lisa M. Stephens is the sole trustee of such trust and Megan D. Lasch or Lisa M. Stephens continues to control the Managing Member.
ARTICLE II
Name and Business

2.1 Name; Continuation

The name of the Company is “Aria Grand, LLC.” The Members agree to continue the Company which was formed pursuant to the provisions of the Act.

2.2 Office and Registered Agent

(a) The principal office of the Company is 5714 Sam Houston Circle, Austin, Texas 78731, at which office there shall be maintained those records required by the Act to be kept by the Company. The Company may have such other or additional offices as the Managing Member shall deem desirable. The Managing Member may at any time change the location of the principal office and shall give due notice thereof to the Non-Managing Members, provided that doing so shall not adversely affect the Investment Member for tax purposes.

(b) The registered agent for the Company in the State for service of process is as follows:

Antoinette M. Jackson
811 Main Street, Suite 2900
Houston, Texas 77002

2.3 Purpose

The purpose of the Company is to acquire, hold, invest in, secure financing for, construct, rehabilitate, develop, improve, maintain, operate, lease and otherwise deal with the Apartment Complex. The Company shall operate the Apartment Complex in accordance with any applicable Regulations. The Company shall not engage in any other business or activity.

2.4 Term and Dissolution

(a) The Company shall continue in full force and effect in perpetuity, except that the Company shall be dissolved and its assets liquidated prior to such date upon the first to occur of the following events (“Liquidating Events”):

(i) The sale or other disposition of all or substantially all of the assets of the Company;

(ii) [Intentionally Deleted];

(iii) The election to dissolve the Company made in writing by the Managing Member with the Consent of the Investment Member and any Requisite Approvals;

(iv) The entry of a final decree of dissolution of the Company by a court of competent jurisdiction; or
(v) Any other event which causes the dissolution of the Company under the Act if the Company is not reconstituted pursuant to the provisions of Section 7.2 or Section 7.3.

(b) Upon the dissolution of the Company, the Managing Member (or for purposes of this paragraph, its trustees, receivers or successors) shall cause the cancellation of the Articles and shall liquidate the Company assets and apply and distribute the proceeds thereof in accordance with the provisions of Section 10.3, unless the Investment Member elects to reconstitute the Company and continue its business as provided in Section 7.2 or 7.3, in which case the Company assets shall be transferred to the new Company as provided in such Section. Notwithstanding the foregoing, if, during liquidation, the Managing Member shall determine that an immediate sale of part or all of the Company’s assets would be impermissible, impractical or cause undue loss to the Members, the Managing Member may defer liquidation of, and withhold from distribution for a reasonable time, any assets of the Company except those necessary to satisfy Company debts and obligations (other than Subordinated Loans).

2.5 Nature of Company Interests

No Company Interest hereunder shall be represented by any certificate or be considered a “security” or “investment property” for purposes of Article 8 and Article 9 of the Uniform Commercial Code of any jurisdiction.
ARTICLE III
Mortgage, Refinancing and Disposition of Property

3.1 Personal Liability

Subject to compliance with the Permanent Loan Conditions, the Company shall be authorized to obtain the Mortgage Loans to finance the acquisition, development and construction of the Apartment Complex and shall secure the First Mortgage Loan by the First Mortgage Loan Mortgage and the AHFC Loan by the AHFC Loan Mortgage. The Managing Member and its Affiliates, jointly and severally, are hereby authorized to incur personal liability for the repayment of funds advanced by the First Mortgage Lender (and interest thereon) during the construction phase of the First Mortgage Loan pursuant to the First Mortgage Loan Documents. However, from and after the date of Permanent Mortgage Commencement, neither the Managing Member nor any Related Person shall at any time bear, nor shall the Managing Member permit any other Member or any Related Person to bear, the Economic Risk of Loss for the payment of any portion of any Mortgage Loan unless, prior to the effectiveness of the transaction in which such Economic Risk of Loss is created or assumed, the Managing Member shall have obtained, at the expense of the Company, an opinion from reputable tax counsel, in form and substance reasonably satisfactory to the Special Member, to the effect that such Economic Risk of Loss will not result in the reallocation of Tax Credits or Losses from any Non-Managing Member to the Managing Member. The Managing Member shall cause the Company to elect promptly, to the extent permitted and in the manner prescribed by any Agency or Lender having jurisdiction, that all debt service payments made by the Company to the holder of the Permanent Mortgage shall be applied first to interest determined at the stated rate set forth in the Permanent Note, and then to principal due with respect to the Permanent Note.

3.2 Refinancings; Permanent Loan Documents

The Company may decrease, increase or refinance any Mortgage Loan and may make any required transfer or conveyance of Company assets for security or mortgage purposes, provided, however, any such decrease, increase or refinancing of any Mortgage Loan may be made by the Managing Member only with the Consent of the Special Member. To the extent not executed as of the date hereof, the form and content of the Permanent Loan Documents shall be subject to the reasonable Consent of the Special Member.

3.3 Sale of Assets

Except pursuant to Section 3.5 or the Purchase Option, the Company may sell, lease, exchange or otherwise transfer or convey all or substantially all the assets of the Company only with the Consent of the Special Member. Notwithstanding the foregoing and except as set forth in Section 6.2(a)(vi), no Consent of the Special Member shall be required for the execution and delivery of the Mortgage Loan Documents, the leasing of apartments to tenants in the normal course of operations or the leasing of all or substantially all the apartments to a public housing authority at rents satisfactory to any Agency or Lender as expressed in writing, provided (subject to the Rent Restriction Test) that such rents are not less than the Projected Rents.
3.4 **Real Estate Commissions**

The total compensation to all Persons for the sale of the Apartment Complex shall be limited to a Competitive Real Estate Commission, which in no event shall exceed three percent (3%) of the contract price for the sale of the Apartment Complex.

3.5 **Sale of the Apartment Complex**

(a) [Intentionally Deleted]

(b) Notwithstanding any provision of this Agreement to the contrary subject to any Requisite Approvals, at any time after the later of: (i) the end of the Compliance Period, or (ii) the termination of the term of the Purchase Option, the Special Member shall have the right to require, by notice to the Managing Member (the “Required Sale Notice”), that the Managing Member promptly use commercially reasonable efforts to obtain a buyer for the Apartment Complex on the most favorable terms then available. The Managing Member shall submit the terms of any proposed sale to the Special Member and the Investment Member for their approval. If the Managing Member shall fail to so obtain a buyer for the Apartment Complex within twelve (12) months of the Required Sale Notice or if the Special Member and/or the Investment Member in its/their sole discretion shall withhold its/their consent to any proposed sale to such buyer, then the Special Member shall have the right at any time thereafter to obtain a buyer for the Apartment Complex on terms most favorable then available and otherwise acceptable to the Special Member. In the event that such sale is not consummated because of actions taken or not taken by the Managing Member, the Managing Member shall upon receipt of notice from the Investment Member promptly purchase the Interests of the Non-Managing Members for a price equal to the amount each such Member would have received (giving effect to reasonable estimates of closing costs which would have been incurred) in liquidation of the Company had such sale been consummated. In the event that the Special Member so obtains a buyer, it shall notify the Managing Member and the Investment Member in writing with respect to the terms and conditions of the proposed sale and, provided the Investment Member approves, in its sole discretion, the terms of such sale, the Managing Member shall cause the Company promptly to sell the Apartment Complex to such buyer or purchase the Interests of the Non-Managing Members for a price equal to the amount the Non-Managing Members would have received in liquidation of the Company had such sale been consummated.

(c) The Managing Member is hereby required, within five (5) days after its receipt of any offer to purchase the Apartment Complex or all of the Interests in the Company, to send a copy of such offer (or a written description of any such oral offer) to each of the Non-Managing Members. In connection with any proposed sale of the Apartment Complex, the Special Member (or its designee) shall have the right to (i) receive and review copies of all documents relating to the proposed sale, (ii) participate in the negotiations of the terms and conditions of the proposed sale, (iii) meet with the proposed purchaser, (iv) solicit proposals for alternative offers for the Apartment Complex, and (v) provide such other services in connection with the proposed sale as it deems to be appropriate.

(d) In any instance in which the fair market value of the Apartment Complex is required to be determined by appraisal, the following provisions shall apply. Any such appraisal
shall be conducted by one or more Independent Appraisers (as defined below), to be selected as follows: As soon as practicable and in any event within thirty (30) days following the Managing Member’s determination that the Investment Member has failed to approve a sale proposed by the Managing Member for a purchase price of equal to or greater than the fair market value of the Apartment Complex, the Managing Member and the Non-Managing Members shall select an Independent Appraiser. In the event the parties are unable to agree upon an Independent Appraiser within such thirty (30) day period, the Managing Member on the one hand and the Non-Managing Members on the other shall each select an Independent Appraiser. If the difference between the two appraisals is within ten percent (10%) of the lower of the two appraisals, the fair market value shall be the average of the two (2) appraisals. If the difference between the two (2) appraisals is greater than ten percent (10%) of the lower of the two (2) appraisals, then the two appraisers shall jointly select a third appraiser whose determination of fair market value shall be deemed to be binding on all parties. If the two (2) appraisers are unable jointly to select a third appraiser, either the Managing Member or the Non-Managing Members may, upon written notice to the other, apply to the presiding judge of a court of competent jurisdiction in Travis County, Texas for the selection of the third appraiser who shall then participate in such appraisal proceeding, and who shall be selected from a list of names of Independent Appraisers submitted by the Managing Member and the Non-Managing Members. Each list of names of Independent Appraisers shall be submitted within ten (10) written days after the date on which the appraisal proceeding is invoked, or will be disregarded and the appraiser shall be selected from the list provided. The appraisals shall take into account the Extended Use Agreement and any other restriction recorded as of record against the Apartment Complex. Each of the Managing Member and the Non-Managing Members shall pay the cost of any appraiser(s) selected by it pursuant to this Section 3.5(d). If the parties agree on the selection of a single Independent Appraiser then the costs of such appraiser shall be paid by the Managing Member; if the parties are required to use a third appraiser, then the costs of such third appraiser shall be split between Managing Member and Non-Managing Members. For purposes of this Section 3.5(d), the term “Independent Appraiser” means a firm that is generally qualified to render opinions as to the fair market value of assets such as the Apartment Complex, which satisfies the following criteria: (i) such firm is not a Member or an Affiliate of the Company or any Member; (ii) such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years; (iii) such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such firm; (iv) one or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group that establishes and maintains professional standards for its members; and (v) such firm renders an appraisal only after entering into a contract that specifies the compensation payable for such appraisal.

3.6 Investor Provisions

(a) Subject to provisions of this Agreement with respect to related party loans, any GSE that is a limited partner or member in any entity that is a Non-Managing Member (a “Defined Mortgagee”) at any time may make, guarantee, own, acquire, or otherwise credit enhance, in whole or in part, a Mortgage Loan. Under no circumstances will such a Defined
Mortgagee be considered to be acting on behalf or as an agent or the alter ego of the Non-Managing Member of which it is a limited partner or member. A Defined Mortgagee may take any actions that such Defined Mortgagee, in its discretion, determines to be advisable in connection with the applicable Mortgage Loan (including in connection with the enforcement of such Mortgage Loan). By acquiring an interest in the Company, each Member acknowledges that no Defined Mortgagee owes the Company or any Member any fiduciary duty or other duty or obligation whatsoever by virtue of such Defined Mortgagee being a limited partner or member in a Non-Managing Member. Neither the Company nor any Member will make any claim against a Defined Mortgagee, or against the Non-Managing Member in which the Defined Mortgagee is a limited partner or member, relating to a Mortgage Loan and alleging any breach of any fiduciary duty, duty of care, or other duty whatsoever to the Company or to any Member based in any way upon the Defined Mortgagee’s status as a limited partner or member of a Non-Managing Member.
ARTICLE IV  
Members; Capital

4.1 Capital and Capital Accounts

(a) The capital of the Company shall be the aggregate amount of the cash and the Gross Asset Value of property contributed by the Managing Member and by the Non-Managing Members as set forth in Schedule A. No interest shall be paid by the Company on any Capital Contribution to the Company. Schedule A shall be amended from time to time to reflect the withdrawal or admission of Members, any changes in the Company Interests held by a Member arising from the transfer of an Interest to or by such Member and any change in the amounts to be contributed or agreed to be contributed by any Member. No Member shall have the right to withdraw or receive a return of any of its Capital Contributions except as set forth in this Agreement.

(b) An individual Capital Account shall be established and maintained for each Member, including any additional or substituted Member who shall hereafter receive an interest in the Company. The Capital Account of each Member shall be maintained in accordance with the following provisions:

(i) To each Member’s Capital Account there shall be credited such Member’s Capital Contributions, such Member’s distributive share of Profits, and any items in the nature of income or gain that are specially allocated pursuant to Section 10.4 hereof, and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company Property distributed to such Member;

(ii) To each Member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company Property distributed to such Member pursuant to any provision of this Agreement, such Member’s distributive share of Losses, and any items in the nature of expenses or losses that are specially allocated pursuant to Section 10.4 hereof, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

In the event that the Gross Asset Values of Company assets are adjusted pursuant to this Agreement, the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment.

(c) The original Capital Account established for any Assignee (as hereinafter defined) shall be in the same amount as, and shall replace, the adjusted Capital Account of the Member which such Assignee succeeds, and, for the purpose of the Agreement, such Assignee shall be deemed to have made the Capital Contribution, to the extent actually paid in, of the Member which such Assignee succeeds. The term “Assignee,” as used in this paragraph, shall mean a Person who shall become entitled to receive a share of the Profits, Losses, Tax Credits and distributions of the Company by reason of such Person succeeding to the Interest of a Member by assignment of all or any part of an Interest. To the extent an Assignee receives less than
100% of the Interest of a Member, such Assignee’s Capital Account and Capital Contribution shall be in proportion to the Company Interest such Assignee receives, and the Capital Account and Capital Contribution of the Member who retains a partial interest in the Company shall continue, and not be replaced, in proportion to the Company Interest such Member retains.

(d) The foregoing provisions and other provisions of this Agreement relating to the maintenance of the Capital Accounts are intended to comply with the Allocation Regulations, and shall be interpreted and applied in a manner consistent with such Allocation Regulations.

4.2 Managing Members and Class B Special Member

(a) O-SDA is hereby designated as the Managing Member and the name, address and Capital Contribution of the Managing Member is as set forth on Schedule A. The Class B Special Member is hereby admitted to the Company and the name, address and Capital Contribution of the Class B Special Member is as set forth on Schedule A.

(b) The Managing Member has contributed or will contribute contemporaneously with the execution hereof $100 to the capital of the Company. The Class B Special Member has contributed or will contribute contemporaneously with the execution hereof $100 to the capital of the Company.

(c) Notwithstanding anything contained herein to the contrary, in the event that the Developer is an Affiliate of any Managing Member, at the election of the Special Member in its sole and absolute discretion, upon the removal of such Managing Member in accordance with the terms hereof, to the extent all or any portion of the Development Fee or the Deferred Development Fee Note, if any, remains unpaid as of the effective date of such removal of such Managing Member, such Managing Member shall immediately prior to such removal make a capital contribution to the Company in an amount sufficient to pay any unpaid balance of the Development Fee and the Deferred Development Fee Note, if any, and all accrued but unpaid interest thereon (the “Managing Member’s Special Capital Contribution”). Notwithstanding the foregoing, the amount of the Managing Member’s Special Capital Contribution shall be reduced to the extent the Investor Member reasonably determines on or before the end of the first year of the Credit Period that any portion of the remaining balance of the Development Fee and the Deferred Development Fee Note is not necessary to be included in Eligible Basis in order to allocate the aggregate Projected Credit during the Credit Period to the Investor Member. The Company shall thereafter promptly pay to the Developer a portion of the Development Fee equal to the Managing Member’s Special Capital Contribution and any remaining balance of the Development Fee and Deferred Development Fee Note shall be assigned to the replacement Managing Member.

4.3 Non-Managing Members

(a) The Special Member is hereby admitted to the Company as a Non-Managing Member as of the Admission Date in accordance with the terms and conditions of this Agreement. The name and address of the Investment Member and the Special Member are as set forth on Schedule A.
(b) Except as otherwise specifically set forth in Sections 4.5 or 7.4, the Managing Member shall have no authority to admit additional Non-Managing Members without the Consent of the Investment Member.

4.4 Liability of the Non-Managing Members

No Non-Managing Member or any Person who becomes a Substituted Non-Managing Member shall be liable for any debts, liabilities, contracts or obligations of the Company; such Persons shall be liable only to pay their respective Capital Contributions as and when the same are due hereunder and under the Act. After its Capital Contribution shall be fully paid, no Non-Managing Member shall, except as otherwise required by the Act, be required to make any further capital contributions or payments or lend any funds to the Company.

4.5 Special Rights of the Special Member

(a) Notwithstanding any other provisions herein (other than Section 13.8), to the extent the law of the State is not inconsistent, the Special Member shall have the right, subject to any Requisite Approvals, to:

(i) [Intentionally Deleted];

(ii) dissolve the Company, provided, however, that such dissolution shall not be caused by the Special Member unless the Managing Member has violated a material provision of any Project Document, which violation has not been cured within any applicable cure period specified;

(iii) remove any Managing Member and elect a new Managing Member (A) on the basis of the performance and discharge of such Managing Member’s obligations constituting fraud, bad faith, gross negligence, willful misconduct or breach of fiduciary duty, (B) upon the occurrence of a Material Event, or (C) upon any commission of, indictment or conviction for, or pleading of, nolo contendere with respect to a felony by the Managing Member or any entity that owns an interest in a Managing Member or a Guarantor, or there be a complaint filed against the Managing Member or any entity that owns an interest in a Managing Member or a Guarantor, alleging violation of any anti-fraud, registration or reporting provision of state or federal securities law or a judgment rendered against the Managing Member or any entity that owns an interest in a Managing Member or a Guarantor as a defendant (or admit to liability) in any action based upon civil fraud or misrepresentation, or a debarment or otherwise declaration of ineligibility to participate in any federal program or the Managing Member or any entity that owns an interest in a Managing Member or a Guarantor as a defendant (or admit to liability) in any action based upon civil fraud or misrepresentation, or a debarment or otherwise declaration of ineligibility to participate in any federal program or the Managing Member or any entity that owns an interest in a Managing Member or a Guarantor is under investigation by a grand jury, provided, that, in the event that the Managing Member or an Affiliate of the Managing Member is under investigation by a grand jury, voting rights and control belonging to the Managing Member’s Interest shall vest to the Class B Special Member until the conclusion of the investigation or the receipt by the Investment Member of a satisfactory letter from the Attorney General of the United States or the Texas Attorney General, as applicable;
(iv) continue the business of the Company with a substitute Managing Member, provided that the Managing Member has been removed pursuant to Section 4.5(a)(iii) above; and

(v) approve or disapprove the sale of all or substantially all of the assets of the Company.

(b) Upon the removal of a Managing Member for cause pursuant to Section 4.5(a)(iii),

(i) without any further action by any Member, the Special Member shall cause an Affiliate automatically to become a Managing Member (the “Substitute Managing Member”) and acquire in consideration of a cash payment of $100 such portion of the Interest of the removed Managing Member as counsel to the Special Member shall determine is the minimum appropriate interest in order to assure the continued status of the Company as a partnership under the Code and as a limited liability company under the Act;

(ii) the remaining portion of the economic Interest of the removed Managing Member shall automatically be transferred to the Company, not as a penalty but as liquidated damages to compensate the Company for the action or omission of such Managing Member leading to its removal, or for the fact of its violation of the terms of this Agreement and to allow the Company to adequately compensate any replacement Managing Member; and

(iii) the Substitute Managing Member shall automatically be irrevocably delegated all of the powers and duties of the Managing Members pursuant to Section 6.13. A Managing Member so removed will not be liable as a managing member for any obligations of the Company incurred after the effective date of its removal, except to the extent that such obligations arise due to the action or inaction of the Managing Member prior to its removal. Each Managing Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to execute and deliver any and all documents and instruments on behalf of such Managing Member and the Company as the Special Member may deem to be necessary or appropriate in order to effect the provisions of this Section 4.5 and to enable the new Managing Member to manage the business of the Company.

4.6 Meetings

The Managing Member or Non-Managing Members holding more than ten percent (10%) of the then outstanding Non-Managing Member Interests may call meetings of the Company for any matters for which the Non-Managing Members may vote as set forth in this Agreement. A list of the names and addresses of all Non-Managing Members shall be maintained as part of the books and records of the Company and shall be made available upon request to any Non-Managing Member or his representative at his cost. Upon receipt of a written request either in person or by certified mail stating the purpose(s) of the meeting, the Managing Member shall provide all Non-Managing Members within ten (10) days after receipt of said request, written
notice of a meeting and the purpose of such meeting to be held on a date not less than fifteen (15) nor more than sixty (60) days after receipt of said request, at a time and place convenient to the Non-Managing Members.
ARTICLE V
Capital Contributions of the Investment Member
and the Special Member

5.1 Payments

(a) The Special Member’s Capital Contribution of $10 shall be paid in full in cash on the Admission Date. The Investment Member’s Capital Contribution in the aggregate amount of $11,139,586 shall be paid in cash installments (the “Installments”), as follows:

(i) $1,670,938 (the “First Installment”) on the latest of (A) the Admission Date, and (B) the closing of the First Mortgage Loan and the AHFC Loan;

Concurrent with payment of the First Installment, the Company will also pay an amount equal to $50,000 to the Investment Member, which represents the due diligence costs and professional, third-party fees incurred by the Investment Member in connection with the Investment Member’s investment in the Company. Such expense reimbursement may be netted from the First Installment but the entire amount of the First Installment shall be deemed for all purposes to have been paid first, by the Investment Member to the Company as payment of the First Installment and, then, by the Company to the Investment Member as reimbursement for such costs and expenses.

(ii) $1,113,959 (the “Second Installment”) on the latest of (A) the 25% Completion Date, (B) receipt of a final Title Policy with all endorsements in form and substance satisfactory to the Investment Member, (C) receipt of an updated title report in form and substance satisfactory to the Special Member, (D) receipt by the Investment Member of an Estoppel Letter from each Lender, evidence of satisfaction of the Insurance Requirements, and evidence that the remaining Specified Proceeds are sufficient to fund all remaining hard and soft costs needed to achieve the full completion of the construction of the Apartment Complex, and (E) January 1, 2019;

(iii) $1,670,938 (the “Third Installment”) on the latest of (A) the 50% Completion Date, (B) receipt of an updated title report in form and substance satisfactory to the Special Member, (C) receipt by the Investment Member of evidence that the remaining Specified Proceeds are sufficient to fund all remaining hard and soft costs needed to achieve the full completion of the construction of the Apartment Complex, and (D) April 1, 2019;

(iv) $1,670,938 (the “Fourth Installment”) on the latest of (A) the 75% Completion Date, (B) receipt of an updated title report in form and substance satisfactory to the Special Member, (C) receipt by the Investment Member of evidence that the remaining Specified Proceeds are sufficient to fund all remaining hard and soft costs needed to achieve the full completion of the construction of the Apartment Complex, (D) receipt by the Investment Member of a copy of the properly filed Company federal income tax return for Fiscal Year 2018, in which the Company properly elected to be an “electing real property trade or business” under Section 163(j)(7) of the Code (unless the
Managing Member received the direction of, or the Consent of, the Investment Member pursuant to Section 12.4(a) not to make such an election), and (E) July 1, 2019;

(v) $2,784,896 (the “Fifth Installment”) on the latest of (A) the Completion Date, (B) receipt of an updated title report in form and substance satisfactory to the Special Member, and an access endorsement to the Title Policy, (C) receipt by the Investment Member of evidence of satisfaction of the Insurance Requirements and the Due Diligence Recommendations, (D) receipt by the Investment Member of the Substantial Completion Certificate, and (E) receipt and approval by the Investment Member of a Company prepared draft Cost Certification, \textit{provided, that}, upon satisfaction of conditions (A), (B), (C), and (D) of this Section 5.1(a)(v), only $1,000,000 of the Fifth Installment shall be due and payable on or after November 1, 2019 and the remaining balance of the Fifth Installment (i.e., $1,784,896) shall be due and payable on or after January 1, 2020;

(vi) $1,670,938 (the “Sixth Installment”) on the latest of (A) Cost Certification, (B) the Initial Full Occupancy Date, (C) Permanent Mortgage Commencement (which may occur contemporaneously with the payment of this Sixth Installment), (D) the Initial Compliance Audit which shows no material noncompliance (as set forth in Section 12.7(n)) which has not been cured, (E) receipt by the Investment Member of a copy of the recorded Extended Use Agreement, (F) delivery of an “As Built” survey by a professional engineer licensed in the State reflecting all improvements to the property, and (G) receipt of permanent certificates of occupancy if temporary or conditional certificates were received to achieve the Completion Date;

(vii) $556,979 (the “Seventh Installment”) on the latest of (A) State Designation, (B) Rental Achievement, (C) delivery to the Investment Member of a copy of the executed Deferred Development Fee Note, and (D) receipt by the Special Member of evidence of completion of “punch list” items and evidence that any holdbacks for retention and “punch list” items have been fully paid to the Contractor by the Company;

provided, however, that (w) if the only conditions to an Installment not yet satisfied will be satisfied simultaneous with the contribution of such Installment, then the Installment shall be due and payable as set forth herein and the proceeds immediately shall be used to satisfy the final conditions to such Installment, (x) the Managing Member shall give the Investment Member not less than fourteen (14) days’ written notice prior to the due date of each Installment subsequent to the First Installment, (y) no Installment shall be due unless and until all conditions to the payment of all prior Installments have been satisfied, and (z) the full amount of the First Installment, the Second Installment, the Third Installment and the Fourth Installment of the Investment Member’s Capital Contribution (less all amounts approved as reimbursement for Development Costs on the Admission Date) shall be deposited into the Capital Contribution Account, as further provided in Section 5.1(i) hereof. Funds may be withdrawn from such Capital Contribution Account to pay Development Costs in monthly draws only (1) after the delivery to the Investment Member by the Managing Member of a monthly draw request and all supporting back-up invoices and documentation therefor, including without limitation, the applicable construction inspection report of the Inspecting Consultant, (2) the countersignature of the Special Member of such draw request and (3) the simultaneous submission to and approval
by the First Mortgage Lender of such draw request, if such approval is required by the First Mortgage Loan Documents.

(b) The obligation of the Investment Member to pay each Installment is conditioned upon delivery by the Managing Member to the Investment Member of a written certificate (the “Payment Certificate”) stating that as of the date of such certificate (i) all the conditions to the payment of such Installment and each prior Installment have been satisfied, (ii) all representations and warranties of the Managing Member contained in this Agreement are true and correct and the Managing Member is not in default of any of its duties and obligations set forth in this Agreement, (iii) the Apartment Complex is In Balance, (iii) no event has occurred which suspends or terminates the obligations of the Investment Member to pay Installments under this Agreement which has not been cured as herein provided, and (iv) no event has occurred which, with the giving of notice, would oblige the Managing Member to repurchase the Interests of the Investment Member pursuant to Section 5.2(a). Except as provided in the final sentence of this Section 5.1(b), acceptance by the Company of any Installment shall constitute a confirmation that, as of the date of payment, all such conditions are satisfied and all such representations and warranties are true and correct. The obligation of the Investment Member to pay the First Installment is also conditioned upon delivery by the Managing Member to the Investment Member of (x) a legal opinion of independent counsel to the Company, the Managing Member, the Developer and the Guarantors, which opinion(s) must be satisfactory to the Investment Member as to form, content and identity of counsel and (y) a photocopy of a binding commitment, in form and substance satisfactory to the Special Member, to issue the Title Policy and any endorsements thereto in form and substance reasonably satisfactory to the Special Member. In no event shall any Installment become due until all of the conditions for all of the Installments listed prior to the Installment in question in Section 5.1(a) shall have been satisfied and all of such prior Installments shall have become due. Notwithstanding the foregoing, however, if at any time prior to the date when an Installment becomes due and payable, the Company has an Operating Deficit which the Managing Member would be required to fund pursuant to Section 6.10 as a result of which the Payment Certificate cannot be delivered, then, provided that all other conditions to the Installment in question are met, the Investment Member may, at its option, waive the requirement of the delivery of the Payment Certificate or any other condition with respect to part or all of such Installment and pay such part or all of such Installment, provided that the proceeds of the amount so paid are used by the Company to fully fund such Operating Deficit; provided, however, that if the proceeds of such amount so paid are designated in Section 6.12 to be used to pay fee(s), then such proceeds shall be utilized to pay such fee(s) and the recipient(s) thereof shall be required to, and hereby agree to, utilize the proceeds of such fee(s) to fund such Operating Deficit, in which case the Investment Member is hereby authorized to directly fund such Operating Deficit, with the funds so applied being deemed to have been paid as aforesaid.

(c) The Payment Certificate for each Installment shall be dated and delivered not less than ten (10) nor more than thirty (30) days prior to the due date for such Installment.

(d) If, as of the date when an Installment would otherwise be due, any statement required to be made in the Payment Certificate for such Installment cannot be truthfully made, the Managing Member shall notify the Investment Member of the reason why such statement would be untrue if made, and the Investment Member shall not be required to pay such
Installment; provided, however, that if (i) any such statement can subsequently be truthfully made and (ii) the Investment Member shall not have irrevocably lost, in the good faith judgment of the Special Member, any material tax or other benefits hereunder (other than tax benefits for which the Investment Member has been fully compensated pursuant to the provisions of paragraphs (e) and (f) of this Section 5.1), then the Investment Member shall pay such Installment to the Company thirty (30) days after delivery by the Managing Member to the Investment Member of the Payment Certificate together with an explanation of the manner in which each such statement had become true.

(e) In the event that as of or any time prior to State Designation (the “Initial Adjustment Date”) or as a result of a subsequent audit, the Investment Member shall receive a written certification of the Auditors indicating that the aggregate Actual Credit during the Credit Period will be less than the aggregate Projected Credit during the Credit Period, then (i) the next succeeding Installments of the Capital Contributions of the Investment Member shall be reduced by an amount equal to the product of (X) the difference between (1) the aggregate Projected Credit during the Credit Period and (2) the aggregate Actual Credit during the Credit Period and (Y) $0.925 as to each dollar of Tax Credit, and (ii) the Projected Credit for each Fiscal Year shall thereafter be redefined to mean the Actual Credit, as so determined (the “Revised Projected Credit”). Any such reduction pursuant to this Section 5.1(e) shall be made first to the Installment, if any, next due to be paid by the Investment Member, and any balance of such amount payable by the Managing Member in excess of the amount of such Installment shall be applied to succeeding Installments, if any, provided that if the amount of any such reductions exceeds the sum of the remaining Installments, if any, then an amount equal to the amount of such excess shall be paid by the Managing Member to the Company as a Capital Contribution and immediately distributed to the Investment Member promptly after demand is made therefor (or, to the extent such Managing Member Capital Contribution would in the opinion of counsel to the Investment Member cause tax benefits intended for the Investment Member to be lost or reallocated to another Member, then payments due from the Managing Member shall be made, on an After-Tax Basis, directly to the Investment Member, as a payment of damages for breach of warranty), regardless of the reason for the occurrence of such event (unless such reduction was caused by an act or omission of the Investment Member or its Affiliates, in which event no such reduction or payment shall be required). No reduction of any Installment pursuant to this Section 5.1(e) shall be deemed to be a Capital Contribution by the Managing Member to the Company. No adjustment pursuant to this Section 5.1(e) shall be due if solely attributable to the inability of the Investment Member or its constituent partners to be capable of utilizing the full amount of the Actual Credit.

(f) If for any reason, including without limitation, a Recapture Event, with respect to any Fiscal Year (except to the extent already accounted for in Section 5.1(e) above) all or a portion of which occurs before or during the Compliance Period, the Actual Credit is or was less than the Projected Credit (or the Revised Projected Credit, if applicable) for such Fiscal Year (a “Reduction Year”), then the Managing Member shall pay to the Investment Member the Reduction Amount. The Reduction Amount shall be equal to the sum of (A) the excess of the Projected Credit (or the Revised Projected Credit, if applicable) for such Fiscal Year over the Actual Credit for such Fiscal Year multiplied by $0.925 (provided that in the event a Reduction Amount is due for 2019 and/or 2020 and any of the Projected Credit for such year(s) will be allocable to the Investment Member in 2029 and/or 2030, respectively, then for such Reduction
Year(s) only $0.70 shall be substituted for $0.925 and, with respect to 2019 only, $77,375 shall be substituted for the Projected Credit) as to each dollar of Tax Credit, plus (B) the Recapture Amount as determined pursuant to Section 10.6 and, to the extent not already accounted for, any interest or penalties payable by the limited partners of the Investment Member (or the limited partners of any member of the Investment Member) as a result of such shortfall or Recapture Event, assuming that each limited partner of the Investment Member (or limited partner of any member of the Investment Member) used all of the Tax Credits allocated to it in the Fiscal Year of allocation. The Auditors shall make their determination of the amount of the Actual Credit with respect to each Reduction Year within thirty (30) days following the end of such Fiscal Year, provided that, if it is known at the time of an event or circumstance causing a Reduction Year that any or all of the remaining years in the Credit Period also will be Reduction Years as a result of such event or circumstance, then any Reduction Amount calculable for such future year(s) shall be paid at the time of the first such Reduction Year. The Investment Member shall be eligible to be paid a Reduction Amount as hereinabove described with respect to each Reduction Year. Any Reduction Amount shall first be applied to the Installment next due to be paid by the Investment Member, with any portion of such Reduction Amount in excess of the amount of such Installment then being applied to succeeding Installments, provided that if no further Installments remain to be paid or if the Reduction Amount shall exceed the sum of the amounts of the remaining Installments, then the entire Reduction Amount or the balance of the Reduction Amount, as the case may be, shall be paid by the Managing Member to the Company as a Capital Contribution and immediately distributed to the Investment Member promptly after demand is made therefor (or, to the extent such Managing Member Capital Contribution would in the opinion of counsel to the Investment Member cause tax benefits intended for the Investment Member to be lost or reallocated to another Member, then payments due from the Managing Member shall be made, on an After-Tax Basis, directly to the Investment Member, as a payment of damages for breach of warranty), regardless of the reason for the occurrence of such event (unless such reduction was caused by an act or omission of the Investment Member or its Affiliates, in which event no Reduction Amount shall be payable). No reduction of any Installment pursuant to this Section 5.1(f) shall be deemed to be a Capital Contribution to the Company. No adjustment pursuant to this Section 5.1(f) shall be due if solely attributable to the inability of the Investment Member or its constituent partners to be capable of utilizing the full amount of the Actual Credit.

(g) In the event that the Investment Member shall receive a written certification of the Auditors indicating that the aggregate Actual Credit during the Credit Period will be greater than the aggregate Projected Credit during the Credit Period (an “Upward Basis Adjuster”), then the final Installment of the Capital Contributions of the Investment Member shall be increased by an amount (up to a maximum amount of $1,113,959 inclusive of any Upward Timing Amount) (the “Investment Increased Basis Amount”) equal to the product of (X) the difference between (1) the aggregate Actual Credit during the Credit Period as certified by the Auditors and (2) the aggregate Projected Credit during the Credit Period and (Y) the then prevailing market price for Tax Credits determined by the Investment Member in its sole and absolute discretion, and the Projected Credit for each Fiscal Year shall thereafter be redefined to mean the Revised Projected Credit, provided, however, that the provisions of this Section 5.1(g) shall not apply in the event that the Investment Member does not have sufficient funds to make the additional Capital Contribution and, after a diligent good faith effort, the Investment Member cannot cause any of its Affiliates to make such additional Capital Contribution. Additional Capital Contributions
made pursuant to this Section 5.1(g) shall be applied first to the payment of the Development Fee if so required by the Special Member in its reasonable discretion. If the Investment Member elects not to increase the amount of its Capital Contribution by the full amount of the Investment Increased Basis Amount, in such event, the Managing Member’s share of the Profits and Loss (and, correspondingly, depreciation and Tax Credits) will be increased, and the Investment Member’s share decreased, such that the Investment Member will be entitled to receive allocations of Tax Credits equal to the Projected Tax Credits plus the Tax Credits used in the calculation of the actual Investment Increased Basis Amount. The Members agree to amend this Agreement to reflect any increase in the Investment Member’s Capital Contribution or increase in the Managing Member’s share of Profits and Losses (and, correspondingly, depreciation and Tax Credits), as the case may be.

(h) In the event that, as a result of accelerated lease-up, the Actual Credit for 2019 is greater than $77,375 (an “Upward Timing Adjuster”), provided that as a result of such Upward Timing Adjuster, no Tax Credits are caused to be allocated to the Investment Member over the 15-year Compliance Period instead of the 10-year Credit Period, then the Capital Contribution of the Investment Member shall be increased by an amount (the “Upward Timing Amount”) equal to the product of (A) the amount by which the Actual Credit for 2019 exceeds $77,375 as certified by the Auditors and (B) $0.25, payable on the later of (i) the due date of the Investment Member’s Sixth Installment and (ii) receipt by the Investment Member of the Company’s filed federal tax return for 2019, provided, however, that in no event will the Investment Member be obligated to pay greater than $50,000 for the Upward Timing Amount. Notwithstanding the foregoing, the Investment Member may in its sole discretion contribute an Upward Timing Amount in excess of $50,000 in the event that the Investment Member or its partners have sufficient funds to make the additional Capital Contribution. Additional Capital Contributions made pursuant to this Section 5.1(h) shall be applied first to the payment of the Development Fee if so required by the Special Member in its reasonable discretion.

(i) First Mortgage Lender Provisions

(i) The Investment Member is hereby instructed and agrees that it will deposit the full amount of the First Installment, the Second Installment, the Third Installment and the Fourth Installment of the Investment Member’s Capital Contribution (less all amounts approved as reimbursement for Development Costs on the Admission Date) when paid in accordance with Article V of this Agreement to the Capital Contribution Account, provided however, that such deposit by the Investment Member shall be made for administrative convenience purposes only and such payments shall be deemed to be a payment of the Capital Contribution of the Investment Member to the Company and a subsequent deposit of these amounts by the Company with the First Mortgage Lender. The Managing Member hereby consents to such payment instruction.

(ii) The Special Member will give the First Mortgage Lender written notice during the term of the First Mortgage Loan of any alleged default under this Agreement or any related document that would give the Investment Member a right to withhold, delay or reduce the amount of any of its Capital Contributions and a period of thirty (30) days from the date of such notice to cure such default, during which period no Non-
Managing Member shall exercise any remedy because of such default other than delaying payment of the Capital Contributions during the continuance of such default.

(iii) The Members agree that, until the earlier of (i) the date that all of the Capital Contributions of the Investment Member shall have been funded and (ii) the date the First Mortgage Loan is paid in full, the Members shall not amend this Agreement without the written approval of the First Mortgage Lender, which approval shall not be unreasonably withheld, conditioned or delayed, in any manner that shall have the effect of reducing the amount of Capital Contributions or deferring payment thereof under Section 5.1 of this Agreement. Any amendment to this Agreement which is in violation of the terms of this Section 5.1(i) shall not be effective.

(iv) This Section 5.1(i) is for the benefit of the First Mortgage Lender and, prior to the conversion of the First Mortgage Loan to its permanent phase, may not be amended or terminated without the written consent of the First Mortgage Lender.

5.2 Return of Capital Contributions

(a) Failure to Achieve Development and/or Tax Credit Benchmarks and Standards. Upon the occurrence of any of the events (a “Repurchase Event”) listed below in this Section 5.2(a), within five (5) days of the occurrence thereof, the Managing Member shall send to the Investment Member notice of such event and of the Managing Member’s obligation to repurchase the Interests of the Investment Member by paying to the Investment Member an amount in cash (the “Repurchase Amount”) equal to each such Member’s Invested Amount minus an amount equal to the amount of Tax Credits previously received by the Investment Member and not subject to recapture (provided, however, that, unless the Investment Member receives a written notice from the IRS prior to the date the Repurchase Amount is due as to whether any of the Tax Credits are to be recaptured, then the determination of whether such previously received Tax Credits are subject to recapture shall be made in the reasonable discretion of the Investment Member based on its assessment of whether there is a reasonable likelihood that the Apartment Complex will be continued as affordable housing for the remainder of the Compliance Period), plus the outstanding principal and accrued interest in respect of any loans made by the Non-Managing Members to the Company and the amount of any third-party costs, including, without limitation, attorney’s fees incurred by or on behalf of such Member in implementing this Section 5.2(a) in the event the Investment Member requires such a repurchase plus interest thereon at the AFR commencing on the fifth (5th) day after delivery of the notice referred to in the next sentence. If the Investment Member elects to require a repurchase of its Interest and the payment to it of an amount equal to its Repurchase Amount, it shall send notice thereof to the Company within thirty (30) days after the mailing date of the Managing Member’s notice, or at any time after the occurrence of any of the foregoing if the Managing Member shall not have sent a notice thereof, and the Managing Member shall within ten (10) days after the Company receives any such notice from a Member requesting the purchase of its Interest repurchase the Interest of such Member by paying to such Member an amount equal to its Repurchase Amount. If funds are insufficient, the Interest of the Investment Member shall be purchased first, then the Special Member Interest shall be purchased. Upon the payment of the Repurchase Amount to the Investment Member and the Special Member such Member shall withdraw as members of the Company. If, following receipt of the Managing Member’s notice,
any Member fails to send notice to the Managing Member by the end of such thirty (30)-day period requesting the Managing Member to purchase its Interest, such Member, as the case may be, shall be deemed to have waived its right to cause the Managing Member to purchase its Interest as a result of the event described in the Managing Member’s notice; provided, however, such deemed waiver shall not be presumed unless the Managing Member shall have first sent a second notice to such Member or otherwise confirmed that the first notice was timely received by such Member. No such waiver, however, shall affect the right of the Investment Member to cause the Managing Member to purchase its Interest upon the occurrence of any other event described in this Section 5.2(a), or upon any subsequent occurrence of the event described in the Managing Member’s notice. The Repurchase Events are as follows:

(i) each of the buildings in the Apartment Complex shall not have been placed in service by the later of (a) December 31, 2019, or (b) the date required by the Code and the Credit Agency to preserve the Tax Credits for purposes of satisfying the requirements of Section 42(h)(1)(E)(i) of the Code; or

(ii) by April 1, 2020, the Completion Date shall not have occurred; or

(iii) construction of the Apartment Complex or, prior to Rental Achievement, operation thereof shall have been enjoined by a final order (from which no further appeals are possible) of a court having jurisdiction and such injunction shall continue for a period of ninety (90) days; or

(iv) Permanent Mortgage Commencement shall not have been achieved prior to the date that causes a default under the First Mortgage Loan Documents; or

(v) if at any time it shall be determined by the Service or by the Tax Accountants that a Carryover Certification could not be issued or was issued in error; or

(vi) State Designation shall not have occurred by June 15, 2020 (or any later date fixed by the Managing Member with the Consent of the Investment Member); or

(vii) if by the date which is twelve (12) months following the Completion Date, Rental Achievement shall not have been achieved; or

(viii) the Company shall fail to meet the Minimum Set-Aside Test or the Rent Restriction Test by the close of the first year of the Credit Period and/or fails to continue to meet either of such tests or any other tenant set-asides required by the Credit Agency at any time during the sixty (60)-month period commencing on such date; or

(ix) (A) foreclosure proceedings shall have commenced under any Mortgage and such proceedings shall not have been dismissed within thirty (30) days, provided however that, after Rental Achievement, this clause (A) shall continue to be effective only if the Managing Member is in default of its obligations under Section 5.1(e), 5.1(f) or 6.10, (B) any of the commitments of a Lender to provide a Mortgage Loan and/or any subsidy financing shall be terminated or withdrawn and not reinstated or replaced within sixty (60) days with terms at least as favorable to the Company or terms for which the Consent of the Investment Member and any Requisite Approvals shall have been
obtained, or (C) the First Mortgage Lender, acting in good faith and in accordance with the provisions of the First Mortgage Loan Documents, shall have irrevocably refused to make any further advances under the First Mortgage Loan Documents and such decision shall not have been reversed or the First Mortgage Lender replaced within thirty (30) days; or

(x) at any time the Managing Member fails to advance Subordinated Loans and such failure continues for thirty (30) days; or

(xi) prior to Rental Achievement, any action is commenced to foreclose any mechanics, or any other lien (other than the lien of a Mortgage) against the Apartment Complex and such action has not within thirty (30) days been either bonded against in such a manner as to preclude the holder of such lien from having any recourse to the Apartment Complex or to the Company for payment of any debt secured thereby, or affirmatively insured against by the title insurance policy or an endorsement thereto issued to the Company by a reputable title insurance company (which insurance company will not have indemnity from or recourse against Company assets by reason of any loss it may suffer by reason of such insurance) in an amount satisfactory to the Investment Member; or

(xii) a casualty occurs resulting in substantial destruction of all or a portion of the Apartment Complex, and the insurance proceeds (if any) are insufficient to restore the Apartment Complex or the Apartment Complex is not so restored within twenty-four (24) months following such casualty; or

(xiii) at any time prior to Rental Achievement, an action is commenced to abandon or permanently enjoin the construction of the Apartment Complex; or

(xiv) a final determination by the Tax Accountants that the Investment Member shall be allocated less than 70% of the Projected Credit during the Credit Period; provided however that, after Rental Achievement, this subsection (xiv) shall continue to be effective only if the Managing Member is in default of its obligations under Section 5.1 or 6.10.

(b) Lender/Agency Disapproval. If any Agency or Lender shall disapprove, or fail to give any required approval of, the Investment Member and/or the Special Member as a Non-Managing Member hereunder within one hundred eighty (180) days of the Admission Date, then the Member being disapproved or not approved shall, effective as of such time or such later time as may be elected by the Member being disapproved or not approved as may be specified by such Agency or Lender in its disapproval, at the option of the Member being disapproved or not approved (if not directed by such Agency or Lender to withdraw), cease to be a Non-Managing Member. The Managing Member shall, within ten (10) days of the effective date of such cessation, pay to the Member being disapproved or not approved an amount equal to its paid-in Capital Contributions and the outstanding balance of any loans made by the Non-Managing Members to the Company plus the amount of any third party costs, including, but not limited to attorney’s fees, incurred by or on behalf of such Member in implementing this Section 5.2(b).
(c) Substitution and Indemnification. Upon the receipt by the Investment Member and/or the Special Member of the amount due to it pursuant to either Section 5.2(a) or Section 5.2(b), the Interest of such Member shall terminate, and the Managing Member shall indemnify and hold harmless such Member from and against any Adverse Consequences to which such Member (as a result of its participation hereunder) may be subject, provided that such Adverse Consequences do not result from such Member’s acts or omissions.

(d) Waiver of Repurchase Right. Each of the Investment Member and the Special Member shall have the right to irrevocably waive its right to have its Interest repurchased pursuant to any clause or clauses of Section 5.2(a), or any portion thereof, at any time during which any of such rights shall be in effect. Such a waiver shall be exercised by delivery to the Managing Member of a written notice stating that the rights being waived pursuant to any specified clause or clauses of Section 5.2(a), or any specified portion thereof, are thereby waived for a specified period of time.

(e) Additional Managing Member. If the Managing Member shall fail to make on the due date therefor any payment required under Section 5.2(a) or Section 5.2(b), time being of the essence, at any time thereafter the Special Member shall have the option, exercisable in its sole discretion, to cause itself or its designee to be admitted as an additional Managing Member, receiving from the existing Managing Member, in consideration of the payment of ten dollars ($10.00), an interest in the Profits, Losses, Tax Credits and distributions of the Company sufficient in the opinion of counsel to the Special Member to cause the Special Member to become a Managing Member of the Company, with the Special Member retaining its status as such and its economic interest in the Company as the Special Member (or its designee as an additional Managing Member). If the Special Member exercises the option described in this Section 5.2(e), each of the other Managing Members hereby agrees that all of its rights and powers hereunder as a Managing Member shall automatically be irrevocably delegated to the Special Member pursuant to Section 6.13 without the necessity of any further action by any Member. Each Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to take any action and to execute, deliver and file or record any and all documents and instruments on behalf of such Member and the Company as the Special Member may deem necessary or appropriate in order to effectuate the provisions of this Section 5.2(e) and to allow the additional Managing Member to manage the business of the Company. The admission of the Special Member or its designee as an additional Managing Member shall not relieve any other Managing Member of any of its economic obligations hereunder, and each other Managing Member shall fully indemnify and hold harmless the additional Managing Member on an After-Tax Basis from and against any and all Adverse Consequences sustained by such additional Managing Member in connection with its status as a Managing Member (other than Adverse Consequences arising solely from the gross negligence or willful misconduct of such additional Managing Member) for so long as such additional Managing Member remains a Managing Member of the Company. Any such additional Managing Member shall withdraw (notwithstanding the provisions of Article VII), as such and remain only as the Special Member upon the payment of all amounts due under Sections 5.2(a) and 5.2(b).
ARTICLE VI
Rights, Powers and Duties of Managing Member

6.1 Authorized Acts

Subject to the provisions of Section 6.2, Section 6.3, Section 6.15 and all other provisions of this Agreement, the Managing Member for, in the name and on behalf of the Company, is hereby authorized, in furtherance of the purposes of the Company:

(i) to acquire by purchase, lease, exchange or otherwise any real or personal property;

(ii) to construct, rehabilitate, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage or lease any real estate and any personal property;

(iii) to borrow money and issue evidences of indebtedness and to secure the same by mortgage, pledge or other lien on the Apartment Complex or any other assets of the Company;

(iv) to execute the Mortgage Loan Documents and the other Project Documents and all such other documents as the Managing Member deems to be necessary or appropriate in connection with the acquisition, development, construction and financing of the Apartment Complex;

(v) subject to Section 3.2, to prepay in whole or in part, refinance or modify any Mortgage Loan or other financing affecting the Apartment Complex;

(vi) to employ the Management Agent (which may be an Affiliate of the Managing Member) and, subject to the provisions of Article XI, to pay reasonable compensation for its services;

(vii) to employ its Affiliates to perform services for, or sell goods to, the Company provided that (except with respect to any contract specifically authorized by this Agreement) the terms of any such transaction with an Affiliate shall not be less favorable to the Company than would be arrived at by unaffiliated parties dealing at arms’ length;

(viii) to execute contracts with any Agency, the State or any subdivision or agency thereof or any other Governmental Authority to make apartments or tenants in the Apartment Complex eligible for any public-subsidy program;

(ix) to execute leases of some or all of the apartment units of the Apartment Complex to individuals and/or to a public housing authority and/or to a non-profit corporation, cooperative or other non-profit Entity;

(x) to employ or engage such engineers, architects, technicians, accountants, attorneys and other Persons, as may be necessary, convenient or incidental to the accomplishment of the purposes of the Company;
(xi) to enter into any kind of activity and to perform and carry out contracts of any kind which may be lawfully carried on or performed by a limited liability company and to file all certificates and documents which may be required under the laws of the State.

### 6.2 Restrictions on Authority

(a) Notwithstanding any other Section of this Agreement, neither the Managing Member nor the Class B Special Member shall have the authority to perform any act in violation of the Act, any other applicable law, Agency or other government regulations, the requirements of any Lender, or the Project Documents. In the event of any conflict between the terms of this Article VI and any applicable Regulations or requirements of any Lender, the terms of such Regulations or the requirements of such Lender, as the case may be, shall govern. Subject to the provisions of Section 6.2(b), neither the Managing Member, acting in its capacity as Managing Member, either on its own behalf or on behalf of the Company, nor the Class B Special Member shall have the authority, without the Consent of the Special Member (which consent shall not be unreasonably withheld or delayed as to clauses (viii), (x), and (xiii)):

(i) to have unsecured borrowings in excess of ten thousand dollars ($10,000.00) in the aggregate at any one time outstanding, except borrowings constituting Subordinated Loans;

(ii) to borrow from the Company or commingle Company funds with the funds of any other Person;

(iii) following the Completion Date, to construct any new or replacement capital improvements on the Apartment Complex which substantially alter the character or use of the Apartment Complex or which cost in excess of ten thousand dollars ($10,000.00) in a single Fiscal Year, except (x) replacements and remodeling in the ordinary course of business or under emergency conditions or (y) construction paid for from insurance proceeds;

(iv) to acquire any real property in addition to the Apartment Complex;

(v) to borrow the Permanent Loan on terms other than the Permanent Loan Conditions or to increase, decrease or modify the terms of or refinance any Mortgage Loan;

(vi) to rent apartments in the Apartment Complex such that the Apartment Complex would not meet the requirements of the Agreed-Upon Set-Aside, the Minimum Set-Aside Test or the Rent Restriction Test;

(vii) to sell, exchange or otherwise convey or transfer the Apartment Complex or substantially all the assets of the Company;

(viii) to amend or terminate any Material Agreement;

(ix) to permit an Event of Bankruptcy with respect to the Company;
to execute contracts with any Agency, the State or any subdivision or agency thereof or any other Governmental Authority to make apartments or tenants in the Apartment Complex eligible for any public-subsidy program (other than with respect to the 811 Units); 

(xi) to amend any construction or rehabilitation contract except as expressly provided in subsection (xiv) below; 

(xii) to pledge or assign any of the Capital Contributions of the Investment Member or the proceeds thereof (except to the extent required by the terms of the First Mortgage Loan Documents and agreed to in writing by the Special Member); 

(xiii) **to amend or terminate any Project Document**; 

(xiv) to approve any material changes to the Plans and Specifications for the Apartment Complex or make any changes which would result, either individually or in the aggregate, in an overall development cost increase or decrease in excess of $100,000; 

(xv) to permit the merger, consolidation, acquisition, termination or dissolution of the Company; 

(xvi) to do any act required to be approved or ratified by all Non-Managing Members under the Act; 

(xvii) to admit any additional Member to the Company; 

(xviii) to make any discretionary capital calls; 

(xix) to confess any judgment on behalf of the Company; 

(xx) to cause the Company to institute, settle, compromise, mediate or otherwise relinquish any claim (actual or prospective), or to release, waive or diminish any material Company rights in any litigation or arbitration matter involving a claim in excess of $15,000; 

(xxi) to change the nature of the Company’s business; 

(xxii) to grant any approval or consent on behalf of the Company under the Project Documents that would have a material adverse effect on the Company or the Non-Managing Members; 

(xxiii) to make any decision not to repair or rebuild in the case of material damage to or condemnation of the Apartment Complex; 

(xxiv) to do any act which is in contravention or inconsistent with this Agreement, the Extended Use Agreement or the Project Documents;
(xxv) to make, amend or revoke any tax election required of or permitted to be made by the Company under the Code, including, without limitation, any election under Section 42 or Section 754 of the Code. In this regard, the Managing Member shall make any elections required or permitted under Section 42 of the Code requested in writing by the Investment Member;

(xxvi) to change any accounting method or practice of the Company or terminate or replace the Auditors;

(xxvii) to take any action (or fail to take any action) which would cause or result in a breach of any of the representations, warranties or covenants of the Managing Member set forth in this Agreement, including, without limitation, those set forth in Section 6.6;

(xxviii) to deposit any Company funds in any bank, savings and loan or other financial institution whose accounts are not fully insured by the Federal Deposit Insurance Corporation;

(xxix) to make any single expenditure of more than $10,000 or any total annual expenditures greater than $25,000 which are not consistent with operating budget provided to the Special Member pursuant to Article XII of this Agreement, or make any material modification to such development budget or any operating budget;

( xxx) to hire any employees for any purpose;

( xxxi) to receive or allow any rebate or give-up or participate in any reciprocal business arrangements which would circumvent the provisions hereof; or

( xxxii) execute any Deferred Development Fee Note.

(b) In the event that any Managing Member violates any provision of Section 6.2(a), the Special Member in its sole discretion and without prejudice to its rights under Sections 4.5(b) and 7.6(a), may cause itself or its designee to be admitted as an additional Managing Member without any further action by any other Member. Upon any such admission of an additional Managing Member, each existing Managing Member shall be deemed to have assigned proportionally to the additional Managing Member, automatically and without further action, such portion of its Company Interest so that the additional Managing Member shall receive an interest in the Profits, Losses, Tax Credits and distributions of the Company sufficient in the opinion of counsel to the Special Member to cause such additional Managing Member to be a Member of the Company, in consideration of one dollar ($1.00) and any other consideration which may be agreed upon. An additional Managing Member so admitted shall automatically become the Controlling Managing Member and shall be irrevocably delegated all of the power and authority of all of the Managing Member pursuant to Section 6.13. Any such additional Managing Member shall have the right to withdraw as a Managing Member at any time, leaving the prior Managing Member once again as the only Managing Member, the provisions of Article VII notwithstanding. Each Member hereby grants to the Special Member a special power of attorney, irrevocable to the extent permitted by law and coupled with an interest, to amend this Agreement and to do anything else which, in view of the Special Member, may be necessary or
appropriate to accomplish the purposes of this Section 6.2(b) or to enable any additional Managing Member admitted pursuant to this Section 6.2(b) to manage the business of the Company. The admission of an additional Managing Member shall not relieve any other Managing Member of any of its economic obligations hereunder, and each other Managing Member on an After-Tax Basis shall fully indemnify and hold harmless the additional Managing Member from and against any and all Adverse Consequences sustained by the additional Managing Member in connection with its status as a Managing Member (other than Adverse Consequences arising solely from the gross negligence or willful misconduct of such additional Managing Member).

6.3 Personal Services; Other Business Ventures

No Managing Member or Affiliate thereof shall receive any salary or other direct or indirect compensation for any services or goods provided in connection with the Company or the Apartment Complex, except as may be specifically provided in Section 6.12, Section 6.15 and Article XI or as to which the Consent of the Special Member shall have been obtained to the precise terms thereof prior to the commencement of such services or the provision of such goods. Any Member may engage independently or with others in other business ventures of every nature and description, including the ownership, operation, management, syndication and development of real estate; neither the Company nor any other Member shall have any rights in and to such independent ventures or the income or profits derived therefrom.

6.4 Business Management and Control

(a) Subject to the provisions of this Agreement, the Managing Member shall have the exclusive right to control the business of the Company. If at any time there is more than one Managing Member, the powers and duties of the Managing Members hereunder shall be exercised in the first instance by a Managing Member who, subject to the terms and provisions of this Agreement, shall manage the business and affairs of the Company (the “Controlling Managing Member”). The initial Controlling Managing Member shall be O-SDA; if it is unwilling or unable to serve in such capacity or shall cease to be a Managing Member, the remaining Managing Members may from time to time designate a new Controlling Managing Member. The Controlling Managing Member may bind the Company by executing and delivering, in the name and on behalf of the Company, any documents which this Agreement authorizes the Managing Members to execute hereunder without the requirement that any other Managing Member execute such documents. If for any reason no designation is in effect, the powers of the Managing Member shall be exercised by a majority in interest of the Managing Members. Any action required or permitted to be taken by a corporate Managing Member hereunder may be taken by such of its proper officers or agents as it shall validly designate for such purpose.

(b) Subject to Section 6.2 and the other provisions of this Agreement, the Managing Member shall have control over the business of the Company and shall have all rights, powers and authority conferred by law as necessary, advisable or consistent in connection therewith. Without limiting the generality of the foregoing, the Managing Member shall have the right, power and authority to execute any documents relating to the acquisition, financing, construction, operation and sale of all or any portion of the Apartment Complex with the prior
approval of the other Managing Members, if any. The Managing Member shall be responsible for administering any First Mortgage Loan draw requests for the development of the Apartment Complex.

(c) Neither the Investment Member nor the Special Member shall have any right to take part in the management or control of the business of the Company or to transact any business in the name of the Company. No provision of this Agreement which makes the Consent of the Investment Member or the Consent of the Special Member a condition for the effectiveness of an action taken by the Managing Member is intended, and no such provisions shall be construed, to give the Investment Member or the Special Member, as the case may be, any participation in the control of the Company business. Each of the Special Member and the Investment Member hereby consents to the exercise by the Managing Member of the powers conferred on it by law and this Agreement, and the Managing Member agrees to exercise control of the business of the Company only in accordance with the provisions of this Agreement. Notwithstanding the foregoing, in no event may the provisions of this Section 6.4 be invoked by any Managing Member or by any other Person as a defense against or as an impediment to the ability of either the Investment Member or the Special Member to take any action hereunder.

6.5 Duties and Obligations

(a) The Managing Member shall manage the affairs of the Company to the best of its ability, shall use its best efforts to carry out the purpose of the Company, and shall devote to the Company such time as may be necessary for the proper performance of its duties and the business of the Company. The Managing Member shall promptly take all action which may be necessary or appropriate for the proper development, construction, maintenance and operation of the Apartment Complex in accordance with the provisions of this Agreement, the Project Documents and any applicable laws and Regulations. The Managing Member is responsible for the management and operation of the Company, including the oversight of the rent-up and operational stages of the Apartment Complex.

(b) Subject to the provisions of Section 6.5(g), the Managing Member shall use its diligent good faith efforts to cause the Company to generate Cash Flow for distribution to the Members at the maximum realizable level in view of (i) any applicable Regulations, (ii) the Minimum Set-Aside Test, (iii) the Rent Restriction Test and (iv) the Projected Rents, and, if necessary, the Managing Member also shall use its best efforts to obtain approvals and implementation of appropriate adjustments in the rental schedule of the Apartment Complex.

(c) The Managing Member shall cause the Company to obtain and keep in force, during the term of the Company, insurance policies in accordance with the Insurance Requirements set forth on Exhibit D hereto. Throughout the term of the Company, the Managing Member shall provide copies of all such policies (or binders) to the Investment Member within thirty (30) days after their receipt thereof. The Managing Member shall cause the applicable insurer to name the Investment Member as an “additional insured” on each Company insurance policy. Each Company insurance policy shall include a provision requiring the insurance company to notify the Investment Member in writing no less than thirty (30) days prior to any cancellation, non-renewal or material change in the terms and conditions of coverage. The Managing Member shall review regularly all of the Company and Apartment
Complex insurance coverage to insure that it is adequate and continuing. In particular, the Managing Member shall review at least annually the insurance coverage required by this Section 6.5(c) to insure that it is in an amount at least equal to the then current full replacement value of the Apartment Complex.

Without limitation of the foregoing, the Managing Member shall deliver to the Investment Member on or before the Admission Date one or more certificates or memoranda of insurance, in form reasonably acceptable to the Investment Member, evidencing, (i) the existence of the insurance policies and coverages specified on Exhibit D, (ii) that the Company and its Members (including the Investment Member) are named insured on such policies, and (iii) that such insurance policies will not be cancelled by the insurers except within thirty (30) days’ written notice to the Investment Member. From time to time following the Admission Date, the Managing Member shall deliver to the Investment Member such further certificates or memoranda of insurance as the Investment Member may reasonably require to confirm that such insurance and notice provisions with respect to insurance under this Agreement have been complied with.

(d) If at any time there is more than one Managing Member, the obligations of the Managing Members hereunder shall be the joint and several obligations of each Managing Member. Except as otherwise provided in Sections 4.5(b) and 7.1, such obligations shall survive any Withdrawal of a Managing Member from the Company.

(e) (i) The Managing Member shall on the Completion Date establish and thereafter maintain reasonable reserves (the “Replacement Reserve”) to provide for working capital needs, improvements, replacements and any other contingencies of the Company. At a minimum, the Managing Member shall cause the Company to annually deposit $17,500 from Cash Flow into the Replacement Reserve, which requirement shall be offset against and not be in addition to any similar capital replacement reserve requirement of any Lender; to the extent that Cash Flow (as determined before deduction of such reserve deposit) for any Fiscal Year shall be insufficient to make such deposit in full, the Managing Member shall fund such shortfall from its own funds as a Subordinated Loan. The Managing Member’s obligation to make Subordinated Loans pursuant to this Section 6.5(e)(i) shall be ongoing and shall not be restricted to the Subordinated Loan Period and the Subordinated Loan Cap.

(ii) In addition to the requirements of Section 6.5(e)(i), in order to fund Operating Deficits, the Managing Member (or its designee), shall upon the satisfaction of the conditions to the payment of the Sixth Installment deposit $345,314 (the “Initial Reserve Amount”) (or such larger amount as required by a Lender) into a segregated reserve account for the benefit of the Company (the “Operating Reserve”) to secure the Managing Member’s obligation to fund Operating Deficits. Funds held in the Operating Reserve may be released to pay operating expenses only after Rental Achievement, subject to Section 6.10, and with the reasonable approval of the Special Member and, if required, any Lender. The Operating Reserve may be terminated by the Managing Member only after the end of the Compliance Period, and upon such termination, the funds remaining in the Operating Reserve shall be released and distributed as Cash Flow in the order and priority set forth in Section 10.2(a). Any funds utilized from the Operating Reserve to pay Company operating expenses shall not constitute Subordinated Loans or count toward the Subordinated Loan Cap. Upon the utilization of any
amount of such funds from the Operating Reserve, the Managing Member shall deposit Cash Flow into the Operating Reserve in the order and priority set forth in Section 10.2(a) in an amount sufficient to restore the balance of the Operating Reserve to the Initial Reserve Amount.

(f) Each Managing Member shall be bound by the provisions of the Project Documents, and no additional Managing Member shall be admitted if he, she or it has not first agreed to be bound by this Agreement (and assume the obligations of a Managing Member hereunder) and by the Project Documents to the same extent and under the same terms as each of the other Managing Members.

(g) The Managing Member shall take all actions appropriate to ensure that the Investment Member receives the full amount of the Projected Credit, including, without limitation, the rental of apartments to appropriate tenants and the filing of annual certifications as may be required. In this regard, the Managing Member shall, inter alia, cause (i) the Company to satisfy the Agreed-Upon Set-Aside, the Minimum Set-Aside Test, the Rent Restriction Test and all other requirements imposed from time to time under the Code, the Carryover Allocation or otherwise by the Credit Agency with respect to rental levels and occupancy by qualified tenants by the close of the first year of the Credit Period and throughout the Compliance Period so as to permit the Company to be entitled to the maximum available Tax Credit (ii) the Company to comply with all Tax Credit monitoring procedures of the State, (iii) all dwelling units in the Apartment Complex to be leased for initial periods of not less than six months to individuals, as to the Low Income Units, satisfying the Rent Restriction Test, (iv) the Company to make all appropriate Tax Credit elections in a timely fashion, and (v) all rental units in the Apartment Complex to be of equal quality with comparable amenities available to low-income tenants on a comparable basis without separate fees.

(h) On or before the Admission Date, the Managing Member shall provide to the Special Member either (i) an appraisal of the Apartment Complex prepared by a competent independent appraiser or (ii) completed RECD Forms 1924-13 (estimate and certificate of actual cost) and 1930-7 (statement of budget, income and expense) or HUD project cost and budget analysis on Form 2264, or any successor RECD or HUD form, any comparable form of a state or other Governmental Authority, including any applicable Credit Agency, setting forth estimates with respect to construction, rehabilitation and mortgage financing costs and initial rental income and operating expense figures for the Apartment Complex.

(i) The Managing Member shall (i) not store or dispose of (except in compliance with all laws, ordinances, and regulations pertaining thereto) any Hazardous Material at the Apartment Complex; (ii) neither directly nor indirectly transport or arrange for the transport of any Hazardous Material to, at or from the Apartment Complex (except in compliance with all laws, ordinances, and regulations pertaining thereto); (iii) provide the Investment Member with written notice (x) upon any Managing Member’s obtaining knowledge of any potential or known release, or threat of release, of any Hazardous Material at or from the Apartment Complex; (y) upon any Managing Member’s receipt of any notice to such effect from any federal, state, or other Governmental Authority; and (z) upon any Managing Member’s obtaining knowledge of any incurrence of any expense or loss by any such government authority in connection with the assessment, containment, or removal of any Hazardous Material for which expense or loss any
Managing Member may be liable or for which expense or loss a lien may be imposed on the Apartment Complex.

(j) The Managing Member shall promptly request in writing of the Permanent Lender that the Permanent Lender cause the Special Member to be named as an “interested party” in the Permanent Loan Documents, so that the Permanent Lender will notify the Special Member of any default under the Permanent Mortgage or the Managing Member shall itself notify the Special Member of any such default.

(k) The Managing Member shall provide the Special Member with a true and accurate copy of each First Mortgage Loan requisition and any supporting documents and information which has been submitted for approval by the First Mortgage Lender (whether submitted before or after the Admission Date).

(l) The Managing Member shall have a fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in its immediate possession or control. The Managing Member shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the Company. No Managing Member shall contract away the fiduciary duty owed at common law to the Non-Managing Members.

(m) The Managing Member shall cause the Company to comply with all of the duties and obligations of the Apartment Complex owner under the Mortgage Loan Documents and shall provide any funds required in excess of available Cash Receipts or Specified Proceeds necessary to comply with such duties and obligations.

(n) The Managing Member shall cause the Company to provide all social services which the Company is obligated to provide in connection with the Apartment Complex, including, without limitation, any such social services described in the Company’s Tax Credit application. In addition to the foregoing, the Managing Member shall take all action necessary to cause the Company to pay all amounts incurred by the Company in connection with the provisions of any such social services.

(o) The Managing Member will cause the payment for the construction of the Apartment Complex to be made in conformity with the requirement of any so-called “Davis-Bacon” or other prevailing wage statutes, if required by any Lender of a Mortgage Loan or any Project Document.

(p) The Managing Member will cause the Company to rent all units so as to maintain at all times the Agreed-Upon Set-Aside and the Minimum Set-Aside.

(q) [Intentionally Deleted].

(r) The Managing Member shall cause the Company to make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code and will cause the Company to use the Alternative Depreciation System (ADS) to the extent required by such election. The Managing Member shall also cause the Company to use Bonus Depreciation to the extent not inconsistent with the foregoing. The Managing Member shall seek the direction
and/or Consent of the Investment Member prior to filing of the Company’s 2018 tax returns or such earlier time as such election is to be made.

(s) The Managing Member shall cause the Company to comply with all requirements under the Section 811 Participation Agreement to ensure that the Section 811 Units, if any, will be available and suitable for occupancy by eligible referrals following the Completion Date.

(t) The Managing Member shall cause the Company to maintain the Section 811 RAC, if entered into by the Company and TDHCA, throughout the Compliance Period.

(u) The Managing Member shall cause the Company to comply with the Regulatory Agreements.

6.6 Representations and Warranties

The Managing Member and the Class B Special Member represent and warrant to the Investment Member and the Special Member as follows:

(a) The Company is a duly organized limited liability company validly existing and in good standing under the laws of the State and has complied with all filing requirements necessary for its existence and to preserve the limited liability of the Investment Member and the Special Member.

(b) No event or proceeding has occurred or is pending or, is to the Best Knowledge of the Managing Member, threatened which would (i) materially adversely affect the Company or its properties, or (ii) materially adversely affect the ability of the Managing Member or any of its Affiliates to perform their respective obligations hereunder or under any other agreement with respect to the Apartment Complex, other than legal proceedings which have been bonded against without recourse to Company assets in such manner as to stay the effect of the proceedings or otherwise have been adequately provided for. This subparagraph shall be deemed to include, without limitation, the following: (w) the occurrence and continuation of a Material Event; (x) legal actions or proceedings before any court, commission, administrative body or other Governmental Authority having jurisdiction over the zoning applicable to the Apartment Complex; (y) labor disputes; and (z) acts of any Governmental Authority.

(c) No default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under this Agreement or under any material provision of the Project Documents, and the Project Documents are in full force and effect.

(d) Except as specifically permitted under Section 3.1, no Member or Related Person bears (or will bear) the Economic Risk of Loss with respect to the Permanent Mortgage Loan. No Managing Member has, either on its own behalf or on behalf of the Company, incurred any financial obligation with respect to the Company prior to the Admission Date, other than as disclosed in writing to the Special Member prior to the Admission Date.

(e) The Apartment Complex will be, is being, or has been constructed in a timely manner in conformity with the Project Documents. There is no violation by the Company or the
Managing Member of any zoning, environmental or similar regulation applicable to the Apartment Complex which could have a material adverse effect thereon, and the Company has complied and will comply with all applicable municipal and other laws, ordinances and regulations relating to such construction and use of the Apartment Complex. All appropriate public utilities, including, but not limited to, water, electricity, gas (if called for in the Plans and Specifications), and sanitary and storm sewers, are or will be available and operating properly for each unit in the Apartment Complex at the time of the initial occupancy of such unit.

(f) The Company owns good and marketable fee simple title to the Apartment Complex and will at all times be considered to be the owner of the Apartment Complex for federal income tax purposes, subject to no material liens, charges or encumbrances other than those which (i) are both permitted by the Project Documents and are noted or excepted in the Title Policy, (ii) do not materially interfere with use of the Apartment Complex (or any part thereof) for its intended purpose or, other than the permitted Mortgages, have a material adverse effect on the value of the Apartment Complex, or (iii) have been bonded or insured against in such a manner as to preclude the holder of such lien or such surety or insurer from having any recourse to the Apartment Complex or the Company for payment of any debt secured thereby, which bond(s) or insurance have been approved by the Lenders.

(g) The Managing Member has provided the Non-Managing Members with true, complete and correct copies of all material correspondence and contracts with, applications to, and allocation certifications, if any, from the Mortgage Lenders concerning the Mortgage Loans. The Mortgage Loan Documents are binding and in full force and effect in accordance with their respective terms.

(h) The Managing Member has provided the Non-Managing Members with true, complete and correct copies of all material correspondence and contracts with, applications to, and allocation certifications, if any, from any Credit Agency concerning the Tax Credits allocated or otherwise available to the Apartment Complex. The Carryover Allocation is binding and in full force and effect in accordance with its terms.

(i) The execution and delivery of all instruments and the performance of all acts heretofore or hereafter made or taken pertaining to the Company or the Apartment Complex by each Affiliate of a Managing Member which is a corporation or limited liability company have been or will be duly authorized by all necessary corporate or other actions, and the consummation of any such transactions with or on behalf of the Company will not constitute a breach or violation of, or a default under, the charter or by-laws of such Affiliate or any agreement by which such Affiliate or any of its properties is bound, nor constitute a violation of any law, administrative regulation or court decree.

(j) Any Managing Member (or partner or member of a Managing Member) which is a corporation or limited liability company (a “Corporation/LLC”) has been duly organized, is validly existing and in good standing under the laws of its state of organization and has all requisite corporate and other power to be a Managing Member and to perform its duties and obligations as contemplated by this Agreement and the Project Documents. Neither the execution and delivery by any Corporation/LLC of this Agreement nor the performance of any of the actions of any Corporation/LLC contemplated hereby has constituted or will constitute a
violation of (a) the articles of incorporation, operating agreement, by-laws and any other organizational documents of such Corporation/LLC, (b) any agreement by which such Corporation/LLC is bound or to which any of its property or assets is subject, or (c) any law, administrative regulation or court decree.

(k) No Event of Bankruptcy has occurred with respect to the Company, any Managing Member, the Developer or any Guarantor.

(l) All accounts of the Company required to be maintained under the terms of the Project Documents, including, but not necessarily limited to, any account for replacement reserves, are currently funded to the levels required by any Agency or Lender.

(m) The Managing Member and Guarantors have and shall at all times maintain a combined net worth which satisfies the Designated Net Worth Requirements.

(n) All anticipated payments and expenses required to be made or incurred in order to complete the construction of the Apartment Complex in conformity with the Project Documents, to fund any reserves hereunder or under any other Project Document required to be funded at or prior to the later of the Admission Date or Rental Achievement, to satisfy all requirements under the Project Documents and to pay the Development Fee and all other fees, have been or will be paid or provided for utilizing only (i) the funds available from the Mortgage Loans, (ii) the Capital Contributions of the Investment Member, (iii) the Capital Contributions of the Managing Member in the amounts set forth on Schedule A as of the Admission Date, (iv) the available net rental income, if any, earned by the Company prior to Rental Achievement (to the extent that it is permitted to be used for such purposes by any Agency or Lender), (v) any Cash Flow generated subsequent to Rental Achievement (to the extent provided in Section 10.2(a)), (vi) any insurance proceeds and (vii) any funds furnished by the Managing Member pursuant to Sections 6.5(e) and 6.11(a).

(o) The aggregate amount of Tax Credit which is expected to be allocated by the Company to the Investment Member is as set forth in the definition of Projected Credit, provided, however, that the Managing Member shall have no liability to the Investment Member or the Special Member for any breach of the representation contained in this paragraph (o) if (but only to the extent that) the adjuster provisions set forth in Sections 5.1(e), (f) and (g) have become operative and all required payments or adjustments have been made thereunder in accordance with the terms thereof.

(p) The Apartment Complex will be, is being or has been constructed and operated in a manner which satisfies Section 42 of the Code and shall continue to satisfy all existing and anticipated restrictions applicable to projects generating Tax Credits.

(q) No Managing Member, Affiliate of a Managing Member or Person for whose conduct any Managing Member is or was responsible has ever: (i) stored or disposed of (except in compliance with all laws, ordinances and regulations pertaining thereto) any Hazardous Material at the Apartment Complex; (ii) directly or indirectly transported, or arranged for the transport of any Hazardous Material to, at or from the Apartment Complex (except in compliance with all laws, ordinances, and regulations pertaining thereto); (iii) caused or was
legally responsible for any release or threat of release of any Hazardous Material at the Apartment Complex; (iv) received notification from any federal, state or other Governmental Authority of (x) any potential, known, or threat of release of any Hazardous Material from the Apartment Complex; or (y) the incurrence of any expense or loss by any such Governmental Authority or by any other Person in connection with the assessment, containment, or removal of any release or threat of release of any Hazardous Material from the Apartment Complex.

(r) To the Best Knowledge of the Managing Member, no Hazardous Material was ever or is now stored on, transported, or disposed of on the land comprising the Apartment Complex, except to the extent any such storage, transport or disposition was at all times in compliance with all laws, ordinances, and regulations pertaining thereto. The Managing Member has provided to the Investment Member a complete copy of a “Phase I” hazardous waste site assessment report for the Apartment Complex, prepared in accordance with ASTM standards.

(s) The Managing Member has fulfilled and will continue to fulfill all of its duties and obligations under Section 6.5.

(t) The Managing Member has completed or will complete on a timely basis all of the Due Diligence Recommendations.

(u) The Company’s basis in the Apartment Complex as of July 1, 2018 was greater than 10% of the Company’s reasonably expected basis in the Apartment Complex as of December 31, 2019, and all conditions set forth in Section 42 of the Code, the Treasury Regulations, Service notices, rulings or releases and any other authorities to the validity of the allocation of tax credit have been or will be satisfied in a timely manner.

(v) To the Managing Member’s Best Knowledge, all consents or approvals of any governmental authority, or any other Person, necessary in connection with the transactions contemplated by this Agreement or necessary to admit the Investment Member to the Company as a Non-Managing Member have been obtained by the Managing Member and as of the Admission Date, the Investment Member is duly admitted as a Non-Managing Member of the Company owning a 99.99% membership interest in the Company free and clear of any and all claims, liens, charges and encumbrances.

(w) The Managing Member and the Company are under no obligation under any federal or state law, rule, or regulation to register the Interests or to take any action in order to comply with any exemption available for the sale of Interests without registration.

(x) None of the loans evidenced by the Mortgages constitutes a “federal grant” within the meaning of Section 42(d)(5)(A) of the Code.

(y) Neither the Apartment Complex nor its operation has been or will be financed at any time during the Compliance Period with an obligation the interest on which is exempt from tax under Section 103 of the Code.

(z) The Company and the Credit Agency have entered or, prior to the end of the first year of the Credit Period, will enter, into the “extended low-income housing commitment”
within the meaning of Section 42(h)(6)(B) of the Code and such commitment shall remain in full force and effect throughout the entire extended use period as defined in Section 42(h)(6)(D) of the Code.

(aa) No portion of the Apartment Complex is or will be treated as “tax exempt use property” as defined in Section 168(h) of the Code.

(bb) The Managing Member properly has elected or prior to the filing deadline for the Company’s first year tax return properly will elect to be an “electing real property trade or business” under Section 163(j)(7) of the Code.

(cc) The Managing Member shall not act in any manner which will cause (i) the Company to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Company to fail to qualify as a limited liability company under the Act, or (iii) the Non-Managing Member to be liable for Company obligations, including, without limitation, the obligations set forth in the Mortgage documents.

(dd) The Managing Member shall not employ any person as an employee of the Company.

(ee) The Managing Member is not presently under any commitment to any real estate broker, rental agent, finder, syndicator or other intermediary with respect to the Apartment Complex or any portion thereof, except for the Management Agreement and other arrangements described in the Project Documents.

(ff) No fact necessary to make the information and statements contained in this Section 6.6 not misleading has been omitted therefrom, and to the Best Knowledge of the Managing Member, no material fact concerning the Apartment Complex, the Tax Credits, the Managing Member, the Company, the Guarantor, or the Developer has been withheld from the Non-Managing Members and no material document has not been delivered to the Non-Managing Members.

6.7 Liability on Mortgages

Neither any Managing Member nor any Related Person shall at any time bear the Economic Risk of Loss for the payment of any portion of any Mortgage Loan, and the Managing Member shall not permit any other Member or any Related Person to bear the Economic Risk of Loss for the payment of any portion of any Mortgage Loan, except as may be expressly permitted pursuant to the provisions of Article III or with the Consent of the Special Member.
6.8 Indemnification of the Managing Member

(a) Except as provided by Article V, no Managing Member or any Affiliate thereof shall have liability to the Company or to any Non-Managing Member for any loss suffered by the Company which arises out of any action or inaction of any Managing Member or Affiliate thereof if such Managing Member or Affiliate thereof in good faith determined that such course of conduct was in the best interest of the Company and such course of conduct did not constitute gross negligence or willful misconduct of such Managing Member or Affiliate thereof.

(b) A Managing Member or any Affiliate thereof shall be indemnified by the Company from and against any Adverse Consequences sustained in connection with the business and operations of the Company, provided that all of the following conditions are met: (i) such Managing Member has determined, in good faith, that the course of conduct which caused the loss, judgment, liability, expense or amount paid in settlement was in the best interests of the Company; and (ii) such Adverse Consequences were not the result of gross negligence or willful misconduct on the part of such Managing Member or Affiliate thereof; and (iii) such indemnification or agreement to hold harmless is recoverable only out of the assets of the Company, and not from the Non-Managing Members.

(c) Notwithstanding the above, no Member or any Affiliate thereof performing services for the Company or any broker-dealer shall be indemnified for any Adverse Consequences arising from or out of an alleged violation of federal or state securities laws unless there has been a successful adjudication on the merits of each count involving securities laws violations as to the particular indemnitee and the court finds that indemnification of the settlement and related costs should be made. In any claim for indemnification for federal or state securities law violations, the party seeking indemnification shall, prior to seeking court approval for such indemnification, place before the court the positions of the Securities and Exchange Commission, the Massachusetts Securities Division and any other applicable state securities administrator with respect to the issue of indemnification for securities law violations.

(d) The Company shall not incur the cost of the portion of any insurance, other than public liability insurance or course of construction insurance, which insures any party against any liability as to which such party is herein prohibited from being indemnified.

(e) The Company may indemnify Affiliates of a Managing Member under this Section 6.8 only if the loss involves an activity in which such Affiliates acted in the capacity of a Managing Member or Developer.

(f) For purposes of this Section 6.8 only, the term “Affiliate” shall mean (i) any Person performing services on behalf of the Company who (x) directly or indirectly controls, is controlled by or is under common control with a Managing Member; (y) owns or controls ten percent (10%) or more of the outstanding voting securities of a Managing Member or (z) is an officer, director, partner, member, manager or trustee of a Managing Member; and (ii) any Person for whom the Managing Member acts as an officer, director, partner or trustee. For purposes of this Section 6.8 only, the term “controls” and any form of such term shall mean the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise.
6.9 Indemnification of the Company and the Non-Managing Members

(a) The Managing Member will indemnify and hold the Company and the Non-Managing Members harmless from and against any and all Adverse Consequences which the Company or any Non-Managing Member may incur by reason of the past, present or future actions or omissions of the Managing Member or any of its Affiliates constituting gross negligence or willful misconduct; provided, however, that the foregoing indemnification shall not be construed to (x) affect the non-recourse nature of any Mortgage or (y) limit the Company’s primary liability for contractual obligations incurred pursuant to the requirements of any Agency or Lender in connection with the operation of the Apartment Complex in the ordinary course of business.

(b) Notwithstanding the foregoing, no Managing Member shall be liable to a Non-Managing Member or the Company for any act or omission for which the Company is required to indemnify such Managing Member under Section 6.8, except as provided by Article V.

(c) The Managing Member shall indemnify, defend, and hold the Non-Managing Members harmless on an After-Tax Basis from and against any Adverse Consequences related to or arising directly or indirectly out of the presence on, under or about the Apartment Complex of any Hazardous Material at the Apartment Complex, the use, generation, manufacture, migration, storage or disposal of any Hazardous Material on, under or about the Apartment Complex, or the violation of any Environmental Laws by the Managing Member or its representatives (other than any Adverse Consequences resulting from the acts or omissions of the Non-Managing Members). Any claim or loss described in the immediately preceding sentence may be defended, compromised, settled, or pursued by the Non-Managing Members with counsel of the Non-Managing Members’ selection, but at the expense of the Managing Member. Notwithstanding anything else set forth herein, this indemnification shall survive the withdrawal of any Managing Member and/or the termination of this Agreement.

6.10 Operating Deficits

Subject to any Requisite Approvals, the Managing Member shall be obligated during the period from Rental Achievement until the later of (A) the fifth (5th) anniversary of Rental Achievement and (B) the achievement of an average Debt Service Coverage Ratio of 1.15 to 1.00 for the six consecutive months occurring immediately prior to such date (the “Subordinated Loan Period”), to promptly advance funds to eliminate any Operating Deficit, provided however, that the Managing Member shall not be obligated to have Subordinated Loans outstanding at any one time in excess of $375,000 (the “Subordinated Loan Cap”). Notwithstanding anything to the contrary contained herein, if at the end of the Subordinated Loan Period there are insufficient funds in the Operating Reserve to meet the Initial Reserve Amount, the Subordinated Loan Period will be extended until such time the Operating Reserve is restored to the Initial Reserve Amount and condition (A) above is satisfied. In any case in which the Managing Member otherwise would be required to advance funds under this Section 6.10, any amounts then held in the Operating Reserve may be released and disbursed with the reasonable approval of the Special Member for the purpose of eliminating the Operating Deficit before the Managing Member shall be required to advance their own funds. In the event that the Managing Member shall fail to make any such advance as aforesaid, (a) the Company shall utilize amounts (the “Applied
otherwise payable to the Managing Member or its Affiliates under Section 6.12 and/or Article X to meet the obligations of the Managing Member pursuant to this Section 6.10, with such utilization of Applied Amounts constituting payment and satisfaction of the corresponding amounts payable to the Managing Member or its Affiliates under Section 6.12 and/or Article X, with the proceeds thereof being applied to such obligations, and with the obligation of the Company to make such payments to the Managing Member or its Affiliates pursuant to Section 6.12 and/or Article X being deemed to have been satisfied to the extent thereof and (b) the Special Member shall have the option, exercisable in its sole discretion, to cause it or one or more of its designees to be admitted to the Company as additional Managing Member(s). An additional Managing Member so admitted shall automatically, without the need for any further action by any Member, become the Managing Member and shall be delegated all of the powers and authority of all of the Managing Members pursuant to Section 6.13. Each Member hereby grants to any such additional Managing Member a power of attorney, coupled with an interest and irrevocable to the extent permitted by law, to execute and deliver any and all instruments and documents which it believes to be necessary or appropriate in order to accomplish the purposes of this Section 6.10 and to manage the business of the Company. The admission of an additional Managing Member shall not relieve any other Managing Member of any of its economic obligations hereunder, and each other Managing Member shall indemnify and hold harmless the additional Managing Member from and against any and all Adverse Consequences sustained in connection with the additional Managing Member’s status as a Managing Member (other than Adverse Consequences arising solely out of the negligence or misconduct of such additional Managing Member). Any additional Managing Member admitted under this paragraph shall withdraw (notwithstanding the provisions of Article VII) as such and remain only as the Special Member upon payment by the Managing Member of all amounts due under this paragraph. For the purpose of this Section 6.10, all expenses shall be paid on a thirty (30)-day current basis. Moreover, the Managing Member may in its sole discretion at any time advance funds to the Company to pay operating expenses and/or debt service of the Company in order to facilitate the Company’s compliance with the Rent Restriction Test. All advances pursuant to Section 6.5(e) and this Section 6.10 (including any Applied Amounts), except advances from the Operating Reserve, shall constitute non-interest-bearing Subordinated Loans. Subordinated Loans shall be repaid in accordance with the provisions of Article X. The form and provisions of all Subordinated Loans shall conform to any applicable Regulations.

6.11 Obligation to Complete the Construction of the Apartment Complex

(a) To the extent the Developer fails to do so under the Development Agreement, the Managing Member shall be obligated to cause the Completion Date of the Apartment Complex and pay all costs necessary to achieve Rental Achievement in the manner set forth in this Agreement and the Development Agreement.

(b) The Managing Member shall be obligated to pay all costs necessary to achieve Permanent Mortgage Commencement and Rental Achievement, including all Development Costs, in the manner set forth in this Agreement, and may be reimbursed for such payments only out of Specified Proceeds.
(c) The completion of the Apartment Complex shall be secured by a completion bond in an amount at least equal to the full amount of the Construction Contract for the Apartment Complex and by the Guaranty.

6.12 Certain Payments to the Managing Member and Others

(a) As reimbursement for certain advances and as compensation for the Developer’s services in connection with the development and construction of the Apartment Complex, the Company shall pay to the Developer a development fee (the “Development Fee”) in the amount and at the times set forth in the Development Agreement. If Specified Proceeds are insufficient to pay the Development Fee, such unpaid amounts shall be evidenced by a Deferred Development Fee Note as set forth in the Development Agreement, provided however that the maximum amount of the Deferred Development Fee Note shall be $588,301 (or such larger amount as in the opinion of tax counsel to the Investment Member would not cause tax benefits to be projected to be reallocated from the Investment Member to another Member during the Compliance Period). Any unpaid portion of the Development Fee not evidenced by the Deferred Development Fee Note must be paid as a Development Cost as set forth in Section 6.11. The Managing Member, with the Consent of the Special Member, shall cause the Deferred Development Fee Note, if any, to be executed by the Company at the time set forth in and in accordance with the terms of the Development Agreement. If the Development Fee, including without limitation, any portion evidenced by a Deferred Development Fee Note and all accrued but unpaid interest thereon, has not been fully paid by the fourteenth (14th) anniversary of the Completion Date, the Managing Member shall make the Managing Member’s Special Capital Contribution to the Company, and the Company shall thereafter promptly pay to the Developer a portion of the Development Fee equal to the Managing Member’s Special Capital Contribution. Notwithstanding the foregoing, the amount of the Managing Member’s Special Capital Contribution shall be reduced to the extent the Investor Member reasonably determines on or before the end of the first year of the Credit Period that any portion of the remaining balance of the Development Fee and the Deferred Development Fee Note is not necessary to be included in Eligible Basis in order to allocate the aggregate Projected Credit during the Credit Period to the Investor Member. Following any reduction of the Managing Member’s Special Capital Contribution as described in the immediately preceding sentence, the Members agree to review and work diligently and in good faith to determine the sources to promptly repay or refinance the remaining unpaid balance of the Development Fee and the Deferred Development Fee Note, and all accrued but unpaid interest thereon.

(b) The Company shall pay to the Special Member or an Affiliate thereof a fee (the “Asset Management Fee”) commencing in 2019 for its services in connection with the Company’s accounting matters relating to the Investment Member and assisting with the preparation of tax returns and the reports required by Section 12.7 in the annual amount of $5,250, increased each year by a factor equal to the percentage increase in the Consumer Price Index for such year. The Asset Management Fee shall be payable from Cash Flow in the manner and priority set forth in Section 10.2(a); provided however, that if in any Fiscal Year, Cash Flow is insufficient to pay the full amount of the Asset Management Fee, the Managing Member shall advance the amount of such deficiency to the Company as a Subordinated Loan, provided further that the Managing Member’s obligation to make Subordinated Loans under this Section 6.12(b) shall be ongoing and shall not terminate upon the expiration of the Subordinated Loan Period or
be subject to the Subordinated Loan Cap. If for any reason the Asset Management Fee is not paid in any Fiscal Year, the unpaid portion thereof shall accrue and be payable on a cumulative basis in the first Fiscal Year in which there is sufficient Cash Flow or Capital Proceeds as provided in Article X.

(c) In consideration of the services of the Managing Member in managing the day-to-day business and affairs of the Company, the Company shall pay to the Managing Member an annual fee (the “Company Management Fee”) commencing in 2019 in the amount of $5,250, payable from Cash Flow in the manner set forth in Section 10.2(a). The Company Management Fee shall be noncumulative so that if there is not sufficient Cash Flow in any Fiscal Year to pay the amount of the Company Management Fee specified for such use in Section 10.2(a), the Company shall have no obligation to pay such shortfall in any future Fiscal Year.

(d) The Company also shall pay to the Managing Member the Incentive Management Fee as set forth in the Incentive Management Agreement.

6.13 Delegation of Managing Member Authority

(a) If there shall be more than one Managing Member serving hereunder, each Managing Member may from time to time, by an instrument in writing, delegate all or any of his powers or duties hereunder to another Managing Member or Managing Members.

(b) Each contract, deed, mortgage, lease and other instrument executed by any Managing Member shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that at the time of the delivery thereof (i) the Company was in existence, (ii) this Agreement had not been amended in any manner so as to restrict the delegation of authority among Managing Members (except as shown in certificates or other instruments duly filed in the Filing Office) and (iii) the execution and delivery of such instrument was duly authorized by the Managing Members. Any Person may always rely on a certificate addressed to him and signed by any Managing Member hereunder:

(1) as to who are the Managing Members or Non-Managing Members hereunder;

(2) as to the existence or nonexistence of any fact which constitutes a condition precedent to acts by the Managing Members or in any other manner germane to the affairs of the Company;

(3) as to who is authorized to execute and deliver any instrument or document of the Company;

(4) as to the authenticity of any copy of this Agreement and any amendments thereto; or

(5) as to any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

6.14 Assignment to Company
The Developer and the Managing Member hereby transfer and assign to the Company all of their right, title and interest in and to the Apartment Complex and in and to all of the Project Documents, including, but not limited to, the following: (i) all contracts with architects, supervising architects, engineers and contractors with respect to the development of the Apartment Complex; (ii) all plans, specifications and working drawings heretofore prepared or obtained in connection with the Apartment Complex; (iii) all governmental commitments and approvals obtained, and applications therefore, including, but not limited to those relating to planning, zoning, building permits and Tax Credits; (iv) any and all commitments with respect to any Mortgages; and (v) any and all contracts or rights with respect to any agreements with any Agency or Lender.

6.15 Contracts with Affiliates

(a) The Managing Member or any Affiliate thereof may act as Management Agent upon the terms and conditions set forth in Article XI.

(b) The Managing Member or any Affiliates thereof shall have the right to contract or otherwise deal with the Company for the sale of goods or services to the Company in addition to those set forth herein, if (i) compensation paid or promised for such goods or services is reasonable (i.e., at fair market value) and is paid only for goods or services actually furnished to the Company, (ii) the goods or services to be furnished shall be reasonable for and necessary to the Company, (iii) the fees, terms and conditions of such transaction are at least as favorable to the Company as would be obtainable in an arm’s-length transaction, (iv) the Consent of the Special Member is obtained for any such contract where the compensation to be paid by the Company to the Managing Member or its Affiliates is $50,000 or more, and (v) no agent, attorney, accountant or other independent consultant or contractor who also is employed on a full-time basis by the Managing Member or any Affiliate shall be compensated by the Company for his services. Any contract covering such transactions shall be in writing and shall be terminable without penalty on sixty (60) days written notice. Any payment made to the Managing Member or any Affiliate for such goods or services shall be fully disclosed to all Non-Managing Members in the reports required under Article XII. Neither the Managing Member nor any Affiliate shall, by the making of lump-sum payments to any other Person for disbursement by such other Person, circumvent the provisions of this Section 6.15(b).

6.16 Partnership Audit Procedures

(a) Defined Terms. For purposes of this Section 6.16, the following terms shall have the meanings set forth below:

“Administrative Adjustment Request” An administrative adjustment request under Code Section 6227.

“Affected Partner” means at any point in time, with respect to any Administrative Adjustment Request or proposed Partnership Adjustment, any person who is a then current Partner or a Former Partner.
“Former Partner” Any Person who was a Reviewed Year Partner but is not a Partner in the year of an Administrative Adjustment Request or proposed Partnership Adjustment.

“Imputed Underpayment” Has the meaning set forth in Section 6225 of the Code.

“Partner” means any Member.

“Partnership” means the Company.

“Partnership Adjustment” Any adjustment to any item of income, gain, loss, deduction, or credit of the Partnership, or any Partner’s distributive share thereof, in either case as described in any applicable Regulations or other guidance prescribed by the Service.

“Reviewed Year” The Partnership taxable year to which a Partnership Adjustment relates.

“Reviewed Year Partner” Any Person who held an interest in the Partnership at any time during the Reviewed Year.

“Revised Partnership Audit Rules” Subchapter 63C of the Code (as amended by the Bipartisan Budget Act of 2015, P.L. 114-74, the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113 and the Consolidated Appropriations Act of 2018, P.L. 115-141), and the Regulations promulgated thereunder, all as may be further amended from time to time.

“Taxes” Any tax, penalties, additions to tax, additional amounts, and interest as described in Section 6226 of the Code.

(b) Partnership Representative

(i) Appointment and Designation. The Partners hereby authorize the Partnership to appoint O-SDA as the initial partnership representative of the Partnership pursuant to Section 6223(a) of the Code (the “Partnership Representative”). The Partnership Representative shall timely designate, with the Consent of the Investment Member, an individual to serve as the sole individual through whom the Partnership Representative will act for purposes of the Revised Partnership Audit Rules (the “Designated Individual”). The Designated Individual must agree in writing to be bound by the same obligations and restrictions imposed on the Partnership Representative under this Section 6.16 prior to and as condition of such designation.

(ii) Resignation; Revocation. The Partnership shall revoke the designation of O-SDA as the Partnership Representative for all taxable years during which such designation was in effect by written notice to the Partnership Representative and the Service: (i) upon withdrawal or removal of the Managing
Member for any reason, (ii) upon request of the Investment Member at a time when there exists cause for removal pursuant to Section 4.5(a)(iii) and any notice of partnership adjustment has been issued by the Service, or (iii) upon request of the Investment Member in the event of a default by the Partnership Representative or Designated Individual of its/his/her duties and obligations under this Section 6.16. The designation of the Designated Individual as the Designated Individual shall automatically terminate on the effective date of the resignation or revocation of the applicable entity as Partnership Representative. If a Designated Individual becomes unable to perform the tasks required of a Designated Individual, no longer has the “capacity to act” within the meaning of the Revised Partnership Audit Rules, or the Partnership Representative otherwise determines that such individual should be removed as the Designated Individual, the Partnership Representative shall promptly notify the Investment Member of such determination and take all necessary actions to effectuate the resignation of such individual as Designated Individual for all applicable taxable years. Notice of any revocation of a Partnership Representative or Designated Individual shall be given to the Service in the time and manner prescribed by the Service and shall include the designation of another Person selected by the Investment Member as the successor Partnership Representative and/or the designation of another Person selected by the Partnership Representative (with the Consent of the Investment Member) as the successor Designated Individual. The resigning or removed Partnership Representative and/or Designated Individual shall remain obligated hereunder in such capacity until the replacement is acknowledged by the Service. O-SDA hereby constitutes and appoints the Investment Member, with full power of substitution, its true and lawful attorney-in-fact in its name, place and stead to carry out fully the provisions of this Section 6.16(b)(ii) and take any action which the Investment Member may deem necessary or appropriate in connection herewith. The power of attorney hereby granted shall be deemed to be coupled with an interest, shall be irrevocable and shall survive and shall not be affected by the subsequent incapacity, dissolution, resignation, revocation or other termination of O-SDA as the Partnership Representative.

(iii) Successor Partnership Representative. Any successor Partnership Representative and/or Designated Individual must satisfy all statutory and regulatory requirements imposed by the Revised Partnership Audit Rules and must agree in writing to be bound by the terms of this Section 6.16.

(iv) Notice of Communications; Cooperation. The Partnership Representative shall: (i) give all Affected Partners prompt notice of any inquiry, notice, or other communication received from the Service or other applicable tax authority regarding the tax treatment of the Partnership or the Partners, (ii) consult with the Affected Partners in good faith on the strategy and substance of any tax audit or contest, and (iii) shall, to the extent possible, give the Affected Partners prior notice of and a reasonable opportunity to review and comment upon any written communication the Partnership Representative intends to make to any such taxing authority in connection with any examination, audit or other inquiry involving the Partnership and the nature and content of all actions to be taken and
defenses to be raised by the Company in response to any tax audit or contest (including without limitation the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous Service proceeding against the Company or otherwise). Without limiting the generality of the foregoing, the Partnership immediately shall send to all Affected Partners copies of any notice of a proposed or final partnership adjustment received by the Partnership and/or the Partnership Representative from the Service. To the extent requested by the Affected Partner and permitted under Treasury Regulations or by the Service or other taxing authority in a particular tax audit or contest, the Partnership Representative shall cooperate in allowing the Affected Partner or its representative to participate, at its own expense, in such tax audit or contest.

(v) Duties and Limitations on Authority. The Partnership Representative and any Designated Individual shall have all power and authority of a partnership representative and designated individual, respectively, as set forth in Section 6223 of the Code, and shall represent the Partnership and its Partners in all dealings with the Service and state and local taxing authorities. If the Partnership receives notice of a final Partnership Adjustment from the Service, the Partnership Representative shall so notify the Affected Partners, and if requested to do so by the Investment Member, (i) the Partnership Representative shall file a petition for readjustment within the time frame required by Treasury Regulations or Service guidance, and/or (ii) the Partnership Representative and the Managing Member shall cause the Partnership to seek any and all available judicial review of such final Partnership Adjustment as is available under applicable law. Notwithstanding the foregoing, except as specifically provided in Section 6.16(c) below, the Partnership Representative shall not, without the Consent of the Investment Member (and, in the case of (C), (D) and (F), the Investment Member for the Reviewed Year), have any power or authority to do any or all of the following:

(A) make an election to opt out of the application of the Revised Partnership Audit Rules to the Partnership;

(B) make a Push-Out Election, or request a modification to an Imputed Underpayment;

(C) file an Administrative Adjustment Request;

(D) select any judicial forum for the litigation of any Partnership tax dispute;

(E) extend the statute of limitations for the Partnership; or,

(F) take any other action (or fail to take any action) that would have the effect of finally determining any tax audit or contest.

(vi) Fiduciary Relationship. The relationship of the Partnership Representative to the Investment Member shall be that of a fiduciary, and the
Partnership Representative shall have a fiduciary obligation to perform its duties in such manner as will serve the best interests of the Investment Member.

(vii) **Indemnification.** To the extent of available funds, the Partnership shall indemnify the Partnership Representative against judgments, fines, amounts paid in settlement and expenses (including attorneys’ fees) reasonably incurred by the Partnership Representative in its capacity as the Partnership Representative, and not its capacity as a Partner or a Former Partner, in connection with any audit or administrative or judicial proceeding in which the Partnership Representative is involved solely by reason of being the Partnership Representative of the Partnership, provided that the same were not the result of negligence, misconduct, fraud, breach of fiduciary duty or breach of this Agreement on the part of the Partnership Representative and were the result of a course of conduct which the Partnership Representative, in good faith, reasonably believed to be consistent with its communications with and Consent provided by the Investment Member in accordance with this Section 6.16, and within the scope of its authority under this Section 6.16.

(c) **Modifications and Partnership Elections**

(i) **Modifications to Imputed Underpayment.** If requested to do so by the Investment Member, O-SDA shall request modification of an Imputed Underpayment in accordance with any applicable Treasury Regulations, forms, instructions, and other guidance prescribed by the Service. With any such request, the Investment Member shall describe the modifications or adjustment factors that the Investment Member believes affect the calculation of the Imputed Underpayment in sufficient detail to substantiate the request for modification and timely provide all required supporting documents or information.

(ii) **Amended Returns.** If requested to do by the Investment Member, the Partnership Representative shall request a modification of an Imputed Underpayment based on an amended return (or, to the extent permitted by law, any similar statement) filed by a Partner (or its owners) that takes account of all of the Partnership adjustments properly allocable to such Partner (or its owners). Any such request shall be accompanied by an affidavit from the requesting Partner that each required amended return (or similar statement) has been filed and all Taxes due as a result of taking into account the adjustments in the first affected year and all modification years have been paid, as required by any applicable Regulations, forms, instructions, and other guidance prescribed by the Service.

(iii) **Pull-In Procedure.** In lieu of filing an amended return in accordance with Section 6.16(c)(ii) above, any Reviewed Year Partner may elect to comply with the “pull-in” procedure described in Section 6225(c)(2)(B) of the Code. In such event, such Reviewed Year Partner shall (x) pay all amounts due under Section 6225(c)(2)(A)(iii) of the Code, (y) take into account, in the form and manner set forth in the Code and Regulations, the adjustments to the tax
attributes of suchReviewed Year Partner, and (z) provide, in the form and manner
specified by the Service (including, if so specified, in the same form as on an
amended return), such information as the Service may require to carry out the
terms and intent of the pull-in procedure described in Section 6225(c)(2)(B) of the
Code. Copies of all notices and filings made pursuant to this Section 6.16(c)(iii)
shall be provided by the Reviewed Year Partner to the Partnership Representative.

(iv) Push-Out Election. If requested to do so by the Investment
Member, the Partnership Representative shall timely make and implement an
election under Section 6226(a)(1) of the Code (a “Push-Out Election”) with
respect to an Imputed Underpayment. Except as hereinafter provided, if a Push-
Out Election is made, each Reviewed Year Partner shall take into account its
allocable share of the Partnership Adjustments that relate to the specified Imputed
Underpayment (as determined with the Consent of the Investment Member for
such Reviewed Year) and shall be liable for any Taxes as described in Section
6226 of the Code and any applicable Treasury Regulations or other guidance
prescribed by the Service.

(v) Reimbursement of Allocable Share of Imputed
Underpayment. If the Partnership becomes obligated to make an Imputed
Underpayment under Code Section 6225, each of the Partners (including any
Former Partner) to whom such liability relates (as determined with the Consent of
the Investment Member) shall be obligated, within thirty (30) days after written
notice from the Managing Member, to pay an amount that, on an After-Tax Basis
if such payment is treated as a taxable payment to the Partnership, is equal to its
allocable share of such amount to the Partnership; provided, however, that if and
to the extent that the Partnership’s liability results from a loss, disallowance or
recapture of Credits for which a Reduction Amount is due to such Person and has
not been paid, the amount otherwise payable by such Person to the Partnership
under this Section 6.16(c)(v) shall be reduced by the amount of any unpaid
Reduction Amount payable to such Person so that the Partnership will bear the
portion of the Imputed Underpayment equal to such reduction, and such
Reduction Amount shall be paid to the Partnership and applied to the Imputed
Underpayment. Any amount not paid by a Partner (or Former Partner) within such
30-day period shall accrue interest at Prime Rate plus 2% until paid. Any such
payment made by any Partner shall be treated as a Capital Contribution and, if
and to the extent permitted by the Code and Regulations, any Capital Account
reduction attributable to the Imputed Underpayment shall be allocated to the
Partners in proportion to such Capital Contributions.

(vi) Withholding. Notwithstanding anything to the contrary
contained herein, the Managing Member shall cause the Partnership to withhold
from any distribution or payment due to any Partner (or Former Partner) under
this Agreement any amount due to the Partnership from such Partner (or Former
Partner) under clause (v) above. Any amount(s) so withheld shall be applied by
the Partnership to discharge the obligation in respect of which such amount was
withheld. All amounts withheld pursuant to the provisions of this Section
6.16(c)(vi) with respect to a Partner (or Former Partner) shall be treated as if such amounts were distributed or paid, as applicable, to such Partner (or Former Partner).

(vii) **Indemnity.** To the extent that a portion of the Taxes imposed under Code Section 6225 relates to a Former Partner, the Managing Member shall require such Former Partner to indemnify the Partnership for its allocable portion of such tax (including any penalties, additions to tax, additional amounts, and interest) to the extent such amounts have not been withheld pursuant to the provisions of Section 6.16(c)(vi). Each Partner acknowledges that, notwithstanding the transfer or liquidation of all or any portion of its Interest in the Partnership, it shall remain liable for Taxes with respect to its allocable share of income and gain of the Partnership for the Partnership’s taxable years (or portions thereof) prior to such transfer or liquidation and entitled to the consent rights provided to it in this Section 6.16 with respect to such taxable years unless otherwise agreed to in writing by the Partners during the taxable year(s) (or portion thereof) to which the Taxes relate and all Former Partners during the Partnership’s taxable year(s) (or portion(s) thereof) to which the Taxes relate.

(viii) **Continuing Obligations.** Whether the liability is assessed to the Partnership or the Partners (or Former Partners), the parties hereto acknowledge and agree that nothing in this Section 6.16(c) is intended, nor shall it be construed, to modify or waive any obligations of the Managing Member under this Agreement including, without limitation, the obligation to make a payment pursuant to the provisions of Section 5.1(e) and Section 5.1(f).

(d) **Related Tax Items**

(i) **Tax Counsel or Accountants.** The Partnership Representative, with the reasonable Consent of the Investment Member, shall employ experienced tax counsel and/or accountants to represent the Partnership in connection with any audit or investigation of the Partnership by the Service or any other taxing authority and in connection with all subsequent administrative and judicial proceedings arising out of such audit. Such counsel and/or accountants shall be responsible for representing the Partnership; it shall be the responsibility of the Partners, at their expense, to employ tax counsel or accountants to represent their respective separate interests.

(ii) **Survival.** The rights and obligations of each Partner or Former Partner under this Section shall survive the transfer, redemption or liquidation by such Partner of its Partnership Interest and the termination of this Agreement or the dissolution of the Partnership.

(iii) **Amendments.** Upon the promulgation of revised Treasury Regulations implementing the Revised Partnership Audit Rules or upon further amendment of the Revised Partnership Audit Rules, the Partners will evaluate and consider options available with respect to preserving the allocation of
responsibility and authority described in this Section 6.16, while conforming with the applicable provisions of the revised partnership audit procedures. The Partners agree to work together in good faith to make elections and amend this Agreement (if any party determines that an amendment is required) to maintain the intent of the parties with respect to the obligations and limitations of the Partnership Representative.

(iv) State and Local Income Tax Matters. The provisions of this Section 6.16 shall also apply to state and local income tax matters affecting the Partnership to the extent the terms and conditions hereof have any application to audit procedures at the state and local level

6.17 Single Purpose Entity

(a) The Managing Member shall not engage, has not engaged and does not engage, in any business other than the business of making housing available to persons of low and moderate income.

(b) The Managing Member shall not enter into and has not entered into any contract or agreement with any Affiliate of the Managing Member, any constituent party of the Managing Member, or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s length basis with third parties other than any such party.

(c) The Managing Member has and shall continue to pay its debts and liabilities from its own assets as the same shall become due. No Affiliate has paid any debts or liabilities on behalf of the Managing Member.

(d) The Managing Member has and shall continue to maintain books, financial records and bank accounts that are separate and distinct from the books, financial records and bank accounts of any other Person including any Affiliate.

(e) The Managing Member has and shall continue to maintain separate annual financial statements prepared in accordance with generally accepted accounting principles, consistently applied, showing its assets and liabilities separate and distinct from those of any other entity; in the event the financial statements of the Managing Member are consolidated with the financial statements of any other entity, the Managing Member has and shall continue to cause to be included in such consolidated financial statements: (i) a narrative description of the separate assets, liabilities, business functions, operations and existence of the Managing Member to ensure that such separate assets, liabilities, business functions, operations and existence are readily distinguishable by any entity receiving or relying upon a copy of such consolidated financial statements; and (ii) a statement that the Managing Member’s assets and credit are not available to satisfy the debts of such other entity or any other person.

(f) The Managing Member has and shall continue to file its own tax returns and pay its own taxes required to be paid under applicable law.
(g) The Managing Member has and shall continue to (i) hold itself out as an entity separate and distinct from any other Person; (ii) not identify itself or any of its affiliates as a division or part of the other; (iii) correct any known misunderstanding regarding its separate status; and (iv) use separate stationery, invoices, checks, and the like bearing its own name.

(h) The Managing Member has and shall continue to conduct its business in its own name so as to avoid or correct any misunderstanding on the part of any creditor concerning the fact that any invoices and other statements of account from creditors of the Managing Member are to be addressed and mailed directly to the Managing Member, though this provision shall not prohibit such mail to be delivered to the Managing Member c/o any other entity.

(i) The Managing Member has and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(j) The Managing Member has not and shall not commingle any of its assets, funds or liabilities with the assets, funds or liabilities of any other Person or Affiliate.

(k) The Managing Member has and shall continue to maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any party.

(l) The Managing Member has not and shall not (i) assume or guaranty the debts of any other Person in a manner that includes a pledge, encumbrance, transfer or hypothecation (whether by operation of law or otherwise) of any assets or interests of the Company or, (ii) hold itself out to be responsible for the debts of another Person in a manner that includes the pledge, encumbrance, transfer or hypothecation of any assets or interests of the Company (whether by operation of law or otherwise), or (iii) otherwise pledge, encumber, transfer or hypothecate the assets of the Company for the benefit of another Person or permit the same to occur, or (iv) hold the Company’s credit as being available to satisfy the obligations of any other Person.

(m) All transactions carried out by the Managing Member have been and will be, in all instances, made in good faith and without intent to hinder, delay or defraud creditors of the Managing Member.

6.18 Anti-Corruption Laws

The Managing Member hereby represent, warrant and covenant that there has been no violation by the Managing Member or any entity that owns an interest in a Managing Member or the Guarantors of Anti-Corruption Laws in connection with the execution of the Project Documents. At and after execution of the Project Documents, without limitation, the Managing Member and any entity that owns an interest in a Managing Member are in, and shall remain in, compliance with Anti-Corruption Laws. No action, suit or proceeding is pending or, to the Managing Member’s knowledge, threatened, relating to any Anti-Corruption Laws. The Managing Member shall notify the Investment Member if either of them becomes aware of any violation of Anti-Corruption Laws or circumstance likely to give rise to such a violation and, upon request by the Investment Member, the Managing Member will provide information verifying their respective compliance with Anti-Corruption Laws.
ARTICLE VII
Withdrawal of a Managing Member; New Managing Members

7.1 Voluntary Withdrawal

No Managing Member shall have the right to Withdraw voluntarily from the Company or to sell, assign or encumber its Interest without the Consent of the Investment Member and each of the other Managing Members (if any) and, if required, any Requisite Approvals.

7.2 [Intentionally Deleted]

7.3 Successor Managing Member

(a) Upon the occurrence of any Withdrawal, the remaining Managing Members may designate a Person to become a successor Managing Member to the Withdrawing Managing Member. Any Person so designated, subject to any Requisite Approvals, the Consent of the Investment Member and, if required by the Act or any other applicable law, the consent of any other Member so required, shall become a successor Managing Member upon his written agreement to be bound by the Project Documents and by the provisions of this Agreement.

(b) If any Withdrawal shall occur at a time when there is no remaining Managing Member and the Members do not unanimously elect to continue the business of the Company in accordance with the provisions of clause (ii) of Section 7.2(a) above, then the Investment Member shall have the right, subject to any Requisite Approvals, to designate a Person to become a successor Managing Member upon his written agreement to be bound by the Project Documents and by the provisions of this Agreement.

(c) If the Investment Member elects to reconstitute the Company and admit a successor Managing Member pursuant to this Section 7.3, the relationship of the Members in the reconstituted Company shall be governed by this Agreement.

7.4 Interest of Predecessor Managing Member

(a) No assignee or transferee of all or any part of the Interest as a Managing Member of a Managing Member shall have any automatic right to become a Managing Member. Until the acquisition of the Interest of a Withdrawing Managing Member pursuant to Section 7.4(d) or 7.6, such Interest shall be deemed to be that of an assignee and the holder thereof shall be entitled only to such rights as an assignee may have as such under the laws of the State.

(b) Anything herein contained to the contrary notwithstanding, any Managing Member who Withdraws voluntarily in violation of Section 7.1 shall remain liable for all of its obligations under this Agreement, for all its other obligations and liabilities hereunder incurred or accrued prior to the date of its Withdrawal and for any loss or damage which the Company or any of its Members may incur as a result of such Withdrawal (except as provided in Section 6.8(a)).

(c) The estate (which term, for purposes of this Section 7.4(c), shall include the heirs, distributees, estate, executors, administrators, guardian, committee, trustee or other personal
(d) The Disposition of the Managing Member Interest of a Managing Member who or which Withdraws voluntarily in compliance with this Agreement shall be accomplished in such manner as shall be acceptable to the remaining Managing Members and shall be approved by Consent of the Investment Member. Except as provided in the preceding sentence, upon the Withdrawal of a Managing Member (other than a Managing Member who or which is removed as such pursuant to Section 4.5), such Withdrawn Managing Member shall be deemed to have automatically transferred to the remaining Managing Members, in proportion to their respective Managing Member Interests, or, if there shall be no remaining Managing Member, then to the Company for the benefit of the remaining Members, all or such portion of the Managing Member Interest of such Withdrawn Managing Member which, when aggregated with the existing Managing Member Interests of all such remaining Managing Members, will be sufficient in the opinion of the Tax Accountants to assure such remaining Managing Members a sufficient interest in all Profits, Losses, Tax Credits and distributions of the Company under Article X so as to be deemed to be a Member of the Company for federal income tax purposes. No documentation shall be necessary to effectuate such transfer, which shall be automatic, and no consideration shall be payable therefor. For the purposes of Article X, the effective date of the transfer pursuant to the provisions of this Section 7.4(d) of the Managing Member Interest of a Withdrawn Managing Member shall be deemed to be the date on which such Withdrawal occurs. That portion of the Managing Member Interest (the “Remaining Interest”) of the Withdrawing Managing Member which shall not have been transferred pursuant to this Section 7.4(d) (except in respect of a removed Managing Member), shall be retained by such Withdrawing Managing Member (or pass to legal representatives thereof) who or which shall have the status of a special member (an Article VII Special Member), but with the right to receive only that share of the Profits, Losses, Tax Credits and distributions of the Company to which the Withdrawing Managing Member, as such, would have been entitled had he or it remained, reduced to the extent of the Managing Member Interest transferred hereunder, but such Withdrawing Member (or his or its legal representatives, as the case may be) shall not be considered to be a Special Member for the purpose of exercising any rights reserved to the Special Member under this Agreement or sharing the benefits allocated to the Special Member under Article X hereof and shall not participate in the votes or consents of the Non-Managing Members hereunder; provided, however, that in the case of a Managing Member who or which Withdraws involuntarily without violation of this Agreement, the Company shall have the option (but not the obligation), exercisable by notice to the holder of such Interest within six (6) months following the date of such Withdrawal, to acquire the Remaining Interest of such Withdrawing Managing Member (or the Article VII Special Member Interest deriving therefrom) in accordance with the valuation and payment provisions of Section 7.6.
7.5 Amendment of Articles; Approval of Certain Events

(a) Upon the admission of a new Managing Member pursuant to the preceding provisions of this Article VII, Schedule A shall be amended to reflect such admission and an amendment to the Articles, also reflecting such admission, shall be filed as required by the Act.

(b) Each Member hereby consents to and authorizes any admission or substitution of a Managing Member or any other transaction, including, without limitation, the continuation of the Company business, which has been authorized under the provisions of this Agreement, and hereby ratifies and confirms each amendment of this Agreement necessary or appropriate to give effect to any such transaction.

7.6 Valuation and Sale of Interest of Former Managing Member

(a) Subject to the provisions of Section 7.4(d), if the business of the Company is continued after the Withdrawal of a Managing Member, or if, following such event, the Company is reconstituted and continued, in each case as contemplated by this Agreement, the Company shall purchase such Managing Member’s Interest if such removal is without cause or if such Withdrawal is not in violation of this Agreement (which term, and words of like import, as used in this Section 7.6 shall refer only to the “Remaining Interest” of such Withdrawing Managing Member as defined in Section 7.4(d) in all cases where applicable) each for a price equal to the fair market value thereof. Such fair market value shall be determined by two independent appraisers, one selected by the former Managing Member or its representative and one by the Company. If such appraisers are unable to agree on the value of the former Managing Member’s Interest, they shall jointly appoint a third independent appraiser whose determination shall be final and binding. The appraisers may act with or without a hearing, and the cost of the appraisal will be shared equally between such former Managing Member and the Company. If a Managing Member is removed by the Investment Member for cause, or if a Managing Member has voluntarily withdrawn from the Company in contravention of the terms of this Agreement, the Managing Member shall forfeit its Interest to the Company, not as a penalty but as liquidated damages to compensate the Company for the action of such Managing Member leading to its removal, or for the fact of its violation of the terms of this Agreement.

(b) Promptly after the determination of the purchase price of a former Managing Member’s Interest pursuant to Section 7.6(a), the Company shall deliver to such former Managing Member a promissory note of the Company for such purchase price, payable in five equal consecutive annual installments commencing on the first anniversary of the date of such note. Such promissory note shall bear simple interest at the rate per annum which is at all times the AFR payable on the last day of each calendar quarter during which such note is outstanding. Within one hundred twenty (120) days after the determination of the purchase price of the former Managing Member’s Interest, the Company may, with the consent of all remaining Managing Members and the Consent of the Investment Member, sell such Interests to one or more Persons, who may be Affiliates of the remaining Managing Member or Managing Members, and admit such Person or Persons to the Company as substitute Managing Members; provided, however, that the purchase price to be paid to the Company for the Interest of the former Managing Member shall not be less than its purchase price as determined by the appraisal. Such substitute
Managing Members may pay said purchase price in installments in the manner set forth above in this Section 7.6(b).

7.7 Designation of New Managing Members

The Managing Member may, with the written consent of all Non-Managing Members, at any time designate new Managing Members, each with such Interest as a Managing Member in the Company as the Managing Member may specify, subject to any Requisite Approvals.

Any new Managing Member shall, as a condition of receiving any interest in the Company property, agree to be bound by the Project Documents and any other documents required in connection therewith and by the provisions of this Agreement, to the same extent and on the same terms as any other Managing Member.
ARTICLE VIII
Transferability of a Non-Managing Member’s Company Interests

8.1 Assignments

(a) Each of the Non-Managing Members may each assign all or any part of its Company Interest without the consent of any other Member.

(b) An assignee of a Non-Managing Member who does not become a Substituted Non-Managing Member shall have, and shall only have, the right to receive the share of allocations and distributions of the Company to which the assigning Non-Managing Member would have been entitled with respect to the Company Interest (or portion thereof) so assigned if no such assignment had been made by such Non-Managing Member. Any assigning Non-Managing Member whose assignee becomes a Substituted Non-Managing Member shall thereupon cease to be a Non-Managing Member and shall no longer have any of the rights or privileges of a Non-Managing Member. Where the assignee does not become a Substituted Non-Managing Member, the Company shall recognize such assignment not later than the last day of the calendar month following receipt of notice of assignment and all documentation required in connection therewith. The Managing Member shall cooperate with the Non-Managing Members in facilitating such assignment by promptly furnishing complete and accurate financial and other relevant data regarding the Company, the Apartment Complex, the Managing Member and Affiliates of the Managing Member and any other matters reasonably necessary in the judgment of the Special Member to facilitate such Assignment, but only to the extent such information is readily available to the Managing Member either (a) at no or at nominal cost, or (b) the Non-Managing Members shall reimburse the Managing Member for the reasonable cost thereof.

(c) Every assignee of a Non-Managing Member’s Company Interest (or any portion thereof) who desires to make a further assignment of its Company Interest shall be subject to all the provisions of this Article VIII.

8.2 Substituted Non-Managing Member

Each Non-Managing Member shall have the right to substitute an assignee as Non-Managing Member in its place without the consent of any other Member; provided that any Substituted Non-Managing Member shall execute such instrument or instruments as shall be reasonably required by the Managing Members to signify the agreement of such Substituted Non-Managing Member to be bound by all the provisions of this Agreement.

8.3 Restrictions

(a) No Disposition of a Non-Managing Member Interest may be made if such Disposition would violate the provisions of Sections 8.1, 8.2 or 13.1.

(b) In no event shall all or any part of a Non-Managing Member Interest be Disposed of to a minor (other than to a descendant by reason of death) or to an incompetent.

(c) The Managing Member may, in addition to any other requirement it may impose, require as a condition of any Disposition of a Non-Managing Member Interest that the transferor
or transferee (i) assume all costs incurred by the Company or the Non-Managing Member in connection therewith and (ii) furnish the Company and the other Members with an opinion of counsel satisfactory to counsel to the Company that such Disposition complies with applicable federal and state securities laws.

(d) Any sale, exchange, transfer or other Disposition of a Non-Managing Member Interest in contravention of any of the provisions of this Section 8.3 shall be void and ineffectual and shall not bind or be recognized by the Company.
ARTICLE IX
Borrowings

All Company borrowings shall be subject to the terms of this Agreement and the Project Documents and may be made from any source, including Members and their Affiliates. Any Company borrowings from any Member, other than the Subordinated Loans shall be subject to any Requisite Approvals and the Consent of the Special Member. If any Member shall lend any monies to the Company, the amount of any such loan shall not increase such Member’s Capital Contribution. If any Member shall so lend monies, each such loan (a “Voluntary Loan”) shall be an obligation of the Company and (except for Subordinated Loans) shall be repayable to such Member on the same basis and with the same rate of interest as would be applicable to a comparable loan to the Company from a third party. Funds advanced by the Managing Member to the Company as Subordinated Loans shall not constitute borrowings for the purposes of this Article IX or for any other purposes.
ARTICLE X
Profits, Losses, Tax Credits, Distributions and Capital Accounts

10.1 Profits, Losses and Tax Credits

(a) Subject to the provisions of Section 10.1(b) and Section 10.4, for each Company Fiscal Year or portion thereof, all Operating Profits and Losses, tax-exempt income, losses, non-deductible non-capitalizable expenditures and Tax Credits incurred or accrued on or after the Commencement Date shall be allocated 99.99% to the Investment Member, 0.0025% to the Class B Special Member, and 0.0075% to the Managing Member.

(b) Except as otherwise specifically provided in this Article, all Profits and Losses arising from a Capital Transaction shall be allocated to the Members as follows:

As to Profits:

First, that portion of Profits (including any Profits treated as ordinary income for federal income tax purposes) shall be allocated to the Members who have negative Capital Account balances in proportion to the amounts of such balances, provided that no Profits shall be allocated to a Member under this Clause First to increase any such Member’s Capital Account above zero; and

Second, Profits in excess of the amounts allocated under Clause First above shall be allocated to and among the Members in the same percentages as cash is distributed under Clause Fifth of Section 10.2(b);

As to Losses:

First, an amount of Losses shall be allocated to the Members to the extent and in such proportions as shall be necessary such that, after giving effect thereto, the respective balances in all Members’ Capital Accounts shall be in the ratio of 99.99% for the Investment Member, 0.0025% for the Class B Special Member, and 0.0075% for the Managing Member;

Second, an amount of Losses shall be allocated to the Members until the balance in each Member Capital Account equals the amount of such Member’s Capital Contribution (after the allocation under Clause First above);

Third, an amount of Losses shall be allocated to the Members to the extent of and in proportion to such Members’ Capital Account balances (after the allocations under Clauses First and Second above); and

Fourth, any remaining amount of Losses after the allocation under Clauses First, Second and Third above shall be allocated to the Members in accordance with the manner in which they bear the Economic Risk of Loss associated with such Loss; provided, however, that in the event that no Member bears an Economic Risk of Loss then any remaining Losses shall be allocated 99.99% to the Investment Member, 0.0025% to the Class B Special Member, and 0.0075% to the Managing Member.
10.2 **Cash Distributions Prior to Dissolution**

(a) **Cash Flow**

Subject to any Requisite Approvals, Cash Flow for each Fiscal Year or portion thereof shall be applied as follows:

*First*, to the payment to the Investment Member of the full amount (including interest) of any amounts due and owing to the Investment Member, including without limitation, adjusters under Section 5.1, any Recapture Amount pursuant to Section 10.6, guaranty payments and/or indemnity payments which the Investment Member is entitled to receive pursuant to this Agreement, the Guaranty or the Development Agreement and to repay any Voluntary Loan made by the Investment Member pursuant to Article IX;

*Second*, to the payment of the Asset Management Fee for such Fiscal Year and for any previous Fiscal Year(s) as to which the Asset Management Fee shall not yet have been paid in full;

*Third*, to the replenishment of the Operating Reserve until the balance in the Operating Reserve is equal to the Initial Reserve Amount;

*Fourth*, to the payment of any unpaid portion of the Development Fee, including without limitation, any amounts evidenced by a Deferred Development Fee Note and all accrued but unpaid interest thereon;

*Fifth*, to the repayment of any Subordinated Loans;

*Sixth*, to the payment of the Company Management Fee for such Fiscal Year; and

*Seventh*, the balance thereof, if any, shall be distributed annually, seventy-five (75) days after the end of the Fiscal Year, 10% to the Investment Member and 90% to the Managing Member (of such 90%, 65% to the Managing Member, and 35% to the Class B Special Member), first as payment of the Incentive Management Fee and then as a distribution.

(b) **Distributions of Capital Proceeds**

Prior to dissolution, if Capital Proceeds are available for distribution from a Capital Transaction, such Capital Proceeds shall be applied or distributed as follows:

*First*, to the payment to the Investment Member of the full amount (including interest) of any amounts due and owing to the Investment Member, including without limitation, adjusters under Section 5.1, any Recapture Amount pursuant to Section 10.6, guaranty payments and/or indemnity payments which the Investment Member is entitled to receive pursuant to this Agreement, the Guaranty or the Development Agreement and to repay any Voluntary Loan made by the Investment Member pursuant to Article IX;

*Second*, to the payment of any accrued and unpaid Asset Management Fees;
**Third**, to the repayment of any remaining unpaid debts and liabilities owed to Members or Affiliates thereof by the Company for Company obligations (exclusive of Subordinated Loans) to any of them, including, but not limited to, accrued and unpaid amounts due in respect of any and all fees (including but not limited to the Development Fee and any Deferred Development Fee Note) due and payable to the Managing Member or its Affiliates as set forth in Section 6.12; provided, however, that any debts or obligations to be repaid to any Non-Managing Member or Affiliate thereof pursuant to this Clause Third shall be repaid prior to the repayment of any such debts or obligations to any Managing Member or Affiliate thereof;

**Fourth**, to the repayment of any Subordinated Loans;

**Fifth**, subject to the provisions of Section 10.3(a), any balance 9.999% to the Investment Member, 0.001% to the Special Member, 31.5% to the Class B Special Member, and 58.5% to the Managing Member.

10.3 Distributions Upon Dissolution

(a) Upon dissolution and termination, after payment of, or adequate provision for, the debts and obligations of the Company, the remaining assets of the Company shall be distributed to the Members in accordance with the positive balances in their Capital Accounts after taking into account all Capital Account adjustments for the Company Fiscal Year, including adjustments to Capital Accounts pursuant to Sections 10.1(b) and 10.3(b). In the event that a Managing Member has a negative balance in its Capital Account following the liquidation of the Company or such Member’s Interest, after taking into account all Capital Account adjustments for the Company Fiscal Year in which such liquidation occurs, such Member may pay to the Company in cash an amount equal to the negative balance in such Member’s Capital Account. Such payment shall be made by the end of such Fiscal Year (or, if later, within ninety (90) days after the date of such liquidation) and shall, upon liquidation of the Company, be paid to recourse creditors of the Company or distributed to other Members in accordance with the positive balances in their Capital Accounts.

(b) With respect to assets distributed in kind to the Members in liquidation or otherwise, (i) any unrealized appreciation or unrealized depreciation in the values of such assets shall be deemed to be Profits and Losses realized by the Company immediately prior to the liquidation or other distribution event; and (ii) such Profits and Losses shall be allocated to the Members in accordance with the provisions of Section 10.1(b), and any property so distributed shall be treated as a distribution of an amount in cash equal to the excess of such fair market value over the outstanding principal balance of and accrued interest on any debt by which the property is encumbered. For the purposes of this Section 10.3(b), the terms “unrealized appreciation” or “unrealized depreciation” shall mean the difference between the fair market value of such assets, taking into account the fair market value of the associated financing (but subject to the provisions of Section 7701(g) of the Code), and the Company’s adjusted basis for such assets as determined under the applicable provisions of the Allocation Regulations. This Section 10.3(b) is merely intended to provide a rule for allocating unrealized gains and losses upon liquidation or other distribution event, and nothing contained in this Section 10.3(b) or elsewhere herein is intended to treat or cause such distributions to be treated as sales for value.
The fair market value of such assets shall be determined by an appraiser to be selected by the Managing Member with the Consent of the Special Member.

(c) The Investment Member may, on a timely basis, elect to be unconditionally obligated to restore all or a portion of any deficit in the Investment Member’s Capital Account upon liquidation of its Interest in the Company (an “Elective DRO”). Any such election shall be evidenced by written notice to the Managing Member, delivered prior to such time, specifying the amount of any deficit for which the Investment Member elects a Deficit Restoration Obligation. Any amount owing pursuant to a Deficit Restoration Obligation shall be payable upon the later of (a) the end of the Fiscal Year in which Investment Member’s Interest is liquidated or (b) ninety (90) days after the date of such liquidation. The amount of any such election shall automatically be reduced to the extent the deficit in the Investment Member’s Capital Account (after reduction for the items described in (4), (5) and (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d)) is subsequently reduced or eliminated as of the end of the Company’s taxable year without affecting the validity of prior allocations. If an allocation or distribution thereafter increases the deficit in the Investment Member’s Capital Account, unless the Investment Member elects otherwise under (i) below, the Investment Member will be obligated to restore the deficit only to the extent of the lesser of (i) the deficit amount the Investment Member has previously elected to restore or (ii) the smallest deficit balance in the Investment Member’s Capital Account (after reduction for the items described in (4), (5) and (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d)) as of the end of the Company’s taxable year subsequent to the taxable year for which the election above was made. For purposes of determining the amount referred to in (ii), the income, gain, losses and deductions of the Company shall be allocated under an interim closing of the books method.

10.4 Special Provisions

(a) Except as otherwise provided in this Agreement, all Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures, Tax Credits and cash distributions shared by a class of Members shall be shared by each Member in such class in the ratio of such Member’s paid-in Capital Contribution to the paid-in Class Contribution of the class of Members of which such Member is a member.

(b) Notwithstanding the foregoing provisions of this Article X:

(i) If (a) the Company incurs recourse obligations or Partner Nonrecourse Debt (including, without limitation, Voluntary Loans or Subordinated Loans) or (b) the Company incurs Losses from extraordinary events which are not recovered from insurance or otherwise (collectively “Recourse Obligations”) in respect of any Company Fiscal Year, then the calculation and allocation of Profits and Losses shall be adjusted as follows: first, an amount of deductions attributable to the Recourse Obligations shall be allocated to the Member who bears the Economic Risk of Loss therefor; and second, the balance of such deductions shall be allocated as provided in Section 10.1(a).

(ii) If any Profits arise from the sale or other disposition of any Company asset which shall be treated as ordinary income under the depreciation recapture provisions of the Code, then the full amount of such ordinary income shall be allocated
among the Members in the proportions that the Company deductions from the
depreciation giving rise to such recapture were actually allocated. In the event that
subsequently-enacted provisions of the Code result in other recapture income, no
allocation of such recapture income shall be made to any Member who has not received
the benefit of those items giving rise to such other recapture income.

(iii) If the Company shall receive any purchase money indebtedness in partial
payment of the purchase price of the Apartment Complex and such indebtedness is
distributed to the Members pursuant to the provisions of Section 10.2(b) or Section 10.3,
the distributions of the cash portion of such purchase price and the principal amount of
such purchase money indebtedness hereunder shall be allocated among the Members in
the following manner: On the basis of the sum of the principal amount of the purchase
money indebtedness and cash payments received on the sale (net of amounts required to
pay Company obligations and fund reasonable reserves), there shall be calculated the
percentage of the total net proceeds distributable to each class of Members based on
Section 10.2(b) or Section 10.3, as applicable, treating cash payments and purchase
money indebtedness principal interchangeably for this purpose, and the respective classes
shall receive such respective percentages of the net cash purchase price and purchase
money principal. Payments on such purchase money indebtedness retained by the
Company shall be distributed in accordance with the respective portions of principal
allocated to the respective classes of Members in accordance with the preceding sentence,
and if any such purchase money indebtedness shall be sold, the sale proceeds shall be
allocated in the same proportion.

(iv) Income, gain, loss and deduction with respect to any asset which has a
variation between its basis computed in accordance with the applicable provisions of the
Allocation Regulations and its basis computed for federal income tax purposes shall be
shared among the Members so as to take account of such variation in a manner consistent
with the principles of Section 704(c) of the Code and Section 1.704-1(b)(2)(iv)(g) of the
Allocation Regulations.

(v) The terms “Profits” and “Losses” used in this Agreement shall mean
income and losses, and each item of income, gain, loss, deduction or credit entering into
the computation thereof, as determined in accordance with the accounting methods
followed by the Company and computed in accordance with Treasury Regulation Section
1.704-1(b)(2)(iv). Profits and Losses for federal income tax purposes shall be allocated
in the same manner as set forth in this Article X, except as provided in Section
10.4(b)(iv).

(vi) Nonrecourse Deductions shall be allocated 99.99% to the Investment
Member, 0.0025% to the Class B Special Member, and 0.0075% to the Managing
Member.

(vii) Partner Nonrecourse Deductions shall be allocated to and among the
Members in the manner provided in the Allocation Regulations.
(viii) Subject to the provisions of Section 10.4(b)(xix), if there is a net decrease in Partnership Minimum Gain for a Company Fiscal Year, the Members shall be allocated items of Company income and gain in accordance with the provisions of Section 1.704-(2)(f) of the Allocation Regulations.

(ix) Subject to the provisions of Section 10.4(b)(xix), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain for a Company Fiscal Year then any Member with a Share of such Partner Nonrecourse Debt Minimum Gain shall be allocated items of Company income and gain in accordance with the provisions of Section 1.704-2(i)(4) of the Allocation Regulations.

(x) Subject to the provisions of 10.4(b)(vi) through 10.4(b)(ix) above, in the event that any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Allocation Regulations, items of Company income and gain, including gross income, shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Allocation Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible. This Section 10.4(b)(x) is intended to constitute a “qualified income offset” provision within the meaning of the Allocation Regulations and shall be interpreted consistently therewith. For purposes of this Section 10.4(b)(x), a Member’s Capital Account shall be treated as reduced by Qualified Income Offset Items.

(xi) Subject to the provisions of Sections 10.4(b)(vi) through 10.4(b)(x) above, in no event shall any Non-Managing Member be allocated Losses that would cause it to have an Adjusted Capital Account Deficit as of the end of any Company Fiscal Year. Any Losses that are not allocated to a Non-Managing Member by reason of the application of the provisions of this Section 10.4(b)(xi) shall be allocated to the Managing Member.

(xii) Subject to the provisions of Sections 10.4(b)(vi) through 10.4(b)(xi) above, in the event that any Member has an Adjusted Capital Account Deficit at the end of any Company Fiscal Year, items of Company income and gain shall be specially allocated to each such Member in the amount of such Adjusted Capital Account Deficit as quickly as possible.

(xiii) Syndication Expenses for any Fiscal Year or other period shall be specially allocated to the Investment Member.

(xiv) For purposes of determining the Profits, Losses, Tax Credits or any other items allocable to any period, Profits, Losses, Tax Credits and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Managing Member using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

(xv) To the extent that interest on loans (or other advances which are deemed to be loans) made by a Managing Member to the Company is determined to be deductible
by the Company in excess of the amount of interest actually paid by the Company, such additional interest deduction(s) shall be allocated solely to such Managing Member.

(xvi) To the extent the Company earns interest income on the deposit or investment of Mortgage Loan proceeds, an equal amount of gross income shall be specially allocated to the Managing Member if required by the Investment Member. Any taxable income of the Company resulting from its receipt of donations, contributions, grants or subsidies (whether in the form of property, cash, or forgivable debt) shall be specially allocated to the Managing Member.

(xvii) For purposes of determining each Member’s proportionate share of the excess Nonrecourse Liabilities of the Company pursuant to Section 1.752-3(a)(3) of the Allocation Regulations, the Members’ interests in Profits shall be determined by reference to the Members’ allocable share of Capital Proceeds from a Capital Transaction under Clause Fifth of Section 10.2(b); provided, however, that the Members agree that, upon giving written notice to the Managing Member, the Investment Member shall have the right at any time to cause the Company to select an alternative method for allocating excess Nonrecourse Liabilities of the Company pursuant to Section 1.752-3(a)(3) of the Allocation Regulations if the Investment Member reasonably determines that such alternative method would (or could reasonably be expected to) avoid or mitigate any tax or economic detriment to the Investment Member or its affiliates (as a result of an actual or pending change in law, change in circumstance, or otherwise). Without limiting the foregoing, the Managing Member shall provide written notice to the Investment Member no later than 45 days following the close of any Fiscal Year in which the Investment Member’s adjusted basis in its Company Interest is or is reasonably likely to be zero.

(xviii) Any recapture of any Tax Credit shall be allocated to and among the Members in the same manner as such Tax Credit was allocated to the Members.

(xix) If for any Fiscal Year the application of the minimum gain chargeback provisions of Section 10.4(b)(viii) or Section 10.4(b)(ix) of this Agreement would cause distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Managing Member may request a waiver from the Commissioner of the Service of the application in whole or in part of Section 10.4(b)(viii) or Section 10.4(b)(ix) in accordance with Section 1.704-2(f)(4) of the Allocation Regulations. Furthermore, if additional exceptions to the minimum gain chargeback requirements of the Allocation Regulations have been provided through private letter rulings issued to the Company or published revenue rulings or other binding administrative authority, the Managing Member is authorized to cause the Company to take advantage of such exceptions if to do so would be in the best interest of a majority in interest of the Members.

(xx) In the event that any fee payable to any for profit Managing Member or any for profit Affiliate thereof shall instead be determined to be a non-deductible, non-capitalizable distribution from the Company to a Member for federal income tax purposes, then there shall be allocated to such Managing Member an amount of gross income equal to the amount of such distribution.
(xxi) In applying the provisions of Article X with respect to distributions and allocations, the following ordering of priorities shall apply:

1. Capital Accounts shall be deemed to be reduced by Qualified Income Offset Items.
2. Capital Accounts shall be reduced by distributions of Cash Flow under Clause Seventh of Section 10.2(a).
3. Capital Accounts shall be reduced by distributions of Capital Proceeds under Clause Fifth of Section 10.2(b).
4. Capital Accounts shall be increased by any minimum gain chargeback under Section 10.4(b)(viii) or Section 10.4(b)(ix).
5. Capital Accounts shall be increased by any qualified income offset required under Section 10.4(b)(x).
6. Capital Accounts shall be increased by allocations of Operating Profits under Section 10.1(a).
7. Capital Accounts shall be reduced by allocations of Operating Losses under Section 10.1(a).
8. Capital Accounts shall be reduced by allocations of Losses under Section 10.1(b).
9. Capital Accounts shall be increased by allocations of Profits under Section 10.1(b).
10. All remaining allocations shall be made in the order in which they appear in Section 10.4(b).

(xxii) To the maximum extent permitted under the Code, allocations of Profits and Losses shall be modified so that the Members’ Capital Accounts reflect the amount they would have reflected if adjustments required by Sections 10.4(b)(x), 10.4(b)(xi) and 10.4(b)(xii) had not occurred.

(xxiii) In the event the Investment Member shall give notice to the Managing Member that, in the reasonable judgment of the Investment Member, its Capital Account as of the close of the tax year in which such notice is given either will have a zero balance or there will be an increase in Partner Nonrecourse Debt Minimum Gain for such year that is attributable to the Deferred Development Fee Note, the Managing Member shall take all such action as may be necessary to assure that any outstanding balance of any Deferred Development Fee Note shall constitute a “partnership nonrecourse liability” of the Company, as such term is defined in Treasury Regulation Section 1.752-1(a)(2) or any successor regulation. One such action shall be the assignment of any Deferred
Development Fee Note to an Entity that is not a “related person,” as defined in Section 42(d)(2)(D)(iii) of the Code, to the Company.

10.5 Authority of the Managing Member to Vary Allocations to Preserve and Protect the Members’ Intent

(a) It is the intent of the Members that each Member’s distributive share of Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures and Tax Credits (and items thereof) shall be determined and allocated in accordance with this Agreement to the fullest extent permitted by Section 704(b) of the Code and the Allocation Regulations. In order to preserve and protect the determinations and allocations provided for in this Agreement, the Managing Member is hereby authorized and directed to allocate Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures and credits (and items thereof) arising in any Fiscal Year differently than otherwise provided for in this Agreement to the extent that allocating Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures or credits (or any item thereof) in the manner provided for herein would cause the determinations and allocations of each Member’s distributive share of Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures or credits (or any item thereof) not to be permitted by Section 704(b) of the Code. Any allocation made pursuant to this Section 10.5 shall be deemed to be a complete substitute for any allocation otherwise provided for in this Agreement and shall only be made with the Consent of the Investment Member.

(b) In making any allocation (the “New Allocation”) under Section 10.5(a), the Managing Member is authorized to act only with the Consent of the Investment Member after having been advised in writing by the Tax Accountants that, under Section 704(b) of the Code and/or the Allocation Regulations, (i) the New Allocation is necessary, and (ii) the New Allocation is the minimum modification of the allocations otherwise provided for in this Agreement necessary in order to assure that, either in the then-current Fiscal Year or in any preceding Fiscal Year, each Member’s distributive share of Profits, tax-exempt income, Losses, non-deductible non-capitalizable expenditures and Tax Credits (or any item thereof) is determined and allocated in accordance with this Agreement to the fullest extent permitted by Section 704(b) of the Code and the Allocation Regulations.

(c) New Allocations made by the Managing Member under Section 10.5 shall be deemed to be made pursuant to the fiduciary obligation of the Managing Member to the Company and the Non-Managing Members, and no such allocation shall give rise to any claim or cause of action by any Non-Managing Member.

10.6 Recapture Amount

(a) If at any time during the “compliance period” (as defined in Section 42(i)(1) of the Code), the Apartment Complex ceases to be a “qualified low income housing project” (as defined in Section 42(g)(1) of the Code), any Low-Income Unit in the Apartment Complex ceases to be a “low income unit” (as defined in Section 42(i)(3) of the Code), or for any other reason all or any portion of credits allowed to the Company and its Members under Section 42 of the Code are subject to recapture pursuant to Section 42(j) of the Code (such an occurrence being referred to herein as a “Recapture Event”), the Investment Member shall become entitled to
receive funds equal to the “Recapture Amount”. The Recapture Amount shall be in the form of an offset against future Installments, a cash distribution or payment to the Investment Member, in each case as set forth in Sections 5.1(e) and/or (f).

(b) The Recapture Amount is an amount equal the sum of (i) the “credit recapture amount” allocable to the Investment Member as defined in Section 42(j) of the Code plus (ii) all income taxes payable by the Investment Member (or its partners or members) as computed under Section 10.6(d).

(c) Any Recapture Amount distributable to the Investment Member pursuant to the foregoing provisions shall be distributed as funds become available for such distributions, but such distributions shall not be made prior to (i) in the case of the “credit recapture amount”, the year of the Recapture Event and (ii) in the case of any credits disallowed with respect to any year subsequent to the Recapture Event, in each such subsequent year.

(d) Determination of the Recapture Amount shall be made on the assumption that receipt or accrual by each partner of the Investment Member of any amounts distributable to such partner under Subsection (c) above will currently be subject to United States federal and State income tax at the highest marginal rate applicable to corporations for the year(s) in question (and assuming the non-applicability of the alternative minimum tax).

(e) All computations required under this Section 10.6 shall be made reasonably by the Investment Member, and the results of such computations, together with a statement describing in reasonable detail the manner in which such computations were made, shall be delivered to the Managing Member in writing. Within fifteen (15) days following receipt of such computation, the Managing Member may request that the Auditors determine whether such computations are reasonable and are not erroneous. If the Auditors determine that such computations are unreasonable or contain errors, then the Auditors shall determine what they believe to be the appropriate computations. If the Investment Member does not agree with the determination of the Auditors, then another accounting firm other than the Auditors to be selected jointly by the Investment Member and the Managing Member or, if they cannot agree, by the American Arbitration Association, from among the ten largest national accounting firms, shall make such computations. The computations of the Investment Member, the Auditors, or the other accounting firm so selected, whichever is applicable, shall be final, binding and conclusive upon the parties. All fees and expenses payable to an accounting firm other than the Auditors under this paragraph shall be borne solely by the Managing Member. All fees and expenses payable to the American Arbitration Association shall be borne equally by the Managing Member and the Investment Member.
ARTICLE XI
Management Agent

11.1 General

The Managing Member shall engage the Management Agent to manage the Apartment Complex pursuant to the Management Agreement. The Management Agent shall receive a Management Fee of those amounts payable from time to time by the Company to the Management Agent for management services in accordance with a management contract approved by any Agency or Lender with the right to approve the same, or, when any such management contract is not subject to the approval of any Agency or Lender, in accordance with a reasonable and competitive fee arrangement. The initial Management Agent shall be Accolade Property Management, Inc. From and after the Admission Date, the Company shall not enter into any Management Agreement or modify or extend any Management Agreement unless (i) the Managing Member shall have obtained the prior Consent of the Special Member to the identity of the Management Agent and the terms of the Management Agreement or the modification or extension thereof and (ii) such new Management Agreement or modified or extended Management Agreement provides that it is terminable by the Company on thirty (30) days’ notice by the Company in the event of any change in the identity of the Managing Member. The Management Agent shall maintain insurance in accordance with the applicable Insurance Requirements set forth in Exhibit D. Copies of such policies (or binders) shall be provided to the Company and the Investment Member within thirty (30) days after the effective date of the Management Agreement and annually thereafter.

11.2 Fees

Notwithstanding the provisions of Section 11.1, however, should the Special Member or an Affiliate thereof perform property management services for the Company, property management, rent-up or leasing fees shall be paid to the Special Member or such Affiliate only for services actually rendered and shall be in an amount equal to the lesser of (i) fees competitive in price and terms with those of non-affiliated Persons rendering comparable services in the locality where the Apartment Complex is located and which could reasonably be available to the Company, or (ii) five percent (5%) of the gross revenues of the Apartment Complex. No duplicate property manager fees shall be paid to any Person.

11.3 Removal and Replacement

If (i) the Apartment Complex shall be subject to a substantial building code violation which shall not have been cured within six (6) months after notice from a Governmental Authority or (ii) the Company shall not have achieved a 1.15 to 1.00 Debt Service Coverage Ratio during any Fiscal Year commencing on January 1, 2021, or (iii) an Event of Bankruptcy shall occur with respect to the Management Agent, or (iv) the Management Agent shall commit willful misconduct or gross negligence in its conduct of its duties and obligations under the Management Agreement or (v) there is any change in the Persons acting as Managing Members (to which the Special Member has not consented), or (vi) the Management Agent is cited by the Credit Agency or any other Tax Credit monitoring or compliance agency of the State or any other Governmental Authority for a violation or alleged violation of any applicable rules,
regulations or requirements, including, without limitation, non-compliance with the Agreed-Upon Set-Aside Test, the Rent Restriction Test or any other Tax Credit-related provision, or (vii) the Management Agent fails to promptly and competently perform (after any applicable notice and cure period) all duties of the Management Agent under the Management Agreement, or (viii) the Apartment Complex fails to generate at least 90% of the Revised Projected Tax Credits in any calendar year, or (ix) the Management Agent fails to materially comply with the record keeping, tenant qualification and rental requirements of the Extended Use Agreement, and Code Section 42 and the Regulations, rulings and policies related thereto, or (x) the Apartment Complex is materially mismanaged, or (xi) the Managing Member is removed, then, upon request by the Special Member and subject to Agency and Lender approval, if required, the Managing Member shall cause the Company to promptly terminate the Management Agreement with the Management Agent and appoint a new Management Agent selected by the Special Member, which new Management Agent shall not be an Affiliate of a Managing Member. Each Managing Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to take any action and to execute and deliver any and all documents and instruments on behalf of such Managing Member and the Company as the Special Member may deem to be necessary or appropriate in order to effectuate the provisions of this Article XI. Subject to any Requisite Approvals, the Company shall not enter into any future management arrangement or renew or extend any existing management arrangement unless such arrangement is terminable without penalty upon the occurrence of the events described in this Article XI.

11.4 Lack of Management Agent

The Managing Member shall have the duty to manage the Apartment Complex during any period when there is no Management Agent.
ARTICLE XII
Books and Records, Accounting, Tax Elections, Etc.

12.1 Books and Records

The Company shall maintain all books and records which are required under the Act or by any Governmental Authority and may maintain such other books and records as the Managing Member in its discretion deems advisable or as reasonably requested by the Special Member. Each Non-Managing Member, or its duly authorized representatives, shall have access to the records of the Company at the principal office of the Company at any and all reasonable times, and may inspect and copy any of such records. A list of the name and addresses of all of the Non-Managing Members shall be maintained as part of the books and records of the Company and shall be mailed to any Non-Managing Member upon request. The Company may require reimbursement for any out of pocket expenses which it incurs as a result of the exercise by any Non-Managing Member of its rights under this Section 12.1, including, without limitation, photocopying expenses. The Managing Member shall cause the Company to maintain at all times all informational and qualification files of each tenant of the Apartment Complex in fireproof storage facilities (whether paper files or micro fiche or film) and in a secure location controlled by the Company, for the later of six (6) years after completion of the Compliance Period or as long as is required under applicable law.

12.2 Bank Accounts

The bank accounts of the Company shall be maintained in the Company’s name with such financial institutions as the Managing Member shall determine. Withdrawals shall be made only in the regular course of Company business on such signature or signatures as the Managing Member may determine. All deposits (including security deposits and other funds required to be escrowed by any Lender or Agency) and other funds not needed in the operation of the business shall be deposited, if required by applicable law and to the extent permitted by applicable Agency or Lender requirements, in interest bearing accounts or invested in United States Government obligations maturing within one year.

12.3 Auditors

(a) The Auditors shall prepare, for execution by the Managing Member, all tax returns of the Company. Prior to the filing of the Company tax returns, and in no event later than February 15 of each Fiscal Year, the Auditors shall deliver the tax returns for the prior Fiscal Year to the Tax Accountants for their review and comment. If a dispute arises between the Auditors and the Tax Accountants over the proper preparation of the tax returns and such dispute cannot be resolved by the Auditors and the Tax Accountants by March 1 of such Fiscal Year, then the Tax Accountants shall make the final decision with respect to whether any changes are necessary. The Company shall reimburse the Investment Member and its Affiliates for all costs and expenses paid to the Tax Accountants for the aforementioned services.

(b) The Auditors shall certify all annual financial reports to the Members in accordance with generally accepted auditing standards.
(c) If the Company fails to fulfill any of its obligations under Section 12.7(a)(i) and/or Section 12.7(a)(ii) within the time periods set forth therein, at any time thereafter upon written notice from the Special Member, the Managing Member shall appoint replacement Auditors. If no such notice from the Special Member is delivered, the Consent of the Special Member must be received to the appointment of replacement Auditors. If the Managing Member fails to appoint replacement Auditors within thirty (30) days of the notice from the Special Member to replace the Auditors, then the Special Member shall appoint replacement Auditors of its own choosing, the cost of which shall be borne by the Company as a Company expense. All of the Members hereby grant to the Special Member a special power of attorney, irrevocable to the extent permitted by law, coupled with an interest, to so appoint replacement Auditors and to anything else which in the judgment of the Special Member may be necessary or appropriate to accomplish the purposes of this Section 12.3(c).

(d) On or prior to the date which is thirty (30) days after the Admission Date, the Managing Member shall cause the Company (i) in writing, to engage the Auditors to perform the services required herein and (ii) to deliver to the Investment Member copies of all such engagement letters and agreements.

12.4 Cost Recovery and Elections

(a) The Managing Member shall cause the Company to make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code and will cause the Company to use the Alternative Depreciation System (ADS) to the extent required by such election. The Managing Member shall also cause the Company to use Bonus Depreciation to the extent not inconsistent with the foregoing. The Managing Member shall seek the direction and/or Consent of the Investment Member prior to filing of the Company’s 2018 tax returns or such earlier time as such election is to be made.

(b) Subject to the provisions of Section 12.5, all other elections required or permitted to be made by the Company under the Code shall be made by the Managing Member with the Consent of the Investment Member, in such manner as will, in the opinion of the Auditors, be most advantageous to the Investment Member and the limited partners thereof.

12.5 Special Basis Adjustments

In the event of a transfer of all or any part of the Interest of the Investment Member or a transfer of all or any part of an interest of a partner of the Investment Member, the Company shall elect, upon the request of the Investment Member, pursuant to Section 754 of the Code, to adjust the basis of the Company property. Any adjustments made pursuant to said Section 754 shall affect only the successor in interest to the transferring Member or partner thereof. Each Member will furnish the Company all information necessary to give effect to any such election.

12.6 Fiscal Year

Unless otherwise required by law, the Fiscal Year and tax year of the Company shall be the calendar year. The books of the Company shall be maintained on an accrual basis.
12.7 Information to Members

(a) The Managing Member shall cause to be prepared and distributed to all Persons who were Members at any time during a Fiscal Year of the Company:

(i) Within sixty (60) days after the end of each Fiscal Year of the Company, drafts of (A) a balance sheet as of the end of such Fiscal Year, a statement of income, a statement of members’ equity, and a statement of cash flows, each for the Fiscal Year then ended, all of which, except the statement of cash flows, shall be prepared in accordance with generally accepted accounting principles and accompanied by a report of the Auditors containing an opinion of the Auditors, on which the Investment Member shall comment, with final financial statements (reflecting the reasonable comments made by the Investment Member on the draft financial statements) to follow within ninety (90) days of the end of such Fiscal Year of the Company, and (B) a report of the activities of the Company during the period covered by the report. With respect to any distribution to the Investment Member, the report called for shall separately identify distributions from (1) Cash Flow from operations during the period, (2) Cash Flow from operations during a prior period which had been held as reserves, (3) proceeds from disposition of property and investments, (4) lease payments on net leases with builders and sellers, (5) reserves from the gross proceeds of the Capital Contributions of the Investment Member, (6) borrowed monies, and (7) transactions outside of the ordinary course of business with a description thereof.

(ii) Within forty-five (45) days after the end of each Fiscal Year of the Company, the Managing Member shall cause to be prepared and delivered to the Investment Member with respect to such Fiscal Year a draft tax return and Schedule K-1 showing all items of income, gain, loss, deduction and credit of the Company for federal income tax purposes and the Investment Member's allocable share thereof (together with all information relating to the Company and/or the Apartment Complex which is necessary, in the view of the Tax Accountants, for the preparation of the Non-Managing Members’ federal income tax returns for the prior Fiscal Year), on which the Investment Member shall comment, with a final tax return and Schedule K-1 (reflecting the reasonable comments made by the Investment Member on the draft tax return and Schedule K-1) to follow within ninety (90) days of the end of such Fiscal Year of the Company. The Managing Member shall cause all tax returns and reports required to be filed by the Company to be prepared and timely filed with the appropriate authorities and shall furnish to the Investment Member copies of such tax returns and reports promptly after the filing of the same. The Managing Member shall retain copies of such tax returns and reports for the Company for as long as is required by applicable law.

(iii) Within thirty (30) days after the end of each quarter of a Fiscal Year of the Company, a report containing:

(A) a balance sheet, which may be unaudited;

(B) a statement of income for the quarter then ended, which may be unaudited;
(C) a statement of cash flows for the quarter then ended, which may be unaudited;

(D) a certification of the Managing Member that the Apartment Complex and its tenants are in compliance with all applicable federal, state and local requirements and regulations;

(E) a Tax Credit monitoring form, a copy of the rent roll for the Apartment Complex for each month during such quarter, a statement of income and expenses, an operating statement and an Occupancy/Rental Report, all in a form specified by the Special Member;

(F) a certification of the Managing Member that it has received no notice of a building, health or fire code violation or similar violation of a governing law, ordinance or regulation against the Apartment Complex, or, if there is any such violation, a detailed description thereof;

(G) the number of Section 811 Units required by the Credit Agency pursuant to any Section 811 RAC; and

(H) all other information which would be pertinent to a reasonable investor regarding the Company and its activities during the quarter covered by the report.

(b) Within sixty (60) days after the end of each Fiscal Year of the Company a copy of the annual report to be filed with the United States Treasury concerning the status of the Apartment Complex as low-income housing and, if required, a certificate to the appropriate state agency concerning the same, including copies of the Form 8609-A, Form 8586 and any other report to be filed annually with the United States Treasury concerning the status of the Apartment Complex as low-income housing and, if required, any report or certificate to be filed with the Credit Agency concerning the same.

(c) Upon the written request of the Investment Member for further information with respect to any matter covered in item (a) or item (b) above, the Managing Member shall furnish such information within thirty (30) days of receipt of such request.

(d) Prior to October 15 of each Fiscal Year, the Company shall send to the Investment Member an estimate of the Investment Member’s share of the Tax Credits, Profits and Losses of the Company for federal income tax purposes for the current Fiscal Year. Such estimate shall be prepared by the Managing Member and the Auditors and shall be in the form specified by the Special Member.

(e) The Managing Member shall send the Investment Member a detailed report within fifteen (15) days after the end of any calendar quarter during which any of the following events occur:
(i) there is a material default by the Company under any Project Document or in the payment of any mortgage, taxes, interest or other obligation on secured or unsecured debt,

(ii) any reserve has been reduced or terminated by application of funds therein for purposes materially different from those for which such reserve was established,

(iii) any Managing Member has received any notice of a material fact which may substantially affect further distributions or Tax Credit allocations to any Non-Managing Member,

(iv) any Member has pledged or collateralized its Interest in the Company, or

(v) TDHCA has proposed changes to the “rent schedule” under the Section 811 RAC (to the extent each such agreement is in effect).

(f) After the Admission Date, the Company shall send to the Investment Member copies of all applicable periodic reports covering the status of project operations and any matters relating to the Tax Credit as are required by any Lender or Agency. The Managing Member shall deliver to the Investment Member copies of all construction draw requests (and all supporting documentation) submitted to the Lender prior to the Admission Date, if any, and shall deliver to the Investment Member simultaneously with their submission to the Lender copies of all construction draw requests (and all supporting documentation) submitted to the Lender on or after the Admission Date.

(g) On or before May 1 of each Fiscal Year, the Company shall send to the Investment Member a report on operations, in the form supplied by the Special Member.

(h) The Managing Member hereby consents to each Lender or Agency providing the Investment Member with copies of all material communications between any such Lender or Agency and the Managing Member and/or the Company, including, but not limited to, any notices of default.

(i) [Intentionally Deleted]

(j) Within sixty (60) days following the Completion Date, the Managing Member shall prepare, or cause the Auditors to prepare, and deliver to each Non-Managing Member a Tax Credit basis worksheet for each building in the Apartment Complex, all in a form specified by the Special Member.

(k) Promptly after Permanent Mortgage Commencement, the Managing Member shall send to the Special Member a closing binder containing photocopies of the fully executed versions of all documents signed in connection with the Permanent Loan(s). From and after any date upon which the Managing Member receives notice from the Special Member that the Special Member would like copies of the monthly rent rolls for the Apartment Complex to be sent to the Special Member, the Managing Member shall send copies of the rent rolls to the Special Member no later than ten (10) days after the expiration of each month.
(l) If the Managing Member does not cause the Company to fulfill its obligations under Section 12.7(a)(i) and/or Section 12.7(a)(ii) within the time periods set forth therein, the Managing Member shall pay as damages the sum of $250 per day (plus interest at a rate equal to the Prime Rate plus three percent (3%)) to the Investment Member until such obligations shall have been fulfilled. Such damages shall be paid forthwith by the Managing Member, and the failure to pay any such damages shall constitute a material default by the Managing Member hereunder. In addition, if the Managing Member shall fail to pay any such damages, the Managing Member and its Affiliates shall forthwith cease to be entitled to the distribution of any Cash Flow or Capital Proceeds to which they may otherwise be entitled hereunder. Such distributions of Cash Flow and Capital Proceeds shall be restored only upon the payment of such damages in full, and any amount of such damages not so paid shall be deducted against distributions of Cash Flow and Capital Proceeds otherwise due to the Managing Member or its Affiliates.

(m) On or before November 1 of each Fiscal Year, theManaging Member shall cause the Company to send to the Investment Member an operating budget of the Apartment Complex for the upcoming Fiscal Year. The Special Member shall have the right to review and comment on the budget, and the Managing Member shall incorporate the Special Member’s recommendations, subject to the approval of the Agency. If the Managing Member and the Special Member are unable to agree on a budget for a particular Fiscal Year, the budget for such year shall be the budget for the preceding year increased by 5%. The Managing Member shall keep the Special Member informed concerning the general state of the business and financial condition of the Company and shall, upon the reasonable request of the Special Member, furnish to the Special Member full information, accounts and documentation concerning the state of the business and financial condition of the Company. Such budget shall include, but not be limited to:

(i) an overall assessment of the market in the general vicinity of the Apartment Complex,

(ii) an assessment of repairs and capital improvements needed and the priority of such items; and

(iii) a proposed repairs and capital improvements budget for the year affected.

(n) Notwithstanding anything to the contrary contained herein, the Managing Member shall cause to be conducted and delivered to the Non-Managing Members pursuant to Section 5.1(a) an audit on one hundred (100%) percent of the initial leases or occupancy agreements executed in connection with the Apartment Complex in order to ensure compliance with the applicable Rent Restriction Test, Minimum Set Aside Test, or any other applicable tenant restriction test (“Initial Compliance Audit”). The Special Member shall select at its option, any combination of occupancy agreements which shall comprise the Initial Compliance Audit (the “Selected Occupancy Agreements”). The Initial Compliance Audit shall consist of a review of the complete tenant files in connection with the Selected Occupancy Agreements, including but not limited to any tenant financial information. Further, the Initial Compliance Audit shall be conducted with the cooperation of, and at the sole cost and expense of the Managing Member if the Initial Compliance Audit reveals an instance of material
noncompliance. An instance of material noncompliance shall be deemed to exist if at least five (5) occupancy agreements reveal noncompliance or violations of any applicable tenant restriction test. If the Initial Compliance Audit does not reveal any instance of material noncompliance the Company shall bear the cost of such audit.

(o) The Managing Member shall deliver to the Investment Member audited annual financial statements of each of the Managing Member and the Guarantors within one hundred eighty (180) days of the end of each fiscal year of the Company, unless waived by the Special Member, in writing.

(p) The Managing Member shall maintain all documentation with respect to initial qualification of the Apartment Complex as a qualified Tax Credit project, including tenant leasing files in compliance with the Code, for the later of six (6) years after completion of the Compliance Period or as long as is required under applicable law. Such files shall be stored off-site at the Managing Member’s principal place of business. The Managing Member shall retain such other documentation relating to the continuing Tax Credit qualification of the Apartment Complex for at least six (6) years, unless requested by the Special Member or required by applicable law to retain such documentation for a longer period. Within ten (10) business days’ notice from the Special Member, the Managing Member shall afford the Non-Managing Members, or their respective members or agents, access to all files of the Company. The Managing Member acknowledges and agrees that it shall cooperate fully and in good faith, and shall instruct and cause the Management Agent to cooperate fully and in good faith, with the Non-Managing Members with respect to their monitoring of the Company’s operation of the Apartment Complex, including the review of and compliance with Tax Credit related laws and regulations.

12.8 Expenses of the Company.

All expenses of the Company shall be billed directly to and paid by the Company.

12.9 Review of Compliance.

The Managing Member shall, within seventy-five (75) days after the end of each Fiscal Year of the Company, certify to each Non-Managing Member in the same scope and manner that it is required to certify, if requested, to the Agency, that the Company is in compliance with all regulations and procedures relating to the operation of the Apartment Complex as a qualified Tax Credit project within the meaning of Section 42(g) of the Code. The Special Member may, at its own expense, conduct or cause to be conducted an audit or review of the Company’s compliance with all regulations and procedures relating to the operation of the Apartment Complex as a qualified Tax Credit project within the meaning of Section 42(h) of the Code. Such audit or review shall be conducted upon not less than thirty (30) nor more than ninety (90) days prior written request. The Managing Member shall cooperate with any such audit by making appropriate personnel of the Managing Member and Property Manager and all books and records of the Apartment Complex and Company available to the Investment Members or their representatives at the offices of the Company during regular business hours.
12.10 **Inspections.**

The Special Member, at its sole cost and expense, shall have the right to conduct physical inspections of the Apartment Complex on an annual basis and the Managing Member shall take all reasonable steps necessary to cooperate therewith.
ARTICLE XIII
General Provisions

13.1 [Intentionally Deleted]

13.2 Amendments to Articles

Within one hundred twenty (120) days after the end of the Company Fiscal Year in which the Investment Member shall have received any distributions under Article X, the Managing Member shall file an amendment to the Articles reducing the amount of its allocable share of such distribution the amount of Capital Contribution of the Investment Member as stated in the last previous amendment to the Articles. However, Schedule A shall not be amended on account of any such distribution.

The Company shall amend the Articles at least once each calendar quarter to effect the substitution of Substitute Non-Managing Members, although the Managing Member may elect to do so more frequently. In the case of assignments, where the assignee does not become a Substitute Non-Managing Member, the Company shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and all documentation required in connection therewith hereunder.

Notwithstanding the foregoing provisions of this Section 13.2, no such amendments to the Articles need be filed by the Managing Member if the Act does not require it and the Articles do not identify the Non-Managing Members or their Capital Contributions in such capacity.

13.3 Notices

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given when the same are (i) deposited in the United States mail and sent by certified or registered mail, postage prepaid, three business days after mailing, (ii) sent by nationally recognized overnight delivery service, one business day after deposit with such nationally recognized overnight delivery service, provided all delivery charges have been prepaid, (iii) sent by telecopier or other facsimile transmission, answerback requested with a copy by regular mail, on the date such answerback is received, or (iv) delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the Company:

(a) If to the Company, at the office of the Company set forth in Section 2.2.

(b) If to a Member, at its address set forth in the Schedule, with copies to Douglas W. Clapp, Esq., Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116; Gary Cohen, Esq., Shutts & Bowen LLP, 200 South Biscayne Boulevard, Suite 4100, Miami, FL 33131; and Tad Adams, Esq., Adams Law Group, 6004 Brownsboro Park Blvd., Suite A, Louisville, KY 40207.
13.4 Word Meanings

The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural, and vice versa, and each gender (masculine, feminine and neuter) shall include the other genders, unless the context requires otherwise. Each reference to a “Section” or an “Article” refers to the corresponding Section or Article of this Agreement, unless specified otherwise. References to Treasury Regulations (permanent or temporary) or Revenue Procedures shall include any successor provisions.

13.5 Binding Effect

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

13.6 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the State.

13.7 Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

13.8 Financing Regulations

(a) So long as any of the Project Documents are in effect, (i) each of the provisions of this Agreement shall be subject to, and the Managing Member covenants to act in accordance with, the Project Documents; (ii) the Project Documents shall govern the rights and obligations of the Members, their heirs, executors, administrators, successors and assigns to the extent expressly provided therein; (iii) upon any dissolution of the Company or any transfer of the Apartment Complex, no title or right to the possession and control of the Apartment Complex and no right to collect the rent thereof shall pass to any Person who is not, or does not become, bound by the Project Documents in a manner satisfactory to the Lenders and any Agency (to the extent that its approval is required); (iv) no amendment to any provision of the Project Documents shall become effective without the prior written consent of any Lender and/or Agency (to the extent that its approval is required); and (v) the affairs of the Company shall be subject to the Regulations, and no action shall be taken which would require the consent or approval of any Lender and/or Agency unless the prior consent or approval of such Lender and/or Agency, as the case may be, shall have been obtained. No new Member shall be admitted to the Company, and no Member shall withdraw from the Company or be substituted for without the consent of any Lender and/or Agency (if such consent is then required). No amendment to this Agreement relating to matters governed by the Regulations or requirements shall become effective until any Requisite Approvals to such amendment shall have been obtained.
(b) Any conveyance or transfer of title to all or any portion of the Apartment Complex required or permitted under this Agreement shall in all respects be subject to all conditions, approvals and other requirements of any Regulations applicable thereto.

13.9 Separability of Provisions

Each provision of this Agreement shall be considered separable and (a) if for any reason any provision is determined to be invalid, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, and (b) if for any reason any provision would cause the Investment Member or the Special Member (in its capacity as a Non-Managing Member) to be bound by the obligations of the Company (other than the Regulations and the other requirements of any Agency or Lender), such provision or provisions shall be deemed void and of no effect.

13.10 Paragraph Titles

All article and section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any article or section.

13.11 Amendment Procedure

This Agreement may be amended by the Managing Member only with the Consent of the Investment Member and the Consent of the Special Member.

13.12 Extraordinary Non-Managing Member Expenses

(a) Any and all costs and expenses incurred by the Investment Member and/or the Special Member in connection with exercising rights and remedies against the Managing Member with respect to this Agreement, including, without limitation, reasonable attorneys’ fees, shall be paid by the Managing Member on demand. All amounts due to the Investment Member and/or the Special Member pursuant to this provision shall bear interest from demand at a rate of seven percent (7%) per annum.

(b) If any Managing Member breaches any provision of this Agreement, the Investment Member and/or the Special Member may employ an attorney or attorneys to protect its rights hereunder, and the Managing Member shall pay on demand the reasonable attorneys’ fees and expenses incurred by the Investment Member and/or the Special Member, whether or not a legal action is actually commenced against any Managing Member by reason of such breach. All amounts due to the Investment Member and/or the Special Member pursuant to this provision shall bear interest from demand at a rate equal to nine percent (9%) per annum.

13.13 Time of Admission

The Investment Member shall be deemed to have been admitted to the Company as of the Commencement Date for all purposes of this Agreement, including Article X, provided, however, that if treasury regulations are issued under the Code or an amendment to the Code is adopted which would require, in the opinion of the Auditors, that the Investment Member be deemed admitted on a date other than as of the Commencement Date, then the Managing
Member shall select a permitted admission date which is most favorable to the Investment Member.


The Company and its Members shall be permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure (as defined in Treasury Regulation Section 1.6011-4(c) or its successor) of the transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) relating to such tax treatment and tax structure. The Managing Members will notify the Members of any “reportable transaction” under Treasury Regulation Section 1.6011-4 (or its successor) in which the Company shall engage.
WITNESS the execution hereof under seal as of the date first written above.

MANAGING MEMBER:

O-SDA ARIA, LLC, a Texas limited liability company, by its sole member, O-SDA Industries, LLC, a Texas limited liability company

By: [Signature]

Megan Lasch, Sole Member
CLASS B SPECIAL MEMBER:  

LDG MULTIFAMILY, LLC, a Kentucky limited liability company

By:  

Chris Dischinger, Manager
SPECIAL MEMBER:

BCCC, INC., a Massachusetts corporation

By: Jeffrey H. Goldstein
Executive Vice President

INVESTMENT MEMBER:

BOSTON CAPITAL DIRECT PLACEMENT, A LIMITED PARTNERSHIP, a Massachusetts limited partnership, by its general partner, Corporate Investment Holdings, Inc., a Massachusetts corporation

By: Jeffrey H. Goldstein
Executive Vice President
CONSENT AND AGREEMENT

The undersigned hereby executes this Agreement for the sole purpose of agreeing to the provisions of Article XI of the foregoing Second Amended and Restated Operating Agreement of the Company notwithstanding any provision of the Management Agreement to the contrary.

ACCOLADE PROPERTY MANAGEMENT, INC.,
a Texas corporation

By: [Signature]
Name: STEPHANIE BAKER
Title: PRESIDENT

Signature Page 4 of 4 to Second Amended and Restated Operating Agreement
Aria Grand, LLC
## ARIA GRAND, LLC

**SCHEDULE A**

As of September 1, 2018

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<thead>
<tr>
<th>Member Type</th>
<th>Capital Contribution</th>
<th>Percentage Interests of Operating Profits and Losses</th>
<th>Percentage Interests of Tax Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Managing Member</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>O-SDA Aria, LLC</td>
<td>$100</td>
<td>0.0075%</td>
<td>0.0075%</td>
</tr>
<tr>
<td><strong>Class B Special Member</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LDG Multifamily, LLC</td>
<td>$100</td>
<td>0.0025%</td>
<td>0.0025%</td>
</tr>
<tr>
<td><strong>Special Member</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BCCC, Inc.</td>
<td>$10</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Investment Member</strong></th>
<th>Total Agreed-to Capital Contribution</th>
<th>Paid-In Capital Contribution*</th>
<th>Percentage Interests of Operating Profits and Losses</th>
<th>Percentage Interests of Tax Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston Capital Direct Placement, A Limited Partnership</td>
<td>$11,139,586</td>
<td>$1,670,938</td>
<td>99.99%</td>
<td>99.99%</td>
</tr>
</tbody>
</table>

*Paid-in Capital Contribution as of the date of this Schedule A. Future Installments of Capital Contribution are subject to adjustment and are due at the times and subject to the conditions set forth in the Agreement to which this Schedule is attached.
## SCHEDULE B

### INVESTMENT MEMBER UNDERWRITTEN OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Operating Expenses</th>
<th>BCC Underwriting 70 units</th>
<th>Boston Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>10,400</td>
<td>149</td>
</tr>
<tr>
<td>Screening/Credit</td>
<td>700</td>
<td>10</td>
</tr>
<tr>
<td>Office Salaries</td>
<td>47,000</td>
<td>671</td>
</tr>
<tr>
<td>Mgr/Super Free Unit</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office Supplies</td>
<td>7,000</td>
<td>100</td>
</tr>
<tr>
<td>Tax Credit Compliance &amp; Monitoring Fee</td>
<td>2,400</td>
<td>34</td>
</tr>
<tr>
<td>Audit/Accounting/Legal</td>
<td>17,250</td>
<td>246</td>
</tr>
<tr>
<td>Telephone</td>
<td>8,100</td>
<td>116</td>
</tr>
<tr>
<td>Security - Vehicle Cost</td>
<td>600</td>
<td>8</td>
</tr>
<tr>
<td>Miscellaneous/Unallocated</td>
<td>1,750</td>
<td>25</td>
</tr>
<tr>
<td>Management Fee</td>
<td>39,460</td>
<td>564</td>
</tr>
<tr>
<td><strong>Total Administrative Expenses</strong></td>
<td><strong>$134,660</strong></td>
<td><strong>$1,924</strong></td>
</tr>
<tr>
<td>Utility Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity</td>
<td>13,750</td>
<td>196</td>
</tr>
<tr>
<td>Water &amp; Sewer</td>
<td>14,170</td>
<td>202</td>
</tr>
<tr>
<td>Adj. - Tenant Pays</td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Fuel</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Adjustment - Tenant Pays</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous/Unallocated</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Utility Expenses</strong></td>
<td><strong>$27,920</strong></td>
<td><strong>$399</strong></td>
</tr>
<tr>
<td>Maintenance Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Materials &amp; Supplies</td>
<td>12,600</td>
<td>180</td>
</tr>
<tr>
<td>Maintenance Contracts</td>
<td>14,700</td>
<td>210</td>
</tr>
<tr>
<td>Payroll</td>
<td>47,000</td>
<td>671</td>
</tr>
<tr>
<td>Elevator</td>
<td>10,000</td>
<td>143</td>
</tr>
<tr>
<td>Pool</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Grounds Supplies/Contracts</td>
<td>15,600</td>
<td>223</td>
</tr>
<tr>
<td>Exterminating</td>
<td>2,000</td>
<td>29</td>
</tr>
<tr>
<td>Trash Removal</td>
<td>8,400</td>
<td>120</td>
</tr>
<tr>
<td>Decorating/Turnover</td>
<td>6,325</td>
<td>90</td>
</tr>
<tr>
<td>Miscellaneous/Unallocated</td>
<td>0</td>
<td>0</td>
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<tr>
<td><strong>Total Maintenance Expenses</strong></td>
<td><strong>$116,625</strong></td>
<td><strong>$1,666</strong></td>
</tr>
<tr>
<td>Taxes &amp; Insurance Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate Taxes</td>
<td>77,500</td>
<td>1,107</td>
</tr>
<tr>
<td>Adjustment for Real Estate Taxes</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Payroll Taxes/Benefits</td>
<td>9,400</td>
<td>134</td>
</tr>
<tr>
<td>Health Insurance Benefits</td>
<td>12,500</td>
<td>179</td>
</tr>
<tr>
<td>Property Insurance</td>
<td>12,250</td>
<td>175</td>
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<tr>
<td>Other Expenses</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Miscellaneous/Unallocated</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Taxes &amp; Insurance Expenses</strong></td>
<td><strong>$111,650</strong></td>
<td><strong>$1,595</strong></td>
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<tr>
<td>Other Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supportive Services</td>
<td>15,000</td>
<td>214</td>
</tr>
<tr>
<td><strong>Total Other Expenses</strong></td>
<td><strong>$15,000</strong></td>
<td><strong>$214</strong></td>
</tr>
<tr>
<td><strong>Total Operating Expenses &amp; Reserves</strong></td>
<td><strong>$423,355</strong></td>
<td><strong>$6,048</strong></td>
</tr>
</tbody>
</table>
EXHIBIT A

LEGAL DESCRIPTION

TRACT B, THE BROOK, AN ADDITION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 57, PAGE 52, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.
EXHIBIT B

PROJECTED RENTS

(attached behind)
### Maximum Eligible & Projected Rents

<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Bath-Rooms</th>
<th>Number of Units</th>
<th>Floor Area</th>
<th>Set Aside</th>
<th>% of Effective Median</th>
<th>Maximum Gross Rent</th>
<th>Utility Allowance</th>
<th>Maximum Eligible Rent</th>
<th>Revised G.P. Rent</th>
<th>Revised B.C. Rents</th>
<th>Estimated Market Rents</th>
<th>Revised B.C. Rent</th>
<th>Maximum Eligible Net Rent</th>
<th>Total Annual B.C. Rent</th>
<th>B.C. Rent Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Bedroom</td>
<td>1 Bath</td>
<td>1</td>
<td>693</td>
<td>30%</td>
<td>22.5%</td>
<td>484</td>
<td>84</td>
<td>440</td>
<td>399</td>
<td>399</td>
<td>1,025</td>
<td>100%</td>
<td>4,788</td>
<td>4,788</td>
<td>None</td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>1 Bath</td>
<td>4</td>
<td>693</td>
<td>50%</td>
<td>37.5%</td>
<td>906</td>
<td>84</td>
<td>722</td>
<td>722</td>
<td>722</td>
<td>1,025</td>
<td>100%</td>
<td>34,944</td>
<td>34,944</td>
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</tr>
<tr>
<td>1 Bedroom</td>
<td>1 Bath</td>
<td>5</td>
<td>693</td>
<td>60%</td>
<td>45.0%</td>
<td>968</td>
<td>84</td>
<td>884</td>
<td>840</td>
<td>840</td>
<td>1,100</td>
<td>95%</td>
<td>50,400</td>
<td>50,400</td>
<td>None</td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>1 Bath</td>
<td>2</td>
<td>693</td>
<td>0%</td>
<td>0%</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
<td>22,152</td>
<td>22,152</td>
<td>None</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>2 Bath</td>
<td>2</td>
<td>873</td>
<td>30%</td>
<td>27.0%</td>
<td>811</td>
<td>105</td>
<td>746</td>
<td>475</td>
<td>475</td>
<td>1,100</td>
<td>100%</td>
<td>11,400</td>
<td>11,400</td>
<td>None</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>2 Bath</td>
<td>10</td>
<td>873</td>
<td>50%</td>
<td>45.0%</td>
<td>968</td>
<td>105</td>
<td>863</td>
<td>862</td>
<td>862</td>
<td>1,100</td>
<td>100%</td>
<td>103,440</td>
<td>103,440</td>
<td>None</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>2 Bath</td>
<td>13</td>
<td>873</td>
<td>60%</td>
<td>54.0%</td>
<td>1,161</td>
<td>105</td>
<td>1,056</td>
<td>1,040</td>
<td>1,040</td>
<td>1,100</td>
<td>98%</td>
<td>162,240</td>
<td>162,240</td>
<td>None</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>2 Bath</td>
<td>5</td>
<td>873</td>
<td>Market</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>1,044</td>
<td>1,044</td>
<td>1,044</td>
<td>1,044</td>
<td>100%</td>
<td>62,640</td>
<td>62,640</td>
<td>None</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>2 Bath</td>
<td>3</td>
<td>1,050</td>
<td>30%</td>
<td>31.2%</td>
<td>671</td>
<td>129</td>
<td>542</td>
<td>541</td>
<td>541</td>
<td>1,050</td>
<td>95%</td>
<td>50,400</td>
<td>50,400</td>
<td>None</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>2 Bath</td>
<td>10</td>
<td>1,050</td>
<td>50%</td>
<td>45.0%</td>
<td>968</td>
<td>129</td>
<td>863</td>
<td>862</td>
<td>862</td>
<td>1,100</td>
<td>100%</td>
<td>162,240</td>
<td>162,240</td>
<td>None</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>2 Bath</td>
<td>13</td>
<td>1,050</td>
<td>60%</td>
<td>52.0%</td>
<td>1,161</td>
<td>129</td>
<td>1,056</td>
<td>1,040</td>
<td>1,040</td>
<td>1,100</td>
<td>92%</td>
<td>160,560</td>
<td>160,560</td>
<td>None</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>2 Bath</td>
<td>3</td>
<td>1,050</td>
<td>Market</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>1,044</td>
<td>1,044</td>
<td>1,044</td>
<td>1,044</td>
<td>100%</td>
<td>62,640</td>
<td>62,640</td>
<td>None</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>2 Bath</td>
<td>5</td>
<td>1,050</td>
<td>Market</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>1,044</td>
<td>1,044</td>
<td>1,044</td>
<td>1,044</td>
<td>100%</td>
<td>62,640</td>
<td>62,640</td>
<td>None</td>
</tr>
</tbody>
</table>

**Total:** 70 includes managers' units

<table>
<thead>
<tr>
<th>2018</th>
<th>Total Rental</th>
<th>4-person Very Low Income: $43,000 Austin-Round Rock TX MSA 69335</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>4-person LI Change</th>
<th>Historic Averages</th>
<th>AMI Trending Analysis</th>
<th>Model Section 8 Overhang?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>-1.5%</td>
<td>5.65%</td>
<td>5%</td>
<td>Yes</td>
</tr>
<tr>
<td>2017</td>
<td>4.0%</td>
<td>4.63%</td>
<td>10%</td>
<td>4.9%</td>
</tr>
<tr>
<td>2016</td>
<td>3.8%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.8%</td>
</tr>
<tr>
<td>2015</td>
<td>3.8%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.8%</td>
</tr>
<tr>
<td>2014</td>
<td>3.7%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.7%</td>
</tr>
<tr>
<td>2013</td>
<td>3.6%</td>
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<td>3.6%</td>
</tr>
<tr>
<td>2012</td>
<td>3.5%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.5%</td>
</tr>
<tr>
<td>2011</td>
<td>3.5%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.5%</td>
</tr>
<tr>
<td>2010</td>
<td>3.5%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.5%</td>
</tr>
<tr>
<td>2009</td>
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<td>15%</td>
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<td>2008</td>
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<td>3.7%</td>
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<td>3.5%</td>
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<tr>
<td>2007</td>
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<td>3.7%</td>
<td>15%</td>
<td>3.5%</td>
</tr>
<tr>
<td>2006</td>
<td>3.5%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.5%</td>
</tr>
<tr>
<td>2005</td>
<td>3.5%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.5%</td>
</tr>
<tr>
<td>2004</td>
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<td>3.7%</td>
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<tr>
<td>2003</td>
<td>3.5%</td>
<td>3.7%</td>
<td>15%</td>
<td>3.5%</td>
</tr>
</tbody>
</table>

**Notes:**
- Total Rental includes managers' units.
- Use Manager under Set Aside for manager's units, use Market for market units.
- Other Income includes:
  - Laundry Machine Collections
  - Late Fees
  - Application Fees
  - Security Deposit Forfeitures
  - Vending
- Gross Potential Income from Novg.
- Net Income
- Historic Averages
- AMI Trending Analysis
- Model Section 8 Overhang?
EXHIBIT C

DUE DILIGENCE RECOMMENDATIONS

1. Receipt by the Investment Member of a final “approved for construction” set of plans stamped by the building inspector (provided within 30 days of the Admission Date).
June 6, 2018  
File No. 172822.30

Mr. Eliot Weisman  
Boston Capital  
One Boston Place  
Boston, Massachusetts 02108

Re: Review of Environmental Documents  
Aria Grand Apartments  
Austin, Texas

Dear Mr. Weisman:

At your request, and in accordance with our master agreement with Boston Capital (GZA File No. 14070), GZA GeoEnvironmental, Inc. (GZA) has reviewed the following documents:

<table>
<thead>
<tr>
<th>ENVIRONMENTAL REPORT</th>
<th>COMPANY</th>
<th>REPORT DATE</th>
<th>GZA REVIEW</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Phase I Environmental Site Assessment, Aria Grand Project, SWC of Woodland Avenue and IH-35, Austin, Travis County, TX” (ESA-1)</td>
<td>Terracon Consultants, Inc (Terracon)</td>
<td>February 13, 2017</td>
<td>December 8, 2017</td>
</tr>
<tr>
<td>“Phase I Environmental Site Assessment, Aria Grand Project, 1800 South IH 35, Austin, Travis County, TX” (ESA-2)</td>
<td>Terracon</td>
<td>May 25, 2018</td>
<td>June 5, 2018</td>
</tr>
<tr>
<td>Area Grand – Environmental Responses</td>
<td></td>
<td>June 4, 2018</td>
<td>June 5, 2018</td>
</tr>
</tbody>
</table>

Based on our review of the above-referenced documents, it is GZA’s opinion that the ESA is generally consistent with the referenced ASTM Standard (E1527-13) for Phase I Environmental Site Assessments. The ESA does not identify the presence of any Recognized Environmental Conditions (RECs); however, GZA offers the following comments:

1. **Issue:** The ESA is approximately 10 months old, well beyond the 180-day “shelf life” for ESAs as specified in ASTM E1527-13.

   **Recommendation:** An updated ESA should be provided to Boston Capital.

   **Status:** CLOSED with the submittal of ESA-2.

2. **Issue:** Given the proximity of the property to Interstate Highway (IH) 35, Terracon recommends that a noise study be conducted.

   **Recommendation:** A copy of the noise study should be forwarded to Boston Capital upon completion.
Status: CLOSED with the submittal to Boston Capital of a noise study dated December 18, 2017, and a letter from Miller Slayton Architects dated May 14, 2018, which states, “we approximate the resulting interior noise levels to conform at the HUD Noise Guidelines.”

3. Issue: Terracon indicated that “The Texas Department of State Health Services (TDSHS) was contacted by letter regarding documentation, which might indicate potential environmental concerns on the site. At the issuance of this report, a response from the TDSHS has not been received.” Further, Terracon indicted that “At the issuance of this report, responses have not been received from the Planning Development and Review Department, the Watershed Protection Department, Austin Fire Department, the City of Austin Code Compliance Department, Austin Resource Recovery, Austin Water Utility, and the Health and Human Services Department.”

Recommendation: Copies of correspondence from these departments, or a summary of such correspondence, should either be forwarded to Boston Capital or included in the updated ESA referenced above.

Status: CLOSED by the response provided in the Environmental Responses document: “Updated Phase I (12/18/17) provided responses from Austin Fire Department Hazardous Materials Alarm and Storage Location Databases. City and State file their records by address. Since there was not a physical address for this site during the Phase I update in Nov./Dec. there are likely no records for the site and therefore the reason why we did not get a response. No records available for the address.”

4. Issue: Terracon noted the presence of “minor amounts of construction/demolition-related pieces of concrete, asphalt and rock,” and indicated that “these items should be removed and disposed in accordance with applicable regulations.”

Recommendation: Confirmation of the removal and proper disposal of these materials should be forwarded to Boston Capital.

Status: CLOSED by the confirmation referenced in the Environmental Responses document.

If you have any questions regarding the above, please contact David E. Leone at (781) 278-5766 or Larry Feldman at 781-278-3807.

Very truly yours,

GZA GEOENVIRONMENTAL, INC.

David E. Leone
Associate Principal

Lawrence Feldman
Consultant/Reviewer
PART I - SITE INFORMATION

1. Boston Capital project designation
   Project Name: **Aria Grand Apartments**
   Location: **Austin, Texas**
   Acquisitions Assoc. / V.P.: **E. Weisman**

2. GZA project designation
   File No.: **172822.30**
   Reviewer in Charge: **Leone**
   Reviewer: **Feldman**

3. Current land use
   a. residential
   b. commercial
   c. vacant, wooded, pasture **✓**
   d. active agricultural
   e. under development

4. Age of ESA at time of GZA review **10 months**

PART II - ADEQUACY OF SITE ASSESSMENT - GENERAL

1. Adequate description of site visit/observations? **Yes**
   [ ] No

2. Adequate description of site history? **Yes**
   [ ] No

3. Adequate review of regulatory information/environmental databases
   a. for study site? **Yes**
   [ ] No
   b. for surrounding properties? **Yes**
   [ ] No

4. If there are surrounding properties that have the potential to impact the study site, have they been adequately addressed in the ESA? **Yes**
   [ ] No
   [ ] N/A
5. If the current or recent past use of the study site is active agricultural, has the ESA addressed the potential impact of residual levels of agricultural chemicals in the soil on the future residential use of the site?  Yes ☐ No ☐ N/A ☒

6. Does the ESA provide an opinion with respect to radon levels in current or future site structures?  Yes ☒* No ☐
   a. Does existing structure have basement?  Yes ☐ No ☐ Unk./N/A ☒
   b. Will future structure have basement?  Yes ☐ No ☐ Unknown ☒

Comments:

* The ESA indicates that the Site is in U.S. EPA Radon Zone 3 (average indoor radon levels less than 2 pCi/L).

7. Is asbestos adequately addressed?  Yes ☒ No ☐
   a. no buildings on site  ☒
   b. all buildings on site post-1978  ☐
   c. buildings undergoing extensive renovation  ☐
   d. asbestos suspected:  friable ☐ non-friable ☐
   e. asbestos confirmed by inspection/testing:  friable ☐ non-friable ☐
   f. management plan recommended  management plan provided  ☐
   g. no asbestos present  ☐

8. Is lead paint adequately addressed?  Yes ☒ No ☐
   a. no buildings on site  ☒
   b. all buildings on site post-1978  ☐
   c. buildings undergoing extensive renovation  ☐
   d. lead paint suspected  ☐
   e. lead paint confirmed by testing  ☐
   f. management plan recommended  ☐
g. no lead paint present

9. Are wetland issues adequately addressed?
   a. wetland issues of concern
   b. wetland on-site
   c. portion of study site subject to regulation due to off-site wetland

PART III - ISSUES RAISED BY REPORT

1. On-site source of contamination?
   Past ☐ Present ☐

2. Off-site source of contamination?
   Past ☐ Present ☐

3. Agricultural chemical residue?
   In soil ☐ In on-site supply well ☐

4. Elevated radon levels likely?
   Yes ☐ No ☒

5. Asbestos?
   Yes ☐ No ☒

6. Lead paint?
   Yes ☐ No ☒

7. High tension lines?
   Yes ☐ No ☒

8. PCB-containing electrical equipment?
   Yes ☐ No ☒

9. Elevators/hydraulic lifts?
   Yes ☐ No ☒

10. Wetlands?
    Yes ☐ No ☒

If any of the Part III items are checked yes, provide a brief explanation:
Aria Grand
Austin, Texas

BC A&E Consultant: CODA Consulting Group, LLC
C0-Developers: Saigebrook Development & O-SDA Industries, LLC
General Contractor: Housing Authority of Austin, Skybeck Construction, LLC to be prime subcontractor
Architect: Miller Slayton Architects

Date 9/20/18
Developer Responses: In Red

Description: Aria Grand is a to-be-built project that will consist of two podium style buildings. One building is four stories over parking and includes community and amenity spaces, the other building is five stories over parking. The 1.42 acre site is a tract of vacant, undeveloped land located just west of IH 35 at the intersection of Woodland Avenue and the highway service road. There will be 70 units: 12 1BR/1BA, 30 2BR/2BA, and 28 3BR/2BA units. Seven units will be accessible with two units equipped for the hearing and visually impaired (HVI). Ten of the units are market rate units. Parking for 89 cars is provided and includes: 50 garage spaces at ground level, including 5 accessible spaces, two of which are van accessible spaces; 22 tandem spaces that extend from the garage spaces and are uncovered; and 17 open parking spaces, one of which is van accessible. Eight bicycle spaces are also provided. All provided parking meets local requirements. Building exteriors will be engineered wood panel and lap siding with brick veneer and membrane roofing with fiberglass shingled mansards. Units are accessed off double loaded corridors via elevators or stairways entered at the garage ground level. Unit amenities include a coat closet, W/D hook-ups, carpet, and ceiling fans. Unit appliances include a refrigerator, range with microwave/range hood, dishwasher, and disposal. Units are individually metered for electricity and water. Community space is located in Building 1 and includes management offices, mailroom, file room, restrooms, reception and cyber lounge on the first floor and kid's playroom, fitness room, community room with kitchen, and a maintenance room on the second floor.

RECOMMENDATIONS

1. A draft Owner/Contractor Agreement in AIA A101-2017 format was provided. The agreement dated 7/17/18 is between the Owner, Aria Grand, LLC, and Contractor, Austin Affordable Housing Corporation (a Texas nonprofit) where the basis of payment is a Stipulated Sum. The contract references General Conditions AIA A201 and Exhibits A - J. The exhibits include a list of Drawings and Specifications, Construction Schedule, Schedule of Values, TDHCA Requirements, Clarifications, Allowances, and Alternates, as well as required waiver and bond forms. The contractor has entered in to a Prime Subcontract Agreement with Skybeck Construction, LLC. The draft agreement is an AIA A401-2007 form that transfers all construction responsibilities for the project to Skybeck Construction. The Subcontract references Exhibits in the Prime Contract and also adds Exhibit 1 - Prime Contract, Exhibit 2 - Sub-subcontractor Insurance Requirement, and Exhibit 3 - P&P Bonds Forms. Both contracts are in draft form with some details missing.
   1. Final contracts with all Exhibits should be provided.
   Response: Final drafts for signature will be provided this week. Final executed contracts were provided with all Exhibits.
   Status: CLOSED

2. Construction Costs:
   1. It should be confirmed that trade costs are based on sub-contractor bids. Please indicate what percentage of the construction hard costs have been bid to support the contract sum and demonstrate readiness to begin construction.
   2. Were multiple bids obtained for all trades?
   3. Please provide names of key subcontractors and indicate any prior experience with Skybeck.
   4. Are their specific trades which are anticipated to be in short supply that could impact construction progress
Response: Skybeck response: 100% of hard costs have been bid with multiple bids obtained for all trades. Key Trades: Ranger Excavating, Kent Concrete, Buffalo Framing, Texas ERW, Tristar Utilities. Skybeck has completed many projects with these trades. We do not anticipate issues with trades not being able to perform due to manpower. We have secured both framing and drywall subcontractors.

Status: CLOSED

3. A general bar chart schedule was provided as Exhibit B to the GC contract. The schedule indicates approximately a 13.5 month duration for Bldg 1 and a 15 month duration for Bldg 2 with a start date of 8/27/18 and final project completion 11/29/19. This is a 9% project with a placed in service deadline of 12/31/19. The schedule indicates completion on 11/29/19, providing essentially no cushion. Please provide a schedule that support a completion date of October 2019 and detail how this can be accomplished. Specific schedule concerns include:
   1. A tight labor market, difficulties scheduling utility connections, and busy building inspectors has resulted in some significant construction delays for recent projects. Subcontractor manpower is limited and could impact production rates and result in an extended construction period. Specific concerns are framing and drywall crews.
   2. Wet weather can also be a factor with projects starting site and foundation work in the fall/winter. It is recommended that weather delay days be accounted for in the schedule.
   3. ECS Southwest recommends confirmatory swell testing be performed and moisture conditioning recommendations may need to be adjusted during construction. Swell testing requires approximately 2 days to complete, and some rework of placed material should be expected where the moisture conditioning option is selected for PVR reduction.

It should be confirmed that these factors have been accounted for in the final project construction schedule.

Response: The construction schedule has been adjusted to 395 days total – 13 months. This provides for 60 days cushion based on a 10/1 start date. Typical weather delays are incorporated into the schedule.

Skybeck: Re: item 3: We will be using select fill and not moisture conditioned subgrade.

ECS: Re item 3: The recommendations we provided in our geotechnical report to reduce the as-built PVR of the building pad using select fill only are considered to be a valid option. BC – The developer provided an e-mail dated 9.12.18 that addresses The City of Austin’s potential flexibility in issuing TCOs and if a tax credit extension could be obtained.

Status: CLOSED

4. A permit ready letter dated 8/17/18 was provided from the City of Austin Development Services Department (DSD) indicating permits will be granted after an approved Site Plan is submitted to the DSD Expedited team and a review is conducted to confirm no further changes have been made. What is the status of the Site Plan approval?

Response: Site plan approval is expected the week of 9/17. Final signatures are in process of being obtained. The developer indicated this is administrative and may be a week or more before all departments have signed off.

Status: CLOSED, final evidence of sign off should be provided.

5. There is a 25 foot building setback along the street frontage. Site plans indicate the buildings are set back very close to this line. A foundation survey should be provided to confirm there is no encroachment prior to vertical construction.

Response: Will provide at the appropriate time.

Status: CLOSED. Post closing item

6. The Geotechnical report notes a number of specific challenges to construction of the proposed podium style buildings namely highly expansive soil conditions, potential to encounter groundwater, caving soils in drilled shaft excavations and very hard bedrock. Please confirm that the drilled pier
subcontractor has extensive experience with similar soil conditions and is aware of all specific challenges identified in the ECS Southwest and Terracon Geotechnical Reports.

Response: Skybeck: Kent Concrete has extensive experience with similar soil conditions and has reviewed thoroughly all the Contract Documents

Status: CLOSED

7. Geotechnical Reports were provided from Terracon (12/4/17) and from ECS Southwest (8/9/18). There were substantial differences in the Terracon and ECS Southwest reports including:

1. The Terracon report identified 12 to 13 feet of fill, or suspected fill, in 3 borings in two areas of the site. Their site preparation recommendations were strongly influenced by the expected fill soils. The ECS Southwest report did not acknowledge the presence of fill on site even though they reported reviewing and relying on the boring information in the Terracon report. Their recommendations did not refer to site fill.
   - ECS Southwest should confirm if they expect fill soils on-site. If yes, do their previously provided recommendations for building pad and pavement subgrade preparation apply or will additional recommendations for preparation of building pads and pavement subgrades in fill areas need to be provided.
   - ECS: ECS reviewed historical aerial photographs available on HistoricAerials.com as part of our analysis. The available photographs dating back to 1964 appeared to show tree canopy substantially covering the site in all available photographs. It was noted that in 1964, the IH-35 frontage road was already in place. It is possible that some fills exist on-site which could have been dumped within the tree canopy, or could have been placed during the development of the frontage road, and the observable canopy in 1964 grew after the fill placement. A copy of the 1964 image is attached for reference. In general, it is believed that the potential for existing fills to impact the proposed development to be relatively low, considering the potential age of the fills if pre-dating the 1964 photograph, and considering the proposed deep foundation systems for the proposed structures.

2. The Terracon report recommended over excavation of the building pads and backfilling with select off-site compacted fill. The report stated the on-site soils were not suitable as building pad backfill. The ECS Report gave recommendations for building pad over-excavation and backfill with off-site select fill and gave recommendations for building pad over-excavation and backfill with on-site moisture conditioned fill capped with two feet of select fill.
   - ECS Southwest should confirm the building pad preparation procedure for the garage slab areas and the resulting expected level of movement of the garage slab.
   - ECS: Confirmed. The recommendations of the referenced ECS report for the corresponding as-built PVR conditions are considered to be valid and appropriate for design. It is understood that the floor slabs of the at-grade lobby and stairwell areas are to be constructed above formed voids at least 2 times the height of the as-built PVR, or at least 2 times the height of the existing PVR if these areas are unimproved. The suspended floors will be fully structurally supported by drilled shafts, and will incorporate soil retainers to prevent soils from intruding into the void spaces after carton forms decay.

3. Terracon recommended removal and replacement of 18 inches of subgrade soil for pavement areas in site fill areas. The ECS southwest report did not recommend pavement subgrade undercutting in any areas. ECS: with exception to the pavements underlying the parking garage
   - ECS Southwest should confirm pavement preparation procedures and expected movement of pavements.
ECS: The site preparation, subgrade preparation and general fill placement recommendations presented in the referenced ECS geotechnical report can be considered to be confirmed. Some movement of pavement areas should be expected at the site. Compacting the upper 1½ feet of the 15 foot expansive soil active zone would be expected to provide minimal improvement for the pavement performance at the site. BC – The ECS report notes that cracks and distress due to expansive soils may appear in the pavement after construction and the introduction of landscape irrigation. Without regular maintenance, the cracks can allow additional moisture intrusion and rapid degradation of the pavement section. It is recommended that a Pavement Operations and Maintenance Plan be developed and adequate maintenance costs be included in the project maintenance and repair budget. The developer responded in an e-mail dated 9.12.18, “a 2” PVR is pretty typical for paving areas on our jobs and we have not experienced excessive cracking. Our management company does a monthly walk of the property. They keep on staff a VP of maintenance that walks each property every month. To the extent any cracks occur, their policy is to grout, caulk and seal. Further, the parking areas are cleaned monthly and any oil spots treated on a regular basis to prevent deterioration. These costs are already covered in our maintenance budget.”

4. The ECS Southwest referenced building pad preparation recommendations are for 2 inch PVR building pads. This level of expected movement should be confirmed as acceptable by the architect of record.

Response: Miller Slayton: Re: item 4: The buildings for Aria are not subjected to the 2” of movement because they are pier supported independent from the slab on grade on cast in place concrete piers. The only portion of the “building pad” that is subjected to the 2” of movement is the parking below the podium. BC – Understood, please confirm the 2” garage floor slab PVR is acceptable and is not anticipated to require significant repair and maintenance costs. The developer noted that Architect has signed off on the 2” PVR.

Status: CLOSED

8. The performance of the foundation system will be highly dependent on the quality of construction. It is important that the Geotechnical Engineer be engaged to provide material testing services and to confirm soil preparation and foundation design are consistent with their recommendations. Please confirm ECS Southwest will be engaged to provide the recommended oversight and testing.

Response: ECS will be engaged for oversight and testing

Status: CLOSED

9. Clarifications, Allowances and Alternates:

1. Clarifications of note in Exhibit D to the contract include garage slab on grade and foundation soil conditioning procedures that differ from recommendations in the Geotech Report. These changes will need to be reviewed by the Geotech Engineer and confirmed as acceptable alternatives.

   This clarification has been revised as below. The new clarification will be provided with the final contract draft.

   “We include prepping subgrade to a 2” PVR with 4.5 feet of select fill per the ECS geotechnical recommendations and Douglas Structure email dated 8/9/18.”

2. Clarifications also note that attic sprinklers are not included with an add of $56,000 if required and value engineering included changing fire treated lumber specs and changing Bldg 1 from Type III (2 hr Ext wall) to Type V (1 hr Ext wall) construction. These changes should be reviewed and confirmed as acceptable by the architect.
Response: Miller Slayton: Re: item 2: With attic draft stopping, attic sprinklers are not required. Yes, Bldg 1 will now be a Type V / Type 13 building – requires no fire treated wood.
Status: CLOSED

10. Given the project's proximity to I-35 a HUD Noise Assessment was completed by Terracon Consultants, Inc. dated 12/18/17. The results of the noise assessment conducted for the site indicated that the combined day-night average sound level (DNL) at the noise assessment location (NAL) is 79.6076 dBA. The predicted DNL for the proposed site buildings would be classified under the HUD criteria as being “Unacceptable”. Based on this information, Terracon recommends noise mitigation (i.e. construct natural or man-made noise barriers or increase mitigation in the building walls/windows/doors). A letter by Miller Slayton Architects Dated May 14, 2018 indicates the wall design will yield an expected aggregate wall STC rating of not less than 41, which assumes a window STC of 26. CODA believes a higher window STC of 34 to 35 might be necessary at building elevations facing I-35. Please confirm that Terracon or other acoustical consultant has confirmed the window STC value assumed by the Architect is adequate.
Response: The architect’s determination is adequate for TDHCA. HUD is not involved in the project. No further documentation should be required.
Status: CLOSED

11. Provide Irrigation, Retaining Walls, Pavements and Sidewalks, Fire Protection and Fire Sprinkler drawings or confirm these items will be design-build.
Response: Irrigation, fire protection and fire sprinkler will be design build. Sidewalks are on civil drawings – for public sidewalks or sidewalks in the ROW the detail is Detail 3 of Sheet 19. For private sidewalks it is Detail 10 of Sheet 19. Pavement is per the geotech recommendations – noted on Site Plan, sheet 6, Note 21. BC - That note references a report by Alpha Testing, Inc, not the ECS Southwest Report. The developer indicated the note is being updated for the ECS report – same note, same page. Retaining wall plans are being provided under separate cover with this response.
Status: CLOSED

12. Required parking is indicated to be a total of 91 spaces including 54 garage spaces. Plans depict a total of 89 spaces with 50 garage spaces. Please reconcile.
Response: Please see attached letter from engineer – required parking is now 89 spaces.
Status: CLOSED

13. Flood Zone - the site is in Zone X, outside the 500 year floodplain based on FEMA FIRM No. 48453C0605J, dated 1/6/16. However, there is a tributary of Harper's Branch Creek that crosses the site from east to west, approximately 150 feet from the SE corner of the site and Civil Plans (Sheet 15 of 27, labelled Existing and Proposed Floodplain Conditions) indicate that part of the site currently lies within the 100 year floodplain following contour 507.5 feet. Apparently the City of Austin has a different flood zone determination than FEMA The proposed conditions plan shows part of the 100 year floodplain will still encroach upon the site, but the finished floor elevation of both buildings will be 513 feet. Please confirm if the City of Austin has any specific requirements regarding their flood designation for the site.
Response: Yes, the COA has a different flood designation than FEMA. We are changing the shape of the floodplain by building the retaining wall at the back of the site so that the City “floodplain” will not encroach into buildings. Everything behind the retaining wall will then be designated within a drainage easement aka floodplain. Site plan approval is the approval given for the floodplain modification.
Status: CLOSED
14. The architect should provide a completed TDHCA Application checklist of project features to meet mandatory requirements and selected Common, Unit and Green amenity points.

Response: The TDHCA required/point items are attached to the GC contract
Status: CLOSED, pending receipt of final contract.

MISSING DOCUMENTS

1. Site Work & Building permits.
2. Final approved set of plans stamped and signed by design professionals.
3. Final ALTA Survey.
4. Payment & Performance Bonds.
5. Architect’s Certification. Received.
6. Site Plan Approval - Post Closing.

PLAN REVIEW COMMENTS

1. Plans indicate washer and dryer hook-ups in unit utility closets, but specifications note the machines are not included in the contract. It should be confirmed if the owner intends to provide W/D, as no common laundry if provided. LMS – no W/D, no common laundry – this is typical of our developments. Residents bring their own W/D or can rent them.

2. The drawings show concrete at the dumpster pads and the area in front of the dumpster and the remainder is believed to be asphaltic concrete; however, a Pavement Drawing and pavement design sections are not provided. Please provide a Pavement drawing and pavement section designs. If a design section is less than recommended by the Geotechnical Engineer, provide the Geotechnical Engineer’s approval of the reduced design section. Consort: Pavement design is per geotech recommendations – see note 21, page 6 Site Plan. BC - That note references a report by Alpha Testing, Inc, not the ECS Southwest Report.

3. Freeze proof hose bibs are not shown on the first-floor apartment building sides. We suggest they be added as a back-up landscape watering system if the landscape irrigation system fails. LMS – hose bibs are provided as part of landscape irrigation - this is typical of our developments. Freezing is generally not an issue in Austin.

4. Provide details for the monument sign. LMS – monument sign is by owner – design build.

5. Gutters and downspouts are shown on the Civil plans, but are not shown on the elevations. Confirm gutters and downspouts will be provided, the selection of size and material, and if they are planned to be directed underground to the bioretention ponds, or discharge at grade. LMS – gutters & downspouts color/shape are selected by owner via submittals from the GC, discharge at grade.

6. Provide plumbing fixture selections once available. LMS – submittals will be provided when available.

7. Fire Alarm drawings have not been provided, the drawings note the buildings to be monitored by a fire alarm to be provided per IFC shop drawings submitted at a later date. Please confirm the system is planned to be NFPA 72. Miller Slayton: Fire alarm shop drawings are to be provided by TX licensed alarm subcontractor and compliant with NFPA 72.

8. Attic draft stops are not shown on the Architectural Roof Drawings or the Framing Drawings which is not typical. We assume attic draft stops will be installed per code which is expected to be either to separate the attics into spaces of 3,000 square feet or less or over each top floor apartment area. Miller Slayton: Yes, attic draft stopping (generally located in line with tenant separation walls and/or breezeway walls shall be provided to compartmentalize the attic into contiguous spaces no
larger than 3000 sf. Attic draft stopping lines are on the roof plans (A1.25 & A1.33) and it shows up on section details. Flexibility is provided for the GC to install in locations that best coordinate with roof trusses.

9. National Green Building Standard: The Developer has indicated the completed construction will qualify for certification under the National Green Building Standard. The specifications and Drawings do not appear to support this designation. Confirm the National Green Building Standard certification is planned and the contractor has included this work in their scope of work and costs. 
LMS: see email from US Ecologic confirming the plans as designed meet the requirements along with the NGBS checklist.

10. The Drawings show backflow preventers for the water lines. The contractor Qualifications appears to exclude backflow preventers. Will backflow preventers be installed?
LMS: the exclusion on the qualifications was a mistake and will be removed from the final qualifications statement.

POST CLOSING FOLLOW-UP

- Material testing reports should be provided to CODA Consulting for review.
- Foundation survey
EXHIBIT D

INSURANCE REQUIREMENTS

Except as otherwise provided herein, the Managing Member shall at all times ensure that the following policies of insurance are in full force and effect. Where these Guidelines are in disagreement with the Guidelines of any interim or permanent lender, the higher standards will govern. When the interest of FNBC Leasing Corporation (FNBC) is noted herein, it is understood to mean FNBC Leasing Corporation, JPMorgan Capital, its successors or assigns as their interest may appear.

GENERAL GUIDELINES

Evidence of Insurance must be provided 10 days prior to closing each project, for the duration of the project, and as required for each capital contribution.

Evidence of insurance must consist of:

- **ACORD 27 or 28** – Evidence of Property Insurance showing the lower tier Company as the Named Insured and the Investment Member, Boston Capital Midway Tax Credit Fund IV, A Limited Partnership (the “Fund”) and FNBC Leasing Corporation (FNBC) as additional insured.

- **ACORD 25** – A Certificate Of Liability Insurance for all liability coverage showing the lower tier Company, the Investment Member, the Fund, and FNBC Leasing Corporation (FNBC) as an additional insured.

- All insurance carriers must have a AM Best Rating of A VII or better or must be reasonably approved by FNBC.

- All such liability insurance maintained by the Company or general contractor shall include the condition that it is primary and that any such insurance maintained by FNBC or any other additional insured is excess and non-contributory.

- Company must waive and must require that its insurers waive their rights of subrogation against FNBC.

All certificates must contain provisions recognizing that insurance will not be cancelled, non-renewed, or be materially changed without thirty (30) days written notice to the following addressee. All evidence of insurance, e.g. Certificates of Insurance, Binders, and Notices shall be addressed and forwarded to:

FNBC Leasing Corporation  
C/O JPMorgan Capital, Housing Investments  
Attention: Jon Zywiciel  
21 S. Clark 12th Floor  
Chicago, Illinois 60603-0502  
e-mail: jon.zywiciel@jpmorgan.com
A copy of these Insurance Guidelines should be given to the Company’s insurance representative as soon as possible to provide sufficient lead-time for effective negotiation of the coverage. The Company is advised to obtain whatever additional insurance is deemed prudent to adequately protect the Company’s interest, as the insurance required by FNBC is not intended to be all-inclusive. Any insurance included herein are only for purpose of illustration, and FNBC assumes no responsibility for inadequacy of any insurance regardless of cause.

PROPERTY RELATED COVERAGES
During the Course of Construction/Renovation

During the course of construction the Company is to provide evidence of insurance as follows:

Evidence of all property related insurance shall consist of the following documents for each project approved by FNBC for acquisition of Non-Managing Member interests in a Company.

- **ACORD 27 or 28** – Evidence of Property Insurance Certificate with all forms and endorsements noted. (Causes of Loss – Special Form is to be included)

**BUILDER’S RISK**

Builder’s Risk Insurance shall be provided for all new construction. Coverage shall be:

- “All Risk Property”
- Non-Reporting, completed value form.
- 100% of the replacement value of the completed project with a Waiver of Coinsurance or Agreed Amount clause.
- Cover all buildings machinery, equipment, supplies, temporary structures and all other property of any nature which is to be used in fabrication, erection, installation and completion of the project until it is completed and accepted by the Owner.
- Cover “resulting” loss or damage, the expense for debris removal and provide permission by the insurer for occupancy and use of the premises.
- Cover soft costs associated with increased engineering/architectural fees, interest expense, insurance, real estate taxes, and other miscellaneous expenses associated with project completion delays resulting from a loss.
- The limit of coverage shall be no less than the amount of the approved Construction Contract(s) and include the Hard Cost Contingency with a maximum deductible up to $10,000.

**SOFT COSTS**
Insurance covering Soft Costs, resulting from damage or destruction to insured property on-site, off-site and while in transit shall be provided, including flood, earthquake and earth movement when such perils are required. Such insurance shall cover continuing expenses not directly involved in the direct cost of construction/renovation, including expense incurred upon money borrowed to finance construction or repair, continuing interest on mortgage loans, advertising, promotion, realty taxes and other assessments, the cost to the insured of additional commissions incurred upon re-negotiating leases, and other expenses incurred as the result of property loss or destruction by an insured peril.

**LIABILITY RELATED COVERAGES**

**During the Course of Construction**

Evidence of liability related insurance coverage shall, as a minimum, consist of an original, signed, Certificate of Insurance addressed to Certificate holder with a written proviso that the insurance will not be cancelled, non-renewed, or contain a material change without at least thirty (30) days prior written notice to FNBC.

**COMPANY**

The Company Commercial General Liability insurance in an amount no less than listed on Attachment A, including Umbrella/Excess form of liability coverage. Evidence of Workers’ Compensation and Employers’ Liability (Acord #25) shall also be provided when lower tier Managing Member utilizes its own work force for the benefit of the lower tier Company.

**GENERAL CONTRACTOR**

The General Contractor shall provide Commercial General Liability insurance covering claims arising out of Contractor’s operations, independent contractors, products/completed operations with broad form property damage, and liability assumed under contract on a broad form blanket basis. The General Contractor further agrees to maintain Automobile liability coverage (including coverage for liability assumed under any contract in the minimum amount of $1,000,000), and Workers’ Compensation and Employers’ Liability coverage (per statutory requirements by applicable state law, Employers’ Liability coverage in the minimum amount of $1,000,000). The total amount of insurance shall be no less than the amount listed on Attachment A, including Umbrella/Excess Liability coverage.

**ARCHITECT**

Architects and Engineers Professional Liability insurance shall be provided covering each professional entity for an amount not less than listed on Attachment A.

**PROPERTY & LIABILITY INSURANCE**

**For the Completed Development**
Upon completion of the construction/renovation, the Managing Member shall obtain and maintain the following required insurance for the duration of the investment period.

**PROPERTY**

The insurance shall be an “All Risk” insurance policy naming the Company as insured and covering all real and personal property subject to the investment. Such insurance shall be written on a Replacement Cost Basis and shall include an Agreed Amount Clause or Waiver of Coinsurance. The amount of insurance shall be the full insurable replacement cost of the property with a maximum deductible up to $10,000. The policy shall be endorsed to provide that insurance will not be cancelled, non-renewed, or be materially changed without 30 days written notice to FNBC.

**GENERAL LIABILITY**

Provide Commercial General Liability insurance covering the premises and operations by independent contractors, and contractual liability on a broad form blanket basis.

If any vehicles are used, owned or operated by the Company, Automobile Liability coverage is required (including coverage for liability assumed under any contract).

The amount of insurance including Umbrella Liability shall be no less than the amount listed on Attachment A.

**LOSS OF INCOME**

Loss of Income insurance, as appropriate, shall be carried sufficient in amount to fully cover twelve (12) months loss.

**SPECIAL HAZARDS: FLOOD/ EARTHQUAKE/HIGH WIND**

Evidence of Flood insurance is required for areas designated by FEMA to be in a Flood hazard zone. If required, the amount of Flood insurance shall be no less than 50% of the replacement value of the completed project. Earthquake insurance is required in UBC zones 3 and 4 and should include a business interruption insurance rider. Earthquake insurance may be waived by the Non-Managing Members on properties for which an approved Seismic Risk Assessment (SRA) indicates a Scenario Expected Loss (SEL) of less than 20%. In areas subject to hurricanes or high winds, “All Risk” policy must include coverage for damage caused by hurricanes, high winds or Named Storms at 100% replacement cost and include flood insurance regardless of the Flood Hazard Zone. The amount of Flood insurance shall be equal to the greater of the maximum amount available under the National Flood Insurance Program or 20% of the replacement value of the completed project.
PROPERTY MANAGER

Except as provided below, the Property Manager shall maintain and provide evidence of insurance for:

- Commercial General Liability including Umbrella/Excess form of liability coverage in an amount no less than listed on Attachment A.

- Fidelity Bond in an amount no less than the equivalent of 2 months gross income written with a company reasonably acceptable to the Company, provided the purchase of the Fidelity Bond in the required amount is commercially reasonable.

- Automobile Liability Insurance covering owned, hired and non-owned autos for limits no less than $1,000,000 combined single limit per accident for bodily injury, property damage and physical damage (collision and comprehensive), naming the Company and FNBC as additional insured under such policy for vehicles used exclusively for the Property.

- Workers’ Compensation Insurance, to the extent of the statutory limits required by applicable law, and Employer’s Liability Insurance in the minimum amount of $1,000,000.

Property Manager shall cause all contractors, sub-contractors and suppliers performing work or providing supplies to maintain insurance coverage at such parties’ expense in the following amounts, as statutorily required in the projects’ respective states, or as listed below whichever is less:

- Worker’s Compensation – Statutory Amount;

- Employer’s Liability (for losses which are not covered by Worker’s Compensation statutes) - $1,000,000 minimum; and

- Comprehensive General Liability including contractual liability in the following minimum amounts:

  1. $1,000,000 per occurrence, $2,000,000 aggregate

   Business Auto Liability - $1,000,000 bodily injury and property damage combined single limit, per accident, to cover all owned, leased, hired or non-owned vehicles.
# INSURANCE COVERAGE GUIDELINES

Note: This matrix is intended to provide general guidelines however site specific factors could require revised coverages. Refer to detailed guidelines on Exhibit A in addition to the below for additional coverage and insurer requirements.

## Pre-Certificate of Occupancy

<table>
<thead>
<tr>
<th>Project Type</th>
<th>Number of units</th>
<th>Builders Risk*</th>
<th>Terrorism coverage required (y/n)</th>
<th>Partnership</th>
<th>General Contractor</th>
<th>Umbrella</th>
<th>Prof Liability Architect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garden apartments between 1 and 3 stories, single family rentals, and townhouse rentals (non elevator bids)</td>
<td>less than 50</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>$1 million / occurrence</td>
<td>$1 million / occurrence</td>
<td>Waived</td>
<td>Waived</td>
</tr>
<tr>
<td></td>
<td>51-300</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
</tr>
<tr>
<td></td>
<td>300 or greater</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$2 million aggregate</td>
<td>$5-10 million, depending on location/conditions</td>
</tr>
<tr>
<td>Midrise apartment buildings between 4 and 10 stories.</td>
<td>less than 50</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
</tr>
<tr>
<td></td>
<td>51-300</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
</tr>
<tr>
<td></td>
<td>300 or greater</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$2 million aggregate</td>
<td>$5-10 million, depending on location/conditions</td>
</tr>
<tr>
<td>Highrise apartment buildings between 11 and 40 stories</td>
<td>1-300</td>
<td>100% replacement plus soft costs.</td>
<td>yes **</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$2 million aggregate</td>
<td>$10-50 million, depending on location/conditions</td>
</tr>
<tr>
<td></td>
<td>300 or greater</td>
<td>100% replacement plus soft costs.</td>
<td>yes **</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$2 million aggregate</td>
<td>$30 million or more, depending on location/conditions</td>
</tr>
</tbody>
</table>

## Post Certificate of Occupancy

<table>
<thead>
<tr>
<th>Project Type</th>
<th>Number of units</th>
<th>All Risk*</th>
<th>Terrorism coverage required (y/n)</th>
<th>Loss of Income</th>
<th>Partnership</th>
<th>General Liability</th>
<th>Umbrella</th>
<th>Fidelity Bond (project based)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garden apartments between 1 and 3 stories, single family rentals, and townhouse rentals (non elevator bids)</td>
<td>less than 50</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>12 months gross income</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>Waived</td>
<td>2 months gross income</td>
</tr>
<tr>
<td></td>
<td>51-300</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>12 months gross income</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
<td>2 months gross income</td>
</tr>
<tr>
<td></td>
<td>300 or greater</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>12 months gross income</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
<td>2 months gross income</td>
</tr>
<tr>
<td>Midrise apartment buildings between 4 and 10 stories.</td>
<td>less than 50</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>12 months gross income</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
<td>2 months gross income</td>
</tr>
<tr>
<td></td>
<td>51-300</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>12 months gross income</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
<td>2 months gross income</td>
</tr>
<tr>
<td></td>
<td>300 or greater</td>
<td>100% replacement plus soft costs.</td>
<td>no</td>
<td>12 months gross income</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
<td>2 months gross income</td>
</tr>
<tr>
<td>Highrise apartment buildings between 11 and 40 stories</td>
<td>1-300</td>
<td>100% replacement plus soft costs.</td>
<td>yes **</td>
<td>12 months gross income</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$5 million</td>
<td>10-50 months depending on condition</td>
</tr>
<tr>
<td></td>
<td>300 or greater</td>
<td>100% replacement plus soft costs.</td>
<td>yes **</td>
<td>12 months gross income</td>
<td>$1 million / occurrence</td>
<td>$2 million aggregate</td>
<td>$10-50 million depending on condition</td>
<td>2 months gross income</td>
</tr>
</tbody>
</table>

* For rehab projects, in addition to an All Risk policy, the partnership should acquire a Builders Risk policy in an amount equal to the cost indicated on the construction contract plus a reasonable amount for soft costs.

** Only if the project is located within a dense urban area or Terrorism coverage is economically viable.

*** General Liability for projects under construction and located within dense urban areas may require additional umbrella coverage.
EXHIBIT E

SUBSTANTIAL COMPLETION CERTIFICATE

The undersigned, an architect duly licensed and registered in the State of Texas has reviewed final working plans, detailed specifications (including, without limitation, for heating, ventilation and cooling systems, roof and structural details, and mechanical and electrical systems), and soil tests for Aria Grand, LLC (the “Company”), dated and identified as set forth in Schedule 1 attached hereto. This certification is provided in connection with that certain Second Amended and Restated Operating Agreement (the “Operating Agreement”) among O-SDA Aria, LLC, LDG Multifamily, LLC, Boston Capital Direct Placement, A Limited Partnership, and BCCC, Inc. in connection with the construction of improvements on certain real property located in Austin, Texas, such improvement or project being known as Aria Grand Apartments (the “Improvements”).

The undersigned hereby represents and warrants that (i) it has approved the aforesaid plans and specifications, (ii) to the best of its knowledge, information and belief, with due inquiry, based upon periodic inspection of the Improvements during construction, and a final inspection after completion of the Improvements, the Improvements have been completed in material conformance with the aforesaid plans and specifications, (iii) a temporary certificate of occupancy and all other permits required for the continued use and occupancy of the Improvements have been issued with respect thereto by the governmental agencies having jurisdiction thereof, (iv) in its professional opinion, the Improvements have been designed in compliance with all laws, regulations, codes, requirements and restrictions of all governmental authorities having jurisdiction in effect as of the date on the plans and specifications, including, without limitation, all applicable zoning, building, environmental, fire, health ordinances, rules and regulations, including any accessibility requirements found in the Americans with Disabilities Act (42 U.S.C. § 12101 et seq., as amended), the Rehabilitation Act of 1973 (20 U.S.C. § 794 et seq., as amended) and the Fair Housing Act (42 U.S.C. § 3601 et seq., as amended), and (v) it has signed the final draw request (AIA Form __________) for the improvements and amounts in dispute are listed on Schedule 2 attached hereto.

[NAME OF ARCHITECT]

By: ____________________________________
Name: ____________________________________
Title: ____________________________________
Date: ____________________________________
ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section 811 PRA Program).

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Letter to Boston Capital requesting to add 811 units.

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 18, 2019

Mr. Scott Arrighi  
Vice President  
Boston Capital Corporation  
One Boston Place  
Boston, MA 02108-4406

Re: 811 Units – Aria Grand

Dear Scott:

Per the 2019 TDHCA Qualified Allocation Plan, we are hereby submitting a request for your consideration to add an additional ten 811 program units at Aria Grand, in Austin, Texas.

Under the Second Amended and Restated Operating Agreement for Aria Grand, the Managing Member’s Authority is restricted without consent of the Investment Member to add 811 units other than those underwritten at the time of closing. Aria Grand already has seven 811 units as was contemplated during underwriting and closing of the transaction. An additional ten units would result in more than 24% of the property being 811 tenants.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 352-213-8700.

Sincerely,

Megan D. Lasch  
President
Existing Development Name: Aria Grand

iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from Boston Capital denying the request to add 811 units.

ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.
February 19, 2019

Ms. Megan D. Lasch
President
O-SDA Industries
55010-A Balcones Dr., #302
Austin, TX 78731

RE: Aria Grand, Austin, TX

Dear Megan:

It is my understanding that you were notified by the Texas Department of Housing and Community Affairs (TDHCA), of certain requirements of TDHCA with regard to Section 811 units that could impact the set-asides and property encumbrances at Aria Grand, in Austin, TX that Boston Capital syndicated in 2018.

Boston Capital performed and completed the underwriting and market analysis on the property based upon the information and due diligence provided to us at the time of our investment. These findings have been provided to our investors. The addition of Section 811 units at the property would alter our analysis, require additional feasibility underwriting, and would require consent from our investors. As such, it is our preference not to change the resident profile at the property at this time and we must deny your request.

Please do not hesitate to contact me with any questions at the number or email address below.

Sincerely,

Scott M. Arrighi
VP, Assistant Director Acquisitions
Boston Capital Corporation
617-624-8867
sarrighi@bostoncapital.com
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet

Legal Right to Withhold Cover Page §11.9(c)(6)(A)(i)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name Aria Grand

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (DOT) and Credit Support & Funding Agreement (CS&FA)

Provide the name of the Third Party: CommunityBank of Texas

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: DOT: Section 2 Uniform Commercial Code Security Agreement; Section 16 Liens; Encumbrances; CS&FA: Section 3.1 Representations and Warranties of Borrowers - para c, Section 4.1 Covenants of Borrower - para a & b; Section 5.1 Negative Covenants - para f

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: DOT: 9 & 26; CS&FA: 25-26, 30-31, 55-57 and Definitions on page 7, 13 - 16

ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.
Prepared by, and after recording return to:

Wayne Yaffee, Esquire
Greenberg Traurig LLP
1000 Louisiana, Suite 1700
Houston, Texas 77002

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.

MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT AND FIXTURE FILING

(TEXAS)
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. DEFINITIONS</td>
<td>1</td>
</tr>
<tr>
<td>2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT</td>
<td>8</td>
</tr>
<tr>
<td>3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION</td>
<td>11</td>
</tr>
<tr>
<td>4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY</td>
<td>15</td>
</tr>
<tr>
<td>5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM</td>
<td>17</td>
</tr>
<tr>
<td>6. EXCULPATION</td>
<td>18</td>
</tr>
<tr>
<td>7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES</td>
<td>18</td>
</tr>
<tr>
<td>8. COLLATERAL AGREEMENTS</td>
<td>19</td>
</tr>
<tr>
<td>9. APPLICATION OF PAYMENTS</td>
<td>19</td>
</tr>
<tr>
<td>10. COMPLIANCE WITH LAWS</td>
<td>20</td>
</tr>
<tr>
<td>11. USE OF PROPERTY</td>
<td>21</td>
</tr>
<tr>
<td>12. PROTECTION OF LENDER'S SECURITY</td>
<td>21</td>
</tr>
<tr>
<td>13. INSPECTION</td>
<td>21</td>
</tr>
<tr>
<td>14. BOOKS AND RECORDS; FINANCIAL REPORTING</td>
<td>22</td>
</tr>
<tr>
<td>15. TAXES; OPERATING EXPENSES</td>
<td>25</td>
</tr>
<tr>
<td>16. LIENS; <strong>ENCUMBRANCES</strong></td>
<td>26</td>
</tr>
<tr>
<td>17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY</td>
<td>26</td>
</tr>
<tr>
<td>18. ENVIRONMENTAL HAZARDS</td>
<td>27</td>
</tr>
<tr>
<td>19. PROPERTY AND LIABILITY INSURANCE</td>
<td>35</td>
</tr>
<tr>
<td>20. CONDEMNATION</td>
<td>38</td>
</tr>
<tr>
<td>21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER</td>
<td>40</td>
</tr>
<tr>
<td>22. EVENTS OF DEFAULT</td>
<td>47</td>
</tr>
<tr>
<td>23. REMEDIES CUMULATIVE</td>
<td>48</td>
</tr>
<tr>
<td>24. FORBEARANCE</td>
<td>48</td>
</tr>
<tr>
<td>25. [INTENTIONALLY DELETED]</td>
<td>49</td>
</tr>
</tbody>
</table>
56. CONSTRUCTION INSTRUMENT .............................................. 62
57. INDEMNIFICATION OF TRUSTEE .......................................... 62
58. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY ............... 62
59. EXTENDED LOW-INCOME HOUSING COMMITMENT ................. 63
60. ANNUAL LIHTC REPORTING REQUIREMENTS ..................... 63
61. CROSS-DEFAULT ................................................................. 63
62. BANK CONSENT ................................................................. 63
63. ANNUAL COMPLIANCE ......................................................... 64
64. INDEMNIFICATION ............................................................. 64
65. CONTROLLING DOCUMENT .................................................. 58
66. INSURANCE AND CONDEMNATION PROCEEDS ..................... 64
67. WAIVER OF SPECIAL DAMAGES ........................................... 65
68. LOAN CHARGES ................................................................. 65
69. NOTICE OF LITIGATION ....................................................... 65
MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Instrument") is dated as of the 21st day of September, 2018, by ARIA GRAND, LLC, a limited liability company organized and existing under the laws of Texas, whose address is 5501-A Balcones Drive, #302, Austin, Texas 78731, as trustor ("Borrower"), to Joe F. West, as trustee ("Trustee"), for the benefit of COMMUNITYBANK OF TEXAS, N.A. whose address is 5999 Delaware, Beaumont, Texas 77706-7607, Attn: Stephen W. Rose, as beneficiary ("Lender").

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in Travis County, State of Texas, and described in Exhibit A attached to this Instrument, subject, however, to the Permitted Exceptions (hereinafter defined).

TO SECURE TO LENDER (1) the repayment of the Indebtedness evidenced by Borrower's Promissory Note (the "Note") payable to Lender, dated as of the date of this Instrument, and maturing no later than fifteen (15) years after the Conversion Deadline (as defined in the Loan Agreement), in the original face amount of $8,400,000.00, and all renewals, extensions and modifications of the Note and (2) the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower warrants and represents that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except for those permitted encumbrances shown on Exhibit B attached hereto (collectively, the "Permitted Exceptions"). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to the Permitted Exceptions.

Borrower and Lender covenant and agree as follows:

1. DEFINITIONS.

The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "Affiliate" means with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with the Person specified.

(b) "Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.
(c) "Borrower" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

(d) "Collateral Agreement" means, collectively, the Operating Reserve and Security Agreement and the Replacement Reserve and Security Agreement each dated of even date herewith executed by Borrower and Lender.

(e) "Control": means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" shall have meanings correlative thereto.

(f) "Conversion Certificate" shall have the meaning assigned to that term in the Loan Agreement.

(g) "Conversion Date" shall have the meaning assigned to that term in the Loan Agreement.

(h) "Environmental Permit" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(i) "Event of Default" means the occurrence of any event listed in Section 22.

(j) "Fixtures" means all property owned by Borrower which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment specifically excluding any trade fixtures owned by third party providers under written contracts or agreements or by any tenants of the Mortgaged Property.
(k) "Governmental Authority" means any 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 the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(l) "Guarantor" shall have the meaning assigned to that term in the Loan Agreement.

(m) "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.


(o) "Impositions" and "Imposition Deposits" are defined in Section 7(a).

(p) "Improvements" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(q) "Indebtedness" means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and
advances as provided in Section 12 to protect the security of this Instrument, any interest swap or other derivative products and depository service contracts relating to the foregoing.

(r) "Investor Member" means Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, together with its successors and/or assigns as expressly permitted under the terms and provisions of the Loan Agreement.

(s) "Key Principal" means the natural person(s) or entity identified as such after the signature pages at the foot of this Instrument, and any person or entity who becomes a Key Principal after the date of this Instrument and is identified as such in an amendment or supplement to this Instrument.

(t) "Land" means the land described in Exhibit A.

(u) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property, and all modifications, extensions or renewals thereof.

(v) "Lender" means the entity identified as "Lender" in the first paragraph of this Instrument and its successors and assigns, or any subsequent holder of the Note.

(w) "Loan Agreement" means that certain Credit Support and Funding Agreement of even date herewith between the Borrower and Lender, as may hereinafter be amended.

(x) "Loan Documents" means the Loan Agreement, the Note, this Instrument, all guaranties, all indemnity agreements, the Collateral Agreement, O&M Programs, if any, and any other documents now or in the future executed by Borrower, Key Principal, any Guarantor or any other person evidencing, governing and/or securing the loan evidenced by the Note, as such documents may be amended from time to time.

(y) "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, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Instrument.
(z) "Mortgaged Property" means all of Borrower’s present and future right, title and interest in and to all of the following:

(1) The Land;

(2) The Improvements;

(3) the Fixtures;

(4) the Personalty;

(5) all water and water rights, timber, crops and mineral interests pertaining to the Land;

(6) all building materials, appliances and equipment now or hereafter delivered to and intended to be installed in or on the Land or the Improvements (including, without limitation, all such building materials, appliances, and equipment stored by Borrower from time to time off the Land);

(7) to the extent assignable, all current and future rights, including air rights, development rights, zoning rights and other similar rights’ or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(8) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement;

(9) to the extent assignable, all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
(10) to the extent assignable, all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(11) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(12) all Rents and Leases;

(13) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(14) all Imposition Deposits;

(15) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);

(16) to the extent permitted by applicable law, all tenant security deposits which have not been forfeited by any tenant under any Lease;

(17) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

(18) to the extent assignable, any Low-Income Housing Tax Credit (as that term is used in Section 42 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code")) relating to the Mortgaged Property and the use thereof and the allocations therefor;

(19) to the extent assignable, all development fees due on or with respect to the Borrower;
(20) all environmental assessment and other environmental due diligence, appraisals, and other due diligence relating to the proposed development of the Land;

(21) all deposit, reserve, and other accounts of Borrower now or hereafter located at Lender (or any affiliate of Lender); and

(22) all development agreements relating to the proposed development of the Land.

(a) "Note" means the Note (as defined above) and all schedules, riders, allonges and addenda attached thereto, as such Note may be amended from time to time.

(b) "O&M Program" is defined in Section 18(a).

(c) "Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

(d) "Personalty" means all of Borrower’s right, title and interest in and to all equipment, inventory, general intangibles which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any 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 to the extent owned by Borrower, but excluding any of the foregoing owned by tenants of the Mortgaged Property.

(e) "Property Jurisdiction" is defined in Section 31(a).

(f) "Rents" means all collected rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited
to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(gg) "Special Member" means BCCC, Inc., a Massachusetts corporation and its successors and assigns.

(hh) "Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(ii) "Transfer" means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law, except the Permitted Exceptions); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, and (iii) the Permitted Exceptions. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests,
to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may reasonably require. Without the prior written consent of Lender, and except for the Permitted Exceptions, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, in addition to the remedies provided in Section 44 hereof, during the continuance of an Event of Default hereunder, Lender may, at its option, do any one or more of the following:

(1) Subject to applicable law, either personally, or by means of a court appointed receiver, take possession of all or any of the UCC Collateral and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower with respect to the UCC Collateral or any part thereof. In the event Lender demands, or attempts to take possession of the UCC Collateral in the exercise of any rights under this Instrument, Borrower agrees to promptly turn over and deliver possession thereof to Lender;

(2) Without notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the UCC Collateral (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all reasonable expenses (including, without limitation, litigation costs and reasonable attorneys’ fees) incurred in connection therewith;

(3) Require Borrower from time to time to assemble the UCC Collateral, or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and deliver promptly such UCC Collateral to Lender (to the extent the UCC Collateral may be physically delivered), or an agent or representative designated by Lender. Lender, and its agents and representatives, shall have the right to enter upon any or all of Borrower’s premises and property to exercise Lender’s rights hereunder;

(4) Realize upon the UCC Collateral or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Lender by
this Instrument, any other Loan Document, or by law, either concurrently or in such order as Lender may determine;

(5) Sell or cause to be sold, in any manner permitted by applicable law, in such order as Lender may determine, as a whole or in such parcels as Lender may determine, the UCC Collateral and the remainder of the Mortgaged Property;

(6) Sell, lease, or otherwise dispose, in any manner permitted by applicable law, of the UCC Collateral at public sale, upon terms and in such manner as Lender may determine. Lender may be a purchaser at any sale; and

(7) Exercise any remedies of a secured party under the Uniform Commercial Code of Texas or any other applicable law.

(b) Unless the UCC Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, for a UCC Sale unrelated to a foreclosure under Section 44, Lender shall give Borrower at least ten (10) days’ prior written notice of the time and place of any public or private sale of the UCC Collateral or other intended disposition thereof to be made. Such notice may be mailed to Borrower at the address set forth above.

(c) The proceeds of any sale under Subsection (5) above shall be applied as follows:

(1) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the UCC Collateral (including, without limitation, costs of litigation and attorneys’ fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the UCC Collateral prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(2) To the payment of the Indebtedness in such order as Lender shall determine; and

(3) The surplus, if any, shall be paid to the Borrower or as a court of competent jurisdiction may direct.

Lender shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Lender from pursuing any further remedy that it may have. Any repossession or
retaking or sale of the UCC Collateral pursuant to the terms hereof shall not operate to release Borrower until full payment of any deficiency has been made in cash.

Upon its recording in the real property records, this Instrument shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Instrument and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. Information concerning the security interest created by this Instrument may be obtained from Lender, as secured party, at the address of Lender stated above. The mailing address of Borrower, as debtor, is as stated above.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower grants a security interest to Lender in the Rents, in accordance with the Texas Assignment of Rents Act (codified as Chapter 64 of the Texas Property Code). Notwithstanding any other provision hereof or in any of the Loan Documents to the contrary, all provisions related to the assignment of rents are subject to the terms, provisions, and conditions of the Texas Assignment of Rents Act ("TARA"), as codified in Tex. Prop. Code, Chapter 64, as the same may be amended, modified or supplemented from time to time. To the extent that specific terms and requirements of this Instrument or any other Loan Document, including the Loan Agreement, 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 Instrument 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 Instrument or the other Loan Documents shall not otherwise be impaired or superseded thereby and shall remain in full force and effect. This Instrument is intended to be a Security Instrument for purposes of TARA and the Indebtedness shall be a secured obligation for purposes of TARA. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time reasonably require. Borrower and Lender intend this assignment and grant of a security interest of Rents to be an assignment for security of the Indebtedness. Rents shall be deemed to be a part of the "Mortgaged Property". It is the intention of the
Borrower that this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) If an Event of Default has occurred and is continuing, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower’s receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the Lender. However, so long as no Event of Default has occurred and is continuing, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender’s rights with respect to Rents under this Instrument. From and during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower’s license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid, and Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time during the continuance of an Event of Default, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender; provided, however, that the giving of any such notice by Lender shall not affect, in any way, Lender’s entitlement to the Rents as of the date on which the Event of Default occurs. Without limiting the foregoing, upon the receipt by a tenant of a Notice to Pay Rents to Person Other Than Landlord ("NPROL") provided by Lender pursuant to Section 64.055 of TARA after the occurrence of an Event of Default, Borrower shall (and authorizes tenants under Leases to) (1) immediately turn over all Rents which Lender is entitled to collect under Section 64.053 of TARA; (2) not deduct any portion of the Rents for any purpose, notwithstanding any other provision of TARA, this Deed of Trust, or other Loan Document; and (3) shall pay all Rents as they accrue to the Lender. Further, no tenant shall have any right to delay payment of rent contemplated by Section 64.055(d) of TARA or numbered paragraph 3 of the statutory form of NPROL set forth in Section 64.055 of TARA.
No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender’s collection of such Rents.

(c) Except in connection with a subordinate assignment made in the AHFC Loan Documents (as that term is defined in the Loan Agreement), Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing any prior indebtedness that is being assigned to Lender or that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents, with the exception of advance Rent in the amount of one month rent which is collected at the time of execution of a lease and held as a security deposit. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents, with the exception of advance Rent in the amount of one month Rent which is collected at the time of execution of a Lease and held as a security deposit.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender’s security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its reasonable discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender’s security, without regard to Borrower’s solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver
for the Mortgaged Property at any time an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender’s entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents (Borrower may retain copies thereof). In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, excluding any portion of such liability arising solely and exclusively from the gross negligence or willful misconduct of Lender, any Indemnitee (hereinafter defined) or any of Lender’s agents, employees, contractors, officers and/or invitees (collectively, the “Lender Parties”, and individually, a “Lender Party”).

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.
(h) Notwithstanding anything to the contrary in this assignment of Rents, this assignment of Rents is subject to and governed by the Texas Assignment of Rents Act, Chapter 64 of the Texas Property Code, as it may hereafter be amended ("TARA"). In the event of any conflict between this assignment of Rents and TARA, the latter shall control.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower’s right, title and interest in, to and under the Leases, including Borrower’s right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower’s right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property". However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument creates security interest on the Leases in favor of Lender, which shall be effective as of the date of this Instrument and be perfected upon the filing of an associated financing statement in the applicable filing office.

(b) Until an Event of Default has occurred and is continuing, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. If an Event of Default has occurred and is continuing, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower’s obligations under all Leases, including Borrower’s obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual
possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not 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 Mortgaged Property except to the extent caused solely and exclusively by the gross negligence or willful misconduct of any Lender Party (as hereinafter defined). Prior to Lender’s actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) If an Event of Default has occurred and is continuing, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender’s request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be substantially in the form approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender’s prior written consent.

(f) Except for any lease made in connection with providing tenant services such as cable, internet, laundry services, utility or similar services to tenants, Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender, such consent not to be unreasonably withheld or conditioned, and Lender’s prior written approval of the Lease Agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender, such
consent not to be unreasonably withheld or conditioned. However, Lender’s consent shall not be required for the modification or extension of a non-residential Lease if such modification or extension is on terms at least as favorable to Borrower as those customary at such time in the applicable market and the income from the modified or extended Lease will not be less than the income received from the Lease as of the date of the modification or extension. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Lender); (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender’s or such purchaser’s option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance, other than advance rent in the amount of one month rent collected at the time of execution of a Lease and held as a security deposit.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium if and to the extent payable under the Note in connection with certain prepayments of the Indebtedness, including a payment made after Lender’s exercise of any right of acceleration of the Indebtedness, as provided in the Note. Without limiting the requirements of the Loan Agreement, after the delivery of the Conversion Certificate, Borrower shall not incur any additional indebtedness other than as may be permitted by the Loan Agreement and other than in the ordinary course of Borrower’s day to day business operations at the Mortgaged Property without Lender’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.
6. EXCULPATION.

Borrower’s personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall deposit with Lender on the first day monthly installments of principal or interest are due under the Note on and after the Conversion Date and the delivery of the Conversion Certificate (or on another day designated in writing by Lender, which shall be after the Conversion Date unless an Event of Default is then continuing), and continuing on the same day each month until the Indebtedness is paid in full, 1/12 of the amount sufficient to accumulate with Lender the annual sum required to pay, before past due and accumulating penalties (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 19 (unless Borrower has provided Lender with evidence that such premiums have been paid for the next 12-month period), (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably estimated from time to time by Lender. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the “Imposition Deposits”. The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as “Impositions”. The amount of the Imposition Deposits shall be sufficient 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. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender’s discretion, at any time upon notice to Borrower.

(b) 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 the Federal Deposit Insurance Corporation. 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. Lender shall apply the
Imposition Deposits to pay Impositions so long as no Event of Default has
occurred and is continuing. Borrower hereby pledges and grants to Lender a
security interest in the Imposition Deposits as additional security for all of
Borrower’s obligations under this Instrument and the other Loan Documents. Any
amounts deposited with Lender under this Section 7 shall not be trust funds, nor
shall they operate to reduce the Indebtedness, unless applied by Lender for that
purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay
the Imposition from the Imposition Deposits held by Lender prior to the date such
Impositions become past due. Lender shall have no obligation to pay any
Imposition to the extent it exceeds Imposition Deposits then held by Lender.
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,
except in the event of clear, manifest error.

(d) If at any time the amount of the Imposition Deposits held by Lender
for payment of a specific Imposition exceeds the amount reasonably deemed
necessary by Lender, the excess shall be credited against future installments of
Imposition Deposits. If at any time the amount of the Imposition Deposits held by
Lender for payment of a specific Imposition is less than the amount reasonably
estimated by Lender to be necessary, Borrower shall pay to Lender the amount of
the deficiency within 15 days after written notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may
apply any Imposition Deposits, in any amounts and in any order as Lender
determines, in Lender’s discretion, to pay any Impositions or as a credit against
the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund
to Borrower any Imposition Deposits held by Lender.

8. COLLATERAL AGREEMENTS.

Borrower shall deposit with Lender such amounts as may be required by any
Collateral Agreement and shall perform all other obligations of Borrower under each
Collateral Agreement.

9. APPLICATION OF PAYMENTS.

If at any time Lender receives, from Borrower or otherwise, any amount
applicable to the Indebtedness which is less than all amounts due and payable at such
time, then Lender may apply that payment to amounts then due and payable in any
manner and in any order determined by Lender, in Lender’s discretion. Neither
Lender’s acceptance of an amount which is less than all amounts then due and payable
nor Lender's application of such payment in the manner authorized 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 amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. COMPLIANCE WITH LAWS.

Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take commercially reasonable measures to prevent, and shall not engage in or knowingly permit, 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 Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that, to its knowledge, no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

Nothing herein shall prevent Borrower from contesting any legal requirement (including any Hazardous Material Law) in good faith so long as Borrower complies with the following requirements:

(i) The contest must be pursued diligently, in good faith and at Borrower's sole cost and expense.

(ii) Borrower shall promptly notify Lender of the commencement of such contest and shall use reasonable efforts to advise Lender of the expected commencement of such contest.

(iii) The Mortgaged Property shall not be in immediate danger of being sold or forfeited as a result of such contest and the continuing and ongoing operation of the Mortgaged Property (or any material part of the Mortgaged Property) as a residential apartment complex shall not be reasonably likely to be interrupted or terminated during the pendency of the proceeding.

Borrower shall post any security required by law or, if and to the extent Borrower is not required to post any security, such other amount (to cover interest and penalties, if applicable and the cost to correct or remediate) as may be reasonably required by Lender.
11. USE OF PROPERTY.

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, which such consent shall not be unreasonably withheld, conditioned, or delayed, allow changes in the use for which all or any part of the Mortgaged Property is being used or for which the Mortgaged Property is intended to be used at the time this Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

12. PROTECTION OF LENDER’S SECURITY.

(a) If Borrower fails in any material respect to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender’s security or Lender’s rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender’s option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender’s interest, including (1) payment of reasonable fees and reasonable out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the “Default Rate”, as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

Subject to the rights of tenants, Lender, its agents, representatives, and designees upon 48 hours prior notice to Borrower, may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours and with at least 48 hours
prior written notice (but no such notice will be required during the continuance of an Event of Default), or at any other reasonable time and as otherwise provided for in the Loan Agreement. Lender also reserves the right to reappraise the Mortgaged Property one time at Borrower’s expense after the closing of the loan evidenced by this Instrument, to the extent and as provided for in the Loan Agreement. Prior to the Conversion Date, Lender may reappraise the Mortgaged Property as provided for in the Loan Agreement. After the Conversion Date, Lender also reserves the right to reappraise the Mortgaged Property one time at Borrower’s expense and as required by applicable governmental requirements.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent’s offices, and upon Lender’s request shall make available at the Mortgaged Property (or, at Borrower’s option, at the management agent’s office), complete and accurate (in all material respects) books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. Upon 72 hours prior written notice to Borrower, the books, records, contracts, Leases and other instruments shall be subject to examination and inspection during normal business hours by Lender (but no such prior notice shall be required during the continuance of an Event of Default).

(b) Borrower shall furnish to Lender all financial and other information relating to Borrower and the Mortgaged Property as Lender shall reasonably request, including, without limiting, all of the following:

(1) As soon as available, and in any event within 30 days from the end of each calendar month (beginning with the first calendar month ending after a certificate of occupancy is issued for all or any part of the Mortgaged Property or as otherwise required by Lender), statements showing the financial condition of the Mortgaged Property at the close of such calendar month, which statements shall include, without limitation, an income/operating statement signed by the property manager and/or a duly authorized officer of the managing member of Borrower, a summary report of rent collections for that month, a current rent roll (which shall include a summary of the number of units leased, available, and occupied and any rental concessions), the current month’s budget, year to date activity, year to date budget, and all other matters as Lender may reasonably request; provided that after the Conversion Date, the reporting under this subsection (1) shall be quarterly within 30
days of the end of each fiscal quarter of Borrower instead of monthly;

(2) As soon as available, and in any event within 120 days from the end of each fiscal year of Borrower (beginning with the fiscal year ending on December 31, 2019), an audited financial statement, prepared by a third party accounting firm reasonably acceptable to Lender in a manner reasonably acceptable to Lender, showing the financial condition of Borrower at the close of such fiscal year and the results of operation during such fiscal year, which financial statement shall include a balance sheet, income statement, statement of contingent liabilities, and statement of cash flows (sources and uses);

(3) Until the Conversion Date, within 120 days from the end of each fiscal year, an unaudited financial statement for each Guarantor, prepared on a form and in a manner acceptable to Lender, which shall include, without limitation, a balance sheet, cash flow statement, and statement of contingent liabilities;

(4) Upon Lender’s written request, Borrower shall provide to Lender (within 90 days of filing), and each managing member of Borrower, and only prior to the Conversion Date, each Guarantor shall provide to Lender (within 90 days of filing), a copy of its respective filed federal income tax returns for such calendar year and of all requests for extensions to the filing thereof. Without limiting the foregoing, Borrower shall submit to Lender a copy of the following sections of Borrower’s federal tax return: Forms 1065, 8586, 8609, and 8609 Schedule A if filed.

(5) Within 120 days after the end of each calendar year, copies of all low income tax credit compliance audits prepared by the TDHCA and/or a third party manager;

(6) Upon Lender’s written request, within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender’s request but not more than twice during any fiscal year, 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;
(7) Upon Lender's written request, within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;

(8) Upon Lender's written request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and

(9) Borrower shall satisfy all other reporting requirements set forth in the Loan Agreement until the Conversion Date and the delivery of the Conversion Certificate.

(c) Borrower shall satisfy all other reporting requirements set forth in the Loan Agreement until the Conversion Date and each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate in all material respects by an individual having authority to bind Borrower or the property manager where applicable, and shall be in such form and contain such detail as Lender may reasonably require.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related reasonable costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) 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, provided, however, Borrower can keep copies thereof.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time, at Lender's expense unless an Event of Default is existing in which case at Borrower's expense.

(g) If an Event of Default exists and Lender has not previously required Borrower to furnish a quarterly statement of income and expense for the Mortgaged Property, Lender may require Borrower to furnish such a statement.
within 45 days after the end of each fiscal quarter of Borrower during the existence of such Event of Default.

15. Taxes; Operating Expenses.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall 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.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) if Borrower has not already paid the Imposition, Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition, provided that such security shall not be required if Borrower posts a bond or deposits collateral with the appropriate court or body with jurisdiction over the matter.
(e) Borrower shall 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.

16. LIENS; ENCUMBRANCES.

Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a “Lien”) on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a “Transfer” which constitutes an Event of Default, except (a) any Permitted Exception or (b) prior to the Conversion Date, a Transfer (expressly permitted under the terms of the Loan Agreement), and, on and after the Conversion Date, any Transfers expressly permitted under Section 21.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower (1) shall not intentionally commit waste or permit impairment or deterioration of the Mortgaged Property (normal wear and tear excepted), (2) shall not abandon the Mortgaged Property, (3) subject to the other terms of this Instrument and the Loan Documents, shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property as provided in Section 17(c), (4) shall keep the Mortgaged Property in good repair (normal wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) shall provide for professional management of the Mortgaged Property by a residential rental property manager reasonably satisfactory to Lender under a contract approved by Lender in writing, and (6) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender’s security or Lender’s rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property without Lender’s prior written consent, except in connection with the replacement of tangible Personalty (provided that Borrower may perform such restoration or repair with available insurance proceeds and/or condemnation awards to the extent permitted by Sections 19, 20, and 68 hereof).

(b) If, in connection with the making of the loan evidenced by the Note or at any later date, Lender waives in writing the requirement of Section 17(a)(5) above that Borrower enter into a written contract for management of the Mortgaged Property and if, after the date of this Instrument, Borrower intends to
change the management of the Mortgaged Property, Lender shall have the right to reasonably approve such new property manager and the written contract for the management of the Mortgaged Property and require that Borrower and such new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower (other than Investor Member) to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. “Affiliate of Borrower” means any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls Borrower (the term “control” for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to substantially the equivalent of its condition as of the date of this Instrument, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair; however, Borrower may, in any event, perform such restoration or repair if no Event of Default has occurred and is continuing, otherwise, Lender shall apply any available insurance proceeds and/or condemnation awards to the payment of Indebtedness in accordance with the provisions of this Instrument.

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an “O&M Program”), those disclosed to Lender prior to the date hereof, or matters described in Section 18(b), Borrower shall not cause or knowingly 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 on or under the Mortgaged Property or any other
property of Borrower 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 or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

(4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 18 as "Prohibited Activities or Conditions".

(b) Prohibited Activities and Conditions shall not include lawful conditions permitted by an O&M Program or 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) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower 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 Activity or Condition.

(d) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and undertake commercially reasonable efforts to cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply
with the O&M Program. All costs of performance of Borrower’s obligations under any O&M Program shall be paid by Borrower, and Lender’s reasonable out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower’s performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing prior to the date of this Instrument in any environmental report or otherwise, to the best of its knowledge:

(1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions on the Mortgaged Property;

(2) to the best of Borrower’s knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed on the Mortgaged Property;

(3) except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower’s knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;

(4) to the best of Borrower’s knowledge, Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(5) to the best of Borrower’s knowledge, no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would
constitute, noncompliance with the terms of any Environmental Permit;

(6) to the best of Borrower’s knowledge, there are no actions, suits, claims or proceedings pending or, to the best of Borrower’s knowledge, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

(7) Borrower has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full, subject to any change in circumstances as may be disclosed to Lender in accordance with Section 19(f), below.

(f) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

(1) Borrower’s discovery of any Prohibited Activity or Condition;

(2) Borrower’s receipt of or actual knowledge of any written complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or (if applicable) any other property of Borrower that is adjacent to the Mortgaged Property; and

(3) any representation or warranty in this Section 18 becomes untrue after the date of this Instrument.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(g) Borrower shall pay promptly the reasonable costs of any environmental inspections, tests or audits ("Environmental Inspections") required
by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender’s consent to any Transfer under Section 21 (to the extent Lender’s consent is expressly required by the terms of Section 21), or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the reasonable fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower (unless Borrower pays all of the costs and expenses associated with such Environmental Inspection) or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any such party (either as part of a notice of sale or otherwise) of the results of any of Lender’s Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender’s Environmental Inspections in accordance with this Section 18(g).

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work (“Remedial Work”) is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after written notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option,
cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the reasonable cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(i) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

Nothing herein shall prevent Borrower from contesting any legal requirement (including any Hazardous Material Law) in good faith so long as Borrower complies with the following requirements:

(i) The contest must be pursued diligently, in good faith and at Borrower’s sole cost and expense.

(ii) Borrower shall promptly notify Lender of the commencement of such contest and shall use reasonable efforts to advise Lender of the expected commencement of such contest.

(iii) The Mortgaged Property shall not be in immediate danger of being sold or forfeited as a result of such contest and the continuing and ongoing operation of the Mortgaged Property (or any material part of the Mortgaged Property) as a residential apartment complex shall not be reasonably likely to be interrupted or terminated during the pendency of the proceeding.

(iv) Borrower shall post any security required by law or, if and to the extent Borrower is not required to post any security, such other amount (to cover interest and penalties, if applicable and the cost to correct or remediate) as may be reasonably required by Lender.

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the “Indemnitees”) from and against all proceedings, claims, damages, penalties and reasonable costs (whether initiated or sought by Governmental Authorities or private parties), including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following (except to the extent caused solely
and exclusively by the gross negligence or willful misconduct of any Lender Party with respect to the following):

(1) any breach of any representation or warranty of Borrower in this Section 18;

(2) any failure by Borrower to perform any of its obligations under this Section 18;

(3) the existence of any Prohibited Activity or Condition;

(4) the presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and

(5) the actual violation of any Hazardous Materials Law.

Borrower’s liability under clauses (3), (4) and (5) of this subsection (j) shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Activity or Conditions that first arise, commence or occur solely and exclusively as a result of actions of Lender or any Lender Party, its successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of the Instrument following the payment in full of the Note and all other sums payable under the Loan Documents or after the actual dispossession from the entire Mortgaged Property of the Borrower and all entities which control, are controlled by, or are under common control with the Borrower following foreclosure of the Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower’s reasonable expense. However, unless an Event of Default has occurred and is continuing, or the interests of Borrower and Lender are in conflict, as determined by Lender in its reasonable discretion, Lender shall permit Borrower to undertake the actions referenced in this Section 18 so long as Lender approves such action, which approval shall not be unreasonably withheld, conditioned or delayed.

(l) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a “Claim”), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may
materially and adversely affect Lender, as determined by Lender in its reasonable discretion.

(m) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Lender agrees that the indemnity under this Section 18 shall on and after the Conversion Date and the delivery of the Conversion Certificate, be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any member of Borrower.

(n) Borrower shall, at its own cost and expense, do all of the following:

(1) pay or satisfy any final judgment or decree that may be entered against any Indemnitee or Indemnities in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 18;

(2) reimburse Indemnitees for any reasonable expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 18; and

(3) reimburse Indemnitees for any and all reasonable expenses, including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all reasonable costs and expenses incurred by Lender, including all reasonable costs of settlements entered into in good faith, and the reasonable fees and out-of-pocket expenses of such attorneys and consultants.

(p) The provisions of this Section 18 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that
Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any Guarantor, or pursued any other rights available under the Loan Documents or applicable law. If more than one person or entity signs the Instrument as Borrower, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument. Notwithstanding anything herein to the contrary, Borrower's liability under this Section shall not extend to cover the presence of any Hazardous Materials that first arises, commences, or occurs (i) solely and exclusively as a result of actions of Lender, its successors, assigns or designees, (ii) after the written release by Lender of this Instrument following the payment in full of the Note and all other sums payable under the Loan Documents, or (iii) following foreclosure of this Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require (and, until the Conversion Date and the delivery of the Conversion Certificate, as required by the Loan Agreement), and thereafter, Borrower shall maintain commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may reasonably require from time to time which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage (if applicable), and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, in its sole and reasonable discretion, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, but only to the extent the same is generally required for comparable properties located in the area of the Mortgaged Property. If any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender in Lender's sole and reasonable discretion. All policies of property damage insurance shall include a non-contributing, non-reporting
mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall 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. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy (or certificate thereof if Lender will require a copy or original of the policy) in form reasonably satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers’ compensation insurance (if required by applicable law) and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give prompt written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for 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 property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender’s expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender’s option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to substantially the equivalent of its original condition or to a condition approved by Lender (the “Restoration”), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender’s then-current policies relating to the restoration of casualty damage on similar multifamily rental properties. After the Conversion Date, to the extent Lender determines to apply insurance proceeds to payment of the Indebtedness, the Note
will be re-amortized and the monthly payments due under the Note will be reduced to reflect any reduction of the principal balance of the Indebtedness that was the result of applying insurance proceeds to the payment thereof. In addition, if the Lender determines to apply insurance proceeds to the payment of the Indebtedness, Borrower will not be required to restore or repair the Mortgaged Property to substantially the equivalent of its original condition. If Lender shall apply insurance proceeds to the payment of the Indebtedness and Borrower deems it necessary to restore or repair the Mortgaged Property to avoid recapture of tax credits, Lender shall consider whether to permit Borrower to secure a subordinate construction loan solely for the purpose of restoring or repairing the Mortgaged Property; provided that Borrower (1) request Lender’s consent in writing, which writing shall include the proposed terms of such subordinate construction loan, (2) the Borrower named in this Instrument is the owner of the Mortgaged Property, (3) no Event of Default exists that will not be cured by Restoration of the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date, and (4) the proposed subordinate construction loan satisfies Lender’s underwriting requirements in Lender’s sole and absolute judgment and discretion.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default has occurred and is continuing that will not be cured by Restoration of the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date; (2) Lender determines, in its reasonable discretion, that there will be sufficient funds to complete the Restoration from insurance proceeds, anticipated contributions of Borrower of its own funds or other sources; (3) Lender determines, in its reasonable discretion, that the Rents from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (4) Lender determines, in its reasonable discretion, that the Restoration will be completed before the earlier of (A) one year before the Maturity Date (as defined in the Note (or six months before the Maturity Date if Lender determines in its discretion that re-leasing of the Property will be completed with such six month period) or (B) one year after the date of the loss or casualty, such period of time shall be extended for a reasonable period of time if a delay in Restoration is caused by an act of God; and (5) upon Lender’s request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 19.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all
rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

Notwithstanding any provision to the contrary in this Section 19, as long as no Event of Default, or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing that would not be cured by Restoration of the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date:

(i) in the event of a casualty resulting in damage to the Mortgaged Property which will cost $50,000 or less to repair, the Borrower shall have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of the Lender so long as the insurance proceeds are used solely for the Restoration of the Mortgaged Property; and

(ii) in the event of a casualty resulting in damage to the Mortgaged Property which will cost more than $50,000 but less than $100,000 to repair, the Borrower is authorized to make proof of loss and adjust and compromise the claim without the prior consent of Lender, and Lender shall hold the applicable insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and shall not apply such proceeds to the payment of sums due under this Instrument.

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding 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 (a "Condemnation"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Provided Borrower receives written notice as described in the immediately preceding sentence, Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender’s or Borrower’s name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation (after consultation with Borrower if no Event of Default is then continuing) consistent with commercially reasonable standards of a prudent lender. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or
take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment (not in excess of any amounts necessary to pay the Indebtedness) with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender’s reasonable expenses incurred in the collection of such amounts, at Lender’s option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require. After the Conversion Date, to the extent Lender applies any awards or proceeds to payment of the Indebtedness, the Note will be re-amortized and the monthly payments due under the Note will be reduced to reflect any reduction of the principal balance of the Indebtedness that was the result of applying the proceeds to the payment thereof. In addition, if the Lender applies any awards or proceeds to payment of the Indebtedness, Borrower will not be required to restore or repair the Mortgaged Property. If Lender shall apply condemnation proceeds to the payment of the Indebtedness and Borrower deems it necessary to restore or repair the Mortgaged Property to avoid recapture of tax credits, Lender shall consider whether to permit Borrower to secure a subordinate construction loan solely for the purpose of restoring or repairing the Mortgaged Property; provided that Borrower (1) request Lender’s consent in writing, which writing shall include the proposed terms of such subordinate construction loan, (2) the Borrower named in this Instrument is the owner of the Mortgaged Property, (3) no Event of Default exists that would not be cured by restoring or repairing the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date, and (4) the proposed subordinate construction loan satisfies Lender’s underwriting requirements in Lender’s sole and absolute judgment and discretion.

(c) Lender shall not exercise its option to apply condemnation proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing that would not be cured by restoring or repairing the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date; (2) Lender determines that there
will be sufficient funds to (A) restore and repair the Mortgaged Property to a
c condition approved by Lender and (B) meet all operating costs and other
expenses, payment for reserves and loan repayment obligations relating to the
Mortgaged Property until completion of the restoration and repair of the
Mortgaged Property to a condition approved by Lender; and; (3) Lender
determines that the rental income from the Mortgaged Property after restoration
and repair of the Mortgaged Property to a condition approved by Lender, will be
sufficient to meet all operating costs and other expenses, Imposition Deposits,
deposits to reserves and loan repayment obligations relating to the Mortgaged
Property.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN
BORROWER.

(a) Subject to subsection (b) below, the occurrence of any of the
following events on or after the Conversion Date without Lender's prior written
consent shall constitute an Event of Default under this Instrument (prior to the
Conversion Date, Transfers may only be made to the extent permitted by the Loan
Agreement or this Instrument):

(1) a Transfer of all or any part of the Mortgaged Property or any
interest in the Mortgaged Property;

(2) a Transfer of a Controlling Interest in the Borrower;

(3) a Transfer of a Controlling Interest in any entity which owns,
directly or indirectly through one or more intermediate entities,
a Controlling Interest in Borrower;

(4) a Transfer of all or any part of Key Principal's ownership
interests in Borrower, or in any other entity which owns,
directly or indirectly through one or more intermediate entities,
an ownership interest in Borrower;

(5) if Key Principal is an entity, (A) a Transfer of a Controlling
Interest in Key Principal, or (B) a Transfer of a Controlling
Interest in any entity which owns, directly or indirectly through
one or more intermediate entities, a Controlling Interest in Key
Principal;

(6) if Borrower or Key Principal is a trust, the termination or
revocation of such trust; and
(7) a conversion of Borrower from one type of legal entity into another type of legal entity, whether or not there is a Transfer.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events on or after the Conversion Date (as provided in subsection (f) below) shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) and/or any provision set forth in any of the Loan Documents, to the contrary:

(1) a Transfer to which Lender has consented;

(2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;

(3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;

(4) a Transfer of obsolete or worn out Personality or Fixtures that are contemparaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;

(5) except as otherwise expressly permitted by this Instrument the grant of an easement, if before the grant Lender reasonably determines that the easement will not materially and adversely affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all reasonable costs and expenses incurred by Lender in connection with reviewing Borrower's request;

(6) the creation of a tax lien or a mechanic's, materialman's or judgment lien against the Mortgaged Property which is bonded off, released of record, bonded, or otherwise remedied to Lender's satisfaction within 60 days of the date of creation;

(7) The Transfer by the Investor Member or the Special Member of membership interests in the Borrower (or interests in the Investor Member) to any other entity which is an Affiliate of the
Investor Member and/or the Special Member and/or Boston Capital Partners, Inc.;

(8) the pledge and encumbrance of the interests of the Investor Member or the Special Member to or for the benefit of any financial institution approved by Lender, in Lender's sole reasonable discretion which enables the Investor Member to make its capital contributions to the Borrower;

(9) the removal of any manager or managing member of Borrower by the Special Member pursuant to the terms of the Second Amended and Restated Operating Agreement of Borrower, as may be amended from time to time subject to the terms of the Loan Agreement (if the amendment is done before the Conversion Date) and this Instrument and the replacement of such manager or managing member with the Special Member or an affiliate of the Special Member or Boston Capital Partners, Inc.;

(10) issuance of membership interests in the Borrower equal to 99.99% of the ownership, profits, losses, credits, distributions and other interests in the Borrower to the Investor Member and the Special Member;

(11) subject to the terms and requirements of the Loan Agreement (if occurring prior to the Conversion Date), a change in beneficial ownership of Investor Member or Special Member, provided that in all cases, such Investor Member or Special Member, as applicable, remains controlled by Boston Capital Partners, Inc. (or an affiliate thereof);

(12) issuance of membership interests in the Borrower equal to [0.0025]% of the ownership, profits, losses, credits, distributions and other interests in the Borrower to the Class B Special Member;

(13) a Transfer of a minority interest (less than 50%) in the managing member of Borrower to any children (or grandchildren) of a Key Principal (if an individual) without consent of the Lender (or payment of a fee) so long as the Key Principals (collectively) at all times retain a Controlling Interest of the managing member of Borrower;
(14) a change of Borrower's name, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been filed and copies have been delivered to Lender;

(15) a change of the form of the Borrower not involving a transfer of Borrower's assets and not resulting in any change in liability of the initial owner, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender;

(16) the merging of Borrower with another entity when Borrower is the surviving entity;

(17) a Condemnation which will not materially adversely affect the operation or value of the Mortgaged Property, provided that Borrower complies with the requirements of Section 20 of this Instrument with respect to condemnation;

(18) the merger or consolidation of a Key Principal with another entity with the Key Principal being the surviving entity, or the acquisition by a Key Principal of another entity, or a conversion of Key Principal from one type of legal entity into another type of legal entity (provided that such new legal entity remains obligated for all obligations of the prior entity in the same manner and respect as the prior entity and that the new entity shall have the same financial statements (including assets and liabilities) as the prior entity after giving effect to the conversion), whether or not there is a Transfer;

(19) After the end of the Low-Income Housing Tax Credit compliance period, the Transfer by the Investor Member and/or the Special Member of its membership interest in the Borrower to any other entity which is an affiliate of Borrower's managing member, or which is controlled by or under common control with an affiliate of Borrower's managing member; and

(20) any other Transfer expressly permitted by the terms of the Loan Documents (but only if that Loan Document is then in effect).
(c) Lender shall consent at any time on and after the Conversion Date and the delivery of the Conversion Certificate, without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest or to any other economic terms of the Indebtedness, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

(1) the submission to Lender of all information reasonably required by Lender to make the determination required by this Section 21(c);

(2) the absence of any Event of Default (or the Event of Default will be cured contemporaneously with the Transfer);

(3) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages, deeds of trust or deeds to secure debt on multifamily rental properties;

(4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily rental properties;

(5) in the case of a Transfer of all or any part of the Mortgaged Property, direct or indirect ownership interests in Borrower or Key Principal (if an entity), if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement (including, if applicable, an Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability) that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Instrument or
any other Loan Document which previously may have been waived by Lender;

(6) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and

(7) Lender’s receipt of all of the following:

(A) a non-refundable review fee in the amount of $3,000 and, if to a party who is not controlled by or under common control with the transferor, a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer.

(B) In addition, Borrower shall be required to reimburse Lender for all of Lender’s reasonable out-of-pocket costs (including reasonable attorneys’ fees) incurred in reviewing the Transfer request, to the extent such expenses exceed $3,000.

(d) For purposes of this Section, the following terms shall have the meanings set forth below:

(4) “Initial Owners” means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note own in the aggregate 100% of the ownership interests in Borrower or that entity.

(5) A Transfer of a “Controlling Interest” shall mean, with respect to any entity, the following:

(i) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;

(ii) if such entity is a limited partnership, a Transfer of any general partnership interest;
(iii) if such entity is a limited liability company or a limited liability partnership, a transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity;

(iv) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;

(v) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(vi) if such entity is a trust, the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment or substitution is a trustee identified in the trust agreement approved by Lender.

(6) "Publicly-Held Corporation" shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

(e) Neither the $3,000 nor the one percent (1%) transfer fee will be due for the transfers permitted in subparagraph (b) above.

(f) The foregoing shall only be applicable to Transfers made on or after the Conversion Date (prior to the Conversion Date, Transfers will be governed by the terms of the Loan Agreement).

(g) Notwithstanding the foregoing or anything else herein or in the Loan Agreement to the contrary, any Transfer (before or after the Conversion Date) of the Mortgaged Property or of an interest in Borrower shall be subject to compliance by Borrower with Title 10 of the Texas Administrative Code Rule 10.406.
22. EVENTS OF DEFAULT.

Any one or more of the following shall constitute an Event of Default under this Instrument:

(a) any failure by Borrower to pay an amount on the Note within 10 days of when due, or to pay or deposit any other amount required by this Instrument or any other Loan Document within 10 days after Lender delivers written notice thereof to Borrower;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19, which is not fully cured by or on behalf of Borrower within five (5) business days after Lender delivers notice thereof to Borrower;

(c) any failure by Borrower to comply with the provisions of Section 34;

(d) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, managing members, or managers or any Guarantor 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 Indebtedness, (C) any request for Lender’s consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement, or (D) any of the representations and warranties contained in Section 3.1 of the Loan Agreement and in Section 59 of this Instrument;

(e) any Event of Default under Section 21;

(f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender’s reasonable judgment, will result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender’s interest in the Mortgaged Property, and such action or proceeding is not dismissed or terminated with prejudice within 60 days after the commencement thereof;

(g) any failure by Borrower to comply with the provisions of Section 60 which is not fully cured by or on behalf of Borrower within 30 days after written notice thereof is provided to Borrower by Lender;

(h) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (g)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower. However, no such notice or grace period shall apply in the case of any such failure which would, in Lender’s reasonable judgment, absent
immediate exercise by Lender of a right or remedy under this Instrument, result in material harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Borrower to perform any of its material obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable notice, grace, and/or cure period, if any, specified in that Loan Document;

(j) 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; and

(k) Prior to the Conversion Date and the delivery of the Conversion Certificate, the occurrence of any other Event of Default under and as defined in the Loan Agreement.

23. REMEDIES CUMULATIVE.

Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument 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. Notwithstanding anything to the contrary herein or in any of the other Loan Documents, Lender shall have no right or claim to the low income housing tax credits allocated to the Mortgaged Property unless and until Lender shall foreclose on the Mortgaged Property or accept a deed in lieu of foreclosure. Lender shall, notwithstanding anything to the contrary herein or in any other Loan Documents, have no right or claim to the LIHTCs (hereafter defined) allocated to the Land and Improvements unless and until the Lender shall foreclose on the Mortgaged Property or accept a deed in lieu of foreclosure.

24. FORBEARANCE.

(a) Except as otherwise expressly provided in any of the Loan Documents, 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, any Guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or
release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the 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 of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. NOTICE AND CURE RIGHTS OF INVESTOR MEMBER.

Notwithstanding anything to the contrary contained herein, or in any of the Loan Documents after the Conversion Date (prior to the Conversion Date, the Loan Agreement shall govern the notice and cure rights of the Special Member and the Investor Member): (i) Lender shall provide the Special Member with simultaneous notice of any Event of Default or other violation by Borrower under the Loan Documents, and (ii), the Lender agrees to accept performance on the part of the Investor Member, the Special Member, or any of their affiliates as though the same had been performed by the Borrower under any of the Loan Documents. The Lender will allow the Investor Member, the Special Member, and/or their affiliates ten (10) days after giving the Special Member notice to cure a monetary default under the Loan Documents (other than the payment due at maturity) and except as to the Borrower's filing of a voluntary bankruptcy petition, up to thirty (30) days after giving the Special Member notice to cure of any non-monetary default under the Loan Documents. If the Investor Member, the Special Member, or any of their affiliates, makes any such payment or otherwise offers cure of a default, the Lender will accept or reject such action as curing such default on the same basis as if payment or cure were made directly by the Borrower. The foregoing notice and cure periods shall run simultaneously with any grace and cure periods provided to the Borrower in Section 22, or otherwise for the applicable occurrences.
26. [INTENTIONALLY DELETED].

27. WAIVER OF STATUTE OF LIMITATIONS.

Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

28. WAIVER OF MARSHALLING.

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 Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are 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 Instrument waives any and all right to require the marshalling 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 Instrument.

29. FURTHER ASSURANCES.

Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances 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 Instrument and the Loan Documents, provided that except as required for the above purposes, Borrower is not obligated to execute, acknowledge or deliver any such items that add to, modify or change the terms of the Loan Documents in a manner which is inconsistent with the terms of the Commitment (under and as defined in the Loan Agreement).

30. ESTOPPEL CERTIFICATE.

Within 10 days after a written request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) 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); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the
Borrower is in default, describing such default in reasonable detail; (v) 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 (vi) any additional facts reasonably requested by Lender.

31. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the State of Texas, exclusive of choice and conflict of law principles.

(b) Borrower and Lender agree that (1) any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in Austin, Texas, and (2) the state and federal courts and authorities with jurisdiction in Austin, Travis County, Texas shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower and Lender irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which they might be entitled by virtue of domicile, habitual residence or otherwise.

32. NOTICE.

(a) All notices, demands and other communications ("notice") under or concerning this Instrument and the other Loan Documents shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 32, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 32. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 32, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 32 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.
(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 32.

(d) Copies of all notices provided by Lender to Borrower under this Instrument or any related document shall be simultaneously provided to the Investor Member at: Boston Capital Direct Placement, A Limited Partnership, c/o Boston Capital Partners, Inc., One Boston Place, 21st Floor, Boston, MA 02108, Attention: Asset Management, with a copy to Holland & Knight LLP, 10 St. James Avenue, 11th Floor, Boston, Massachusetts 02116, Attention: Doug Clapp, Esq. and the Guarantor at the address specified in the applicable guaranty. Notwithstanding anything herein to the contrary, Lender shall provide the Investor Member with copies of all notices of Default and Event of Default provided to Borrower under this Instrument and other Loan Documents simultaneously with the giving of any such notice to Borrower, and Investor Member shall be entitled to cure any such Default or Event of Default for and on behalf of Borrower within any applicable grace or cure period.

33. SALE OF NOTE; CHANGE IN SERVICER.

The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower, and Borrower shall not be liable for any costs or claims in connection therewith. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change. If Borrower receives conflicting Notices regarding the identity of the Loan Servicer or any other subject, any such Notice from Lender shall govern.

34. SINGLE ASSET BORROWER.

Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the acquisition, construction, development, leasing, replacement, sale refinancing, operation and maintenance of the Mortgaged Property (other than de minimis personal property); (b) shall not operate any business other than the acquisition, construction, development, leasing, replacement, sale refinancing, management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

35. SUCCESSORS AND ASSIGNS BOUND.

This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a
Transfer not permitted by Section 21 or any of the other Loan Documents (as then in effect) shall be an Event of Default.

36. **JOINT AND SEVERAL LIABILITY.**

If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

37. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "Servicing Arrangement") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds 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.

38. **SEVERABILITY; AMENDMENTS.**

The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

39. **CONSTRUCTION.**

The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."
40. LOAN SERVICING.

All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the 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 notice from Lender shall govern.

41. DISCLOSURE OF INFORMATION.

Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, 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.

42. NO CHANGE IN FACTS OR CIRCUMSTANCES.

All information in the application for the loan submitted to Lender (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 (as defined in the Loan Agreement) in any fact or circumstance that would make any such information incomplete or inaccurate.

43. SUBROGATION.

If, and to the extent that, the proceeds of the loan evidenced by the Note 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 (a "Prior Lien"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

44. ACCELERATION; REMEDIES.

Except as otherwise expressly provided in the Loan Documents, at any time during the existence of an Event of Default, Lender, at Lender'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 Instrument or in any other Loan Document. Borrower acknowledges that the power
of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender 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 Lender invokes the power of sale, Lender may, by and through the Trustee, or otherwise, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Lender may determine, with or without having first taken possession of the Mortgaged Property, to the highest bidder for cash at public auction. Such sale shall be made at the designated place in the county in which all or any part of the Land to be sold is situated (whether the parts or parcel, if any, situated in different counties are contiguous or not, and without the necessity of having any Personally present at such sale) on the first Tuesday of any month between the hours of 10:00 a.m. and 4:00 p.m., after advertising the time, place and terms of sale and that portion of the Mortgaged Property to be sold by posting or causing to be posted written or printed notice of sale at least twenty-one (21) days before the date of the sale at the designated place in the county in which the sale is to be made and at the designated place in any other county in which a portion of the Land may be situated, and by filing such notice with the County Clerk(s) of the county(s) in which all or a portion of the Land may be situated, which notice may be posted and filed by the Trustee acting, or by any person acting for the Trustee, and Lender has, at least twenty-one (21) days before the date of the sale, served written or printed notice of the proposed sale by certified mail on each debtor obliged to pay the Indebtedness according to Lender's records by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such debtor at debtor's most recent address as shown by Lender's records, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

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. Borrower 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. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including reasonable Trustee's fees not to exceed 3% of the gross sale price (unless higher fees are customary in the jurisdiction where the Mortgaged Property is located) and attorneys' fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess.

If all or any part of the Mortgaged Property is sold pursuant to this Section 44, Borrower 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 Land, Improvements, Fixtures and Personalty, Borrower 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 Borrower shall fail to vacate the Mortgaged Property immediately, the purchaser may and shall have the right, without further notice to Borrower, 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 Borrower 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 Instrument or otherwise.

In any action for a deficiency after a foreclosure under this Instrument prior to the Conversion Date, if any person against whom recovery is sought requests the court in which the action is pending to determine the fair market value of the Mortgaged Property, as of the date of the foreclosure sale, the following shall be the basis of the court's determination of fair market value:

(a) the Mortgaged Property shall be valued "as is" and in its condition as of the date of foreclosure, and no assumption of increased value because of post-foreclosure repairs, refurbishment, restorations or improvements shall be made;

(b) any adverse effect on the marketability of title because of the foreclosure or because of any other title condition not existing as of the date of this Instrument shall be considered;

(c) the valuation of the Mortgaged Property shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Mortgaged Property for cash within a six month period after foreclosure;

(d) although the Mortgaged Property may be disposed of more quickly by the foreclosure purchaser, the gross valuation of the Mortgaged Property as of the date of foreclosure shall be discounted for a hypothetical reasonable holding period (not to exceed 6 months) at a monthly rate equal to the average monthly interest rate on the Note for the twelve months before the date of foreclosure;

(e) the gross valuation of the Mortgaged Property as of the date of foreclosure shall be further discounted and reduced by reasonable estimated costs of disposition, including brokerage commissions, title policy premiums, environmental assessment and clean-up costs, tax and assessment, prorations, costs to comply with legal requirements and attorneys' fees;
(f) expert opinion testimony shall be considered only from a licensed appraiser certified by the State of Texas and, to the extent permitted under Texas law, a member of the Appraisal Institute, having at least five years' experience in appraising property similar to the Mortgaged Property in the county where the Mortgaged Property is located, and who has conducted and prepared a complete written appraisal of the Mortgaged Property taking into considerations the factors set forth in this Instrument; no expert opinion testimony shall be considered without such written appraisal;

(g) evidence of comparable sales shall be considered only if also included in the expert opinion testimony and written appraisal referred to in the preceding paragraph; and

(h) an affidavit executed by Lender to the effect that the foreclosure bid accepted by Trustee was equal to or greater than the value of the Mortgaged Property determined by Lender based upon the factors and methods set forth in subparagraphs (a) through (g) above before the foreclosure shall constitute prima facie evidence that the foreclosure bid was equal to or greater than the fair market value of the Mortgaged Property on the foreclosure date.

Lender may, at Lender's option, comply with these provisions in the manner permitted or required by Title 5, Section 51.002 of the Texas Property Code (relating to the sale of real estate) or by Chapter 9 of the Texas Business and Commerce Code (relating to the sale of collateral after default by a debtor), as those titles and chapters now exist or may be amended or succeeded in the future, or by any other present or future articles or enactments relating to same subject. Unless expressly excluded, the Mortgaged Property shall include Rents collected before a foreclosure sale, but attributable to the period following the foreclosure sale, and Borrower shall pay such Rents to the purchaser at such sale. At any such sale:

(a) whether made under the power contained in this Instrument, Section 51.002, the Texas Business and Commerce Code, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to have physically present, or to have constructive possession of, the Mortgaged Property (Borrower shall deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of any such property shall pass to the purchaser as completely as if the property had been actually present and delivered to the purchaser at the sale;
(b) each instrument of conveyance executed by Trustee shall contain a
general warranty of title (subject to all Permitted Exceptions), binding
upon Borrower;

(c) the recitals contained in any instrument of conveyance made by
Trustee shall conclusively establish the truth and accuracy of the
matters recited in the Instrument, including nonpayment of the
Indebtedness and the advertisement and conduct of the sale in the
manner provided in this Instrument and otherwise by law and the
appointment of any successor Trustee;

(d) all prerequisites to the validity of the sale shall be conclusively
presumed to have been satisfied;

(e) the receipt of Trustee or of such other party or officer making the sale
shall be sufficient to discharge to the purchaser or purchasers for
such purchaser(s)' purchase money, and no such purchaser or
purchasers, or such purchaser(s)' assigns or personal
representatives, shall thereafter be obligated to see to the application
of such purchase money or be in any way answerable for any loss,
misapplication or nonapplication of such purchase money;

(f) to the fullest extent permitted by law, Borrower shall be completely
and irrevocably divested of all of Borrower's right, title, interest,
claim and demand whatsoever, either at law or in equity, in and to
the property sold, and such sale shall be a perpetual bar to any claim
to all or any part of the property sold, both at law and in equity,
against Borrower and against any person claiming by, through or
under Borrower; and

(g) to the extent and under such circumstances as are permitted by law,
Lender may be a purchaser at any such sale.

45. RELEASE.

Upon payment of the Indebtedness, Lender shall release this Instrument by
executing any and all appropriate termination and/or release documents. Borrower
shall pay Lender's reasonable third party costs actually incurred in releasing this
Instrument.

46. TRUSTEE.

(a) Trustee may resign by giving of notice of such resignation in writing
to Lender. If Trustee shall die, resign or become disqualified from
acting under this Instrument or shall fail or refuse to act in accordance with this Instrument when requested by Lender or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named in this Instrument or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the original Trustee named in this Instrument. Such appointment may be executed by an authorized officer, agent or attorney-in-fact of Lender (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 Lender.

(b) Any successor Trustee appointed pursuant to this Section shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of the predecessor Trustee with like effect as if originally named as Trustee in this Instrument; but, nevertheless, upon the written request of Lender or such successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, 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 monies held by the Trustee ceasing to act to the successor Trustee.

(c) Trustee may authorize one or more parties to act on Trustee’s behalf to perform the ministerial functions required of Trustee under this Instrument, including the transmittal and posting of any notices.

47. [INTENTIONALLY OMITTED]

48. NO FIDUCIARY DUTY.

Lender owes no fiduciary or other special duty to Borrower.

49. FIXTURE FILING.

This Instrument is also a fixture filing under the Uniform Commercial Code of Texas.
50. ADDITIONAL PROVISIONS REGARDING ASSIGNMENT OF RENTS.

In no event shall the assignment of Rents or Leases in Section 3 and Section 4 cause the Indebtedness to be reduced by an amount greater than the Rents actually received by Lender and applied by Lender to the Indebtedness, whether before, during or after (i) an Event of Default, or (ii) a suspension or revocation of the license granted to Borrower in Section 3(b) with regard to the Rents. Borrower and Lender specifically intend that the assignment of Rents and Leases in Section 3 and Section 4 is not intended to result in a pro tanto reduction of the Indebtedness. The assignment of Rents and Leases in Section 3 and Section 4 is not intended to constitute a payment of, or with respect to, the Indebtedness and, therefore, Borrower and Lender specifically intend that the Indebtedness shall not be reduced by the value of the Rents and Leases assigned. Such reduction shall occur only if, and to the extent that, Lender actually receives Rents pursuant to Section 3 and applies such Rents to the Indebtedness. Borrower agrees that the value of the license granted with regard to the Rents equals the value of the collateral assignment of Rents to Lender. The assignment of Rents contained in Sections 3 and 4 shall automatically terminate upon the release of this Instrument.

51. LOAN CHARGES.

Borrower and Lender 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 Lender 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 Instrument 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 Borrower results in Borrower having paid any interest in excess of that permitted by any applicable law, then Borrower and Lender expressly intend that all excess amounts collected by Lender 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 Borrower), and the provisions of the Note, this Instrument 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 Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender 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 Instrument 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 Borrower is obligated to pay and Lender is entitled to receive with respect to the Indebtedness shall not exceed the amount calculated on a simple (i.e., noncompounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Borrower, including all current and prior advances and any advances made pursuant to the Instrument or any other Loan Document (such as for the payment of Impositions and similar expenses or costs).

52. PROPERTY AND LIABILITY INSURANCE — DELIVERY OF POLICY TO LENDER.

Notwithstanding the provisions of Section 19(b), Borrower shall not be required to deliver the original (or a duplicate original) of any renewal policy of insurance to Lender more than 15 days prior to the expiration date of the policy then held by Lender.

53. ENTIRE AGREEMENT.

THIS INSTRUMENT, 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.

54. WAIVER OF TRIAL BY JURY.

BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT 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.

55. NO DRILLING OR EXPLORATION.

Without the prior written consent of Lender, which such consent shall not be unreasonably withheld, conditioned or delayed, except for the offsite extraction of mineral from under the Land pursuant to mineral leases existing as of the date hereof, Borrower shall not permit any drilling or exploring on the Land for or extraction, removal, or production of minerals from the surface or subsurface of the Land (in no event may there be any drilling operation on the surface of the Land). The term "minerals" as used herein shall include, without limiting the generality of such term, oil, gas, casinghead
gas, coal, lignite, hydrocarbons, methane, carbon dioxide, helium, uranium and all other natural elements, compounds and substances, including sand and gravel.

56. CONSTRUCTION INSTRUMENT.

THIS INSTRUMENT SECURES ANY OBLIGATION INCURRED FOR THE CONSTRUCTION OF IMPROVEMENTS ON THE LAND. THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" FOR PURPOSES OF SECTIONS 9.334(h) AND 2A.309 OF THE TEXAS BUSINESS AND COMMERCE CODE.

57. INDEMNIFICATION OF TRUSTEE.

EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TRUSTEE SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION OR ERROR OF JUDGMENT. TRUSTEE MAY RELY ON ANY DOCUMENT BELIEVED BY HIM IN GOOD FAITH TO BE GENUINE. ALL MONEY RECEIVED BY TRUSTEE SHALL, UNTIL USED OR APPLIED AS HEREIN PROVIDED, BE HELD IN TRUST, BUT NEED NOT BE SEGREGATED (EXCEPT TO THE EXTENT REQUIRED BY LAW), AND TRUSTEE SHALL NOT BE LIABLE FOR INTEREST THEREON. BORROWER HEREBY INDEMNIFIES TRUSTEE AGAINST ALL LIABILITY TO A THIRD PARTY AND REASONABLE EXPENSES THAT HE MAY INCUR IN THE PERFORMANCE OF HIS DUTIES HEREUNDER, EXCEPT TO THE EXTENT THE SAME RESULTS FROM TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

58. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.

If (a) Borrower shall voluntarily file a petition under Title 11 of the United States Code, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if (b) Borrower shall fail to obtain a removal, discharge, vacation or stay of involuntary proceedings within ninety (90) days of the date brought or filed for the reorganization, dissolution or liquidation of Borrower, or if (c) Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower’s property, or if the Mortgaged Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, and such is not vacated, stayed, discharged, or removed within ninety (90) days, or if (d) Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ninety (90) days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by Section 44 of this Instrument. Any attorneys' fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument. Notwithstanding
anything to the contrary, Borrower shall have 90 days to dismiss any proceedings contemplated under this Section 58.

59. EXTENDED LOW-INCOME HOUSING COMMITMENT.

Lender agrees that the lien of this Instrument 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 Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. Lender further agrees that, as of the date hereof, Internal Revenue Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or an increase in the gross rent with respect to such unit not otherwise permitted under Internal Revenue Code Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure.

60. ANNUAL LIHTC REPORTING REQUIREMENTS.

Borrower must submit to Lender, each year at the time of annual submission of Borrower’s financial analysis of operations, a copy of the following sections of Borrower’s federal tax return: Internal Revenue Forms 1065, 8586, 8609 and Form 8609, Schedule A, which must reflect the total low-income housing tax credits ("LIHTCs") allocated to the Mortgaged Property and the LIHTCs claimed for the Mortgaged Property in the preceding year.

61. CROSS-DEFAULT.

Borrower acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Extended Use Agreement shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney’s fees incurred by the Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any default or event of default under the Extended Use Agreement shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

62. BANK CONSENT.

When Lender is required under this Instrument or any of the other Loan Documents to provide its consent or approval, or render its determination, judgment, decision or satisfaction, such consent, approval, determination, judgment, decision or satisfaction (or the denial thereof, as the case may be) shall not be unreasonably withheld or conditioned and shall be given within a reasonable time after its receipt of the request therefor, taking into consideration the circumstances of the request.
63. **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 regulator under the Extended Use Agreement.

64. **INDEMNIFICATION.**

Notwithstanding anything to the contrary herein set forth or in any of the other Loan Documents, Borrower's indemnification requirements shall not apply to any Indemnitee or Lender Party to the extent the subject of the indemnification is caused by or arises solely and directly by the gross negligence or willful misconduct of any Indemnitee or Lender Party.

65. **CONTROLLING DOCUMENT**

After the Conversion Date, and except as otherwise expressly provided herein, all irreconcilable inconsistencies or conflicts between the terms of this Instrument with the terms of any other Loan Document shall be governed and controlled by the terms of this Instrument.

66. **INSURANCE AND CONDEMNATION PROCEEDS.**

Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, in the event of any fire or other casualty to the Mortgaged Property or eminent domain proceedings resulting in condemnation of the Mortgaged Property, or any part thereof, Borrower shall have the right to rebuild the Mortgaged Property, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds or such other funds Lender has determined are then readily available to Borrower are sufficient to keep the loan evidenced by the Loan Documents (the "Loan") in balance as required by the Loan Agreement and rebuild the Mortgaged Property in a manner that provides adequate security to Lender for repayment of the Loan, or if such proceeds are insufficient then Borrower shall have funded any deficiency in a manner satisfactory to Lender; (b) Lender shall have the right to approve plans and specifications for the rebuilding, the right to approve the schedule for the rebuilding, and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement; and (c) no continuing Event of Default then exists under the Loan Documents that, if prior to the Conversion Date, cannot be cured by the rebuilding of the Mortgaged Property exists. If the casualty or condemnation affects only a portion of the Mortgaged Property and total rebuilding is infeasible, then the proceeds shall be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to Lender for repayment of the remaining balance of the Loan.
67. WAIVER OF SPECIAL DAMAGES.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER LENDER NOR BORROWER SHALL ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST THE OTHER, ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS.

68. LOAN CHARGES.

If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. 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 which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. 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 Note.

69. NOTICE OF LITIGATION.

Borrower shall, in addition to, and without in any way limiting, the other requirements in this Agreement to provide certain notices to Lender, deliver to Lender, promptly upon any officer or partner having actual knowledge of any litigation or proceeding or contingent liability in which the amount involved is $75,000.00 or more, which is not covered by insurance, and which involves Borrower as a defendant or the Premises or any other property of Borrower, a written statement with respect thereto, signed by an authorized representative of Borrower, advising Lender of the occurrence of such event or circumstance and the steps, if any, being taken by Borrower with respect thereto. Notwithstanding the foregoing, if an Event of Default or any event, act or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default is cured within the applicable cure periods, then any unintentional failure to provide the notice that such event has occurred shall also be deemed cured.

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.
ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

| X | Exhibit A | Description of the Land (required). |
|   | Exhibit B | Permitted Exceptions               |

[SIGNATURE PAGE TO FOLLOW]
DATED AND EFFECTIVE AS OF the date first set forth above.

ARIA GRAND, LLC, a Texas limited liability company

By: O-SDA Aria, LLC, a Texas limited liability company, its managing member

By: O-SDA Industries, LLC, a Texas limited liability company, its sole member

By: [Signature]

Megan D. Lasch, sole member

STATE OF TEXAS

COUNTY OF Travis

This instrument was acknowledged before me on the 19th day of September 2018, by Megan D. Lasch, sole member of O-SDA Industries, LLC, a Texas limited liability company, on behalf of said limited liability company acting in its capacity as sole member of O-SDA Aria, LLC, a Texas limited liability company, managing member of ARIA GRAND, LLC, a Texas limited liability company.

[Signature]

LEONOR SANDRA MARTINEZ
Notary Public, State of Texas
Comm. Expires 12-27-2020
Notary ID 13094480-7

SIGNATURE PAGE TO DEED OF TRUST
Key Principals

Name: Megan Lasch
Address: 421 W. 3rd Street
         Austin, Texas 78701

Name: Chris Dischinger
Address: 1469 South 4th Street
         Louisville, Kentucky 40208
EXHIBIT "A"

TRACT B, THE BROOK, AN ADDITION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 57, PAGE 52, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.
EXHIBIT B
(PERMITTED EXCEPTIONS)

This conveyance is made and accepted subject to the following Permitted Encumbrances:

1. Any covenants, conditions or restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c). Filed under County Clerk's File No. 20172000540 of the Official Public Records of Travis County, Texas.

2. Shortages in area.

3. Standby fees, taxes and assessments by any taxing authority for the year 2018, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code.

4. The following matters and all terms of the documents creating or offering evidence of the matters:

   a. Any portion of subject property lying within the boundaries of a public or private roadway whether dedicated or not.

   b. Any and all easements, building lines, and conditions, covenants, and restrictions as set forth in plat recorded under Volume 57, Page 52 of the map records of Travis County, Texas.

   c. All matters disclosed on survey performed by Robert A. Hansen from JPH Surveying, Inc. and RPLS No. Undisclosed, dated February 27, 2017 under Job No, 2017.069.005.

   d. Any claim that the Title is subject to a trust or lien created under The Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §§499a, et seq.) or the Packers and Stockyards Act (7 U.S.C. §§181 et seq.) or under similar state laws.
e.

Survey prepared by JPH Land Surveying, Inc., dated May 24, 2018, last revised September 17, 2018, under Job No. 2017069.005, shows the following:

1) Overhead utility lines cross the southerly boundary line of the subject property.
2) Stream extends outside the westerly and easterly boundary lines of the subject property.

f.

Drainage Easement with Permitted Obstructions and Required Maintenance by and between Aria Grand, LLC and City of Austin, Texas, recorded September 20, 2018 as Instrument Number 2018149217 of Travis County, Texas.

g.

Integrated Pest Management Restrictive Covenant by Aria Grand, LLC, recorded August 15, 2018 as Instrument Number 2018134172 of Travis County, Texas.

h.

Water Lines Easement by and between Aria Grand, LLC and City of Austin, Texas, dated May 15, 2018 and recorded as Instrument Number 2018133944 of Travis County, Texas.

i.

Wastewater Lines Easement by and between Aria Grand, LLC and City of Austin, Texas, recorded August 30, 2018 as Instrument Number 2018138753 of Travis County, Texas.

j.

Drainage Easement with Permitted Obstructions and Required Maintenance by and between Aria Grand, LLC and City of Austin, Texas, recorded August 30, 2018 as Instrument Number 2018138754 of Travis County, Texas.
Prepared by, and after recording return to:

Wayne Yaffee, Esquire
Greenberg Traurig LLP
1000 Louisiana, Suite 1700
Houston, Texas 77002

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.

MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT AND FIXTURE FILING

(TEXAS)
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. DEFINITIONS</td>
<td>1</td>
</tr>
<tr>
<td>2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT</td>
<td>8</td>
</tr>
<tr>
<td>3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION</td>
<td>11</td>
</tr>
<tr>
<td>4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY</td>
<td>15</td>
</tr>
<tr>
<td>5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM</td>
<td>17</td>
</tr>
<tr>
<td>6. EXCULPATION</td>
<td>18</td>
</tr>
<tr>
<td>7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES</td>
<td>18</td>
</tr>
<tr>
<td>8. COLLATERAL AGREEMENTS</td>
<td>19</td>
</tr>
<tr>
<td>9. APPLICATION OF PAYMENTS</td>
<td>19</td>
</tr>
<tr>
<td>10. COMPLIANCE WITH LAWS</td>
<td>20</td>
</tr>
<tr>
<td>11. USE OF PROPERTY</td>
<td>21</td>
</tr>
<tr>
<td>12. PROTECTION OF LENDER'S SECURITY</td>
<td>21</td>
</tr>
<tr>
<td>13. INSPECTION</td>
<td>21</td>
</tr>
<tr>
<td>14. BOOKS AND RECORDS; FINANCIAL REPORTING</td>
<td>22</td>
</tr>
<tr>
<td>15. TAXES; OPERATING EXPENSES</td>
<td>25</td>
</tr>
<tr>
<td>16. LIENS; ENCUMBRANCES</td>
<td>26</td>
</tr>
<tr>
<td>17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY</td>
<td>26</td>
</tr>
<tr>
<td>18. ENVIRONMENTAL HAZARDS</td>
<td>27</td>
</tr>
<tr>
<td>19. PROPERTY AND LIABILITY INSURANCE</td>
<td>35</td>
</tr>
<tr>
<td>20. CONDEMNATION</td>
<td>38</td>
</tr>
<tr>
<td>21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER</td>
<td>40</td>
</tr>
<tr>
<td>22. EVENTS OF DEFAULT</td>
<td>47</td>
</tr>
<tr>
<td>23. REMEDIES CUMULATIVE</td>
<td>48</td>
</tr>
<tr>
<td>24. FORBEARANCE</td>
<td>48</td>
</tr>
<tr>
<td>25. [INTENTIONALLY DELETED]</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>26.</td>
<td>[INTENTIONALLY DELETED]. ................................................................. 50</td>
</tr>
<tr>
<td>27.</td>
<td>WAIVER OF STATUTE OF LIMITATIONS. ...................................................... 50</td>
</tr>
<tr>
<td>28.</td>
<td>WAIVER OF MARSHALLING. ................................................................. 50</td>
</tr>
<tr>
<td>29.</td>
<td>FURTHER ASSURANCES. ................................................................. 45</td>
</tr>
<tr>
<td>30.</td>
<td>ESTOPPEL CERTIFICATE. ................................................................. 50</td>
</tr>
<tr>
<td>31.</td>
<td>GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE. ....................... 51</td>
</tr>
<tr>
<td>32.</td>
<td>NOTICE. ................................................................. 51</td>
</tr>
<tr>
<td>33.</td>
<td>SALE OF NOTE; CHANGE IN SERVICER .................................................. 52</td>
</tr>
<tr>
<td>34.</td>
<td>SINGLE ASSET BORROWER. ................................................................. 52</td>
</tr>
<tr>
<td>35.</td>
<td>SUCCESSORS AND ASSIGNS BOUND. ....................................................... 52</td>
</tr>
<tr>
<td>36.</td>
<td>JOINT AND SEVERAL LIABILITY ............................................................ 53</td>
</tr>
<tr>
<td>37.</td>
<td>RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY .................... 53</td>
</tr>
<tr>
<td>38.</td>
<td>SEVERABILITY; AMENDMENTS. ............................................................ 53</td>
</tr>
<tr>
<td>39.</td>
<td>CONSTRUCTION. ................................................................. 53</td>
</tr>
<tr>
<td>40.</td>
<td>LOAN SERVICING. ................................................................. 54</td>
</tr>
<tr>
<td>41.</td>
<td>DISCLOSURE OF INFORMATION .......................................................... 54</td>
</tr>
<tr>
<td>42.</td>
<td>NO CHANGE IN FACTS OR CIRCUMSTANCES. ........................................... 54</td>
</tr>
<tr>
<td>43.</td>
<td>SUBROGATION. ................................................................. 54</td>
</tr>
<tr>
<td>44.</td>
<td>ACCELERATION; REMEDIES. ............................................................. 54</td>
</tr>
<tr>
<td>45.</td>
<td>RELEASE. ................................................................. 58</td>
</tr>
<tr>
<td>46.</td>
<td>TRUSTEE. ................................................................. 58</td>
</tr>
<tr>
<td>47.</td>
<td>[INTENTIONALLY OMITTED]. ............................................................ 59</td>
</tr>
<tr>
<td>48.</td>
<td>NO FIDUCIARY DUTY. ................................................................. 59</td>
</tr>
<tr>
<td>49.</td>
<td>FIXTURE FILING. ................................................................. 59</td>
</tr>
<tr>
<td>50.</td>
<td>ADDITIONAL PROVISIONS REGARDING ASSIGNMENT OF RENTS. .......... 60</td>
</tr>
<tr>
<td>51.</td>
<td>LOAN CHARGES. ................................................................. 60</td>
</tr>
<tr>
<td>52.</td>
<td>PROPERTY AND LIABILITY INSURANCE — DELIVERY OF POLICY TO LENDER. 61</td>
</tr>
<tr>
<td>53.</td>
<td>ENTIRE AGREEMENT. ................................................................. 61</td>
</tr>
<tr>
<td>54.</td>
<td>WAIVER OF TRIAL BY JURY. ............................................................. 61</td>
</tr>
<tr>
<td>55.</td>
<td>NO DRILLING OR EXPLORATION. ......................................................... 61</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>56</td>
<td>CONSTRUCTION INSTRUMENT.</td>
</tr>
<tr>
<td>57</td>
<td>INDEMNIFICATION OF TRUSTEE.</td>
</tr>
<tr>
<td>58</td>
<td>ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.</td>
</tr>
<tr>
<td>59</td>
<td>EXTENDED LOW-INCOME HOUSING COMMITMENT.</td>
</tr>
<tr>
<td>60</td>
<td>ANNUAL LIHTC REPORTING REQUIREMENTS.</td>
</tr>
<tr>
<td>61</td>
<td>CROSS-DEFAULT.</td>
</tr>
<tr>
<td>62</td>
<td>BANK CONSENT.</td>
</tr>
<tr>
<td>63</td>
<td>ANNUAL COMPLIANCE.</td>
</tr>
<tr>
<td>64</td>
<td>INDEMNIFICATION.</td>
</tr>
<tr>
<td>65</td>
<td>CONTROLLING DOCUMENT.</td>
</tr>
<tr>
<td>66</td>
<td>INSURANCE AND CONDEMNATION PROCEEDS.</td>
</tr>
<tr>
<td>67</td>
<td>WAIVER OF SPECIAL DAMAGES.</td>
</tr>
<tr>
<td>68</td>
<td>LOAN CHARGES.</td>
</tr>
<tr>
<td>69</td>
<td>NOTICE OF LITIGATION.</td>
</tr>
</tbody>
</table>
MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the
"Instrument") is dated as of the 21st day of September, 2018, by ARIA GRAND, LLC, a
limited liability company organized and existing under the laws of Texas, whose address
is 5501-A Balcones Drive, #302, Austin, Texas 78731, as trustor ("Borrower"), to Joe F.
West, as trustee ("Trustee"), for the benefit of COMMUNITYBANK OF TEXAS, N.A.
whose address is 5999 Delaware, Beaumont, Texas 77706-7607, Attn: Stephen W.
Rose, as beneficiary ("Lender").

Borrower, in consideration of the Indebtedness and the trust created by this
Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of
sale, the Mortgaged Property, including the Land located in Travis County, State of
Texas, and described in Exhibit A attached to this Instrument, subject, however, to the
Permitted Exceptions (hereinafter defined).

TO SECURE TO LENDER (1) the repayment of the Indebtedness evidenced by
Borrower's Promissory Note (the "Note") payable to Lender, dated as of the date of this
Instrument, and maturing no later than fifteen (15) years after the Conversion Deadline
(as defined in the Loan Agreement), in the original face amount of $8,400,000.00, and
all renewals, extensions and modifications of the Note and (2) the performance of the
covenants and agreements of Borrower contained in the Loan Documents.

Borrower warrants and represents that Borrower is lawfully seized of the
Mortgaged Property and has the right, power and authority to grant, convey and assign
the Mortgaged Property, and that the Mortgaged Property is unencumbered, except for
those permitted encumbrances shown on Exhibit B attached hereto (collectively, the
"Permitted Exceptions"). Borrower covenants that Borrower will warrant and defend
generally the title to the Mortgaged Property against all claims and demands, subject to
the Permitted Exceptions.

Borrower and Lender covenant and agree as follows:

1. DEFINITIONS.

The following terms, when used in this Instrument (including when used in the
above recitals), shall have the following meanings:

(a) "Affiliate" means with respect to a specified Person, another Person
that directly, or indirectly through one or more intermediaries, Controls, or is
Controlled by, or is under common Control with the Person specified.

(b) "Bankruptcy Code" means the United States Bankruptcy Code, 11
U.S.C. Section 101 et seq., as amended from time to time.
(c) "Borrower" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

(d) "Collateral Agreement" means, collectively, the Operating Reserve and Security Agreement and the Replacement Reserve and Security Agreement each dated of even date herewith executed by Borrower and Lender.

(e) "Control": means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" shall have meanings correlative thereto.

(f) "Conversion Certificate" shall have the meaning assigned to that term in the Loan Agreement.

(g) "Conversion Date" shall have the meaning assigned to that term in the Loan Agreement.

(h) "Environmental Permit" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(i) "Event of Default" means the occurrence of any event listed in Section 22.

(j) "Fixtures" means all property owned by Borrower which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment specifically excluding any trade fixtures owned by third party providers under written contracts or agreements or by any tenants of the Mortgaged Property.
(k) "Governmental Authority" means any 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 the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(l) "Guarantor" shall have the meaning assigned to that term in the Loan Agreement.

(m) "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.


(o) "Impositions" and "Imposition Deposits" are defined in Section 7(a).

(p) "Improvements" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(q) "Indebtedness" means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and
advances as provided in Section 12 to protect the security of this Instrument, any interest swap or other derivative products and depository service contracts relating to the foregoing.

(r) "Investor Member" means Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, together with its successors and/or assigns as expressly permitted under the terms and provisions of the Loan Agreement.

(s) "Key Principal" means the natural person(s) or entity identified as such after the signature pages at the foot of this Instrument, and any person or entity who becomes a Key Principal after the date of this Instrument and is identified as such in an amendment or supplement to this Instrument.

(t) "Land" means the land described in Exhibit A.

(u) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property, and all modifications, extensions or renewals thereof.

(v) "Lender" means the entity identified as "Lender" in the first paragraph of this Instrument and its successors and assigns, or any subsequent holder of the Note.

(w) "Loan Agreement" means that certain Credit Support and Funding Agreement of even date herewith between the Borrower and Lender, as may hereinafter be amended.

(x) "Loan Documents" means the Loan Agreement, the Note, this Instrument, all guaranties, all indemnity agreements, the Collateral Agreement, O&M Programs, if any, and any other documents now or in the future executed by Borrower, Key Principal, any Guarantor or any other person evidencing, governing and/or securing the loan evidenced by the Note, as such documents may be amended from time to time.

(y) "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, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Instrument.
(z) "Mortgaged Property" means all of Borrower’s present and future right, title and interest in and to all of the following:

(1) The Land;

(2) The Improvements;

(3) the Fixtures;

(4) the Personalty;

(5) all water and water rights, timber, crops and mineral interests pertaining to the Land;

(6) all building materials, appliances and equipment now or hereafter delivered to and intended to be installed in or on the Land or the Improvements (including, without limitation, all such building materials, appliances, and equipment stored by Borrower from time to time off the Land);

(7) to the extent assignable, all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(8) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement;

(9) to the extent assignable, all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
(10) to the extent assignable, all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(11) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(12) all Rents and Leases;

(13) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(14) all Imposition Deposits;

(15) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);

(16) to the extent permitted by applicable law, all tenant security deposits which have not been forfeited by any tenant under any Lease;

(17) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

(18) to the extent assignable, any Low-Income Housing Tax Credit (as that term is used in Section 42 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code")) relating to the Mortgaged Property and the use thereof and the allocations therefor;

(19) to the extent assignable, all development fees due on or with respect to the Borrower;
(20) all environmental assessment and other environmental due diligence, appraisals, and other due diligence relating to the proposed development of the Land;

(21) all deposit, reserve, and other accounts of Borrower now or hereafter located at Lender (or any affiliate of Lender); and

(22) all development agreements relating to the proposed development of the Land.

(a) "Note" means the Note (as defined above) and all schedules, riders, allonges and addenda attached thereto, as such Note may be amended from time to time.

(bb) "O&M Program" is defined in Section 18(a).

(cc) "Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

(dd) "Personalty" means all of Borrower’s right, title and interest in and to all equipment, inventory, general intangibles which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any 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 to the extent owned by Borrower, but excluding any of the foregoing owned by tenants of the Mortgaged Property.

(ee) "Property Jurisdiction" is defined in Section 31(a).

(ff) "Rents" means all collected rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited...
to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(gg) "Special Member" means BCCC, Inc., a Massachusetts corporation and its successors and assigns.

(hh) "Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(ii) "Transfer" means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law, except the Permitted Exceptions); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, and (iii) the Permitted Exceptions. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests,
to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may reasonably require. **Without the prior written consent of Lender, and except for the Permitted Exceptions, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral.** If an Event of Default has occurred and is continuing, in addition to the remedies provided in Section 44 hereof, during the continuance of an Event of Default hereunder, Lender may, at its option, do any one or more of the following:

1. Subject to applicable law, either personally, or by means of a court appointed receiver, take possession of all or any of the UCC Collateral and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower with respect to the UCC Collateral or any part thereof. In the event Lender demands, or attempts to take possession of the UCC Collateral in the exercise of any rights under this Instrument, Borrower agrees to promptly turn over and deliver possession thereof to Lender;

2. Without notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the UCC Collateral (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all reasonable expenses (including, without limitation, litigation costs and reasonable attorneys’ fees) incurred in connection therewith;

3. Require Borrower from time to time to assemble the UCC Collateral, or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and deliver promptly such UCC Collateral to Lender (to the extent the UCC Collateral may be physically delivered), or an agent or representative designated by Lender. Lender, and its agents and representatives, shall have the right to enter upon any or all of Borrower’s premises and property to exercise Lender’s rights hereunder;

4. Realize upon the UCC Collateral or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Lender by
this Instrument, any other Loan Document, or by law, either concurrently or in such order as Lender may determine;

(5) Sell or cause to be sold, in any manner permitted by applicable law, in such order as Lender may determine, as a whole or in such parcels as Lender may determine, the UCC Collateral and the remainder of the Mortgaged Property;

(6) Sell, lease, or otherwise dispose, in any manner permitted by applicable law, of the UCC Collateral at public sale, upon terms and in such manner as Lender may determine. Lender may be a purchaser at any sale; and

(7) Exercise any remedies of a secured party under the Uniform Commercial Code of Texas or any other applicable law.

(b) Unless the UCC Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, for a UCC Sale unrelated to a foreclosure under Section 44, Lender shall give Borrower at least ten (10) days’ prior written notice of the time and place of any public or private sale of the UCC Collateral or other intended disposition thereof to be made. Such notice may be mailed to Borrower at the address set forth above.

(c) The proceeds of any sale under Subsection (5) above shall be applied as follows:

(1) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the UCC Collateral (including, without limitation, costs of litigation and attorneys’ fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the UCC Collateral prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(2) To the payment of the Indebtedness in such order as Lender shall determine; and

(3) The surplus, if any, shall be paid to the Borrower or as a court of competent jurisdiction may direct.

Lender shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Lender from pursuing any further remedy that it may have. Any repossession or
retaking or sale of the UCC Collateral pursuant to the terms hereof shall not operate to release Borrower until full payment of any deficiency has been made in cash.

Upon its recording in the real property records, this Instrument shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Instrument and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. Information concerning the security interest created by this Instrument may be obtained from Lender, as secured party, at the address of Lender stated above. The mailing address of Borrower, as debtor, is as stated above.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower grants a security interest to Lender in the Rents, in accordance with the Texas Assignment of Rents Act (codified as Chapter 64 of the Texas Property Code). Notwithstanding any other provision hereof or in any of the Loan Documents to the contrary, all provisions related to the assignment of rents are subject to the terms, provisions, and conditions of the Texas Assignment of Rents Act (“TARA”), as codified in Tex. Prop. Code, Chapter 64, as the same may be amended, modified or supplemented from time to time. To the extent that specific terms and requirements of this Instrument or any other Loan Document, including the Loan Agreement, 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 Instrument 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 Instrument or the other Loan Documents shall not otherwise be impaired or superseded thereby and shall remain in full force and effect. This Instrument is intended to be a Security Instrument for purposes of TARA and the Indebtedness shall be a secured obligation for purposes of TARA. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time reasonably require. Borrower and Lender intend this assignment and grant of a security interest of Rents to be an assignment for security of the Indebtedness. Rents shall be deemed to be a part of the “Mortgaged Property”. It is the intention of the
Borrower that this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) If an Event of Default has occurred and is continuing, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower’s receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the Lender. However, so long as no Event of Default has occurred and is continuing, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender’s rights with respect to Rents under this Instrument. From and during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower’s license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid, and Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time during the continuance of an Event of Default, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender; provided, however, that the giving of any such notice by Lender shall not affect, in any way, Lender’s entitlement to the Rents as of the date on which the Event of Default occurs. Without limiting the foregoing, upon the receipt by a tenant of a Notice to Pay Rents to Person Other Than Landlord ("NPROL") provided by Lender pursuant to Section 64.055 of TARA after the occurrence of an Event of Default, Borrower shall (and authorizes tenants under Leases to) (1) immediately turn over all Rents which Lender is entitled to collect under Section 64.053 of TARA; (2) not deduct any portion of the Rents for any purpose, notwithstanding any other provision of TARA, this Deed of Trust, or other Loan Document; and (3) shall pay all Rents as they accrue to the Lender. Further, no tenant shall have any right to delay payment of rent contemplated by Section 64.055(d) of TARA or numbered paragraph 3 of the statutory form of NPROL set forth in Section 64.055 of TARA.
No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender’s collection of such Rents.

(c) Except in connection with a subordinate assignment made in the AHFC Loan Documents (as that term is defined in the Loan Agreement), Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing any prior indebtedness that is being assigned to Lender or that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents, with the exception of advance Rent in the amount of one month rent which is collected at the time of execution of a lease and held as a security deposit. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents, with the exception of advance Rent in the amount of one month Rent which is collected at the time of execution of a Lease and held as a security deposit.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender’s security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its reasonable discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender’s security, without regard to Borrower’s solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver
for the Mortgaged Property at any time an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender’s entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents (Borrower may retain copies thereof). In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, excluding any portion of such liability arising solely and exclusively from the gross negligence or willful misconduct of Lender, any Indemnitee (hereinafter defined) or any of Lender’s agents, employees, contractors, officers and/or invitees (collectively, the “Lender Parties”, and individually, a “Lender Party”).

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.
(h) Notwithstanding anything to the contrary in this assignment of Rents, this assignment of Rents is subject to and governed by the Texas Assignment of Rents Act, Chapter 64 of the Texas Property Code, as it may hereafter be amended ("TARA"). In the event of any conflict between this assignment of Rents and TARA, the latter shall control.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower’s right, title and interest in, to and under the Leases, including Borrower’s right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower’s right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property". However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument creates security interest on the Leases in favor of Lender, which shall be effective as of the date of this Instrument and be perfected upon the filing of an associated financing statement in the applicable filing office.

(b) Until an Event of Default has occurred and is continuing, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. If an Event of Default has occurred and is continuing, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower’s obligations under all Leases, including Borrower’s obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual
possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not 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 Mortgaged Property except to the extent caused solely and exclusively by the gross negligence or willful misconduct of any Lender Party (as hereinafter defined). Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) If an Event of Default has occurred and is continuing, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be substantially in the form approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender's prior written consent.

(f) Except for any lease made in connection with providing tenant services such as cable, internet, laundry services, utility or similar services to tenants, Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender, such consent not to be unreasonably withheld or conditioned, and Lender's prior written approval of the Lease Agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender, such
consent not to be unreasonably withheld or conditioned. However, Lender's consent shall not be required for the modification or extension of a non-residential Lease if such modification or extension is on terms at least as favorable to Borrower as those customary at such time in the applicable market and the income from the modified or extended Lease will not be less than the income received from the Lease as of the date of the modification or extension. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Lender); (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance, other than advance rent in the amount of one month rent collected at the time of execution of a Lease and held as a security deposit.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium if and to the extent payable under the Note in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note. Without limiting the requirements of the Loan Agreement, after the delivery of the Conversion Certificate, Borrower shall not incur any additional indebtedness other than as may be permitted by the Loan Agreement and other than in the ordinary course of Borrower's day to day business operations at the Mortgaged Property without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.
6. EXCULPATION.

Borrower’s personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall deposit with Lender on the first day monthly installments of principal or interest are due under the Note on and after the Conversion Date and the delivery of the Conversion Certificate (or on another day designated in writing by Lender, which shall be after the Conversion Date unless an Event of Default is then continuing), and continuing on the same day each month until the Indebtedness is paid in full, 1/12 of the amount sufficient to accumulate with Lender the annual sum required to pay, before past due and accumulating penalties (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 19 (unless Borrower has provided Lender with evidence that such premiums have been paid for the next 12-month period), (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably estimated from time to time by Lender. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the “Imposition Deposits”. The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as “Impositions”. The amount of the Imposition Deposits shall be sufficient 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. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender’s discretion, at any time upon notice to Borrower.

(b) 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 the Federal Deposit Insurance Corporation. 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. Lender shall apply the
Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower’s obligations under this Instrument and the other Loan Documents. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender prior to the date such Impositions become past due. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. 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, except in the event of clear, manifest error.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower shall pay to Lender the amount of the deficiency within 15 days after written notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender’s discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

8. COLLATERAL AGREEMENTS.

Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

9. APPLICATION OF PAYMENTS.

If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender’s discretion. Neither Lender’s acceptance of an amount which is less than all amounts then due and payable
nor Lender's application of such payment in the manner authorized 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 amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. **COMPLIANCE WITH LAWS.**

Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take commercially reasonable measures to prevent, and shall not engage in or knowingly permit, 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 Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that, to its knowledge, no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

Nothing herein shall prevent Borrower from contesting any legal requirement (including any Hazardous Material Law) in good faith so long as Borrower complies with the following requirements:

(i) The contest must be pursued diligently, in good faith and at Borrower's sole cost and expense.

(ii) Borrower shall promptly notify Lender of the commencement of such contest and shall use reasonable efforts to advise Lender of the expected commencement of such contest.

(iii) The Mortgaged Property shall not be in immediate danger of being sold or forfeited as a result of such contest and the continuing and ongoing operation of the Mortgaged Property (or any material part of the Mortgaged Property) as a residential apartment complex shall not be reasonably likely to be interrupted or terminated during the pendency of the proceeding.

Borrower shall post any security required by law or, if and to the extent Borrower is not required to post any security, such other amount (to cover interest and penalties, if applicable and the cost to correct or remediate) as may be reasonably required by Lender.
11. USE OF PROPERTY.

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, which such consent shall not be unreasonably withheld, conditioned, or delayed, allow changes in the use for which all or any part of the Mortgaged Property is being used or for which the Mortgaged Property is intended to be used at the time this Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

12. PROTECTION OF LENDER’S SECURITY.

(a) If Borrower fails in any material respect to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender’s security or Lender’s rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender’s option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender’s interest, including (1) payment of reasonable fees and reasonable out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the “Default Rate”, as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

Subject to the rights of tenants, Lender, its agents, representatives, and designees upon 48 hours prior notice to Borrower, may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours and with at least 48 hours
prior written notice (but no such notice will be required during the continuance of an Event of Default), or at any other reasonable time and as otherwise provided for in the Loan Agreement. Lender also reserves the right to reappraise the Mortgaged Property one time at Borrower’s expense after the closing of the loan evidenced by this Instrument, to the extent and as provided for in the Loan Agreement. Prior to the Conversion Date, Lender may reappraise the Mortgaged Property as provided for in the Loan Agreement. After the Conversion Date, Lender also reserves the right to reappraise the Mortgaged Property one time at Borrower’s expense and as required by applicable governmental requirements.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent’s offices, and upon Lender’s request shall make available at the Mortgaged Property (or, at Borrower’s option, at the management agent’s office), complete and accurate (in all material respects) books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. Upon 72 hours prior written notice to Borrower, the books, records, contracts, Leases and other instruments shall be subject to examination and inspection during normal business hours by Lender (but no such prior notice shall be required during the continuance of an Event of Default).

(b) Borrower shall furnish to Lender all financial and other information relating to Borrower and the Mortgaged Property as Lender shall reasonably request, including, without limiting, all of the following:

(1) As soon as available, and in any event within 30 days from the end of each calendar month (beginning with the first calendar month ending after a certificate of occupancy is issued for all or any part of the Mortgaged Property or as otherwise required by Lender), statements showing the financial condition of the Mortgaged Property at the close of such calendar month, which statements shall include, without limitation, an income/operating statement signed by the property manager and/or a duly authorized officer of the managing member of Borrower, a summary report of rent collections for that month, a current rent roll (which shall include a summary of the number of units leased, available, and occupied and any rental concessions), the current month's budget, year to date activity, year to date budget, and all other matters as Lender may reasonably request; provided that after the Conversion Date, the reporting under this subsection (1) shall be quarterly within 30
days of the end of each fiscal quarter of Borrower instead of monthly;

(2) As soon as available, and in any event within 120 days from the end of each fiscal year of Borrower (beginning with the fiscal year ending on December 31, 2019), an audited financial statement, prepared by a third party accounting firm reasonably acceptable to Lender in a manner reasonably acceptable to Lender, showing the financial condition of Borrower at the close of such fiscal year and the results of operation during such fiscal year, which financial statement shall include a balance sheet, income statement, statement of contingent liabilities, and statement of cash flows (sources and uses);

(3) Until the Conversion Date, within 120 days from the end of each fiscal year, an unaudited financial statement for each Guarantor, prepared on a form and in a manner acceptable to Lender, which shall include, without limitation, a balance sheet, cash flow statement, and statement of contingent liabilities;

(4) Upon Lender’s written request, Borrower shall provide to Lender (within 90 days of filing), and each managing member of Borrower, and only prior to the Conversion Date, each Guarantor shall provide to Lender (within 90 days of filing), a copy of its respective filed federal income tax returns for such calendar year and of all requests for extensions to the filing thereof. Without limiting the foregoing, Borrower shall submit to Lender a copy of the following sections of Borrower’s federal tax return: Forms 1065, 8586, 8609, and 8609 Schedule A if filed.

(5) Within 120 days after the end of each calendar year, copies of all low income tax credit compliance audits prepared by the TDHCA and/or a third party manager;

(6) Upon Lender’s written request, within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender’s request but not more than twice during any fiscal year, 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;
(7) Upon Lender's written request, within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;

(8) Upon Lender's written request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and

(9) Borrower shall satisfy all other reporting requirements set forth in the Loan Agreement until the Conversion Date and the delivery of the Conversion Certificate.

(c) Borrower shall satisfy all other reporting requirements set forth in the Loan Agreement until the Conversion Date and each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate in all material respects by an individual having authority to bind Borrower or the property manager where applicable, and shall be in such form and contain such detail as Lender may reasonably require.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related reasonable costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) 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, provided, however, Borrower can keep copies thereof.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time, at Lender's expense unless an Event of Default is existing in which case at Borrower's expense.

(g) If an Event of Default exists and Lender has not previously required Borrower to furnish a quarterly statement of income and expense for the Mortgaged Property, Lender may require Borrower to furnish such a statement.
within 45 days after the end of each fiscal quarter of Borrower during the existence of such Event of Default.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall 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.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) if Borrower has not already paid the Imposition, Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition, provided that such security shall not be required if Borrower posts a bond or deposits collateral with the appropriate court or body with jurisdiction over the matter.
(e) Borrower shall 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.

16. LIENS; ENCUMBRANCES.

Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "Transfer" which constitutes an Event of Default, except (a) any Permitted Exception or (b) prior to the Conversion Date, a Transfer (expressly permitted under the terms of the Loan Agreement), and, on and after the Conversion Date, any Transfers expressly permitted under Section 21.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower (1) shall not intentionally commit waste or permit impairment or deterioration of the Mortgaged Property (normal wear and tear excepted), (2) shall not abandon the Mortgaged Property, (3) subject to the other terms of this Instrument and the Loan Documents, shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property as provided in Section 17(c), (4) shall keep the Mortgaged Property in good repair (normal wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) shall provide for professional management of the Mortgaged Property by a residential rental property manager reasonably satisfactory to Lender under a contract approved by Lender in writing, and (6) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property without Lender's prior written consent, except in connection with the replacement of tangible Personalty (provided that Borrower may perform such restoration or repair with available insurance proceeds and/or condemnation awards to the extent permitted by Sections 19, 20, and 68 hereof).

(b) If, in connection with the making of the loan evidenced by the Note or at any later date, Lender waives in writing the requirement of Section 17(a)(5) above that Borrower enter into a written contract for management of the Mortgaged Property and if, after the date of this Instrument, Borrower intends to
change the management of the Mortgaged Property, Lender shall have the right to reasonably approve such new property manager and the written contract for the management of the Mortgaged Property and require that Borrower and such new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower (other than Investor Member) to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. "Affiliate of Borrower" means any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls Borrower (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to substantially the equivalent of its condition as of the date of this Instrument, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair; however, Borrower may, in any event, perform such restoration or repair if no Event of Default has occurred and is continuing, otherwise, Lender shall apply any available insurance proceeds and/or condemnation awards to the payment of Indebtedness in accordance with the provisions of this Instrument.

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an "O&M Program"), those disclosed to Lender prior to the date hereof, or matters described in Section 18(b), Borrower shall not cause or knowingly 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 on or under the Mortgaged Property or any other
property of Borrower 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 or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

(4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 18 as "Prohibited Activities or Conditions".

(b) Prohibited Activities and Conditions shall not include lawful conditions permitted by an O&M Program or 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) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower 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 Activity or Condition.

(d) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and undertake commercially reasonable efforts to cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply
with the O&M Program. All costs of performance of Borrower’s obligations under any O&M Program shall be paid by Borrower, and Lender’s reasonable out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower’s performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing prior to the date of this Instrument in any environmental report or otherwise, to the best of its knowledge:

(1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions on the Mortgaged Property;

(2) to the best of Borrower’s knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed on the Mortgaged Property;

(3) except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower’s knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;

(4) to the best of Borrower’s knowledge, Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(5) to the best of Borrower’s knowledge, no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would
constitute, noncompliance with the terms of any Environmental Permit;

(6) to the best of Borrower’s knowledge, there are no actions, suits, claims or proceedings pending or, to the best of Borrower’s knowledge, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

(7) Borrower has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full, subject to any change in circumstances as may be disclosed to Lender in accordance with Section 19(f), below.

(f) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

(1) Borrower’s discovery of any Prohibited Activity or Condition;

(2) Borrower’s receipt of or actual knowledge of any written complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or (if applicable) any other property of Borrower that is adjacent to the Mortgaged Property; and

(3) any representation or warranty in this Section 18 becomes untrue after the date of this Instrument.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(g) Borrower shall pay promptly the reasonable costs of any environmental inspections, tests or audits ("Environmental Inspections") required
by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender’s consent to any Transfer under Section 21 (to the extent Lender’s consent is expressly required by the terms of Section 21), or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the reasonable fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower (unless Borrower pays all of the costs and expenses associated with such Environmental Inspection) or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any such party (either as part of a notice of sale or otherwise) of the results of any of Lender’s Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender’s Environmental Inspections in accordance with this Section 18(g).

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work (“Remedial Work”) is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after written notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option,
cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the reasonable cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(i) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

Nothing herein shall prevent Borrower from contesting any legal requirement (including any Hazardous Material Law) in good faith so long as Borrower complies with the following requirements:

(i) The contest must be pursued diligently, in good faith and at Borrower’s sole cost and expense.

(ii) Borrower shall promptly notify Lender of the commencement of such contest and shall use reasonable efforts to advise Lender of the expected commencement of such contest.

(iii) The Mortgaged Property shall not be in immediate danger of being sold or forfeited as a result of such contest and the continuing and ongoing operation of the Mortgaged Property (or any material part of the Mortgaged Property) as a residential apartment complex shall not be reasonably likely to be interrupted or terminated during the pendency of the proceeding.

(iv) Borrower shall post any security required by law or, if and to the extent Borrower is not required to post any security, such other amount (to cover interest and penalties, if applicable and the cost to correct or remediate) as may be reasonably required by Lender.

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the “Indemnities”) from and against all proceedings, claims, damages, penalties and reasonable costs (whether initiated or sought by Governmental Authorities or private parties), including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following (except to the extent caused solely
and exclusively by the gross negligence or willful misconduct of any Lender Party with respect to the following):

(1) any breach of any representation or warranty of Borrower in this Section 18;

(2) any failure by Borrower to perform any of its obligations under this Section 18;

(3) the existence of any Prohibited Activity or Condition;

(4) the presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and

(5) the actual violation of any Hazardous Materials Law.

Borrower’s liability under clauses (3), (4) and (5) of this subsection (j) shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Activity or Conditions that first arise, commence or occur solely and exclusively as a result of actions of Lender or any Lender Party, its successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of the Instrument following the payment in full of the Note and all other sums payable under the Loan Documents or after the actual dispossession from the entire Mortgaged Property of the Borrower and all entities which control, are controlled by, or are under common control with the Borrower following foreclosure of the Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower’s reasonable expense. However, unless an Event of Default has occurred and is continuing, or the interests of Borrower and Lender are in conflict, as determined by Lender in its reasonable discretion, Lender shall permit Borrower to undertake the actions referenced in this Section 18 so long as Lender approves such action, which approval shall not be unreasonably withheld, conditioned or delayed.

(l) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a “Claim”), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may
materially and adversely affect Lender, as determined by Lender in its reasonable discretion.

(m) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Lender agrees that the indemnity under this Section 18 shall on and after the Conversion Date and the delivery of the Conversion Certificate, be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any member of Borrower.

(n) Borrower shall, at its own cost and expense, do all of the following:

(1) pay or satisfy any final judgment or decree that may be entered against any Indemnitee or Indemnities in any legal or administrative proceeding incident to any matters against which Indemnities are entitled to be indemnified under this Section 18;

(2) reimburse Indemnities for any reasonable expenses paid or incurred in connection with any matters against which Indemnities are entitled to be indemnified under this Section 18; and

(3) reimburse Indemnities for any and all reasonable expenses, including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnities of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all reasonable costs and expenses incurred by Lender, including all reasonable costs of settlements entered into in good faith, and the reasonable fees and out-of-pocket expenses of such attorneys and consultants.

(p) The provisions of this Section 18 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that
Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any Guarantor, or pursued any other rights available under the Loan Documents or applicable law. If more than one person or entity signs the Instrument as Borrower, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument. Notwithstanding anything herein to the contrary, Borrower’s liability under this Section shall not extend to cover the presence of any Hazardous Materials that first arises, commences, or occurs (i) solely and exclusively as a result of actions of Lender, its successors, assigns or designees, (ii) after the written release by Lender of this Instrument following the payment in full of the Note and all other sums payable under the Loan Documents, or (iii) following foreclosure of this Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require (and, until the Conversion Date and the delivery of the Conversion Certificate, as required by the Loan Agreement), and thereafter, Borrower shall maintain commercial general liability insurance, workers’ compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may reasonably require from time to time which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage (if applicable), and business income coverage. Lender’s insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, in its sole and reasonable discretion, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, but only to the extent the same is generally required for comparable properties located in the area of the Mortgaged Property. If any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender in Lender’s sole and reasonable discretion. All policies of property damage insurance shall include a non-contributing, non-reporting
mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall 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. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy (or certificate thereof if Lender will require a copy or original of the policy) in form reasonably satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers’ compensation insurance (if required by applicable law) and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give prompt written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for 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 property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender’s expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender’s option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to substantially the equivalent of its original condition or to a condition approved by Lender (the “Restoration”), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender’s then-current policies relating to the restoration of casualty damage on similar multifamily rental properties. After the Conversion Date, to the extent Lender determines to apply insurance proceeds to payment of the Indebtedness, the Note
will be re-amortized and the monthly payments due under the Note will be reduced to reflect any reduction of the principal balance of the Indebtedness that was the result of applying insurance proceeds to the payment thereof. In addition, if the Lender determines to apply insurance proceeds to the payment of the Indebtedness, Borrower will not be required to restore or repair the Mortgaged Property to substantially the equivalent of its original condition. If Lender shall apply insurance proceeds to the payment of the Indebtedness and Borrower deems it necessary to restore or repair the Mortgaged Property to avoid recapture of tax credits, Lender shall consider whether to permit Borrower to secure a subordinate construction loan solely for the purpose of restoring or repairing the Mortgaged Property; provided that Borrower (1) request Lender's consent in writing, which writing shall include the proposed terms of such subordinate construction loan, (2) the Borrower named in this Instrument is the owner of the Mortgaged Property, (3) no Event of Default exists that will not be cured by Restoration of the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date, and (4) the proposed subordinate construction loan satisfies Lender's underwriting requirements in Lender's sole and absolute judgment and discretion.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default has occurred and is continuing that will not be cured by Restoration of the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date; (2) Lender determines, in its reasonable discretion, that there will be sufficient funds to complete the Restoration from insurance proceeds, anticipated contributions of Borrower of its own funds or other sources; (3) Lender determines, in its reasonable discretion, that the Rents from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (4) Lender determines, in its reasonable discretion, that the Restoration will be completed before the earlier of (A) one year before the Maturity Date (as defined in the Note (or six months before the Maturity Date if Lender determines in its discretion that re-leasing of the Property will be completed with such six month period) or (B) one year after the date of the loss or casualty, such period of time shall be extended for a reasonable period of time if a delay in Restoration is caused by an act of God; and (5) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 19.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all
rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

Notwithstanding any provision to the contrary in this Section 19, as long as no Event of Default, or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing that would not be cured by Restoration of the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date:

(i) in the event of a casualty resulting in damage to the Mortgaged Property which will cost $50,000 or less to repair, the Borrower shall have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of the Lender so long as the insurance proceeds are used solely for the Restoration of the Mortgaged Property; and

(ii) in the event of a casualty resulting in damage to the Mortgaged Property which will cost more than $50,000 but less than $100,000 to repair, the Borrower is authorized to make proof of loss and adjust and compromise the claim without the prior consent of Lender, and Lender shall hold the applicable insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and shall not apply such proceeds to the payment of sums due under this Instrument.

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding 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 (a "Condemnation"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Provided Borrower receives written notice as described in the immediately preceding sentence, Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender’s or Borrower’s name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation (after consultation with Borrower if no Event of Default is then continuing) consistent with commercially reasonable standards of a prudent lender. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or
take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment (not in excess of any amounts necessary to pay the Indebtedness) with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender’s reasonable expenses incurred in the collection of such amounts, at Lender’s option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require. After the Conversion Date, to the extent Lender applies any awards or proceeds to payment of the Indebtedness, the Note will be re-amortized and the monthly payments due under the Note will be reduced to reflect any reduction of the principal balance of the Indebtedness that was the result of applying the proceeds to the payment thereof. In addition, if the Lender applies any awards or proceeds to payment of the Indebtedness, Borrower will not be required to restore or repair the Mortgaged Property. If Lender shall apply condemnation proceeds to the payment of the Indebtedness and Borrower deems it necessary to restore or repair the Mortgaged Property to avoid recapture of tax credits, Lender shall consider whether to permit Borrower to secure a subordinate construction loan solely for the purpose of restoring or repairing the Mortgaged Property; provided that Borrower (1) request Lender’s consent in writing, which writing shall include the proposed terms of such subordinate construction loan, (2) the Borrower named in this Instrument is the owner of the Mortgaged Property, (3) no Event of Default exists that would not be cured by restoring or repairing the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date, and (4) the proposed subordinate construction loan satisfies Lender’s underwriting requirements in Lender’s sole and absolute judgment and discretion.

(c) Lender shall not exercise its option to apply condemnation proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing that would not be cured by restoring or repairing the Mortgaged Property in a timely manner as required by the Loan Agreement or otherwise as required by Lender if after the Conversion Date; (2) Lender determines that there
will be sufficient funds to (A) restore and repair the Mortgaged Property to a condition approved by Lender and (B) meet all operating costs and other expenses, payment for reserves and loan repayment obligations relating to the Mortgaged Property until completion of the restoration and repair of the Mortgaged Property to a condition approved by Lender; and; (3) Lender determines that the rental income from the Mortgaged Property after restoration and repair of the Mortgaged Property to a condition approved by Lender, will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) Subject to subsection (b) below, the occurrence of any of the following events on or after the Conversion Date without Lender's prior written consent shall constitute an Event of Default under this Instrument (prior to the Conversion Date, Transfers may only be made to the extent permitted by the Loan Agreement or this Instrument):

1. a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;

2. a Transfer of a Controlling Interest in the Borrower;

3. a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Borrower;

4. a Transfer of all or any part of Key Principal's ownership interests in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower;

5. if Key Principal is an entity, (A) a Transfer of a Controlling Interest in Key Principal, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Key Principal;

6. if Borrower or Key Principal is a trust, the termination or revocation of such trust; and
(7) a conversion of Borrower from one type of legal entity into another type of legal entity, whether or not there is a Transfer.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events on or after the Conversion Date (as provided in subsection (f) below) shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) and/or any provision set forth in any of the Loan Documents, to the contrary:

(1) a Transfer to which Lender has consented;

(2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;

(3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;

(4) 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, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;

(5) except as otherwise expressly permitted by this Instrument the grant of an easement, if before the grant Lender reasonably determines that the easement will not materially and adversely affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all reasonable costs and expenses incurred by Lender in connection with reviewing Borrower's request;

(6) the creation of a tax lien or a mechanic's, materialman's or judgment lien against the Mortgaged Property which is bonded off, released of record, bonded, or otherwise remedied to Lender's satisfaction within 60 days of the date of creation;

(7) The Transfer by the Investor Member or the Special Member of membership interests in the Borrower (or interests in the Investor Member) to any other entity which is an Affiliate of the
Investor Member and/or the Special Member and/or Boston Capital Partners, Inc.;

(8) the pledge and encumbrance of the interests of the Investor Member or the Special Member to or for the benefit of any financial institution approved by Lender, in Lender's sole reasonable discretion which enables the Investor Member to make its capital contributions to the Borrower;

(9) the removal of any manager or managing member of Borrower by the Special Member pursuant to the terms of the Second Amended and Restated Operating Agreement of Borrower, as may be amended from time to time subject to the terms of the Loan Agreement (if the amendment is done before the Conversion Date) and this Instrument and the replacement of such manager or managing member with the Special Member or an affiliate of the Special Member or Boston Capital Partners, Inc.;

(10) issuance of membership interests in the Borrower equal to 99.99% of the ownership, profits, losses, credits, distributions and other interests in the Borrower to the Investor Member and the Special Member;

(11) subject to the terms and requirements of the Loan Agreement (if occurring prior to the Conversion Date), a change in beneficial ownership of Investor Member or Special Member, provided that in all cases, such Investor Member or Special Member, as applicable, remains controlled by Boston Capital Partners, Inc. (or an affiliate thereof);

(12) issuance of membership interests in the Borrower equal to [0.0025]% of the ownership, profits, losses, credits, distributions and other interests in the Borrower to the Class B Special Member;

(13) a Transfer of a minority interest (less than 50%) in the managing member of Borrower to any children (or grandchildren) of a Key Principal (if an individual) without consent of the Lender (or payment of a fee) so long as the Key Principals (collectively) at all times retain a Controlling Interest of the managing member of Borrower;
(14) a change of Borrower's name, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been filed and copies have been delivered to Lender;

(15) a change of the form of the Borrower not involving a transfer of Borrower's assets and not resulting in any change in liability of the initial owner, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender;

(16) the merging of Borrower with another entity when Borrower is the surviving entity;

(17) a Condemnation which will not materially adversely affect the operation or value of the Mortgaged Property, provided that Borrower complies with the requirements of Section 20 of this Instrument with respect to condemnation;

(18) the merger or consolidation of a Key Principal with another entity with the Key Principal being the surviving entity, or the acquisition by a Key Principal of another entity, or a conversion of Key Principal from one type of legal entity into another type of legal entity (provided that such new legal entity remains obligated for all obligations of the prior entity in the same manner and respect as the prior entity and that the new entity shall have the same financial statements (including assets and liabilities) as the prior entity after giving effect to the conversion), whether or not there is a Transfer;

(19) After the end of the Low-Income Housing Tax Credit compliance period, the Transfer by the Investor Member and/or the Special Member of its membership interest in the Borrower to any other entity which is an affiliate of Borrower's managing member, or which is controlled by or under common control with an affiliate of Borrower's managing member; and

(20) any other Transfer expressly permitted by the terms of the Loan Documents (but only if that Loan Document is then in effect).
(c) Lender shall consent at any time on and after the Conversion Date and the delivery of the Conversion Certificate, without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest or to any other economic terms of the Indebtedness, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

(1) the submission to Lender of all information reasonably required by Lender to make the determination required by this Section 21(c);

(2) the absence of any Event of Default (or the Event of Default will be cured contemporaneously with the Transfer);

(3) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages, deeds of trust or deeds to secure debt on multifamily rental properties;

(4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily rental properties;

(5) in the case of a Transfer of all or any part of the Mortgaged Property, direct or indirect ownership interests in Borrower or Key Principal (if an entity), if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement (including, if applicable, an Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability) that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Instrument or
any other Loan Document which previously may have been waived by Lender;

(6) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and

(7) Lender's receipt of all of the following:

(A) a non-refundable review fee in the amount of $3,000 and, if to a party who is not controlled by or under common control with the transferor, a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer.

(B) In addition, Borrower shall be required to reimburse Lender for all of Lender's reasonable out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed $3,000.

(d) For purposes of this Section, the following terms shall have the meanings set forth below:

(4) "Initial Owners" means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note own in the aggregate 100% of the ownership interests in Borrower or that entity.

(5) A Transfer of a "Controlling Interest" shall mean, with respect to any entity, the following:

(i) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;

(ii) if such entity is a limited partnership, a Transfer of any general partnership interest;
(iii) if such entity is a limited liability company or a limited liability partnership, a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity;

(iv) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;

(v) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(vi) if such entity is a trust, the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment or substitution is a trustee identified in the trust agreement approved by Lender.

(6) **Publicly-Held Corporation** shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

(e) Neither the $3,000 nor the one percent (1%) transfer fee will be due for the transfers permitted in subparagraph (b) above.

(f) The foregoing shall only be applicable to Transfers made on or after the Conversion Date (prior to the Conversion Date, Transfers will be governed by the terms of the Loan Agreement).

(g) Notwithstanding the foregoing or anything else herein or in the Loan Agreement to the contrary, any Transfer (before or after the Conversion Date) of the Mortgaged Property or of an interest in Borrower shall be subject to compliance by Borrower with Title 10 of the Texas Administrative Code Rule 10.406.
22. **EVENTS OF DEFAULT.**

Any one or more of the following shall constitute an Event of Default under this Instrument:

(a) any failure by Borrower to pay an amount on the Note within 10 days of when due, or to pay or deposit any other amount required by this Instrument or any other Loan Document within 10 days after Lender delivers written notice thereof to Borrower;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19, which is not fully cured by or on behalf of Borrower within five (5) business days after Lender delivers notice thereof to Borrower;

(c) any failure by Borrower to comply with the provisions of Section 34;

(d) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, managing members, or managers or any Guarantor 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 Indebtedness, (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement, or (D) any of the representations and warranties contained in Section 3.1 of the Loan Agreement and in Section 59 of this Instrument;

(e) any Event of Default under Section 21;

(f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, will result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property, and such action or proceeding is not dismissed or terminated with prejudice within 60 days after the commencement thereof;

(g) any failure by Borrower to comply with the provisions of Section 60 which is not fully cured by or on behalf of Borrower within 30 days after written notice thereof is provided to Borrower by Lender;

(h) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (g)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower. However, no such notice or grace period shall apply in the case of any such failure which would, in Lender's reasonable judgment, absent
immediate exercise by Lender of a right or remedy under this Instrument, result in material harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Borrower to perform any of its material obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable notice, grace, and/or cure period, if any, specified in that Loan Document;

(j) 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; and

(k) Prior to the Conversion Date and the delivery of the Conversion Certificate, the occurrence of any other Event of Default under and as defined in the Loan Agreement.

23. REMEDIES CUMULATIVE.

Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument 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. Notwithstanding anything to the contrary herein or in any of the other Loan Documents, Lender shall have no right or claim to the low income housing tax credits allocated to the Mortgaged Property unless and until Lender shall foreclose on the Mortgaged Property or accept a deed in lieu of foreclosure. Lender shall, notwithstanding anything to the contrary herein or in any other Loan Documents, have no right or claim to the LIHTCs (hereafter defined) allocated to the Land and Improvements unless and until the Lender shall foreclose on the Mortgaged Property or accept a deed in lieu of foreclosure.

24. FORBEARANCE.

(a) Except as otherwise expressly provided in any of the Loan Documents, 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, any Guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or
release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the 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 of any other right available to Lender. Lender’s receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. NOTICE AND CURE RIGHTS OF INVESTOR MEMBER.

Notwithstanding anything to the contrary contained herein, or in any of the Loan Documents after the Conversion Date (prior to the Conversion Date, the Loan Agreement shall govern the notice and cure rights of the Special Member and the Investor Member): (i) Lender shall provide the Special Member with simultaneous notice of any Event of Default or other violation by Borrower under the Loan Documents, and (ii), the Lender agrees to accept performance on the part of the Investor Member, the Special Member, or any of their affiliates as though the same had been performed by the Borrower under any of the Loan Documents. The Lender will allow the Investor Member, the Special Member, and/or their affiliates ten (10) days after giving the Special Member notice to cure a monetary default under the Loan Documents (other than the payment due at maturity) and except as to the Borrower’s filing of a voluntary bankruptcy petition, up to thirty (30) days after giving the Special Member notice to cure of any non-monetary default under the Loan Documents. If the Investor Member, the Special Member, or any of their affiliates, makes any such payment or otherwise offers cure of a default, the Lender will accept or reject such action as curing such default on the same basis as if payment or cure were made directly by the Borrower. The foregoing notice and cure periods shall run simultaneously with any grace and cure periods provided to the Borrower in Section 22, or otherwise for the applicable occurrences.
26. [INTENTIONALLY DELETED].

27. WAIVER OF STATUTE OF LIMITATIONS.

Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

28. WAIVER OF MARSHALLING.

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 Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are 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 Instrument waives any and all right to require the marshalling 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 Instrument.

29. FURTHER ASSURANCES.

Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances 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 Instrument and the Loan Documents, provided that except as required for the above purposes, Borrower is not obligated to execute, acknowledge or deliver any such items that add to, modify or change the terms of the Loan Documents in a manner which is inconsistent with the terms of the Commitment (under and as defined in the Loan Agreement).

30. ESTOPPEL CERTIFICATE.

Within 10 days after a written request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) 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); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the
31. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the State of Texas, exclusive of choice and conflict of law principles.

(b) Borrower and Lender agree that (1) any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in Austin, Texas, and (2) the state and federal courts and authorities with jurisdiction in Austin, Travis County, Texas shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower and Lender irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which they might be entitled by virtue of domicile, habitual residence or otherwise.

32. NOTICE.

(a) All notices, demands and other communications ("notice") under or concerning this Instrument and the other Loan Documents shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 32, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 32. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 32, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 32 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.
(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 32.

(d) Copies of all notices provided by Lender to Borrower under this Instrument or any related document shall be simultaneously provided to the Investor Member at: Boston Capital Direct Placement, A Limited Partnership, c/o Boston Capital Partners, Inc., One Boston Place, 21st Floor, Boston, MA 02108, Attention: Asset Management, with a copy to Holland & Knight LLP, 10 St. James Avenue, 11th Floor, Boston, Massachusetts 02116, Attention: Doug Clapp, Esq. and the Guarantor at the address specified in the applicable guaranty. Notwithstanding anything herein to the contrary, Lender shall provide the Investor Member with copies of all notices of Default and Event of Default provided to Borrower under this Instrument and other Loan Documents simultaneously with the giving of any such notice to Borrower, and Investor Member shall be entitled to cure any such Default or Event of Default for and on behalf of Borrower within any applicable grace or cure period.

33. SALE OF NOTE; CHANGE IN SERVICER.

The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower, and Borrower shall not be liable for any costs or claims in connection therewith. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change. If Borrower receives conflicting Notices regarding the identity of the Loan Servicer or any other subject, any such Notice from Lender shall govern.

34. SINGLE ASSET BORROWER.

Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the acquisition, construction, development, leasing, replacement, sale refinancing, operation and maintenance of the Mortgaged Property (other than de minimis personal property); (b) shall not operate any business other than the acquisition, construction, development, leasing, replacement, sale refinancing, management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

35. SUCCESSORS AND ASSIGNS BOUND.

This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a
Transfer not permitted by Section 21 or any of the other Loan Documents (as then in effect) shall be an Event of Default.

36. **JOINT AND SEVERAL LIABILITY.**

If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

37. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "Servicing Arrangement") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds 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.

38. **SEVERABILITY; AMENDMENTS.**

The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

39. **CONSTRUCTION.**

The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

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Page 53
40. **LOAN SERVICING.**

All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the 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 notice from Lender shall govern.

41. **DISCLOSURE OF INFORMATION.**

Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, 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.

42. **NO CHANGE IN FACTS OR CIRCUMSTANCES.**

All information in the application for the loan submitted to Lender (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 (as defined in the Loan Agreement) in any fact or circumstance that would make any such information incomplete or inaccurate.

43. **SUBROGATION.**

If, and to the extent that, the proceeds of the loan evidenced by the Note 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 (a "Prior Lien"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower’s request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

44. **ACCELERATION; REMEDIES.**

Except as otherwise expressly provided in the Loan Documents, at any time during the existence of an Event of Default, Lender, at Lender’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 Instrument or in any other Loan Document. Borrower acknowledges that the power
of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender 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 Lender invokes the power of sale, Lender may, by and through the Trustee, or otherwise, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Lender may determine, with or without having first taken possession of the Mortgaged Property, to the highest bidder for cash at public auction. Such sale shall be made at the designated place in the county in which all or any part of the Land to be sold is situated (whether the parts or parcel, if any, situated in different counties are contiguous or not, and without the necessity of having any Personalty present at such sale) on the first Tuesday of any month between the hours of 10:00 a.m. and 4:00 p.m., after advertising the time, place and terms of sale and that portion of the Mortgaged Property to be sold by posting or causing to be posted written or printed notice of sale at least twenty-one (21) days before the date of the sale at the designated place in the county in which the sale is to be made and at the designated place in any other county in which a portion of the Land may be situated, and by filing such notice with the County Clerk(s) of the county(s) in which all or a portion of the Land may be situated, which notice may be posted and filed by the Trustee acting, or by any person acting for the Trustee, and Lender has, at least twenty-one (21) days before the date of the sale, served written or printed notice of the proposed sale by certified mail on each debtor obligated to pay the Indebtedness according to Lender's records by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such debtor at debtor's most recent address as shown by Lender's records, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

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. Borrower 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. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including reasonable Trustee's fees not to exceed 3% of the gross sale price (unless higher fees are customary in the jurisdiction where the Mortgaged Property is located) and attorneys' fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess.

If all or any part of the Mortgaged Property is sold pursuant to this Section 44, Borrower 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 Land, Improvements, Fixtures and Personalty, Borrower 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 Borrower shall fail to vacate the Mortgaged Property immediately, the purchaser may and shall have the right, without further notice to Borrower, 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 Borrower 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 Instrument or otherwise.

In any action for a deficiency after a foreclosure under this Instrument prior to the Conversion Date, if any person against whom recovery is sought requests the court in which the action is pending to determine the fair market value of the Mortgaged Property, as of the date of the foreclosure sale, the following shall be the basis of the court’s determination of fair market value:

(a) the Mortgaged Property shall be valued “as is” and in its condition as of the date of foreclosure, and no assumption of increased value because of post-foreclosure repairs, refurbishment, restorations or improvements shall be made;

(b) any adverse effect on the marketability of title because of the foreclosure or because of any other title condition not existing as of the date of this Instrument shall be considered;

(c) the valuation of the Mortgaged Property shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Mortgaged Property for cash within a six month period after foreclosure;

(d) although the Mortgaged Property may be disposed of more quickly by the foreclosure purchaser, the gross valuation of the Mortgaged Property as of the date of foreclosure shall be discounted for a hypothetical reasonable holding period (not to exceed 6 months) at a monthly rate equal to the average monthly interest rate on the Note for the twelve months before the date of foreclosure;

(e) the gross valuation of the Mortgaged Property as of the date of foreclosure shall be further discounted and reduced by reasonable estimated costs of disposition, including brokerage commissions, title policy premiums, environmental assessment and clean-up costs, tax and assessment, prorations, costs to comply with legal requirements and attorneys’ fees;
(f) expert opinion testimony shall be considered only from a licensed appraiser certified by the State of Texas and, to the extent permitted under Texas law, a member of the Appraisal Institute, having at least five years’ experience in appraising property similar to the Mortgaged Property in the county where the Mortgaged Property is located, and who has conducted and prepared a complete written appraisal of the Mortgaged Property taking into considerations the factors set forth in this Instrument; no expert opinion testimony shall be considered without such written appraisal;

(g) evidence of comparable sales shall be considered only if also included in the expert opinion testimony and written appraisal referred to in the preceding paragraph; and

(h) an affidavit executed by Lender to the effect that the foreclosure bid accepted by Trustee was equal to or greater than the value of the Mortgaged Property determined by Lender based upon the factors and methods set forth in subparagraphs (a) through (g) above before the foreclosure shall constitute prima facie evidence that the foreclosure bid was equal to or greater than the fair market value of the Mortgaged Property on the foreclosure date.

Lender may, at Lender’s option, comply with these provisions in the manner permitted or required by Title 5, Section 51.002 of the Texas Property Code (relating to the sale of real estate) or by Chapter 9 of the Texas Business and Commerce Code (relating to the sale of collateral after default by a debtor), as those titles and chapters now exist or may be amended or succeeded in the future, or by any other present or future articles or enactments relating to same subject. Unless expressly excluded, the Mortgaged Property shall include Rents collected before a foreclosure sale, but attributable to the period following the foreclosure sale, and Borrower shall pay such Rents to the purchaser at such sale. At any such sale:

(a) whether made under the power contained in this Instrument, Section 51.002, the Texas Business and Commerce Code, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to have physically present, or to have constructive possession of, the Mortgaged Property (Borrower shall deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of any such property shall pass to the purchaser as completely as if the property had been actually present and delivered to the purchaser at the sale;
(b) each instrument of conveyance executed by Trustee shall contain a general warranty of title (subject to all Permitted Exceptions), binding upon Borrower;

(c) the recitals contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited in the Instrument, including nonpayment of the Indebtedness and the advertisement and conduct of the sale in the manner provided in this Instrument and otherwise by law and the appointment of any successor Trustee;

(d) all prerequisites to the validity of the sale shall be conclusively presumed to have been satisfied;

(e) the receipt of Trustee or of such other party or officer making the sale shall be sufficient to discharge to the purchaser or purchasers for such purchaser(s)' purchase money, and no such purchaser or purchasers, or such purchaser(s)' assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication of such purchase money;

(f) to the fullest extent permitted by law, Borrower shall be completely and irrevocably divested of all of Borrower's right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar to any claim to all or any part of the property sold, both at law and in equity, against Borrower and against any person claiming by, through or under Borrower; and

(g) to the extent and under such circumstances as are permitted by law, Lender may be a purchaser at any such sale.

45. RELEASE.

Upon payment of the Indebtedness, Lender shall release this Instrument by executing any and all appropriate termination and/or release documents. Borrower shall pay Lender's reasonable third party costs actually incurred in releasing this Instrument.

46. TRUSTEE.

(a) Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee shall die, resign or become disqualified from
acting under this Instrument or shall fail or refuse to act in accordance with this Instrument when requested by Lender or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named in this Instrument or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the original Trustee named in this Instrument. Such appointment may be executed by an authorized officer, agent or attorney-in-fact of Lender (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 Lender.

(b) Any successor Trustee appointed pursuant to this Section shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of the predecessor Trustee with like effect as if originally named as Trustee in this Instrument; but, nevertheless, upon the written request of Lender or such successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, 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 monies held by the Trustee ceasing to act to the successor Trustee.

(c) Trustee may authorize one or more parties to act on Trustee’s behalf to perform the ministerial functions required of Trustee under this Instrument, including the transmittal and posting of any notices.

47. [INTENTIONALLY OMITTED]

48. NO FIDUCIARY DUTY.

Lender owes no fiduciary or other special duty to Borrower.

49. FIXTURE FILING.

This Instrument is also a fixture filing under the Uniform Commercial Code of Texas.
50. ADDITIONAL PROVISIONS REGARDING ASSIGNMENT OF RENTS.

In no event shall the assignment of Rents or Leases in Section 3 and Section 4 cause the Indebtedness to be reduced by an amount greater than the Rents actually received by Lender and applied by Lender to the Indebtedness, whether before, during or after (i) an Event of Default, or (ii) a suspension or revocation of the license granted to Borrower in Section 3(b) with regard to the Rents. Borrower and Lender specifically intend that the assignment of Rents and Leases in Section 3 and Section 4 is not intended to result in a pro tanto reduction of the Indebtedness. The assignment of Rents and Leases in Section 3 and Section 4 is not intended to constitute a payment of, or with respect to, the Indebtedness and, therefore, Borrower and Lender specifically intend that the Indebtedness shall not be reduced by the value of the Rents and Leases assigned. Such reduction shall occur only if, and to the extent that, Lender actually receives Rents pursuant to Section 3 and applies such Rents to the Indebtedness. Borrower agrees that the value of the license granted with regard to the Rents equals the value of the collateral assignment of Rents to Lender. The assignment of Rents contained in Sections 3 and 4 shall automatically terminate upon the release of this Instrument.

51. LOAN CHARGES.

Borrower and Lender 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 Lender 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 Instrument 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 Borrower results in Borrower having paid any interest in excess of that permitted by any applicable law, then Borrower and Lender expressly intend that all excess amounts collected by Lender 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 Borrower), and the provisions of the Note, this Instrument 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 Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender 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 Instrument 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 Borrower is obligated to pay and Lender is entitled to receive with respect to the Indebtedness shall not exceed the amount calculated on a simple (i.e., noncompounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Borrower, including all current and prior advances and any advances made pursuant to the Instrument or any other Loan Document (such as for the payment of Impositions and similar expenses or costs).

52. PROPERTY AND LIABILITY INSURANCE — DELIVERY OF POLICY TO LENDER.

Notwithstanding the provisions of Section 19(b), Borrower shall not be required to deliver the original (or a duplicate original) of any renewal policy of insurance to Lender more than 15 days prior to the expiration date of the policy then held by Lender.

53. ENTIRE AGREEMENT.

THIS INSTRUMENT, 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.

54. WAIVER OF TRIAL BY JURY.

BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT 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.

55. NO DRILLING OR EXPLORATION.

Without the prior written consent of Lender, which such consent shall not be unreasonably withheld, conditioned or delayed, except for the offsite extraction of mineral from under the Land pursuant to mineral leases existing as of the date hereof, Borrower shall not permit any drilling or exploring on the Land for or extraction, removal, or production of minerals from the surface or subsurface of the Land (in no event may there be any drilling operation on the surface of the Land). The term “minerals” as used herein shall include, without limiting the generality of such term, oil, gas, casinghead
gas, coal, lignite, hydrocarbons, methane, carbon dioxide, helium, uranium and all other
natural elements, compounds and substances, including sand and gravel.

56. CONSTRUCTION INSTRUMENT.

THIS INSTRUMENT SECURES ANY OBLIGATION INCURRED FOR THE
CONSTRUCTION OF IMPROVEMENTS ON THE LAND. THIS INSTRUMENT IS A
"CONSTRUCTION MORTGAGE" FOR PURPOSES OF SECTIONS 9.334(h) AND
2A.309 OF THE TEXAS BUSINESS AND COMMERCE CODE.

57. INDEMNIFICATION OF TRUSTEE.

EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TRUSTEE
SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION OR ERROR OF JUDGMENT.
TRUSTEE MAY RELY ON ANY DOCUMENT BELIEVED BY HIM IN GOOD FAITH TO
BE GENUINE. ALL MONEY RECEIVED BY TRUSTEE SHALL, UNTIL USED OR
APPLIED AS HEREBIN PROVIDED, BE HELD IN TRUST, BUT NEED NOT BE
SEGREGATED (EXCEPT TO THE EXTENT REQUIRED BY LAW), AND TRUSTEE
SHALL NOT BE LIABLE FOR INTEREST THEREON. BORROWER HEREBY
INDEMNIFIES TRUSTEE AGAINST ALL LIABILITY TO A THIRD PARTY AND
REASONABLE EXPENSES THAT HE MAY INCUR IN THE PERFORMANCE OF HIS
DUTIES HEREUNDER, EXCEPT TO THE EXTENT THE SAME RESULTS FROM
TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

58. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.

If (a) Borrower shall voluntarily file a petition under Title 11 of the United States
Code, or under any similar or successor Federal statute relating to bankruptcy,
insolvency, arrangements or reorganizations, or under any state bankruptcy or
insolvency act, or file an answer in an involuntary proceeding admitting insolvency or
inability to pay debts, or if (b) Borrower shall fail to obtain a removal, discharge, vacation
or stay of involuntary proceedings within ninety (90) days of the date brought or filed for
the reorganization, dissolution or liquidation of Borrower, or if (c) Borrower shall be
adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or
Borrower's property, or if the Mortgaged Property shall become subject to the
jurisdiction of a Federal bankruptcy court or similar state court, and such is not vacated,
 Stayed, discharged, or removed within ninety (90) days, or if (d) Borrower shall make an
assignment for the benefit of Borrower's creditors, or if there is an attachment, execution
or other judicial seizure of any portion of Borrower's assets and such seizure is not
discharged within ninety (90) days, then Lender may, at Lender's option, declare all of
the sums secured by this Instrument to be immediately due and payable without prior
notice to Borrower, and Lender may invoke any remedies permitted by Section 44 of
this Instrument. Any attorneys' fees and other expenses incurred by Lender in
connection with Borrower's bankruptcy or any of the other aforesaid events shall be
additional indebtedness of Borrower secured by this Instrument. Notwithstanding
anything to the contrary, Borrower shall have 90 days to dismiss any proceedings contemplated under this Section 58.

59. EXTENDED LOW-INCOME HOUSING COMMITMENT.

Lender agrees that the lien of this Instrument 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 Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. Lender further agrees that, as of the date hereof, Internal Revenue Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or an increase in the gross rent with respect to such unit not otherwise permitted under Internal Revenue Code Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure.

60. ANNUAL LIHTC REPORTING REQUIREMENTS.

Borrower must submit to Lender, each year at the time of annual submission of Borrower’s financial analysis of operations, a copy of the following sections of Borrower’s federal tax return: Internal Revenue Forms 1065, 8586, 8609 and Form 8609, Schedule A, which must reflect the total low-income housing tax credits ('LIHTCs') allocated to the Mortgaged Property and the LIHTCs claimed for the Mortgaged Property in the preceding year.

61. CROSS-DEFAULT.

Borrower acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Extended Use Agreement shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney's fees incurred by the Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any default or event of default, under the Extended Use Agreement shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

62. BANK CONSENT.

When Lender is required under this Instrument or any of the other Loan Documents to provide its consent or approval, or render its determination, judgment, decision or satisfaction, such consent, approval, determination, judgment, decision or satisfaction (or the denial thereof, as the case may be) shall not be unreasonably withheld or conditioned and shall be given within a reasonable time after its receipt of the request therefor, taking into consideration the circumstances of the request.
63. 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 regulator under the Extended Use Agreement.

64. INDEMNIFICATION.

Notwithstanding anything to the contrary herein set forth or in any of the other Loan Documents, Borrower’s indemnification requirements shall not apply to any Indemnitee or Lender Party to the extent the subject of the indemnification is caused by or arises solely and directly by the gross negligence or willful misconduct of any Indemnitee or Lender Party.

65. CONTROLLING DOCUMENT

After the Conversion Date, and except as otherwise expressly provided herein, all irreconcilable inconsistencies or conflicts between the terms of this Instrument with the terms of any other Loan Document shall be governed and controlled by the terms of this Instrument.

66. INSURANCE AND CONDEMNATION PROCEEDS.

Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, in the event of any fire or other casualty to the Mortgaged Property or eminent domain proceedings resulting in condemnation of the Mortgaged Property, or any part thereof, Borrower shall have the right to rebuild the Mortgaged Property, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds or such other funds Lender has determined are then readily available to Borrower are sufficient to keep the loan evidenced by the Loan Documents (the "Loan") in balance as required by the Loan Agreement and rebuild the Mortgaged Property in a manner that provides adequate security to Lender for repayment of the Loan, or if such proceeds are insufficient then Borrower shall have funded any deficiency in a manner satisfactory to Lender; (b) Lender shall have the right to approve plans and specifications for the rebuilding, the right to approve the schedule for the rebuilding, and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement; and (c) no continuing Event of Default then exists under the Loan Documents that, if prior to the Conversion Date, cannot be cured by the rebuilding of the Mortgaged Property exists. If the casualty or condemnation affects only a portion of the Mortgaged Property and total rebuilding is infeasible, then the proceeds shall be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to Lender for repayment of the remaining balance of the Loan.
67. WAIVER OF SPECIAL DAMAGES.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER LENDER NOR BORROWER SHALL ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST THE OTHER, ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS.

68. LOAN CHARGES.

If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. 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 which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. 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 Note.

69. NOTICE OF LITIGATION.

Borrower shall, in addition to, and without in any way limiting, the other requirements in this Agreement to provide certain notices to Lender, deliver to Lender, promptly upon any officer or partner having actual knowledge of any litigation or proceeding or contingent liability in which the amount involved is $75,000.00 or more, which is not covered by insurance, and which involves Borrower as a defendant or the Premises or any other property of Borrower, a written statement with respect thereto, signed by an authorized representative of Borrower, advising Lender of the occurrence of such event or circumstance and the steps, if any, being taken by Borrower with respect thereto. Notwithstanding the foregoing, if an Event of Default or any event, act or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default is cured within the applicable cure periods, then any unintentional failure to provide the notice that such event has occurred shall also be deemed cured.

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.
ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

<table>
<thead>
<tr>
<th></th>
<th>Exhibit A</th>
<th>Description of the Land (required).</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Exhibit B</td>
<td>Permitted Exceptions</td>
</tr>
</tbody>
</table>

[SIGNATURE PAGE TO FOLLOW]
DATED AND EFFECTIVE AS OF the date first set forth above.

ARIA GRAND, LLC, a Texas limited liability company

By: O-SDA Aria, LLC, a Texas limited liability company, its managing member

By: O-SDA Industries, LLC, a Texas limited liability company, its sole member

By: Megan D. Lasch, sole member

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 19th day of September, 2018, by Megan D. Lasch, sole member of O-SDA Industries, LLC, a Texas limited liability company, on behalf of said limited liability company acting in its capacity as sole member of O-SDA Aria, LLC, a Texas limited liability company, managing member of ARIA GRAND, LLC, a Texas limited liability company.

LEONOR SANDRA MARTINEZ
Notary Public, State of Texas
Comm. Expires 12-27-2020
Notary ID 13094480-7

SIGNATURE PAGE TO DEED OF TRUST
KEY PRINCIPALS

Key Principals

Name: Megan Lasch
Address: 421 W. 3rd Street
         Austin, Texas 78701

Name: Chris Dischinger
Address: 1469 South 4th Street
         Louisville, Kentucky 40208
EXHIBIT “A”

TRACT B, THE BROOK, AN ADDITION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 57, PAGE 52, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.
EXHIBIT B
(PERMITTED EXCEPTIONS)

This conveyance is made and accepted subject to the following Permitted Encumbrances:

1. Any covenants, conditions or restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c). Filed under County Clerk’s File No. 2017200540 of the Official Public Records of Travis County, Texas.

2. Shortages in area.

3. Standby fees, taxes and assessments by any taxing authority for the year 2018, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code.

4. The following matters and all terms of the documents creating or offering evidence of the matters:

   a. Any portion of subject property lying within the boundaries of a public or private roadway whether dedicated or not.

   b. Any and all easements, building lines, and conditions, covenants, and restrictions as set forth in plat recorded under Volume 57, Page 52 of the map records of Travis County, Texas.

   c. All matters disclosed on survey performed by Robert A. Hansen from JPH Surveying, Inc. and RPLS No. Undisclosed, dated February 27, 2017 under Job No. 2017.069.005.

   d. Any claim that the Title is subject to a trust or lien created under The Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §§499a, et seq.) or the Packers and Stockyards Act (7 U.S.C. §§181 et seq.) or under similar state laws.
e. Survey prepared by JPH Land Surveying, Inc., dated May 24, 2018, last revised September 17, 2018, under Job No. 2017-069.005, shows the following:

1) Overhead utility lines cross the southwesterly boundary line of the subject property.
2) Stream extends outside the westerly and easterly boundary lines of the subject property.

f. Drainage Easement with Permitted Obstructions and Required Maintenance by and between Aria Grand, LLC and City of Austin, Texas, recorded September 20, 2018 as Instrument Number 2018149217 of Travis County, Texas.

g. Integrated Pest Management Restrictive Covenant by Aria Grand, LLC, recorded August 15, 2018 as Instrument Number 20181304172 of Travis County, Texas.

h. Water Lines Easement by and between Aria Grand, LLC and City of Austin, Texas, dated May 15, 2018 and recorded as Instrument Number 2018133944 of Travis County, Texas.

i. Wastewater Lines Easement by and between Aria Grand, LLC and City of Austin, Texas, recorded August 30, 2018 as Instrument Number 2018138753 of Travis County, Texas.

j. Drainage Easement with Permitted Obstructions and Required Maintenance by and between Aria Grand, LLC and City of Austin, Texas, recorded August 30, 2018 as Instrument Number 2018138754 of Travis County, Texas.
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name Aria Grand

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section 811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Letter of request to Community Bank of Texas to add 811 units at Aria Grand.

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 18, 2019

Mr. Stephen Rose  
Executive Vice President  
CommunityBank of Texas  
9 Greenway Plaza, Ste. 110  
Houston, TX 77046

Re: 811 Units – Aria Grand

Dear Stephen:

Per the 2019 TDHCA Qualified Allocation Plan, we are hereby submitting a request for your consideration to add an additional ten 811 program units at Aria Grand, in Austin, Texas.

Under the Deed of Trust for Aria Grand, the Borrower has an obligation to not allow any liens or encumbrances other than the Permitted Encumbrances. The addition of 811 units would require a new or amended Extended Use Agreement be recorded and as such, this requires the lender’s consent. Aria Grand already has seven 811 units as was contemplated during underwriting. An additional ten units would result in more than 20% of the property being 811 tenants.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 352-213-8700.

Sincerely,

Megan D. Lasch  
President  
5501-A Balcones Dr., #302 Austin, Texas 78731
Existing Development Name: Aria Grand

iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from CommunityBank denying the request to add 811 units.

ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.
February 25, 2019

Ms. Megan D. Lasch  
President  
O-SDA Industries  
5501-A Balcones Dr., #302  
Austin, Texas 78731  

RE: Aria Grand, Austin, Texas  

Dear Megan,  

It is my understanding that per the 2019 Qualified Allocation Plan, TDHCA is requiring tax credit award applicants request additional Section 811 unit set-aside/property encumbrances on their prior 9% tax credit properties. Specific to this letter, CommunityBank of Texas is currently providing construction to permanent debt financing to Aria Grand, LLC to assist in the development of Aria Grand, a 70-unit LIHTC family development located in Austin, Texas.  

CommunityBank of Texas underwrote the subject Aria Grand development based on information and due diligence leading up to loan approval and ultimate loan closing in September 2019, including proper consideration of seven current Section 811 units on the property. The inclusion of additional Section 811 units would require additional feasibility underwriting, including but not limited to increased operational expenses. As such, it is our preference to not change the unit profile mix at the property at this time; and hereby, we respectfully decline your request.  

Feel free to contact me if I could be of further assistance.  

Sincerely,  

Stephen W. Rose  
EVP, CommunityBank of Texas, N.A.  
9 Greenway Plaza, Suite 110  
Houston, Texas 77046  
713-308-5754  
srose@communitybankoftx.com
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet

Introduction

The purpose of this Packet is to formalize the process by which an Applicant establishes its lack of legal authority to commit Section 811 PRA Program Units in a Development as described pursuant to 10 TAC §11.9(c)(6)(A) of the Qualified Allocation Plan ("QAP").

This Packet is required only if all of the following conditions are true:

1) An Applicant is selecting points under Tenant Populations with Special Housing Needs pursuant to 10 TAC §11.9(c)(6) AND

2) An Applicant is seeking to establish its lack of legal authority where an Applicant or Affiliate Owns or Controls an Existing Development that otherwise meets the criteria established by 10 TAC §11.9(c)(6)(B) of the QAP.

One Packet must be submitted for each Existing Development for which the Applicant or Affiliate is seeking a determination that the needed legal authority is lacking and that the Development can be excluded from consideration.

Instructions: Complete the Questionnaire on page 2 of this packet, then complete the fields on each of the subsequent form cover pages, and attach the denoted documentation for each item behind each included cover pages. Submit each Packet, including Attachments in PDF format and include bookmarks for each item. The Packet must be saved and uploaded as one standalone file to the Serv-U folder associated with each 2019 Multifamily Application.

This Packet and all supporting documentation must be uploaded to the Department’s Serv-U system at the same time as, but as a separate document from, the Application. Refer to the Multifamily Programs Procedures Manual posted at http://www.tdhca.state.tx.us/multifamily/applyforkunds.htm for an explanation of the process to set-up a Serv-U Account if needed.

Questions about this Packet may be submitted to Spencer Duran: spencer.duran@tdhca.state.tx.us
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

Questionnaire

2019 Uniform Multifamily Application #19276 & 19295 & 19288

1) Selecting Points under 10 TAC §11.9(c)(6)?
☐ No – STOP. PACKET SUBMISSION NOT NEEDED
☒ Yes – CONTINUE TO QUESTION 2

2) To obtain Points under 10 TAC §11.9(c)(6), Applicants must first attempt to meet the requirements in §11.9(c)(6)(B).

Does the Applicant Own or Control and Existing Development that appears on the List of Qualified Existing Developments?
☐ No – STOP. PACKET SUBMISSION NOT NEEDED
☒ Yes – CONTINUE TO QUESTION 3

3) Is the Applicant seeking to establish its lack of legal authority where an Applicant Owns or Controls an Existing Development that appears on the List of Qualified Existing Developments?
☐ No - STOP. PACKET SUBMISSION NOT NEEDED
☒ Yes – CONTINUE TO QUESTION 4

4) Can the Applicant provide all three of the following items listed under §11.9(c)(6)(A)(i)-(iii)?
☐ No - STOP. PACKET SUBMISSION NOT NEEDED
☒ Yes – CONTINUE TO COVER PAGES

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement);

(ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program); AND

(iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party identified in (ii) that they are denying an Existing Development from participation).
Section 811 Project Rental Assistance (“PRA”) Program Supplement Packet

Legal Right to Withhold Cover Page §11.9(c)(6)(A)(i)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name LaMadrid Apartments

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided (Examples: Limited Partnership Agreement or Loan Agreement)

Describe the specific legally enforceable agreement being attached: Amended & Restated Operating Agreement

Provide the name of the Third Party: Wells Fargo Affordable Housing Community Development

List the specific citation in the agreement that clearly denotes the Third Party has a legal right to withhold consent: Section 6.01(a), 6.01(b), 6.03(b)(i), 6.03(b)(ix), 6.03(b)(xiv), 6.10 (g)

List the page number in the agreement that clearly denotes the Third Party has a legal right to withhold consent: 43, 46-48, 55-58, and Definitions on page 1, 16, 19-21

ATTACH PDF OF THE LEGALLY ENFORCEABLE AGREEMENT BEHIND THIS PAGE.

Under paragraphs 6.01(a) and 6.01(b), Megan Lasch as the Managing Member does not have any control to act on behalf of the partnership nor make any decisions that are binding on the partnership. As such, we do not believe LaMadrid Apartments should qualify as an existing eligible 811 development under Ms. Lasch. However, we are also providing the requisite request and denial letter from the investor in the event TDHCA determines under the 2019 QAP that Ms. Lasch is under an obligation to do so.
AMENDED AND RESTATED

OPERATING AGREEMENT

d Of

LAMADRID APARTMENTS, LLC

(a Florida limited liability company)

Dated as of October 17, 2016
AMENDED AND RESTATED

OPERATING AGREEMENT

LAMADRID APARTMENTS, LLC

(a Florida limited liability company)

THIS AMENDED AND RESTATED OPERATING AGREEMENT of LaMadrid Apartments, LLC, a Florida limited liability company (the “Company”), is made and entered into as of October 17, 2016, by and among Wolfpack LaMadrid, LLC, a Florida limited liability company, as Administrative Member, O-SDA LaMadrid, LLC, a Texas limited liability company, as Managing Member, Louis Wolfson III as the Withdrawing Member, Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, as the Investor Member, and a to-be-designated entity as the Special Member.

WHEREAS, the Company was formed as a Florida limited liability company pursuant to Articles of Organization that were filed with the Filing Office on June 12, 2015, and pursuant to an Operating Agreement dated June 12, 2015 (collectively, the “Original Operating Agreement”); and

WHEREAS, the Withdrawing Member has agreed to withdraw as a Member from the Company, and the Investor Member, in exchange for its Capital Contributions, is to be admitted to the Company, all as of the Admission Date; and

WHEREAS, the parties hereto desire to enter into this Amended and Restated Operating Agreement to provide for, among other things, (i) the continuation of the Company, as reconstituted, (ii) the withdrawal of the Withdrawing Member as a Member, (iii) the admission of the Investor Member to the Company and (iv) a restatement of the rights, obligations and duties of the Members to each other and to the Company; and

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the parties hereto agree that the Original Operating Agreement is hereby amended and restated and shall be replaced in its entirety by this Amended and Restated Operating Agreement, which is stated in its entirety as follows:

ARTICLE 1

NAME AND BUSINESS

1.01 Name; Formation; Filings.

1.01(a) The name of the Company is LaMadrid Apartments, LLC.

1.01(b) The Administrative Member shall from time to time take all actions as are necessary or appropriate to: (i) effectuate and permit the continuation of the
Company as a limited liability company under the laws of the State, (ii) enable the Company to do business in the State and in the State of Texas, and (iii) protect the limited liability of the Members under the laws and regulations of the State and in the State of Texas, including the preparation and filing of any certificate, document or instrument of the Company as may be required under the laws and regulations of the State and the State of Texas. The Members shall execute such certificates, documents and instruments and take such other action as may be necessary to enable the Administrative Member to fulfill its responsibilities under this Section 1.01(b).

1.02 Place of Business.

1.02(a) The principal office of the Company in the State, wherein there shall be maintained those records required by the Uniform Act to be kept by the Company, shall be located at 421 W. 3rd Street, #1504, Austin, Texas 78701, or at such place or places as the Administrative Member may determine. The Administrative Member shall at all times maintain a principal office in the State.

1.02(b) The registered agent of the Company in the State for service of process is Corporation Company of Miami, 201 South Biscayne Boulevard, Suite 1500 (GJC), Miami, FL 33131.

1.03 Names and Addresses of Members. The names and addresses of the Managing Member, the Administrative Member and the Investor Member are set forth in Exhibit H attached hereto and made a part hereof.

1.04 Purposes. The purposes of the Company are to acquire, finance, own, construct, rehabilitate, maintain, improve, operate, lease and, if appropriate or desirable, sell or otherwise dispose of the Apartment Complex in a manner consistent with the requirements of Section 42 of the Code. The Company shall engage in no other business or activity.

1.05 Term and Dissolution. The duration of the Company shall be perpetual, except that the Company shall be dissolved and its assets liquidated upon:

1.05(a)(i) A sale or other disposition of all or substantially all of the assets of the Company;

1.05(a)(ii) The withdrawal of a Member of the Company, if the Company has not been continued pursuant to Section 10.02;

1.05(a)(iii) An election to dissolve the Company made in writing by the Administrative Member with the Consent of the Investor Member; or

1.05(a)(iv) An occurrence of any other event which results in a dissolution of the Company pursuant to the Uniform Act.

1.05(b) Upon dissolution of the Company, the Administrative Member (or for purposes of this paragraph, its trustees, receivers or successors) shall cause the cancellation of the Certificate, liquidate the Company Assets in a manner consistent with
Section 4.03 and apply and distribute the proceeds thereof in accordance with Section 4.03. Notwithstanding the foregoing, if, during the liquidation, the Administrative Member shall reasonably determine that an immediate sale of all of the Company Assets would be impermissible, impractical or would cause undue loss to the Members, the Administrative Member may either (i) defer liquidation of, and withhold from distribution for a reasonable time, any assets of the Company, except those necessary to satisfy Company debts and obligations, or (ii) with the Consent of the Investor Member, distribute Company Assets to the Members in kind.

1.06 Title to Apartment Complex. Legal title to the Land and Apartment Complex shall, at all times the Company is in existence, be in the name of the Company, and no Member, individually, shall have any ownership interest in the Apartment Complex.

ARTICLE 2

DEFINITIONS

2.01 Meanings. Capitalized terms used in this Agreement shall have the meanings specified in this Section 2.01. Certain additional defined terms are set forth elsewhere in this Agreement. For purposes of this Agreement:

"Accountants" means CohnReznick LLP, Novogradac & Company LLP, or, subject to compliance with Section 6.10(i), any other firm or firms of independent certified public accountants as may be engaged by the Administrative Member, with the Consent of the Investor Member, on behalf of the Company from time to time.

"Accountants’ Determination" means a determination by the Accountants concerning the amount of Credits allocable to the Investor Member during the entire Credit Period and/or during any one or more Company Taxable Years during the Credit Period, as reflected in a final version of any Company Tax Return (including any amended Company Tax Return) prepared by the Accountants or by a written notice or other communication from the Accountants to the Administrative Member or the Investor Member.

"Actual Aggregate Credit Amount" means the aggregate amount of Credits that, as a result of an Accountants’ Determination or a Final Determination, is determined to be allocable to the Investor Member during the Credit Period (or any taxable period therein) after taking into account all prior adjustments required to be made pursuant to the provisions of Section 3.05.

"Additional Adjuster Contribution" shall have the meaning set forth in Section 3.05(b)(ii).

"Additional Adjuster Distribution" shall have the meaning set forth in Section 3.05(b)(ii).
“Adjuster Contributions” means Credit Adjuster Contributions, Additional Adjuster Contributions, Current Adjuster Contributions and Timing Adjuster Contributions.

“Adjuster Distributions” means Credit Adjuster Distributions, Additional Adjuster Distributions, Current Adjuster Distributions and Timing Adjuster Distributions.

“Administrative Member” means Wolfpack LaMadrid, LLC, a Florida limited liability company.

“Admission Date” means the date as set forth in Section 14.11.

“Affiliate” means, as to any Member, any Person that: (i) directly or indirectly controls or is controlled by (such as any partnership or limited liability company in which the Member, directly or indirectly, serves as a general partner or managing member, respectively) or is under common control with the specified Member; (ii) is an officer or director of, commissioner of, partner in, member of or trustee of, or serves in a similar capacity with respect to, the specified Member or of which the specified Member is an officer, director, member, partner or trustee, or with respect to which the specified Member serves in a similar capacity; or (iii) is the beneficial owner, directly or indirectly, of 10% or more of any class of equity securities of the specified Member or of which the specified Member is directly or indirectly the owner of 10% or more of any class of equity securities. The term “control” (including the term “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The parties acknowledge that a limited partnership or limited liability company as to which an Affiliate of Wells Fargo Bank, National Association serves as a general partner or a manager or managing member, respectively, and holds an interest of not less than 0.01% shall be deemed an Affiliate of the Investor Member.

“Affiliate Contract” means the Development Agreement, the Incentive Management Fee Agreement, and the Purchase Option Agreement (Investor Member Interests).

“After-Tax Basis” means with respect to any payment or distribution to be received by a Person (or, in the case of a pass-through entity, the partners or members of such Person), the amount of such payment or distribution supplemented by a further payment or payments so that, after deducting from such total payments or distributions the amount of all Taxes (net of any current credits, deductions or other tax benefits arising from the payment by such Person (or such Person’s partners or members) of any amount, including Taxes, for which the payment to be received is made) imposed currently on such Person by the Service or any other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment received. For the purposes of this definition, and for purposes of any payment to be made to a Person (or such Person’s partners or members) on an After-Tax Basis, it shall be assumed that federal, state and local taxes are payable at the highest combined marginal federal
and state statutory income tax rate (taking into account the deductibility of state income
taxes for federal income tax purposes) applicable to corporations in the year such
payment or distribution is made.

"Agency" means Texas Department of Housing and Community Affairs, or any
successor thereto in its capacity as the agency responsible for administering the Credit
program of the State of Texas.

"Agreement" means this Amended and Restated Operating Agreement, including
all Exhibits and Schedules hereto, as amended from time to time in accordance with the
terms of Section 14.03.

"Annual Credit Amount" means, with respect to any Company Taxable Year
during the Credit Period, the amount of Credits allocable to the Investor Member during
such Company Taxable Year.

"Apartment Complex" means the to-be-constructed 8 residential building, 1, 2
and 3-story garden-style and townhouse development with 95 total units (including 83
affordable housing units and 12 market rate units) and a clubhouse known as LaMadrid
Apartments located on approximately 6.025 acres in Austin, Travis County, Texas (the
legal description of which is set forth in Exhibit E) (the "Land"), and ancillary and
appurtenant facilities and all furnishings, equipment, land, real property and personal
property used in connection with the operation thereof.

"Applicable Federal Rate" means the applicable federal rate for an obligation or
a debt instrument as determined under Code Section 1274(d).

"Approved Loan Amount" shall have the meaning set forth in Section 5.04 of this
Agreement.

"Architect" means Miller Slayton Architects, Inc.

"Architect's Agreement" means the agreement between the Company and
Architect dated November 10, 2015 for the performance of architectural services in
connection with the construction of the Apartment Complex, with such changes as the
Investor Member shall reasonably require, all in form and substance reasonably
satisfactory to Investor Member.

"Architect's Certificate" means each of the AIA form of certificate executed by
the Architect and Administrative Member and the certificate in the form of Exhibit J
issued by the Architect to the Investor Member in connection with each Capital
Contribution Request.

"Asset Management Fee" means the fee payable by the Company to the Investor
Member, commencing with respect to calendar year 2019, pursuant to the Asset
Management Fee Agreement in the annual, cumulative amount of $8,500, increasing 3%
per year thereafter, payable, in arrears at the end of each calendar year from available
Cash Flow or Net Proceeds as described in Article 4.
"Asset Management Fee Agreement" means the Asset Management Fee Agreement between the Company and the Investor Member providing for the payment of the Asset Management Fee.

"Best Knowledge" means, in the case of a specified Person: (i) actual knowledge and (ii) that knowledge that a prudent businessperson should have obtained in the management of his or her business affairs after making due inquiry and exercising due diligence with respect thereto. The knowledge (both actual and constructive) of any general partner, manager, managing member, director, officer or key employee of a Person that is not a natural person shall be deemed to be the knowledge of such Person.

"Budget" means a complete breakdown of direct/hard costs and indirect/soft costs for the Apartment Complex as approved by Investor Member.

"Building" means each building in the Apartment Complex.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in Charlotte, North Carolina are authorized or required by law to close.

"Capital Account" shall, with respect to each Member, mean and refer to the separate “book” account for such Member to be established and maintained in all events in accordance with Section 704 of the Code and the Regulations thereunder.

(i) Except as otherwise set forth in Article 4 to the contrary, a Member’s Capital Account shall include generally, without limitation, the Capital Contribution of a Member (as of any particular date), (1) increased by the Member’s distributive share of Profits of the Company (including, if such date is not the close of the Company Accounting Year, the distributive share of Profits of the Company for the period from the close of the last Company Accounting Year to such date), and (2) decreased by the Member’s distributive share of Losses of the Company and distributions by the Company to such Member (including, if such date is not the close of the Company Accounting Year, the distributive share of Losses of the Company and distributions to the Company during the period from the close of the last Company Accounting Year to such date). For purposes of the foregoing, distributions of property to a Member shall result in a decrease in such Member’s Capital Account equal to the Gross Asset Value, as of the date of distribution, of such property (less the amount of indebtedness, if any, of the Company that is assumed by such Member and/or the amount of indebtedness, if any, to which such property is subject, as of the date of distribution, subject to the provisions of I.R.C. § 7701(g)) distributed by the Company to such Member.

(ii) In the event that the Capital Contribution of a Member consists of property having a fair market value in excess of its adjusted basis, or in the event the Gross Asset Values of Company Assets are adjusted under and pursuant to clause (ii) of the definition of Gross Asset Value, the Members’ Capital Accounts shall be adjusted thereafter in accordance with the provisions of § 1.704-1(b)(2)(iv)(g) of the Regulations with respect to allocations to the Members of
Depreciation, gain or loss, as computed for book purposes, and not for tax purposes.

(iii) In the event that the provisions of § 1.704-1(b)(2)(iv) of the Regulations fail to provide guidance on how adjustments to the Capital Accounts of the Members should be made to reflect particular adjustments to Company capital on the books of the Company, then such Capital Account adjustments shall be made by the Tax Matters Member in its reasonable determination (after consultation with the Investor Member), with the review and concurrence of the Accountants and/or with the advice of the Special Tax Counsel, in a manner that (1) maintains equality between (A) the aggregate Capital Accounts of the Members and (B) the amount of Company capital reflected on the Company’s balance sheet, as computed for book purposes in accordance with § 1.704-1(b) of the Regulations, (2) is consistent with the underlying economic arrangement among the Members, and (3) is based, wherever practicable, on federal tax accounting principles.

“Capital Contribution” means the cash plus the Gross Asset Value (net of liabilities) of other property contributed to the Company by each Member. Any reference in this Agreement to the Capital Contribution of a then Member shall include any Capital Contribution previously made by any prior Member in respect of the Interest of such then Member.

“Capital Contribution Request” means a written Capital Contribution Request in the form attached hereto as Exhibit C.

“Capital Event” means any transaction the proceeds of which are not includable in Cash Flow, including without limitation, the sale or other disposition of all or any substantial part of the assets of the Company, or the refinancing of any Mortgage Loan, but excluding (i) loans to the Company (other than a refinancing of any Mortgage Loan) and (ii) Capital Contributions by the Members.

“Cash Flow” means, for any period of time, the total cash receipts of the Company from ordinary operations (i.e., excluding the proceeds of (A) capital transactions, (B) the Capital Contributions of the Members (other than Capital Contributions attributable to (1) any Credit Excess pursuant to Section 3.03(e), which Capital Contributions will be applied first to pay the Cost of Improvements for the improvements giving rise to such Credit Excess, and then shall be distributed as pursuant to Section 4.02(a) as if it were Cash Flow, and (2) a First Year Credit Excess pursuant to Sections 3.03(f), respectively, which Capital Contributions will be applied first to pay Developer Loan and then shall be distributed pursuant to Section 4.02(a) as if it were Cash Flow), and (C) the proceeds of any loans, other than Operating Deficit Loans), such as, but not limited to, Effective Gross Income plus any other funds (such as any reserves in excess of the amounts required to be established and maintained pursuant to this Agreement, when and to the extent the Administrative Member no longer regards such excess reserves as reasonably necessary in the efficient conduct of the business of the Company) deemed available for distribution and designated as Cash Flow by the
Administrative Member, less (i) the total cash disbursements of the Company (such as, but not limited to, operating expenses, costs of repair or restoration of the Apartment Complex, property management fees (excluding the Asset Management Fee and the Incentive Management Fee), financing fees or other requirements of any Lender and interest and principal repayments of any loans, other than Soft Debt Payments and other than with respect to loans from the Administrative Member or any Affiliate thereof (such as the Developer Loan and Operating Deficit Loans), less (ii) repayment of loans made by the Investor Member under Section 3.03(i), and less (iii) amounts paid in connection with the establishment or maintenance of reserves as required by Section 6.10.

“Certificate” means the Articles of Organization of the Company and any amendment thereto, as filed with the Filing Office in accordance with the Uniform Act.

“Change in Law” means an amendment to the Code or Treasury Regulations that is applicable to the Apartment Complex and that provides for the reduction or elimination of the Credit for qualified low-income housing projects (as defined in Code Section 42(g)(1)) or substantially changes the requirements for qualifying for the Credit in a manner that the Members reasonably agree cannot be satisfied by the Company.

“Closing Date” means the date of this Agreement, which is the date established by the Administrative Member for the admission of the Investor Member and the withdrawal of the Withdrawing Member.

“Code” or “I.R.C.” means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto. Reference herein to any Code section shall include any successor provision.

“Company” means LaMadrid Apartments, LLC, a Florida limited liability company.

“Company Accounting Year” means the accounting year of the Company, ending December 31 of each year.

“Company Assets” means, at any particular time, the Apartment Complex, Land and any other assets or property (tangible, intangible, choate or inchoate, fixed or contingent) of the Company.

“Company/Administrative Member Certificate” means a certification from the Administrative Member to the Investor Member in the form of Exhibit D.

“Company Items” shall have the meaning set forth in Section 4.04(i).

“Company Tax Return” means the United States Partnership Income Tax Return (Form 1065) for the Company, together with all Schedules K-1 included therein, and all state and local tax returns and other similar schedules required to be filed with respect to the operations of the Company.
"Company Taxable Year" shall mean the taxable year of the Company which shall be the Company Accounting Year or such other taxable period as may be required by the Code or Regulations.

"Compliance Period" shall have the meaning set forth in Section 42(i)(1) of the Code.

"Consent" means, and will be deemed to have been obtained, if the Investor Member (or the Special Member, as the case may be) shall have been notified in writing consistent with Section 14.02 by the Administrative Member or the Managing Member of any action either proposed to be taken or for which ratification is desired and if the Investor Member (or Special Member) shall have expressly consented in writing to such action. In the event that there is more than one Investor Member, Consent of the Investor Member shall be deemed to have been obtained if a majority in Interest of the Investor Members so consents in accordance with the preceding sentence; provided, however, that if pursuant to the Uniform Act, the consent of all Investor Members is required in a given context, then the term Consent of the Investor Member shall be deemed to require the consent of all Investor Members. The Investor Member (or Special Member, as applicable) agrees to use reasonable efforts to respond in writing within 15 Business Days of receipt of a notice from the Managing Member or the Administrative Member. In any action with respect to which the Consent of the Investor Member (or Special Member) is requested, the Company shall reimburse the Investor Member (or Special Member) for all attorneys' fees, accountants' fees and other expenses incurred by the Investor Member (or Special Member) in connection with the proposed matter, whether or not Consent is given. The reasonableness of such fees shall be determined by reference to similar transactions within the low-income housing tax credit investment industry.

"Construction Completion" means the date of receipt by the Investor Member of (a) a written certification from the Administrative Member stating that the achievement or substantial completion of all requirements relating to the lien-free construction of the Apartment Complex as set forth in the Project Documents has occurred, (b) a written certification from the Architect stating that all work to be performed by the Contractor with respect to the Apartment Complex is substantially complete and complies with all Laws including, without limitation, the Americans with Disabilities Act (U.S.C. 1201 et. seq.; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)) and the Fair Housing Act (42 U.S.C. 3601-19), as amended, and a written certification from the Contractor stating that it has complied with the Davis-Bacon Act (40 U.S.C. 276a et. seq.), as amended, if applicable, and (c) certificates or permits of occupancy for all units in the Apartment Complex; provided, however, that if such certificates or permits are of a temporary nature, "Construction Completion" shall not be deemed to have occurred unless (i) such certificates or permits permit occupancy of all of the units, (ii) the work remaining to be done is of a nature that would not impair the permanent occupancy of any of the units of the Apartment Complex on a full paying basis and (iii) the Company has made adequate provision to the reasonable satisfaction of the Investor Member for the payment and completion of all outstanding punch list items and any other work that remains to be performed.
“Construction Lender” means Wells Fargo Bank, National Association.

“Construction Loan” means a construction loan to be made by the Construction Lender to the Company in the amount of $4,300,000, with a variable rate of interest equal to the One-Month London Inter-Bank Office Rate, subject to a London Inter-Bank Office Rate floor of 15 basis points, plus 250 basis points and having a term of thirty (30) months, subject to two (2) extensions of three (3) months.

“Contractor” means Pinroc Construction, LLC, a Florida limited liability company.

“Contractor’s Certificate” means each of the AIA form of certificate executed by Contractor and Administrative Member and the Contractor’s Certificate in the form of Exhibit I issued to the Investor Member in connection with each Capital Contribution Request.

“Cost Certification” means the final certification by the Accountants of the costs incurred in connection with the construction of the Apartment Complex, as submitted to and approved by the Agency.

“Costs of Improvements” means all direct and hard costs required to be expended by Company to comply with the requirements of this Agreement, including the reasonable cost of labor and materials actually expended or incurred by Company and incorporated in the Apartment Complex on the property, and the cost of furnishings, fixtures and equipment. The Cost of Improvements may also include certain indirect and soft costs, to be approved by Lender and the Investor Member, which may consist of the cost of permits, appraisals, soil testing, surveys and other professional fees and costs, tax credit application fees, construction fees, taxes, insurance, marketing costs, interest, financing and bonding fees and the Operating Reserve.

“Credit” means the low income housing tax credit allowable to the Company pursuant to Section 42 of the Code.

“Credit Adjuster Contribution” shall have the meaning set forth in Section 3.05(a).

“Credit Adjuster Distribution” shall have the meaning set forth in Section 3.05(a).

“Credit Determination Date” means the date on which the aggregate amount of Credits allocable to the Investor Member during the Credit Period is determined by the Accountants and the Administrative Member and is reflected in a Company Tax Return filed with the Service.

“Credit Excess” shall have the meaning set forth in Section 3.03(e).

“Credit Period” means the credit period as defined in Section 42(f)(1) of the Code and as applicable to the Apartment Complex, as well as any period after the end of such
credit period during which Credits are available pursuant to Section 42(f)(2)(B) of the Code.

"Credit Shortfall" shall have the meaning set forth in Section 3.05(a).

"Credit Shortfall Adjustment Amount" shall have the meaning set forth in Section 3.05(a).

"Current Adjuster Contribution" shall have the meaning set forth in Section 3.05(b)(i).

"Current Adjuster Distribution" shall have the meaning set forth in Section 3.05(b)(i).

"Debt Service Coverage Ratio" means a specified percentage that shall be deemed to have occurred on the first day following a specified period of consecutive calendar months (or days) commencing on or after Construction Completion computed by dividing the Net Operating Income (as defined below) for each of the consecutive calendar months (or days) by all debt service payments required to be made during each of the consecutive calendar months (or days), exclusive of any Soft Debt Payments. For purposes of the foregoing, the amount of required debt service payments for a period shall exclude Soft Debt Payments and shall be computed on the assumption that permanent financing having the terms set forth in Section 5.04 is in effect and all other Mortgage Loans require Soft Debt Payments only or no payments prior to maturity. A period of consecutive calendar months or days shall be determined by analyzing the specified period as a whole and not by applying the Debt Service Coverage Ratio test to individual months or days within the period. Net Operating Income shall be the excess of Effective Gross Income from normal operations over all operating cash requirements of the Apartment Complex properly allocable to such period of time on an annualized accrual basis (not including distributions or payments to Members or Affiliates out of Cash Flow or debt service requirements but including reserve requirements imposed by this Agreement or the Project Documents, real estate taxes and, on an annualized basis, all projected expenses (other than fees or expenses payable solely from Cash Flow) of the Apartment Complex, including those of a seasonal nature, that might reasonably be expected to be incurred on an unequal basis during the full annual period of operations). The determination of the Debt Service Coverage Ratio (and the components thereof) shall be performed and certified by the Accountants and shall be evidenced by a letter or certificate from such Accountants in form and substance reasonably satisfactory to the Investor Member.

"Depreciation" means, for purposes of maintaining Capital Accounts and not for purposes of calculating taxable income, for each Company Accounting Year or other period, with respect to Company Assets, an amount that bears the same ratio to the Gross Asset Values of Company Assets as the federal income tax depreciation, amortization, or other cost recovery deductions for such Company Assets for such year or other period bears to the adjusted tax bases of such assets, appropriately adjusted for any adjustments
to the tax basis of such assets that occur from time to time during such year or other period.

"Developer" means, collectively, O-SDA Industries, LLC, a Texas limited liability company, and Wolfpack Group, LLC, a Florida limited liability company.

"Developer Fee" means the fee payable to the Developer pursuant to Section 7.02 for services under the Development Agreement.

"Developer Loan" means the loan of the unpaid portion of the Developer Fee containing the terms and conditions specified in Section 7.02.

"Development Agreement" means the Amended and Restated Development Agreement dated as of the date hereof between the Company and the Developer.

"Disposition" (including the verb form "Dispose" and the adjective form "Disposing") means, as to a Member, the assignment, sale, transfer, exchange, pledge, hypothecation or other disposition of all or any part of such Member's Interest.

"Effective Gross Income" means, for any period of time, all rental and other incidental income received (on a cash basis) by the Company, including, without limitation, any rent subsidies, to the extent available, forfeited deposits, rental loss insurance proceeds, application fees, late payments and proceeds from laundry facilities and vending machines.

"Eligible Basis" shall have the meaning set forth in Section 42(d) of the Code.

"Entity" means any general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative, association, limited liability company, the State, the State of Texas, or any agency or political subdivision of either of such states.

"Environmental Reports" means, collectively, the following documents with respect to property underlying the Apartment Complex, as amended or supplemented those certain Phase I Environmental Site Assessments dated February 19, 2015, November 3, 2015, and July 18, 2016 by Dominion Due Diligence Group, the Noise Evaluation Report dated October 13, 2015 by the Dominion Due Diligence Group, the Geotechnical Engineering Study by Rone Engineering, dated August 13, 2015, as updated August 8, 2016, and as updated by the Geotechnical Report, dated September 19, 2016.

"Event of Bankruptcy" means, with respect to any Person: (i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in a case under the Federal bankruptcy laws, as now or hereafter constituted, or any other similar law, or the issuance of an order for the winding-up or liquidation of such Person's affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days, or (ii) the commencement by such Person of a proceeding under any reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or (iii) the
commencement against such Person of any such proceeding that remains undismissed for a period of 60 days, or any act by such Person that indicates such Person's consent to, approval of or acquiescence in any such proceeding or the appointment of any receiver of or trustee for such Person or of any substantial part of such Person's property, or allows any such receivership or trusteeship to continue undischarged for a period of 60 days, or (iv) the taking of any action by such Person to authorize any of the foregoing, or (v) the making of an assignment for the benefit of creditors by such Person, or (vi) such Person files a petition in bankruptcy or petitions or applies to any tribunal for any receiver of such Person or for any substantial part of such Person's property, or (vii) if either (a) any one or more judgments or orders against such Person with respect to a claim or claims involving in the aggregate liabilities exceeding $250,000, which judgments or orders are not covered in full by insurance or are not stayed, bonded, paid or discharged within 45 days after such judgment or order, or (b) any writ of attachment or execution or any similar process is (I) issued or levied against such Person's property and (II) is not discharged or stayed within 45 days thereof.

"Extended Use Agreement" shall mean an agreement between the Agency and the Company pursuant to Section 42(h)(6) of the Code in which the Company agrees to maintain the Apartment Complex for occupants who meet the income requirements under Code Section 42(g) and to maintain the Apartment Complex as "rent-restricted" under Code Section 42(g) for a certain period of time set forth in the Extended Use Agreement, subject to certain exceptions set forth therein.

"Felony Conviction" means a formal declaration that an individual is guilty of a criminal offense classified by applicable law as a felony, as evidenced by a judgment entered on the docket of a court of competent jurisdiction based on a guilty finding by (i) the verdict of a jury; (ii) the decision of a judge or (iii) entry by such individual of a plea of guilty or no contest/nolo contendere.

"Fifty Percent Construction Completion" or "50% Construction Completion" means completion of 50% of the construction of the entire Apartment Complex as certified by the Architect and the Inspector in a manner reasonably satisfactory to the Investor Member.

"Filing Office" means the Office of the Secretary of State of the State.

"Final Determination" means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction or government agency with regard to any tax or other issue affecting the Company, which decision, judgment, decree or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted), or (ii) the date on which the Service has entered into a binding agreement with the Company with respect to such issues or has reached a final administrative or judicial determination with respect to such issues which, whether by law or agreement, is not subject to appeal.

"First Mortgage Loan" means the first mortgage permanent loan from Wells Fargo Bank, National Association to the Company in the approximate amount of
$3,500,000 bearing interest at 5.22% per annum, having a 18-year term, and a 30-year amortization period.

"First Year Credit Excess" shall have the meaning set forth in Section 3.03(f).

"First Year Shortfall" shall have the meaning set forth in Section 3.05(b)(iv).

"General Contract" means the construction contract between the Company and Contractor dated September 6, 2016 for the construction of the Apartment Complex, as amended by that certain Rider to Construction Contract dated as of the Closing Date, as the same may be amended from time to time with the prior Consent of the Investor Member.

"Gross Asset Value" means the following, with respect to any Company Asset:

(i) The initial Gross Asset Value of any Company Asset at the time that it is contributed by a Member to the capital of the Company shall be an amount equal to the gross fair market value of such Company Asset (without regard to the provisions of I.R.C. Section 7701(g)), as determined by the contributing Member and the Company.

(ii) The Gross Asset Values of all Company Assets may be adjusted, as reasonably determined by the Administrative Member, to equal their respective fair market values taking Code Section 7701(g) into account (A) in connection with the contribution of money or other property (other than a de minimis amount) to the Company by a new or existing Member as consideration for an Interest in the Company or (B) in connection with the liquidation of the Company or the distribution by the Company of more than a de minimis amount of Company Assets or money to a retiring or continuing Member as consideration for an Interest in the Company or in any other circumstances set forth in § 1.704-1(b)(2)(iv)(f)(5) of the Regulations or in any successor regulations.

(iii) The Gross Asset Values of all Company Assets shall be adjusted, as reasonably determined by the Administrative Member, to equal the respective fair market values of the Company Assets upon the termination of the Company for federal income tax purposes pursuant to I.R.C. Section 708(b)(1)(B).

"Guarantor" means, jointly and severally, Wolfpack Group, LLC, a Florida limited liability company, Louis Wolfson III and any successors and assigns thereto as parties pursuant to the Guaranty.

"Guaranty" means the Guaranty executed by Guarantor for the benefit of the Investor Member.

"HUD" means the U.S. Department of Housing and Urban Development.

"HUD Requirements" shall have the meaning set forth in Section 6.10(cc).
“Historically Underutilized Business Guidelines” means the Historically Underutilized Business Guidelines for contracting with the State of Texas.

“Incentive Management Fee” means the management fee payable to the Administrative Member and the Managing Member from Cash Flow, pursuant to the Incentive Management Fee Agreement, as compensation for their efficient management of the Company and its assets. In no event may the amount of Investment Management Fee paid in any year exceed the lesser of (i) $40,000, less fees paid to the Management Agent for each year, or (ii) a sum that equals 12% of the Company's Effective Gross Income for such year, less fees paid to the Management Agent for such year.

“Incentive Management Fee Agreement” means the agreement of even date herewith by and among the Company, the Administrative Member and the Managing Member, relating to the payment of the Incentive Management Fee.

“Initial Aggregate Credit Amount” means the aggregate amount of Credits that is determined by the Accountants and the Administrative Member, on or before the Credit Determination Date, to be allocable to the Investor Member.

“Inspector” means Partner Engineering and Science, Inc., the Investor Member’s construction inspector.

“Installments” shall have the meaning set forth in Section 3.03(b).

“Interest” means the entire interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement and the obligations of such Member to comply with the terms of this Agreement.

“Investor Member” means Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, and any Person or Persons who, at the time of reference thereto, have been admitted as additional or successor Investor Members.

“Land” is defined within the definition of Apartment Complex.

“Laws” means any statute, rule, ordinance, regulation, order, judgment, award or decree of any governmental authority, including, but not limited to, ERISA, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Clean Air Act, the Occupational Safety and Health Act and the Americans with Disabilities Act of 1990, in each case, as amended.

“Lender” means any lender or its successors and assigns making a Mortgage Loan.

“Letter of Credit” means that certain Irrevocable Standby Letter of Credit, in the amount of $1,269,584.00 to be issued by The Northern Trust Company in favor of the
Construction Lender, as beneficiary, in connection with the construction of the Apartment Complex.

"Letter of Credit Agreement" means that certain Letter of Credit Agreement dated to be effective as of October 17, 2016 by and among the Construction Lender and the Company.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance (including, without limitation, any easement, right-of-way, zoning or similar restriction or title defect), lien (statutory or other) or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the UCC or comparable law of any jurisdiction).

"Major Subcontracts" means subcontracts for plumbing, electrical, site work, structural and mechanical/HVAC, in form and substance reasonably satisfactory to Investor Member.

"Management Agent" means Accolade Property Management, Inc., a Texas corporation, and/or any successor or assign who is selected by the Administrative Member, with the Consent of the Investor Member, to provide management services with respect to the Apartment Complex from time to time in accordance with Article 11 hereof.

"Management Agreement" means the Management Agreement between the Company and the Management Agent, as approved by the Investor Member, in connection with the management of the Apartment Complex.

"Managing Member" means O-SDA LaMadrid, LLC, a Texas limited liability company.

"Materially Participate" shall have the meaning set forth in the Agency’s qualified allocation plan.

"Member" means the Managing Member, Administrative Member, Investor Member, Special Member and any Person or Persons who, at the time of reference thereto, have been admitted as additional or successor Members, in each such Person’s capacity as a Member of the Company. At any time when there is more than one Member, the term "Member" or "Members" shall include, collectively, all such Persons, unless the context clearly implies that such term only refers to one of them.

"Minimum Gain" means, with respect to each Member, the amount computed in accordance with § 1.704-2(g) of the Regulations. The Company shall separately compute each Member’s share of Minimum Gain attributable to partner nonrecourse debt pursuant to § 1.704-2(i) of the Regulations.
“MM Sole Member” shall have the meaning set forth in Section 6.09(aa).

“Mortgage” means any mortgage or deed of trust securing a Mortgage Loan and encumbering the Apartment Complex, as such indebtedness may be increased, decreased or refinanced in accordance with this Agreement and the Project Documents. Where the context permits, the term “Mortgage” shall include any mortgage, deed, deed of trust, note, regulatory agreement, security agreement, assumption agreement or other instrument executed in connection with a Mortgage Note which is binding on the Company; and in case any Mortgage is replaced or supplemented by any subsequent mortgage or mortgages, the “Mortgage” shall refer to any such subsequent mortgage or mortgages.

“Mortgage Loan” means the Construction Loan, the First Mortgage Loan, the RHDA Loan and any other loan made to the Company with the Consent of the Investor Member that is evidenced by a Mortgage Note and secured by a Mortgage.

“Mortgage Note” means the promissory note executed or to be executed by the Company in favor of any Lender to evidence the indebtedness incurred by the Company in connection a Mortgage Loan.

“Net Operating Income” shall have the meaning set forth in the definition of Debt Service Coverage Ratio.

“Net Proceeds” means the difference between (A) the sum of (i) the gross proceeds from a Capital Event other than a refinancing; (ii) the excess proceeds from the refinancing of any loan on the Apartment Complex (that is, any refinancing proceeds not needed for the repayment of the loan refinanced); and (iii) the receipt of any proceeds from insurance settlements or other claims attributable to fire or other casualty, or from condemnation, sales or grants of easements, rights-of-way or the like in excess of those needed for repair, restoration or replacement of the damaged, destroyed or condemned property and (B) the payment of or due provision for (i) all liabilities to creditors of the Company (excluding, except in the event of the dissolution and liquidation of the Company, fees owed to the Administrative Member and loans to the Company from the Administrative Member or Affiliates thereof for any purpose, including, without limitation, Operating Deficit Loans) and (ii) necessary and customary expenses of such Capital Event or refinancing (other than, except in the event of the dissolution and liquidation of the Company, expenses payable to the Administrative Member or an Affiliate thereof).

“Ninety-Five Percent Construction Completion” or “95% Construction Completion” means completion of 95% of the construction of the entire Apartment Complex as certified by the Architect and the Inspector in a manner reasonably satisfactory to the Investor Member.

“Operating Deficit” shall mean the amount by which (i) the amount of funds available to the Company from Effective Gross Income of the Apartment Complex, together with other available cash and funds on hand of the Company, if any, for the
relevant time period but excluding: (a) funds from Capital Contributions (except to the extent that Capital Contribution proceeds are specified in the Budget as available to fund initial working capital amounts), (b) the proceeds of any loans obtained by the Company (except for Operating Deficit Loans), (c) advance rent payments and (d) nonforfeited tenant deposits, is less than (ii) the amount necessary to meet all of the operating costs and expenses of any type due and payable for such time period incidental to the operation and business activities of the Company, including, without limitation, debt service payments due under the Mortgage Loans (other than Soft Debt Payments), taxes, insurance, costs of operations, maintenance, repairs, interest, management expenses, prepaid expenses and reserve funding and maintenance requirements set forth in Section 6.10, but excluding repayment of any loans from the Administrative Member or Affiliates thereof, distributions of Cash Flow (including the Asset Management Fee and the Incentive Management Fee) to Members and amounts expended for capital improvements and similar items.

"Operating Deficit Loan" means any loan or loans made to the Company pursuant to Section 6.12.

"Operating Reserve" shall have the meaning set forth in Section 6.10(p).

"Original Operating Agreement" means the Operating Agreement of the Company dated as of June 12, 2015.

"Partnership Tax Audit Rules" means with respect to any Post-TEFRA Period, the provisions of Section 1101 of the Bipartisan Budget Act, as amended, and any corresponding provisions of state, local or foreign law.

"Permanent Loan Conversion" means the date on which the Construction Loan has been repaid in full and the First Mortgage Loan is made (i) in accordance with the terms and conditions of the applicable Construction Loan and First Mortgage Loan documents, and (ii) as set forth in Section 5.04.

"Permitted Liens" means (i) Liens for taxes, assessments or governmental charges not delinquent or being diligently contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with generally accepted accounting principles consistently applied are maintained on Company’s books, (ii) Liens listed in the title insurance policy and title insurance commitment accepted by the Lender and Investor Member, and (iii) easements, reservations, restrictions, or other matters that (a) would not materially adversely affect the Apartment Complex or its contemplated use or (b) have been bonded against in such manner as to preclude the holder of the lien or claim from having any recourse to the Company or the Company’s property.

"Person" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such individual or Entity as the context may require.

"Plans" means the final signed and sealed plans and specifications for the construction of the Apartment Complex prepared by Architect and approved by Lender,
Investor Member and any applicable governmental subdivision or agency, together with any change orders approved in accordance with this Agreement.

"Post-TEFRA Period" means each federal income tax period of the Company beginning after December 31, 2017 (or such later effective date of Section 1101 of the Bipartisan Budget Act if the implementation of such provision is delayed by legislation or regulation), and such earlier period, if any, with respect to which the Company has made an election pursuant to Section 1101(g)(4) of the Bipartisan Budget Act.

"Profits and Losses" means, subject to the adjustments in Sections 4.04 through 4.06, for each calendar year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with I.R.C. § 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to I.R.C. § 703(a)(1) shall be included in taxable income or loss), with the following adjustments to be made solely for purposes of maintaining Capital Accounts and not for determining taxable income or loss:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in I.R.C. § 705(a)(2)(B) or treated as I.R.C. § 705(a)(2)(B) expenditures pursuant to § 1.704-l(b)(2)(iv)(i) of the Regulations, and not otherwise taken into account in computing Profits or Losses pursuant to this definition, shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company Asset is adjusted pursuant to clause (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as hypothetical gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value; and

(v) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account Depreciation for such calendar year or other period.

"Project Documents" means the Mortgage, the Mortgage Note, and other documents evidencing, securing, or relating to a Mortgage Loan, this Agreement, the Incentive Management Fee Agreement, the Security Agreement, the Asset Management Fee Agreement, the Development Agreement, the Guaranty, the Purchase Option Agreement, the Extended Use Agreement, the Management Agreement, Letter of Credit, the Letter of Credit Agreement, the Section 811 Agreement, the Reimbursement and
Assignment Agreement, and any other documents related to the acquisition, development, construction, financing, operation or contemplated use of the Apartment Complex, as such documents may be amended from time to time in accordance with the terms of this Agreement.

"Projected Aggregate Credit Amount" means the aggregate amount of Credits projected to be allocated to the Investor Member during the Credit Period (or any taxable period therein). If, on or after the Credit Determination Date, the aggregate amount of Credits allocable to the Investor Member is determined to be different than $13,382,662, the term "Projected Aggregate Credit Amount," as used herein, shall mean such revised aggregate amount, provided that any adjustments, payments, or distributions required under the provisions of this Agreement to be made on account of any such prior determination have in fact been made.

"Projected Annual Credit Amount" means, with respect to any Company Taxable Year during the Credit Period, the amount of Credits projected to be allocated to the Investor Member during such Company Taxable Year. It is currently anticipated that the Company will allocate Credit to the Investor Member as follows: (i) $867,944 in 2018 (ii) $1,338,266 in each of years through 2019 through 2027; and (iii) $650,322 in 2028. If, on or after the Credit Determination Date, the amount of Credits allocable to the Investor Member during any Company Taxable Year is determined to be different than as set forth above, the term "Projected Annual Credit Amount," as used herein, shall mean such revised amount, provided that any adjustments, payments, or distributions required under the provisions of this Agreement to be made on account of any such prior determination have in fact been made. If a Timing Adjuster Distribution is made pursuant to Section 3.05(b) for a First Year Shortfall, the Projected Annual Credit Amount for 2028 shall be increased by the amount of Credit Shortfall deferred pursuant to Section 42(f)(2)(B) of the Code.

"Purchase Option Agreement" means the Purchase Option Agreement (Investor’s Member’s Interest) entered into between the Investor Member and the Administrative Member dated as of the Closing Date.

"Qualified Investments" means any of the following if and to the extent permitted by law: (i) direct obligations of or obligations the principal of and interest on which are guaranteed by the United States Government; or (ii) obligations of any agency or instrumentality of the United States Government backed by the full faith and credit of the United States; or (iii) demand and savings deposits at commercial banks and savings and loan associations, provided that the entire deposit is insured by the Federal Deposit Insurance Corporation ("FDIC"); or (iv) certificates of deposit issued by any state or national bank which has combined capital, surplus, and undivided profits of not less than $50,000,000, or any savings and loan institution having combined capital, surplus, and retained earnings of not less than $100,000,000, provided that all such investments are fully insured by the FDIC or fully secured by investments described in (i) or (ii); or (v) repurchase agreements or time deposits with banks or trust companies organized under the laws of the United States or any state or the District of Columbia having combined capital, surplus, and undivided profits of not less than $50,000,000 or any of its affiliates,
provided that all such investments shall be fully insured by FDIC or fully secured by investments described in (i) or (ii) above which have a fair market value equal to 103% of the face amount of the repurchase agreement plus an amount equal to the amount by which the anticipated interest earnings under the arrangement exceed interest which would have been earned at a rate of 6% per year, provided that the party investing in any repurchase agreement shall receive a perfected security interest, whether by delivery or by registration on a book-entry account of a Federal Reserve Bank, in the underlying obligations subject to such repurchase agreement; or (vi) shares of registered investment management companies investing exclusively in the foregoing.

"Qualified Tenant" means a tenant (i) with income on the date of initial occupancy of such tenant’s unit not exceeding that permitted by the minimum set-aside test pursuant to Code Section 42(g)(1) who leases a low-income unit in the Apartment Complex under a lease having an original term of not less than six months at a rent which satisfies the rent restriction test under Code Section 42(g)(2) and (ii) complying with any other requirements imposed by the Project Documents.

"Regulations" means the Income Tax Regulations promulgated under the Code, as amended and in effect from time to time.

"Reimbursement and Assignment Agreement" means the agreement having such title entered into between the Company and the Developer as of the Closing Date.

"Removal Event" shall have the meaning set forth in Section 8.04(a).

"Replacement Reserve" means that certain replacement reserve of the Company established and maintained pursuant to Section 6.10(p)(i) hereof.

"Rental Subsidy" shall mean the subsidy to be provided to the Company pursuant to the Section 811 Agreement.

"RHDA Loan" means the permanent non-amortizing loan from the Austin Housing Finance Corporation to the Company in the amount of $3,300,000, having a 0% interest rate and a term of 40 years.

"Section 811 Agreement" means the Section 811 Project Rental Assistance Demonstration Program Owner Participation Agreement, dated May 24, 2016, between the Company and the Texas Department of Housing and Community Affairs.

"Service" shall mean the Internal Revenue Service.

"Soft Debt Payments" means contingent payments under any Mortgage Loan that are payable only from available Cash Flow or similar measure of cash available to pay debt service.

"Special Allocations" shall have the meaning set forth in Section 4.04(i).
“Special Member” means the Person identified pursuant to Section 14.12 in its capacity as a Special Member of the Company.

“Special Tax Counsel” means Sidley Austin LLP, or such other law firm which shall be selected by the Administrative Member with the Consent of the Investor Member.

“State” means the State of Florida.

“Substituted Investor Member” means any Person who is admitted to the Company as a successor Investor Member pursuant to Section 9.01.

“Tax” or “Taxes” means any and all liabilities, losses, expenses and costs that are, or are in the nature of, taxes, fees or other governmental charges, including interest, penalties, fines and additions to tax imposed by the Service or any other taxing authority.

“Tax Matters Member” means Wolfpack LaMadrid, LLC, a Florida limited liability company, in its capacity as Administrative Member of the Company.

“Tenant Services” means those services to be provided to residents of the Apartment Complex pursuant to and in compliance with the Company’s application to the Agency for the Credits.

“Timing Adjuster Contribution” shall have the meaning set forth in Section 3.05(b)(iv).

“Timing Adjuster Distribution” shall have the meaning set forth in Section 3.05(b)(iv).

“Title Insurer” means First American Title Insurance Company.

“Title Policy” means the title policy provided to the Company from the Title Insurer.

“Uniform Act” means the Florida Limited Liability Company Act or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time as adopted by the State.

“Wastewater Pipeline Cost-Sharing Agreement” shall mean that certain Wastewater Pipeline Cost-Sharing Agreement between LaMadrid Apartments, LLC and Frate Barker Development, LLC, dated June 7, 2016.

“Withdrawal” (including the verb form “Withdraw” and the adjective form “Withdrawing” or “Withdrawn”) means, as to a Managing Member or Administrative Member, the occurrence of death, adjudication of insanity or incompetence, Event of Bankruptcy, dissolution, liquidation, or voluntary or involuntary withdrawal or retirement from the Company for any reason, including whenever a Managing Member or Administrative Member may no longer continue as a Managing Member or
Administrative Member, as applicable, by law or pursuant to any terms of this Agreement. Withdrawal shall also mean the sale, assignment, transfer or encumbrance (other than to a Lender) by a Managing Member or Administrative Member of its interest as a Managing Member or Administrative Member, as applicable. A Managing Member or Administrative Member which is a corporation, limited liability company or partnership shall be deemed to have sold, assigned, transferred or encumbered its interest as a Managing Member or Administrative Member, as applicable, in the event (as a result of one or more transactions) of any sale, assignment or other transfer (but specifically excluding any transfer occurring pursuant to the laws of descent and distribution) of a controlling interest in a corporate Managing Member or Administrative Member, as applicable, or of a controlling membership interest or manager interest in a Managing Member or Administrative Member, as applicable, that is a limited liability company or of a general partner interest in a Managing Member or Administrative Member, as applicable, which is a partnership. For purposes of this definition of Withdrawal, “controlling interest” shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. However, dissolution of any Managing Member or Administrative Member, as applicable, that is a general or limited partnership, or a limited liability company taxed as a partnership) shall not be deemed a Withdrawal unless there is a termination and winding up of the business of such partnership or limited liability company.

“Withdrawn Member” means Louis Wolfson III, who is hereby withdrawing as a Member from the Company simultaneously with the admission of the Investor Member.

2.02 Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or persons may require. Words such as “herein,” “hereinafter,” “hereof,” “hereto” and “hereunder,” when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

ARTICLE 3

CAPITAL

3.01 Capital Contribution of Managing Member and Administrative Member. The Managing Member and the Administrative Member have contributed or will contribute in cash to the Company the Capital Contribution set forth in Exhibit H. Notwithstanding anything to the contrary in this or any prior agreement, the parties hereto agree and acknowledge that the amount reflected in Exhibit H represents the value of all property and other contributions by the Managing Member and the Administrative Member to the Company as of this date (assuming cash contributions have been made in accordance with the preceding sentence) and such amount shall represent the initial Capital Account of the Managing Member and the Administrative Member in the Company.

3.02 Withdrawal of Withdrawing Member and Admission of Investor Member. As of the Admission Date of the Investor Member, the Withdrawning Member hereby withdraws
from the Company as a Member and acknowledges that he no longer has any Interest in, or rights or claims against, the Company as a Member and that he has received a return of the balance of his Capital Account. The Investor Member is hereby admitted to the Company as a Investor Member as of the Admission Date and shall have the Interest specified on Exhibit H attached hereto. No Member shall have authority to admit additional Members without the Consent of the Investor Member.

3.03 Capital Contribution of Investor Member In General. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, SECTIONS 3.03 AND 3.05, IN NO EVENT SHALL THE INVESTOR MEMBER BE OBLIGATED TO CONTRIBUTE TO THE COMPANY CAPITAL CONTRIBUTIONS THAT EXCEED, IN THE AGGREGATE, (i) THE ANTICIPATED $13,650,315 AGGREGATE CAPITAL CONTRIBUTION OF THE INVESTOR MEMBER AND (ii) THE MAXIMUM AGGREGATE INCREASE IN CAPITAL CONTRIBUTIONS OF $630,000. The Investor Member shall not be obligated to make a Capital Contribution installment to the Company prior to the satisfactory completion, in the reasonable discretion of the Investor Member, of all of the conditions to such installment.

3.03(b) Investor Member. Subject to the terms and provisions of this Agreement, including without limitation, the provisions set forth in Exhibit A and the Schedules thereto, the Investor Member shall be obligated to make Capital Contributions to the Company in four (4) installments (the “Installments”), which Installments shall be due and payable by the Investor Members as follows:

3.03(b)(i) $4,777,610 (the “Initial Installment”) shall be disbursed on a “construction draw” basis and such construction draws shall commence pursuant to and upon receipt by the Investor Member of the items set forth on Schedule A hereto;

3.03(b)(ii) $4,777,610 (the “50% Construction Completion Installment”) shall be disbursed pursuant to and upon satisfaction of all of the items on Schedule A hereto;

3.03(b)(iii) $3,185,547 (the “95% Construction Completion Installment”) shall be disbursed pursuant to and upon satisfaction of all of the items on Schedule A hereto; and

3.03(b)(iv) $909,548 (the “Final Installment”) shall be disbursed pursuant to and upon satisfaction of all of the items on Schedule B hereto.

In no event shall any Installment become due until all of the conditions for all of the prior Installments shall have been satisfied and all of such prior Installments shall have become due. In no event shall the Investor Member be obligated to provide any Installment (other than the Initial Installment payable on the Closing Date) prior to its receipt of a Capital Contribution Request (in the form provided
in Exhibit C hereto) and Company/Administrative Member Certification (in the form provided in Exhibit D hereto).

3.03(c) Disputes. If the Investor Member disputes that all or a portion of any Installment is due and payable in accordance with this Agreement, then, until there has been a Final Determination, the Investor Member shall not be required to make such Installment (or portion thereof) in dispute to the Company (and no default under Section 3.03 or 3.04 shall be deemed to occur unless and until the required payment, plus interest at 10% per annum, compounded annually, from the date of such determination was made, is not made within five (5) Business Days of such determination). The non-prevailing party on such issue shall be liable, responsible and accountable to the prevailing party for any cost or expense (including reasonable attorneys’ fees) incurred with respect to such proceeding.

3.03(d) Suspension of Investor Member’s Obligations. From and after the date of the occurrence of an Event of Bankruptcy with respect to the Company, the Managing Member, the Administrative Member or any Guarantor, the obligation of the Investor Member to make any further Capital Contributions shall be suspended until such time as (i) the Event of Bankruptcy shall have been cured in a manner approved in writing by the Investor Member or (ii) a financially responsible party acceptable to the Investor Member shall have agreed to become the Managing Member, Administrative Member or Guarantor, as applicable, and to assume and to perform all of the duties and obligations of the bankrupt Managing Member, Administrative Member or Guarantor, as applicable, under this Agreement and the Project Documents (or, with respect to a new Guarantor, all duties and obligations under any applicable Guaranty).

3.03(e) Credit Excess. If at any time it is determined (based on receipt by the Investor Member of Form(s) 8609 and a written certification from both the Administrative Member and the Accountants) that the Actual Aggregate Credit Amount exceeds the Projected Aggregate Credit Amount (the amount of any such excess being hereinafter referred to as the “Credit Excess”), then there shall be an increase in the Investor Member’s Capital Contribution (payable upon satisfaction of the conditions and requirements described in this Section 3.03) in an amount equal to the lesser of (a) $500,000 or (b) the product of (i) the Credit Excess and (ii) $1.02. Any such increase in the Investor Member’s Capital Contribution shall be payable at the time of the Final Installment noted above or, if later, five Business Days after the Investor Member’s receipt of a Capital Contribution Request and Company/Administrative Member Certification; provided, however, no increased Capital Contribution shall be owed by the Investor Member pursuant to this paragraph unless the amount of such adjustment exceeds $10,000. The amount of increased Capital Contribution shall be used (i) to pay Costs of Improvements with respect to the improvements giving rise to such Credit Excess, and then (ii) shall be distributed pursuant to Section 4.02(a) as if it were Cash Flow.

3.03(f) First Year Credit Excess. If the Investor Member is allocated more than $687,944 of Credits by the Company in 2018 (other than to the extent attributable to any Credit Excess) (such difference being hereinafter referred to as the “First Year Credit Excess”), then there shall be an increase in the Investor Member’s Capital Contribution (payable upon the funding of the Final Installment), in an amount equal to the lesser of (a)
$130,000, or (b) the product of (i) $1.02 and (ii) the difference between (A) the First Year Credit Excess, and (B) the present value as of December 31, 2018 of receiving an amount equal to the First Year Credit Excess on December 31, 2028. The foregoing present value calculations shall be made using a 6% discount rate. The amount of First Year Credit Excess shall be confirmed by the appropriate year’s Company information and tax returns, and the lease up schedule used in calculating the First Year Credit Excess shall be subject to confirmation by the Investor Member. Any Capital Contribution from the Investor Member payable pursuant to this Section 3.03(f) shall first be reduced by the amount of any outstanding obligation of any Administrative Member, Managing Member, and/or Guarantor under this Agreement and/or the Guaranty, respectively, and then shall be added to the Final Installment. To the extent such funds are added to the Final Installment, such funds shall be applied first to the payment of the Developer Loan and then, only to the extent funds remain, in accordance with Section 4.02(a).

3.03(g) Intentionally Omitted.

3.03(h) Maximum Upward Timing Adjusters. Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Investor Member’s Capital Contributions increase by more than $130,000 as a result of the implementation of Sections 3.03(f) and (g).

3.03(i) Security Interest. Payments of the Capital Contribution Installments shall be secured by a security interest in the Investor Member’s Interest granted to the Company upon the admission of the Investor Member. The Company’s security interest in the Investor Member’s Interest may not be pledged or assigned by the Company to any Person other than a Lender of a Mortgage Loan with respect to the Apartment Complex. In connection with the grant to the Company by the Investor Member of a security interest in the Investor Member’s Interest, the Investor Member authorizes the Company to file a financing statement (the “Form UCC-1”) which describes the security interest of the secured party in the Investor Member’s Interest. The Form UCC-1 may be filed by the secured party in the state of formation of the Investor Member in order to perfect the interest of the secured party in the collateral and protect the secured party against claims asserted by third parties against the Investor Member. At such time as the Investor Member has fully paid its required Capital Contributions to the Company, such security interest of the Company shall be released and the Administrative Member shall cause the Partnership to file such releases as are necessary to terminate any financing statements or other documents filed with respect to such security interest.

3.03(j) No Obligatory Additional Capital Contributions. Except as provided in the Act or in Section 4.03, after its Capital Contribution shall be fully paid hereunder, no Investor Member shall be required to make any additional Capital Contribution to the Company or be liable for any debts, liabilities, contracts or obligations of the Company.

3.03(k) Option to Fund Member/Guarantor Defaults. Notwithstanding anything to the contrary herein, the Investor Member shall have the right, in its sole and absolute discretion, upon five (5) days written notice and opportunity to cure given to the
Managing Member or Administrative Member, as applicable (unless failure to fund during such five day notice and cure period could adversely affect the Company as determined by the Investor Member in its reasonable discretion), to fund any failure by the Managing Member, the Administrative Member or the Guarantor to meet its obligations under this Agreement or the Guaranty or to fund any other debts, liabilities, contracts or obligations of the Company. Any such funding by the Investor Member shall (i) constitute a loan to the Company with interest at the rate of 10% per annum, compounded annually and repayable from Cash Flow or Net Proceeds (or liquidation proceeds) prior to any distributions or payments under Sections 4.02(a) or 4.02(b) and (ii) not constitute a waiver by the Investor Member of any of its rights or remedies under this Agreement, the Guaranty or any other agreement.

3.04 Default. Investor Member Default. If the Investor Member does not pay an Installment when due and payable pursuant to Section 3.03, then (subject to the provisions of Section 3.03(c) in the case of a dispute as to whether all or part of an Installment is due and payable) it will be deemed to be in default under this section and interest on any unpaid amount shall accrue, from the date on which such Installment was due and payable to the date on which such default is cured as provided below, at the lesser of (i) 10% per annum, compounded monthly, or (ii) the maximum interest rate permitted by law.

3.04(b) Notice of Default; Right to Cure. The Administrative Member shall promptly give notice of a default to the defaulting Investor Member. A default may be cured by payment to the Company of the Installment (and any accrued interest) due within 30 days of receipt of the notice of default.

3.04(c) Company's Exercise of Rights. In the event that the defaulting Investor Member does not cure any default described in this Section 3.04, then the Company may, after providing to the defaulting Investor Member the notice of the default referred to in Section 3.04(b) and the cure period provided in Section 3.04(b) and any notice required by applicable law, exercise its rights with respect to the security interest granted in the defaulting Investor Member's Interest and sell such Interest to a third party (including an existing Member) by public or private sale at whatever price and on whatever terms are commercially reasonable. Upon such sale of a defaulting Investor Member's Interest, the Administrative Member may admit the purchaser of such Interest as a substituted Investor Member. Upon such an admission, the defaulting Investor Member shall cease to be an Investor Member but shall continue to be liable to the Company if and to the extent that the proceeds of sale of the defaulting Investor Member's Interest are less than the sum of (i) the unpaid balance of all amounts due at whatever time from the defaulting Investor Member and (ii) all reasonable collection and sales expenses incurred by the Company or the Administrative Member, including fees and disbursements of counsel. If the proceeds of such sale exceed the amounts described in clauses (i) and (ii) of the immediately prior sentence, such excess shall be paid to the defaulting Investor Member.

3.05 Credit Adjuster Distributions to the Investor Member.
3.05(a) Prior to Credit Determination Date. If at any time prior to the Credit Determination Date, but in no event prior to an Accountants’ Determination with respect to the year the Apartment Complex is placed in service, the Initial Aggregate Credit Amount is determined to be less than Projected Aggregate Credit Amount (the amount of such shortfall being referred to herein as a “Credit Shortfall”), the amount of any unpaid Installments of the Investor Member’s Capital Contributions shall be reduced by an amount equal to the product of (i) the Credit Shortfall and (ii) $1.02 (the “Credit Shortfall Adjustment Amount”), with any such reduction to be applied to the next succeeding Installments in the order they are due. If the amount of the Credit Shortfall Adjustment Amount exceeds the amount of the remaining Installments, the Administrative Member shall contribute the amount of such shortfall to the capital of the Company (any such Capital Contribution being referred to herein as a “Credit Adjuster Contribution”). The Company immediately shall distribute the proceeds of any such Credit Adjuster Contribution to the Investor Member (any such distribution being referred to herein as a “Credit Adjuster Distribution”). Any contributions or distributions required to be made pursuant to the provisions of this Section 3.05(a) shall be made within 10 calendar days following the earlier of (i) the date on which the Accountants deliver the final version of the Company’s Tax Return for the year of Construction Completion to the Administrative Member (ii) if applicable, a Final Determination relating to a shortfall in Eligible Basis that confirms the existence of a Credit Shortfall, or (iii) December 31, 2019. No contributions or distributions shall be required to be made pursuant to the provisions of this Section 3.05(a) merely as a result of unanticipated delays by the Company in leasing Apartment Complex units to Qualified Tenants, provided, however, that any such delays in leasing could require Current Adjuster Contributions, Additional Adjuster Contributions and/or Timing Adjuster Contributions under Section 3.05(b) below, and this Section 3.05(a) shall apply only if the Initial Aggregate Credit Amount is determined to be less than the Projected Aggregate Credit Amount.

3.05(b) After Credit Determination Date.

3.05(b)(i) Current Adjusters. If at any time on or after the Credit Determination Date, (A) there is an Accountants’ Determination or a Final Determination that all or a portion of the Credits expected to be claimed with respect to such current Company Taxable Year and/or all or a portion of the Credits claimed with respect to a prior Company Taxable Year is disallowed or is subject to recapture pursuant to the provisions of Section 42(j) of the Code for a reason other than a transfer of the Investor Member’s Interest in the Company, or if the amount of any Credit allocated annually in 2018 through 2028 to the Investor Member in a given year is less than the Projected Annual Credit Amount for such year(s), the Administrative Member shall contribute to the capital of the Company within 10 calendar days following the earlier of the Accountants’ Determination or the Final Determination, as the case may be, an amount that, on an After-Tax Basis, is equal to the sum of (A) the amount of Credit that was disallowed, unavailable, or recaptured or allocated in an amount less than the Projected Annual Credit Amount with respect to the current Company Taxable Year and all prior Company Taxable Years, plus (B) the amount of any interest and penalties imposed by the Service solely as a result of the disallowance,
unavailability, or recapture of Credit with respect to the Company (any such Capital Contribution being referred to herein as a “Current Adjuster Contribution”). The Company immediately shall distribute the proceeds of any such Current Adjuster Contribution to the Investor Member (any such distribution being referred to herein as a “Current Adjuster Distribution”).

3.05(b)(ii) Additional Adjusters. In the event of an Accountants’ Determination or Final Determination on or after the Credit Determination Date that the Actual Aggregate Credit Amount is less than the Projected Aggregate Credit Amount due to a shortfall or reduction in the Eligible Basis of the Apartment Complex and that the Credits allocable to the Investor Member also will be reduced or disallowed in all subsequent years of the Credit Period, the Administrative Member shall contribute an additional amount to the Company (i.e., in addition to the Current Adjuster Contribution made pursuant to the provisions of Section 3.05(b)(i)), within 10 calendar days following the earlier of the Accountants’ Determination or the Final Determination, as the case may be, on an After-Tax Basis equal to the product of (A) $1.02 multiplied by (B) an amount equal to the difference between the Projected Aggregate Credit Amount for all subsequent years of the Credit Period and the Actual Aggregate Credit Amount for all such subsequent years of the Credit Period as a result of such Final Determination or Accountants’ Determination (any such Capital Contribution being referred to herein as an “Additional Adjuster Contribution”). The Company immediately shall distribute the proceeds of any such Additional Adjuster Contribution to the Investor Member (any such distribution being referred to herein as an “Additional Adjuster Distribution”).

3.05(b)(iii) Recapture or Disallowance Other Than Due to Shortfall in Eligible Basis. Notwithstanding the foregoing, in the event of an Accountants’ Determination or Final Determination that all or a portion of the Credits previously allocated to the Investor Member on a Company Tax Return is subject to recapture or disallowance for a reason other than a shortfall in Eligible Basis, only the Current Adjuster Distribution will be due in the year of such Accountants’ Determination or Final Determination (referred to herein as a “Determination Year”), and no Additional Adjuster Distribution with respect to future years of the Credit Period will be due and payable in the Determination Year; instead, the amount of Credits allocable to the Investor Member during each subsequent Company Taxable Year during the Credit Period shall be determined upon the close of each such subsequent Company Taxable Year and if, for any such subsequent Company Taxable Year, the Annual Credit Amount is determined to be less than the Projected Annual Credit Amount, the Administrative Member shall (i) make a Current Adjuster Contribution to the Company within 10 calendar days following the earlier of the Accountants’ Determination or Final Determination in an amount that, on an After-Tax Basis, is equal to the amount by which the Annual Credit Amount for such subsequent Company Taxable Year is less than the Projected Annual Credit Amount, and the Company immediately shall make a corresponding Current Adjuster Distribution to Investor Member.
3.05(b)(iv) **First Year Shortfall Adjuster.** In addition to any adjustments or payments otherwise owed pursuant to Section 3.05, if the amount of Credit properly allocated in 2018 to the Investor Member is less than the Projected Annual Credit Amount for such year (the amount of such differential shall hereinafter be referred to as "**First Year Shortfall**"), then the Administrative Member shall make a Capital Contribution to the Company, (a "**Timing Adjuster Contribution**"), within 10 calendar days following the earlier of (i) the date on which the Accountants deliver the final version of the 2018 Company Tax Return to the Administrative Member or (ii) a Final Determination with respect to such First Year Shortfall, in an amount equal to, on an After-Tax Basis, the difference between (a) the First Year Shortfall and (b) the present value as of December 31, 2018 of receiving an amount equal to the First Year Shortfall on December 31, 2028, using an 6% discount rate, which the Company immediately shall distribute to the Investor Member, (a "**Timing Adjuster Distribution**").

3.05(b)(v) **Intentionally Omitted.**

3.05(c) **Recourse Obligations of Administrative Member.** Any Adjuster Contribution required to be made by the Administrative Member pursuant to Section 3.05 shall constitute the recourse obligation of the Administrative Member. Adjuster Distributions that are solely attributable to a Change in Law shall be treated as current distributions of cash by the Company to the Investor Member in accordance with the provisions of Section 731 of the Code. To the extent that any Adjuster Contributions or Adjuster Distributions required to be made under Section 3.05 are not made when due, the unpaid amount thereof shall bear interest at a rate equal to the lesser of (i) 10% per annum, compounded annually, or (ii) the maximum interest rate permitted by law.

3.05(d) **Reduction In Investor Member’s Capital Contributions.** Without limiting the payment obligations set forth in this Section 3.05, the parties hereto agree that Adjuster Distributions owed to the Investor Member (or determined by the Accountants to likely be owed) will be satisfied first by reducing the next succeeding Capital Contributions of the Investor Member in satisfaction of such liability and then by an actual distribution funded by a cash contribution by the Administrative Member to the Company.

3.05(e) **Limits on Liability.** Notwithstanding anything to the contrary in this Agreement:

3.05(e)(i) the Administrative Member shall not be responsible for the Investor Member’s inability to fully utilize Credits allocated to it;

3.05(e)(ii) no Adjuster Contributions shall be owed pursuant to Section 3.05 (other than Section 3.05(b)(iv) and (v)) unless the amount of such payment, when combined with all prior Adjuster Contributions that, but for this sentence would have been required, exceeds $10,000;
3.05(e)(iii) the Administrative Member shall not be responsible for any recapture of Credits arising solely as a result of the Investor Member’s assignment or other Disposition of its Interest;

3.05(e)(iv) the Administrative Member shall have no obligation to make Adjuster Contributions with respect to any Company Taxable Year following the fifth (5th) full year of property operations as to which the Investor Member has received copies of the Company’s tax returns; for purposes of this Section 3.05(e)(iv), the first year in which the Investor Member is allocated Credits in an amount not less than 99.99% of the Credits for which the Company is determined to be eligible based upon the final Cost Certification and Forms 8609 for each Building shall constitute the first full year of property operations;

3.05(e)(v) subsequent to the expiration of the period described in Subsection 3.05(e)(iv), Adjuster Distributions that would otherwise have been required but for the application of such Subsection 3.05(e)(iv) will be payable to the Investor Member from available Cash Flow pursuant to Section 4.02(a) and from Net Proceeds pursuant to Section 4.02(b).

3.05(f) Any Adjuster Contribution the Administrative Member would be obligated to make but for the application of Section 3.05(e)(iv) shall hereinafter be referred to as an "Excess Adjuster Contribution". The Administrative Member shall have the right, but not the obligation, to make Excess Adjuster Contributions. Notwithstanding anything to the contrary set forth in this Section 3.05, the Investor Member shall have grounds to automatically remove the Administrative Member from the Company if either (i) the Administrative Member fails to make an Excess Adjuster Contribution within 30 days after its receipt from the Investor Member of written notice that such Excess Adjuster Contribution exists, or (ii) the Company fails to make an Adjuster Distribution to the Investor Member with the proceeds of the Excess Adjuster Contribution within five days of its receipt of such Excess Adjuster Contribution.

3.05(g) In addition, notwithstanding anything to the contrary herein, to the extent any portion of an Adjuster Distribution owed to the Investor Member is solely attributable to a Change in Law, then such portion shall only be payable to the Investor Member from available Cash Flow pursuant to Section 4.02(a) or from Net Proceeds pursuant to Section 4.02(b). The Administrative Member shall be required to take reasonable steps, at the Investor Member’s expense, to attempt to minimize the adverse effect of any Change In Law to ensure the continued availability of the Credits and the Members’ eligibility therefor.

3.06 No Interest on Capital Contribution; Return of Capital. Except as provided in Section 3.05, no Member shall be entitled to receive any interest on its Capital Contribution. Except as provided in Section 3.05 or as otherwise specifically provided elsewhere herein, no Member shall have the right to withdraw its Capital Contribution or to demand and receive property of the Company in return for its Capital Contribution, nor shall any Investor Member have any right to demand or receive property other than money upon dissolution and termination of the Company. Except as provided in Sections 3.05 and 6.05 or in the Guaranty, each Member
shall look solely to the assets of the Company for all returns of capital and distributions and allocations of Profits or Losses and shall have no recourse therefor (upon dissolution or otherwise) against any other Member.

3.07 No Third-party Beneficiary. None of the provisions of this Agreement, including, without limitation, Sections 3.04, 3.05 and 6.12, shall be construed as existing for the benefit of any creditor of the Company or for the benefit of any creditor of any of the Members, and no such provision shall be enforceable by a party not a signatory to this Agreement, except where granting of a security interest or pledge has been made by the Company.

3.08 Investor Member Put Option. The Investor Member shall have the option to require the Administrative Member to purchase the Interests of the Investor Member and the Special Member at any time after the last expiring Compliance Period applicable to any Building, for consideration of $100, to be divided between the Investor Member and the Special Member as they shall agree.

ARTICLE 4

PROFITS AND LOSSES; DISTRIBUTIONS; CAPITAL ACCOUNTS

4.01 Profits, Losses and Credits. Subject to Section 4.04, all Profits and Losses incurred or accrued from the Admission Date through the date of Construction Completion, or, if earlier, the date of placement in service of any residential unit in the Apartment Complex, other than those arising from a Capital Event, shall be allocated 0.01% to the Investor Member, 99.983% to the Administrative Member and 0.007% to the Managing Member. Subject to Section 4.04, all Profits, Losses and Credits incurred or accrued after Construction Completion is attained (or, if earlier, the date of placement in service of any residential unit in the Apartment Complex), other than those arising from a Capital Event, shall be allocated among the Members as follows:

As to Profits:

4.01(a)(i) First, to the Members until the amount allocated, and previously allocated, with respect to each Member under this Section 4.01(a)(i) equals the amount distributed, and previously distributed, with respect to such Member (in its capacity as a Member) pursuant to Section 4.02(a) and Section 4.02(b); and

4.01(a)(ii) Then, any remaining Profits shall be allocated 99.99% to Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

As to Losses:

4.01(a)(iii) Any Losses and Credits shall be allocated 99.99% to Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.
Subject to Section 4.04, all Profits and Losses arising from a Capital Event shall be allocated among the Members as follows:

As to Profits:

4.01(b)(i) First, an amount of Profits shall be allocated to the Members who have negative Capital Account balances (prior to taking into account the Capital Event) in proportion to the amount of such balances until all such Capital Accounts shall have a zero balance;

4.01(b)(ii) Then, an amount of Profits shall be allocated to the Investor Member until its Capital Account is, on an After-Tax Basis, equal to the Taxes owed by the Investor Member with respect to its share of Profits allocated pursuant to Sections 4.01(b)(i); and

4.01(b)(iii) Then, thereafter, an amount of Profits shall be allocated to each of the Members until the positive balance in the Capital Account of each Member equals the amount of cash which would be distributed to such Member if such Profits were cash available to be distributed to such Member (in its capacity as a Member) in accordance with the provisions of Section 4.02(b).

As to Losses:

4.01(b)(iv) First, an amount of Losses equal to the aggregate positive balances (if any) in the Capital Accounts of all Members then having positive balance Capital Accounts shall be allocated to such Members in proportion to their positive Capital Account balances until all such Capital Accounts shall have a zero balance; provided, however, that if the amount of Losses to be allocated is less than the sum of the positive balances in the Capital Accounts of those Members having positive balances in their Capital Accounts, then such Losses shall be allocated first to any Administrative Member with a positive Capital Account until its Capital Account has a zero balance, with any remainder allocated to the Investor Member until its Capital Account has a zero balance; and

4.01(b)(v) Then, the balance of any such Losses shall be allocated 99.99% to the Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

4.01(b)(vi) Notwithstanding anything to the contrary in this Section 4.01(b), the allocation of Profits and Losses arising from a Capital Event (including allocations of gross profits and gross losses) shall, to the maximum extent allowable under the Code and the Regulations, be allocated among the Managing Member, the Administrative Member and the Investor Member so as to cause the Capital Account of each of them to equal the amount distributable to each of them under Section 4.02(b).

4.02 Cash Distributions Prior to Dissolution.
4.02(a) **Cash Flow.** Subject to all applicable limitations and restrictions including those set forth in the documents governing the Construction Loan, from the Closing Date and until the earlier of (i) 30 months thereafter or (ii) Permanent Loan Conversion, 100% of Cash Flow shall be applied first to payment of the Developer Loan, and after payment in full of the Developer Loan, shall be payable to the Administrative Member and the Managing Member, on a prorata basis, with 95% to the Administrative Member and 5% to the Managing Member, as an incentive leasing fee (provided, however, no such fee shall be payable in any event following Permanent Loan Closing); thereafter, subject to all applicable limitations and restrictions including those set forth in the documents governing the First Mortgage Loan, provided that all reserves have been funded and maintained as required by Section 6.10, Cash Flow, if available with respect to any Company Accounting Year, shall be applied or distributed annually, within 60 days after the end of the Company Accounting Year (but in no event earlier than the filing of a Company Tax Return for such year):

4.02(a)(i) First, subsequent to the expiration of the five-year period described in Section 3.05(c)(iv), Adjuster Distributions that would otherwise have been required to be made to the Investor Member but for the application of such Section 3.05(c)(iv) shall be payable to the Investor Member;

4.02(a)(ii) Then, to the Investor Member until the total amount received pursuant to this clause and Section 4.02(b)(ii) equals the amount of any Credit Adjuster Distributions, Current Adjuster Distributions, Additional Adjuster Distributions and Timing Adjuster Distributions payable under Section 3.05 that is solely attributable to a Change in Law, plus interest on such amount from the due date until paid pursuant to this clause at the rate of 10% per annum, compounded annually;

4.02(a)(iii) Then, to the payment of the Asset Management Fee until the total amount of payments pursuant to this clause and Section 4.02(b)(iv) (including payments in all prior years) equals $8,500 per year (commencing with respect to calendar year 2019) or portion thereof and increasing 3% per year thereafter;

4.02(a)(iv) Then, to the payment of any amounts then owed with respect to the Developer Loan;

4.02(a)(v) Then, to the payment of any Operating Deficit Loans, with any such payments to be applied first to accrued but unpaid interest and then to principal;

4.02(a)(vi) Then, 10% of the remaining balance, if any, to the Investor Member;

4.02(a)(vii) Then, to the payment of the Incentive Management Fee due pursuant to Section 7.03; and
4.02(a)(viii) Then, the balance shall be distributed 95% to the Administrative Member, and 5% to the Managing Member.

4.02(b) **Distributions of Net Proceeds.** Prior to dissolution of the Company, if the Administrative Member shall determine from time to time that Net Proceeds are available for distribution from a Capital Event, such Net Proceeds shall be applied or distributed, subject to any restrictions imposed pursuant to a Mortgage Loan, as follows:

4.02(b)(i) First, to fund reserves for contingent liabilities to the extent deemed reasonable by the Administrative Member and Consented to by the Investor Member;

4.02(b)(ii) Then, to the Investor Member for the payment of amounts arising pursuant to Section 4.02(a)(i) and Section 4.02(a)(ii);

4.02(b)(iii) Then, to fund reserves for contingent liabilities to the extent deemed reasonable by the Administrative Member and Consented to by the Investor Member;

4.02(b)(iv) Then, to the payment of amounts then owed with respect to the Developer Loan;

4.02(b)(v) Then, to the payment of amounts then owed for the current and accrued Asset Management Fees;

4.02(b)(vi) Then, to the Investor Member in an amount equal to, on an After-Tax Basis, the Taxes (if any) owed by it as a result of the Capital Event pursuant to Sections 4.01(b)(i) and (ii);

4.02(b)(vii) Then, to the payment of any Operating Deficit Loans, with any such payments to be applied first to accrued but unpaid interest and then to principal; and

4.02(b)(viii) Then, the balance 85.5% to the Administrative Member, 4.5% to the Managing Member and 10% to the Investor Member.

4.02(c) **Special Adjuster Provisions.** If at any time the Administrative Member fails to make any Adjuster Contribution pursuant to Section 3.05 and/or the Company fails to make any Adjuster Distribution to the Investor Member when due in accordance with the provisions of Section 3.05, any Cash Flow or Net Proceeds otherwise distributable or payable to the Administrative Member or the Developer or any Affiliate of any of such Persons pursuant to the provisions of Sections 4.02(a) or 4.02(b) shall be distributed to the Investor Member and treated as having been (i) distributed or paid by the Company to the applicable Person, as the case may be, (ii) contributed to the Company by the Administrative Member (or other applicable Person in the name of and on behalf of the Administrative Member) as an Adjuster Contribution as appropriate, and (iii) distributed by the Company to the Investor Member as an Adjuster Distribution, as appropriate.
4.02(d) **Pending Removal Events.** Notwithstanding anything to the contrary set forth in this Agreement, the Company shall have no obligation to make a distribution to the Administrative Member or the Managing Member, or to pay any fee or other amount due the Administrative Member or the Managing Member or any Affiliate of either such Member, during the pendency of any Removal Event as to which the Administrative Member or Managing Member, as applicable, has received written notice from the Investor Member.

4.03 **Termination Distributions.**

4.03(a) Upon dissolution and termination of the Company, after payment of, or adequate provision for, the debts and obligations of the Company, including fees and interest owed to the Members, the payment of which pursuant to this Section shall not result in a charge to the recipient’s Capital Account and the parties hereto agree that such amounts shall be paid prior to the payment of any debts, obligations and/or fees owed to the Administrative Member or any Affiliate thereof, the remaining assets of the Company (or the proceeds of sales or other dispositions in liquidation of the Company Assets, as may be determined by the remaining or surviving Administrative Member) shall be distributed pro rata to the Members in accordance with their respective positive Capital Account balances after taking into account all Capital Account adjustments for the year. Upon the dissolution and termination of the Company, no Investor Member shall be obligated to restore any deficit balance in its Capital Account. The parties hereto agree that, upon giving written notice to the Administrative Member, the Investor Member shall have the right (exercisable in its sole discretion) at any time, to create a deficit restoration obligation as to itself, and/or to extend the years in which it may be obligated to restore any deficit balance in its Capital Account. Deficit Capital Account restoration payments shall be made by the end of such taxable year (or, if later, within 90 days after the date of such liquidation) and shall, upon liquidation of the Company, be paid, first, to recourse creditors of the Company and, thereafter, distributed to other Members in accordance with the positive balances in their Capital Accounts. Liquidation distributions shall be made by the end of the taxable year in which the liquidation occurs or, if later, within 90 days after the date of liquidation.

4.03(b) Notwithstanding anything to the contrary contained herein, any fee payments, loan repayments, return of capital or distributions otherwise payable or distributable to the Developer, the Administrative Member, or any Affiliate thereof under Section 4.02 and Section 4.03(a) shall be paid to the Investor Member to the extent of any unpaid Credit Adjuster Distributions, Current Adjuster Distributions, Additional Adjuster Distributions, and Timing Adjuster Distributions (including accrued interest thereon) under Section 3.05, and shall be treated as being first (i) paid or distributed to the Developer, the Administrative Member, or such Affiliate, as the case may be, (ii) contributed by the Administrative Member to the Company, (or by the Developer or such Affiliate in the name of and on behalf of the Administrative Member), and (iii) distributed by the Company to the Investor Member.

4.04 **Special Allocations.** Notwithstanding anything to the contrary contained in this Agreement:
4.04(a) In the event that there is a net decrease in Company minimum gain (as defined in Regulation § 1.704-2(d)) during a fiscal year or period, all Members shall be allocated, before any other allocation is made of the Company items for such year or period, items of income and gain for such year or period (and, if necessary, subsequent years) in the manner and to the extent required by Regulation § 1.704-2(f). The allocations contained in this Section 4.04(a) are intended to be a "minimum gain chargeback" within the meaning of Regulation § 1.704-2(f) and shall be interpreted consistently therewith.

4.04(b) Subject to the provisions of paragraph (a) of this Section 4.04, (i) any partner nonrecourse deduction (as defined in Regulation § 1.704-2(i)(2)) shall be allocated to the Members in the manner specified in Regulation § 1.704-2(i) and (ii) if there is a net decrease during a taxable year of the Company in the minimum gain attributable to partner nonrecourse debt, then items of Company income and gain for such year (and, if necessary, for subsequent years) shall be allocated to the Members in the manner and to the extent required by Regulation § 1.704-2(i)(4). Additionally, any nonrecourse deductions, (as such term is defined in Treasury Regulations Section 1.704-2(b)(1)), of the Company shall be allocated 99.99% to the Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

4.04(c) Subject to the provisions of paragraphs (a) and (b) of this Section 4.04, in the event that a Member unexpectedly receives any adjustments, allocations or distributions described in Regulation § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) as a result of which the negative Capital Account balance of the Member exceeds the sum of such Member’s share of minimum gain and the amount of its negative Capital Account that it has agreed to restore or is deemed to be obligated to restore pursuant to Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5), items of Company income and gain shall be specially allocated to such Member in the manner and to the extent required by such Regulation. This Section 4.04(c) is intended to be a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

4.04(d) 4.04(d)(i) If the balance in the Capital Account of a Member is less than zero, or will become less than zero as a result of such allocation, net loss shall be allocated to such Member only to the extent that (y) the sum of the Minimum Gain of such Member (determined in accordance with the provisions of § 1.704-2(g) of the Regulations) plus the amount of its negative Capital Account that such Member has agreed to restore exceeds (z) the deficit balance in the Capital Account of such Member (determined at the end of the Company Taxable Year to which the allocation relates).

4.04(d)(ii) Any net loss not allocable to a Member as a result of the application of Section 4.04(d)(i) shall be allocated to the Members with positive Capital Account balances in proportion to (and to the extent of) such positive balances and thereafter in accordance with their interests in the Company, excluding any additional Administrative Member or Managing Member admitted pursuant to Section 8.04.

4.04(d)(iii) If, during any year, the Company incurs a Loss in excess of the Loss anticipated for such year and such excess Loss arises from expenses paid
or to be paid with the proceeds of Capital Contributions or Operating Deficit Loans from an Administrative Member, from withdrawals from reserves, or from amounts paid by a Guarantor pursuant to the Guaranty, then, at the end of each such year, the Investor Member's Capital Account and allocable share of Minimum Gain at the end of each year from the date of calculation through the end of the Credit Period shall be calculated. If such calculation indicates that the Investor Member would have an adjusted Capital Account deficit in any such year in the Credit Period in excess of the sum of the Investor Member's share of Minimum Gain (determined in accordance with the provisions of Regulation § 1.704-2(g)) plus the amount of its negative Capital Account that the Investor Member has agreed to restore, then the portion of the Loss derived from the expenses described in the first sentence of this Section 4.04(d)(iii) (but not depreciation) shall be allocated to the Administrative Member to extent of the projected excess adjusted Capital Account deficit of the Investor Member; provided that the Administrative Member shall be specially allocated an amount of gross income (before Profits and Losses are computed under Section 4.01(a)) equal to the amount of any principal repayment in any year of an Operating Deficit Loan or any repayment or return of an Administrative Member Capital Contribution (but in no event shall the aggregate amount of gross income allocated pursuant to this clause exceed the aggregate amount of deductions or losses allocated to the Administrative Member under this Section 4.04(d)(iii)).

4.04(e) In the event that, at any time or from time to time after the effective date of this Agreement, the Gross Asset Values of the Company Assets are adjusted in accordance with this Agreement, then, notwithstanding the provisions of Section 4.01(b), the Members' allocable shares of depreciation, depletion, amortization and gain or loss, as computed for tax purposes, with respect to the Company property, must be determined so as to take into account the variation between the adjusted tax basis of the Company property and the book value, in the same manner as under I.R.C. § 704(c) and the applicable Regulations thereunder. Allocations pursuant to this paragraph (e) shall be solely for purposes of federal, state and local taxes and shall not affect or in any way be taken into account in computing a Member's Capital Account.

4.04(f) If an Interest is transferred or assigned during a Company Accounting Year, that part of the tax incidents allocated pursuant to this Agreement with respect to the Interest so transferred shall, in the discretion of the Administrative Member (after consulting with the Investor Member), either (i) be based on segmentation of the taxable year between the transferor and the transferee using the interim closing of the books or any other reasonable method or (ii) be allocated between the transferor and the transferee in proportion to the number of days in such taxable year during which each owned such Interest, as disclosed on the Company's books and records.

4.04(g) Any depreciation recapture recognized pursuant to I.R.C. Sections 1245 and 1250 and Credit recapture shall be allocated to the Members in the same proportions that the depreciation or cost recovery deductions and Credits giving rise to such recapture were allocated among such Members or their respective predecessors-in-interest. Any taxable income of the Company resulting from its receipt of debt forgiveness,
donations, contributions, grants or subsidies shall be allocated entirely to the Administrative Member.

4.04(h) In the event that there is a determination that I.R.C. § 483 or I.R.C. § 1274 (both relating to imputed interest with respect to deferred payment sales of property) is applicable to any loans between the Company and a Member or any Member’s Affiliate, or that any loan between a Member or any Member’s Affiliate and the Company is subject to I.R.C. § 7872 (relating to imputed interest with respect to below-market interest rate loans), any income or deduction attributable to interest on such a loan (whether stated or unstated) shall be allocated solely to such Member.

4.04(i) It is the intent of the Members that each Member’s allocable share of income, gains, losses, deductions or credits (or items thereof) (“Company Items”) shall be allocated in accordance with this Article 4 to the fullest extent permitted by I.R.C. Sections 704(b) and 704(c). In order to preserve and protect the allocations provided for in this Article 4, without adversely affecting the amounts distributable upon termination of the Company, the Administrative Member, with the review and concurrence of the Company’s Accountants, is authorized and directed, in its reasonable judgment, to allocate Company Items arising in any year differently than otherwise provided for in this Article 4 if, and to the extent that, the allocations otherwise provided under this Article 4 would not be permissible under I.R.C. Sections 704(b) and/or 704(c). Any allocation made pursuant to this Section 4.04(i) shall be deemed to be a complete substitute for any allocation otherwise provided for in this Article 4, and no amendment of this Agreement or approval of any Member shall be required with respect thereto and each Member shall, for all purposes and in all respects, be deemed to have approved any such allocation. The allocations set forth in this Section 4.04 (the “Special Allocations”) are intended to comply with certain requirements of the Section 704 Regulations. The Special Allocations may not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Administrative Member is hereby authorized and directed to divide other allocations of income, gain, loss and deductions among the Members so as to prevent the Special Allocations from distorting the manner in which Company distributions will be divided among the Members on dissolution of the Company. In general, the Members anticipate that this will be accomplished by specially allocating items of income, gain, loss, and deduction among the Members so that the net amount of the Special Allocations and such special allocations to each such Member is zero. In the event that in any year a Special Allocation alters the allocation of tax items to the Members, to the extent possible, depreciation deductions shall nevertheless be allocated 99.99% to the Investor Member, 0.003% to the Administrative Member and 0.007% to the Managing Member.

4.04(j) Notwithstanding anything to the contrary contained herein, the Managing Member and the Administrative Member, collectively, shall be allocated not less than 0.01% of each Company Item at all times during the existence of the Company. In the event that there is no allocation of a material Company Item to the Managing Member and/or the Administrative Member hereunder or if the amount of any material Company Item allocable to the Managing Member and the Administrative Member hereunder, collectively, shall not equal 0.01% of the aggregate amount allocable to all the Members without giving effect to this provision, then the amount of such Company Item(s) otherwise
allocable to the Investor Member hereunder shall be correspondingly reduced in order to assure the Managing Member and the Administrative Member of their collective 0.01% share. Any such reduction shall be applied to reduce the shares of all classes of Investor Members in proportion to their respective Interests.

4.04(k) The Members agree that, except as otherwise determined by the Investor Member pursuant to this Section 4.04(k), the Members’ interests in Company profits for purposes of determining such Members’ shares of the excess nonrecourse liabilities of the Company under the Treasury Regulations § 1.752-3(a)(3) shall be determined by reference to the Members’ allocable share of Profits from a Capital Event under Section 4.01(b); provided, however, that the Members agree that, upon giving written notice to the Managing Member and the Administrative Member, the Investor Member shall have the right at any time to cause the Company to select an alternative method for allocating the excess nonrecourse liabilities of the Company under Treasury Regulation § 1.752-3(a)(3) if the Investor Member reasonably determines that such alternative method would (or could reasonably be expected to) avoid or mitigate any tax or economic detriment to the Investor Member or its affiliates (as a result of an actual or pending change in law, change in circumstances, or otherwise). Without limiting the foregoing, the Managing Member and the Administrative Member shall provide written notice to the Investor Member no later than 45 days following the close of any Company Taxable Year in which the Investor Member’s adjusted basis in its Interest is or is reasonably likely to be zero.

4.04(l) Except as otherwise provided in this Agreement, for tax purposes all items of income, gain, loss, deduction or credit shall be allocated to the Members in the same manner as are Profits and Losses.

4.05 Section 704(c) Allocations. Income, gains, losses and deductions, as determined for income tax purposes, with respect to any Company Asset contributed by a Member to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Company Asset to the Company for federal income tax purposes and its initial Gross Asset Value in accordance with I.R.C. Section 704(c) and the Regulations thereunder.

4.06 Miscellaneous Allocations.

4.06(a) If any Company expenditure treated as a deduction on its federal income tax return is disallowed as a deduction and treated as a distribution pursuant to Section 731(a) of the Code, there shall be a special allocation of gross income to the Member deemed to have received such distribution equal to the amount of such distribution.

4.06(b) Except as otherwise provided in this Article 4, Profits, Losses, Credits, gain and other tax items allocated to the Members shall be allocated among the Members in accordance with their relative Interests in the Company, as set forth in Exhibit H.

4.06(c) Except as otherwise set forth in this Agreement, any elections or other decisions relating to allocations under this Article 4 shall be made by the
Administrative Member (in its reasonable discretion), with the review and concurrence of the Company’s Accountants, in such manner as reasonably reflects the purpose and intention of this Agreement.

ARTICLE 5

COMPANY BORROWINGS

5.01 Authorization to the Administrative Member. Without otherwise limiting the right or authority of the Administrative Member under this Article 5 or Article 6 hereof, the Administrative Member is specifically authorized to execute on behalf of the Company all documents required by any Lender in connection with the construction, acquisition or financing of the Apartment Complex.

5.02 Right To Mortgage.

5.02(a) The Company has obtained or will, subject to the requirements of this Agreement, obtain financing for the Apartment Complex from the Lender and will secure the same by execution and delivery of the Mortgage. The Project Documents (other than with respect to the Construction Loan and any loans provided by the Investor Member or an Affiliate thereof) shall provide that no Person, including, but not limited to, the Company, any party holding an Interest in the Company, or any of their Affiliates, shall have any personal liability for the payment of all or any part of such Mortgage Loans, except as set forth in the Project Documents in existence as of the date hereof.

5.02(b) Subject to the requirements of this Agreement, the Administrative Member is specifically authorized to execute such documents as it reasonably deems necessary in connection with the acquisition, improvement, operation, leasing and financing of the Apartment Complex, including, without limiting the generality of the foregoing, the Project Documents and any other document required by any Lender in connection therewith.

5.03 Loans. All borrowings by the Company shall be subject to the terms of this Agreement and the Project Documents. To the extent borrowings are permitted, they may be made from any source, including any Member or an Affiliate thereof. All such loans will be nonrecourse except as provided in Section 5.02(a) unless the Consent of the Investor Member has been obtained.

5.04 Loans Amounts. Notwithstanding anything to the contrary set forth in this Article 5 or elsewhere in this Agreement, except for a Mortgage Loan requiring Soft Debt Payments only, in no event may the Administrative Member cause the Company to enter into a Mortgage Loan, other than the Construction Loan, having a principal amount in excess of an Approved Loan Amount, or convert a Mortgage Loan to its permanent phase in an amount in excess of an Approved Loan Amount. The term “Approved Loan Amount” shall mean, with respect to the amount of the First Mortgage Loan, the lesser of (a) $3,500,000 or (b) a principal amount determined at Permanent Loan Conversion that would result in an annualized Debt Service Coverage Ratio of not less than 1.15 to 1 with respect to the First Mortgage Loan, during each year of the Compliance Period based on the underwriting parameters set forth below. For
purposes of this Section 5.04, any description of indebtedness or any other provisions of the definitions of Debt Service Coverage Ratio or Effective Gross Income that are inconsistent with the underwriting parameters set forth below and/or this Section 5.04 in general shall be superseded by this Section 5.04. The underwriting parameters shall be as follows:

5.04(a) the First Mortgage Loan shall have constant monthly payments, an interest rate of no greater than 5.22%, a term of 18 years, and an amortization period of 30 years;

5.04(b) gross revenues will be calculated as follows:

5.04(b)(i) assuming revenues escalate 2.0% per year;

5.04(b)(ii) based on actual rents received from tenants in occupancy under signed leases, (as calculated by the Accountants) after giving effect to any rent concessions by spreading the amount of such concessions evenly over the term of the lease;

5.04(b)(iii) assuming a vacancy loss equal to the greater of (a) 7.0% and (b) actual vacancy;

5.04(b)(iv) assuming other income to be the lesser of $17,100 per year or actual other income;

5.04(b)(v) rents for units having rental subsidies of any kind except project based subsidies (A) provided pursuant to a written agreement for the length of the Compliance Period (excluding renewals) and (B) not subject to appropriation risk, will be assumed to be the lesser of permissible rents under the subject subsidy and permissible rents under Section 42 of the Code (without giving effect to sums received pursuant to the subject subsidy);

5.04(c) Company expenses will be calculated:

5.04(c)(i) as being the greater of actual expenses or $5,717 per unit per year, (including Replacement Reserves of $300 per unit per year); and

5.04(c)(ii) to include all required periodic contributions to reserves required by this Agreement or by any Lender; and

5.04(c)(iii) to include a management fee of 5% of effective gross income;

5.04(c)(iv) assuming expenses escalate 3% per year.

5.04(d) All determinations as to Approved Loan Amounts shall be subject to the Consent of the Investor Member.
ARTICLE 6

RIGHTS, POWERS AND OBLIGATIONS OF MEMBERS

6.01 Exercise of Management.

6.01(a) The overall management and control of the business, assets and affairs of the Company shall be vested in the Administrative Member and, subject to the specific limitations and restrictions set forth in this Article 6 and in Article 7 hereof, the Administrative Member, in extension of and not in limitation of the powers given it by law, shall have full, exclusive and complete charge of the management of the business of the Company in accordance with its purposes stated in Section 1.04. No Investor Member shall take part in the management or control of the business of the Company or have authority to bind the Company except as expressly set forth herein.

6.01(b) The Administrative Members (if at the time more than one Person constitutes the Administrative Member) shall act by vote of a majority in Interest of the Persons constituting the Administrative Members, except where otherwise specified herein.

6.01(c) Notwithstanding the foregoing provisions of this Section 6.01, in accordance with the Agency’s qualified allocation plan, the Managing Member shall Materially Participate in the control, management and direction of the Company’s business.

6.02 Powers.

6.02(a) Subject to Article 5 and Section 6.03 and the other provisions of this Agreement, the Administrative Member shall have all authority, rights and powers generally conferred by law, including the authority, rights and powers of a managing member in a limited liability company, and shall have all the authority, rights and powers which it deems necessary or appropriate to effect the purposes of the Company, including, without limitation, the following:

6.02(a)(i) To employ, contract and deal with, from time to time, any Persons, including any Member or Affiliate of a Member (subject to the requirements of Section 6.07), in connection with the management and operation of the Company business, on such terms as the Administrative Member shall reasonably determine (subject to the requirement that the Consent of the Investor Member must be obtained (a) for any contract in excess of $25,000 and (b) for any contract having a term in excess of 12 months);

6.02(a)(ii) To acquire, by purchase or otherwise, and deal with such personal property as may be necessary, convenient or incidental to the accomplishment of the purposes of the Company;

6.02(a)(iii) To bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Company (provided, however, that the Consent of the Investor Member shall be obtained prior to settlement of any claim or demand (A) which would affect the
amount of Credits or Losses allocated or allocable to the Investor Member or (B) for which the liability of the Company or the Investor Member is in excess of $25,000);

6.02(a)(iv) To pay as a Company expense any and all reasonable costs or expenses associated with the formation, development, organization and operation of the Company;

6.02(a)(v) To deposit, withdraw, invest, pay, retain and distribute the Company’s funds in a manner consistent with the provisions of this Agreement;

6.02(a)(vi) To borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Company, and to secure the same by grant of security interests in assets of the Company;

6.02(a)(vii) Unless prohibited under applicable Laws, to require in any or all Company contracts that the Administrative Member and Investor Member shall not have any personal liability thereon but that the Person contracting with the Company shall look solely to the Company and its assets for satisfaction;

6.02(a)(viii) To enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the purposes of, the Company, so long as said activities and contracts may be lawfully carried on or performed by a limited liability company under the laws of the State; and

6.02(a)(ix) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing.

6.02(b) During the Compliance Period, the Administrative Member shall (i) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that not less than 83 of the residential rental units (not including any manager units) in the Apartment Complex will qualify as “low-income units” under Section 42(i)(3) of the Code; (ii) operate the Apartment Complex and cause the Management Agent to manage the Apartment Complex in such a manner that the Apartment Complex will qualify as a “qualified low-income housing project” under Section 42(g) of the Code; and (iii) make, or cause to be made, all certifications required by Section 42(l) of the Code.

6.02(c) In the event that a claim against the Company is made by the Service (a “Claim”) upon audit, the Tax Matters Member shall, within 10 days after receiving notice of such claim, notify the Investor Member of the Claim (such notice being referred to as a “Claim Notice”). The Tax Matters Member shall promptly furnish to the Investor Member a copy of each notice or other communication received by the Tax Matters Member from the Service.

The Tax Matters Member shall not have the authority, without the Consent of the Investor Member, to do all or any of the following:
6.02(c)(i) to enter into a settlement agreement with the Service concerning the adjustment or readjustment of any Company Items or which purports to bind Members other than the Tax Matters Member;

6.02(c)(ii) to file a request for an administrative adjustment with the Service at any time or file a petition for judicial review with respect to the Company or the Apartment Complex;

6.02(c)(iii) to intervene in any action brought by any other Member for judicial review of a final judgment as contemplated in Section 6226(b) of the Code (as in effect for taxable years beginning on or before December 31, 2017);

6.02(c)(iv) to initiate or settle any judicial review or action concerning the amount or character of any Company tax items; or

6.02(c)(v) to enter into an agreement extending the period of limitations for assessing or computing any tax liability against the Company as contemplated in Section 6229(b)(1)(B) of the Code (as in effect for taxable years beginning on or before December 31, 2017) or Section 6235(b) of the Code (as in effect for taxable years beginning after December 31, 2017).

The relationship of the Tax Matters Member to the Investor Member is that of a fiduciary, and the Tax Matters Member has a fiduciary obligation to perform its duties in such manner as will serve the best interests of the Company and the Investor Member.

The Company shall indemnify the Tax Matters Member from and against judgments, fines, amounts paid in settlement, and expenses (including attorneys' fees) reasonably incurred in any civil, criminal or investigative proceeding in which it is involved or threatened to be involved by reason of being the Tax Matters Member, provided that the Tax Matters Member acted in good faith, within what is reasonably believed to be the scope of its authority and for a purpose which it reasonably believed to be in the best interests of the Company or the Members. The Tax Matters Member shall not be indemnified under this provision against any liability to the Company or its Members to any greater extent than the indemnification allowed by Section 6.06. The indemnification provided hereunder shall not be deemed to be exclusive of any other rights to which those indemnified may be entitled under any applicable statute, agreement, vote of the Members, or otherwise.

6.02(d) The Members hereby designate the Administrative Member to serve as the "Partnership Representative" in accordance with Code Section 6223 for any Post-TEFRA Period. Effective for any Post-TEFRA Period, the Partnership Representative shall consult with the Investor Member prior to taking any action (including omitting to take any action) or making any election (or failing to make any permitted election) under the Partnership Tax Audit Rules. Further, the Partnership Representative will be subject to the same terms and conditions imposed on the Tax Matters Member pursuant to this Agreement.
If the Company receives a notice of final partnership adjustment from the Service, the Partnership Representative shall promptly forward a copy of such notice to the Investor Member and its legal counsel (as set forth in Section 14.02). The Partnership Representative may, with the written consent of the Investor Member (such consent not to be unreasonably withheld), within forty-five (45) days of receipt by the Company of a notice of final partnership audit adjustment, make the election described in Code Section 6226(a) to not have Code Section 6225 apply with respect to any underpayment of tax liability. Pursuant to such election, any final partnership adjustments shall be taken into account by each Member in accordance with Code Section 6226(b). In the event that an election described in Code Section 6226(a) is not made with respect to any notice of final partnership adjustment, each Member shall be obligated to make a Capital Contribution in an amount equal to such Member’s share of any taxes imposed in connection with such adjustment (and any associated interest and penalties). For purposes of the preceding sentence, each Member’s share of such taxes shall be determined by taking into account (i) such Member’s share of Profits, Losses and Credits to which such adjustment relates; (ii) such Member’s obligation (if any) to indemnify, defend, or hold harmless the Company or any other Member for such taxes (and any associated interest and penalties) under this Agreement; (iii) such Member’s obligations and liabilities arising from or related to such Member’s representations, warranties and covenants in this Agreement, and (iv) the obligations of the Administrative Member under Section 3.05 (relating to Credit Adjuster Payments and Credit Adjuster Advances).

If for any Post-TEFRA Period the Company meets the requirements of Code Section 6221(b) to elect not to have Code Section 6221(a) apply with respect to any adjustment to Company tax items, the Partnership Representative may, with the written consent of the Investor Member (which consent may be withheld in the Investor Member’s sole discretion), make such election described in Code Section 6221(b) for each tax year, as applicable.

Notwithstanding anything to the contrary in this Section 6.02, none of the Company, the Members, or the Partnership Representative shall, without the prior written consent of the Investor Member (which consent may be withheld in the Investor Member’s sole discretion), take any action or make any election under the Partnership Tax Audit Rules which would or could reasonably be expected to have a materially adverse effect on the Investor Member (or its direct or indirect owners). The rights of the Investor Member under this Section 6.02 shall survive any sale, exchange, liquidation, retirement or other disposition of the Investor Member’s Interest.

6.03 Restrictions on Authority.

6.03(a) Notwithstanding any other provisions of this Agreement, neither the Managing Member nor the Administrative Member shall have authority to do any of the following:

6.03(a)(i) Do any act in violation of applicable Laws, the Project Documents or this Agreement;
6.03(a)(ii) Do any act required to have the Consent of the Investor Member prior to obtaining such Consent; or

6.03(a)(iii) Borrow from the Company or commingle Company funds with the funds of any other Person.

6.03(b) Neither the Managing Member nor the Administrative Member shall, without the Consent of the Investor Member (unless obtaining such Consent is inconsistent with the Act), have the authority to:

6.03(b)(i) Sell, exchange, pledge, transfer or otherwise dispose of, or except for Permitted Liens, grant or permit a Lien with respect to, all or any portion of the Apartment Complex (including any land owned by the Company), other than the conveyance and dedication of the connector road pursuant to the 380 Agreement, or all or substantially all of the assets of the Company or any of the Members’ Interests in the Company;

6.03(b)(ii) Accept the proceeds of a grant or other subsidy, or increase, decrease or modify the terms of or refinance or repay (other than in accordance with its scheduled term of amortization) any loan or Mortgage encumbering the Apartment Complex;

6.03(b)(iii) Admit an additional Member;

6.03(b)(iv) Following the completion of the construction of the Apartment Complex, construct any new capital improvement which substantially alters the Apartment Complex or its use, except (A) replacements, repairs and remodeling in the ordinary course of business or under emergency conditions, (B) construction or rehabilitation paid for from insurance proceeds or (C) any rehabilitation, repairs, remodeling or construction which is required by the Lender;

6.03(b)(v) Acquire any real property in the name of the Company in addition to the Apartment Complex (other than easements or similar rights necessary or convenient for the operation of the Apartment Complex);

6.03(b)(vi) Incur in the aggregate nonmortgage debt (other than Operating Deficit Loans) in excess of $25,000 or mortgage debt (other than the construction and permanent mortgage debt described in the Project Documents relating to the completion of the construction of the Apartment Complex);

6.03(b)(vii) Substantially change the nature of the Company’s business;

6.03(b)(viii) Voluntarily file, or consent to or acquiesce in the filing of a petition in bankruptcy with respect to the Company;

6.03(b)(ix) Modify or amend the Project Documents or this Agreement except in accordance with Section 14.03;
6.03(b)(x) Dissolve or wind up the Company;

6.03(b)(xi) Consolidate, merge or enter into any form of consolidation with or into any other entity; or permit any entity to consolidate, merge or enter into any form of consolidation with or into the Company;

6.03(b)(xii) Pledge or assign, other than to a Lender of a Mortgage Loan with respect to the Apartment Complex, any of the Company's rights with respect to all or any portion of the Capital Contribution of the Investor Member or the proceeds thereof;

6.03(b)(xiii) Guaranty the indebtedness of any Person;

6.03(b)(xiv) Enter into any additional documents or agreements affecting the Company in connection with the Section 811 Agreement;

6.03(b)(xv) Fix the interest rate on any loan that has a floating interest rate; or

6.03(b)(xvi) Institute or settle any claim in connection with any Letter of Credit.

6.03(c) Notwithstanding anything to the contrary set forth in Section 6.03(b), the Consent of the Investor Member shall not be required with respect to the following subsections of Section 6.03(b) at any time following the expiration of the Apartment Complex's Compliance Period: 6.03(b)(i), (ii), (iv), (vi), (x), (xii), and (xv).

6.03(d) The Administrative Member and the Managing Member acknowledge that their Affiliates are parties to the Affiliate Contracts. The Administrative Member and the Managing Member covenant to fully enforce the Affiliate Contracts on behalf of the Company. To avoid any conflict of interest in dealings between the Company and the other parties to the Affiliate Contracts, the Administrative Member and the Managing Member shall obtain the Consent of the Investor Member as a condition precedent to (i) amending any Affiliate Contract or (ii) taking any material action (or in determining not to act), with respect to any Affiliate Contract. The Administrative Member and the Managing Member hereby each indemnifies and holds harmless the Company and the Members against any and all late fees, delay damages, penalty interest, or other claims, damages, or liabilities brought by a party to an Affiliate Contract against the Company.

6.04 Other Activities. The Administrative Member shall be required to devote only so much of its time as it reasonably deems necessary for the proper management of the Company business; additionally, the Managing Member shall at all times Materially Participate in the development and operation of the Apartment Complex. Affiliates of the Administrative Member and Affiliates of the Managing Member may engage or possess an interest, independently or with others, in other businesses or ventures (including limited partnerships and limited liability companies) of every nature and description, including, without limitation, serving as general partner of other partnerships which own, either directly or through interests in other partnerships, projects similar to or that compete with the Apartment Complex. Neither the Company nor any
Member shall have any rights in or to such ventures or the income or profits derived therefrom and nothing shall be construed to render them members in any such business ventures.

6.05 Liability to Company and Investor Member and Indemnification of Investor Member and Company.

6.05(a) Except as otherwise provided in this Agreement, the Managing Member and the Administrative Member shall not be liable, responsible or accountable in damages or otherwise to the Investor Member or to the Company for any acts performed in good faith and within the scope of authority of the Managing Member or the Administrative Member, as applicable, pursuant to this Agreement, unless otherwise provided in this Agreement; provided, however, that the Managing Member and the Administrative Member shall be liable for (i) violations of laws, and for acts and/or omissions to the extent attributable to such Member’s fraud, willful misconduct or gross negligence (ii) any breach of fiduciary duty, (iii) breach of such Member’s representations, warranties, covenants, or obligations under this Agreement, and/or (iv) other matters that the Uniform Act provides are not able to be waived.

6.05(b) The Managing Member and the Administrative Member shall indemnify, defend and hold harmless the Members and the Company (and the Company shall indemnify, defend and hold harmless the Members) from and against any loss, liability, damage, cost or expense (including reasonable attorney’s fees) to the extent that (i) such Member’s acts and/or omissions constituted a violation of law, fraud, willful misconduct or gross negligence, (ii) such Member breached its fiduciary duty, (iii) such Member’s acts or omissions resulted in a violation or breach of any obligation under this Agreement; or (iv) such Member breached any of the representations or warranties set forth in Section 6.09 or the covenants set forth in Section 6.10, which breach had an adverse effect on the Company or on any Member.

6.05(c) The Administrative Member shall indemnify, defend and hold harmless the Investor Member and the Company (and the Company shall indemnify, defend and hold harmless the Investor Member) from and against any loss, liability, damage, cost or expense (including reasonable attorney’s fees) to the extent that any real property transfer tax, documentary stamp tax, intangibles tax or similar tax resulting from the Company’s acquisition of the Land, the development of the Apartment Complex, or Investor Member’s acquisition of its Interest, is not paid as required on the Closing Date.

6.05(d) The indemnification rights contained in this Section 6.05 (i) shall be the joint and several recourse obligations of the Managing Member and the Administrative Member, (ii) shall survive dissolution of the Company and withdrawal, removal, incompetence, bankruptcy or insolvency of a Managing Member or Administrative Member, (iii) shall be cumulative of, and in addition to, any and all rights, remedies and recourses to which the Investor Member shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity, and (iv) shall benefit the successors and assigns of the Investor Member.
6.05(e) All rights of the Investor Member to indemnification shall survive the dissolution of the Company, the transfer by such Investor Member of its Interest, and the insolvency, dissolution or bankruptcy of the Investor Member; provided, however, that a claim for indemnification hereunder must be made by or on behalf of the Person seeking such indemnification prior to the time any distribution in liquidation of the Company assets is made pursuant to Sections 1.05 and 4.03.

6.06 Indemnification of Members.

6.06(a) The Company shall indemnify, defend and hold harmless the Administrative Member and the Managing Member from and against any loss, liability, damage, cost or expense (including reasonable attorney’s fees) arising out of or alleged to arise out of any demands, claims, suits, actions or proceedings against the Administrative Member or the Managing Member, in or as a result of or relating to its respective capacity, actions or omissions as Administrative Member or Managing Member of the Company, as applicable, or otherwise concerning the business or affairs of the Company; provided, however, that the acts or omissions of an Administrative Member or Managing Member shall not be indemnified hereunder as provided in the Act and also to the extent that the same resulted from fraud, willful misconduct, a violation of law, a breach of fiduciary duty or a breach of its obligations under this Agreement. This indemnification shall be made solely from the assets of the Company, and no Member shall be personally liable therefor.

6.06(b) The indemnification authorized by this Section 6.06 shall include, but not be limited to, payment for (i) reasonable attorneys’ fees or other expenses incurred in connection with settlement or in any finally adjudicated legal proceeding, and (ii) the removal of any Liens affecting any property of the indemnitee; provided, however, that the provision of attorneys’ fees or other expenses and costs shall not be operative if the legal action is initiated by a Investor Member of the Company. The indemnification rights contained in this Section 6.06 shall be limited to direct out-of-pocket loss or expense, and shall not include indirect loss or expense such as administrative or overhead expenses of the Administrative Member or the Managing Member or foregone opportunity costs. The Company shall not pay for any insurance covering liability of the Administrative Member or the Managing Member for actions or omissions for which indemnification is not permitted hereunder.

6.06(c) The indemnification rights contained in this Section 6.06 shall be cumulative of, and in addition to, any and all rights, remedies and recourses to which the Administrative Member or the Managing Member (in its capacity as administrative member or managing member, as applicable) shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity.

6.06(d) All rights of the Administrative Member and the Managing Member to indemnification shall survive the dissolution of the Company and the death, retirement, incompetency, insolvency, dissolution or bankruptcy of the Administrative Member or the Managing Member; provided, however, that a claim for indemnification hereunder must be made by or on behalf of the Person seeking such indemnification prior to
the time any distribution in liquidation of the Company Assets is made pursuant to Sections 1.05 and 4.03.

6.06(e) A Managing Member or Administrative Member shall not be indemnified for breach by such Member of the representations and warranties set out in Section 6.09 or the covenants set out in Section 6.10, and no funds shall be advanced or expended by the Company for defending against such a breach.

6.07 Dealing With Affiliates. Except as otherwise provided in this Agreement, the Administrative Member may, for, in the name and on behalf of, the Company, enter into agreements or contracts for performance of services for the Company as an independent contractor with the Administrative Member or Affiliates thereof, and the Administrative Member may obligate the Company to pay compensation for and on account of any such services; provided, however, such compensation and services shall be on terms comparable to those obtainable from qualified third parties in an arm's-length transaction. In no event, however, may the Company at any time have any employees.

6.08 No Salary Payable to Members. Neither the Managing Member nor the Administrative Member shall be paid any salary or other compensation for serving as managing member or administrative member, as applicable. Notwithstanding the foregoing, the Managing Member and the Administrative Member shall be entitled to (a) the payment of certain fees for rendering services to the Company in capacities as other than a managing member or administrative member of the Company as provided in Article 7 and (b) reimbursement for other reasonable fees and expenses incurred on behalf of the Company, including costs of insurance, expenses incurred in connection with distributions to and communications with the Investor Member and the bookkeeping and clerical work necessary in maintaining relations with the Investor Member (including the costs and expenses incurred by the Administrative Member or its Affiliates in printing and mailing checks, statements and reports), and any other reasonable expenses which it may incur on behalf of the Company in connection with the Company business.

6.09 Representations and Warranties. The Managing Member and the Administrative Member each hereby represents and warrants (and covenants, as applicable), as to itself, to the Investor Member and to the Company that the following are true and accurate as of the date hereof (or, as applicable, as of the date(s) on which the representations are restated as being true and accurate as required in Sections 3.03 or 9.02):

6.09(a) The Member has been duly organized, is validly existing and in good standing under the laws of the State (or, if different, its state of organization) and has all requisite power to be a Member and to perform its duties and obligations as contemplated by this Agreement and the Project Documents. The execution and delivery by such Member of this Agreement and the transactions contemplated hereby have been duly authorized by all necessary corporate or other action, and the consummation of any such transactions contemplated hereby with or on behalf of the Company does not constitute a breach or violation of, or a default under, the statutes, regulations, bylaws or other governing instruments of such Member or any agreement by which it or any of its property
is bound, nor a violation of any law, administrative regulation or court decree, any of which would have a material adverse effect on the Company.

6.09(b) The Company is a limited liability company, validly existing and in good standing under the laws of the State (and, if different, in the state of its organization), is authorized to transact business in the State and the State of Texas and has the requisite power to carry on its business, to enter into and perform under the Project Documents, and to carry out the transactions contemplated hereunder, and the Company has complied with all filing requirements necessary to preserve the limited liability of the Investor Member and the Special Member.

6.09(c) No Events of Bankruptcy (or events which, in the course of time, would result in an Event of Bankruptcy) has occurred with respect to such Member or any Guarantor (if such Guarantor is an Affiliate of such Member) (or, in the case of a Member or Guarantor that is a partnership or limited liability company, with respect to the general partner(s), managing member or manager(s) of such Member or Guarantor).

6.09(d) The Managing Member, the Administrative Member and the Developer are each accrual method taxpayers for federal income tax purposes. The books of the Company shall be kept on the accrual basis and the fiscal and tax years of the Company shall be the calendar year.

6.09(e) Except as disclosed in writing to the Investor Member, no litigation, action, investigation, or proceeding is pending or has occurred or, to the Best Knowledge of such Member, is threatened, against such Member, the Company or any Guarantor (or, in the case of a Member or Guarantor that is a partnership or limited liability company, with respect to the general partner(s), managing member or manager(s) of such Member or Guarantor). Furthermore, there is no indictment or threatened indictment of such Member or any Guarantor under any criminal statute, or commencement or threatened commencement of criminal or civil proceedings against such Member or any Guarantor (or, in the case of a Member or Guarantor that is a partnership or limited liability company, with respect to the general partner(s), managing member or manager(s) of such Member or Guarantor).

6.09(f) The Project Documents are in full force and effect (except to the extent fully performed in accordance with their respective terms) and no default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred thereunder.

6.09(g) The application for Credits filed by the Company with the Agency remains true and correct in all material respects and in conformance with the requirements of the Agency’s qualified allocation plan. The Company has received from the Agency a 2015 carryover allocation of Credit in the annual amount of at least $1,338,400, and the Projected Annual Credit Amount is expected as of the date of this Agreement to be allocated by the Company to the Investor Member. Furthermore, the Company’s basis in the Apartment Complex on or before December 15, 2016 (the date set by the Agency for meeting the requirements of Code Section 42(h)(1)(E)) will exceed 10% of the reasonably
expected basis in the Apartment Complex as of December 31, 2017 and the Administrative Member will cause the Apartment Complex to be placed in service, with all units in each building completed and ready for occupancy in accordance with the Company’s Carryover Allocation Agreement with the Agency, not later than December 31, 2017. The Accountants have prepared the certification with respect to satisfaction of the 10% test set forth in the preceding sentence and have provided said certification to the Investor Member. The Accountants will provide the utility certification that is required to be delivered with the 10% test to the Investor Member for its review and comment at least 10 calendar days before such certification is required to be provided to the Agency. The utility certification must be provided to the Agency by December 15, 2016. The Administrative Member shall, within 10 days of its receipt, provide to the Investor Member a copy of (i) the Carryover Allocation Agreement, the Extended Use Agreement and any Forms 8609 issued to the Company and (ii) any temporary or permanent certificates or permits of occupancy. In addition, the Apartment Complex is located in a “qualified census tract” or “difficult development area” as defined in Code Section 42(d)(5)(B), or is otherwise entitled to a 30% basis increase pursuant to the Agency’s rules or regulations.

6.09(h) Such Member has disclosed all material actions with respect to the Company taken by such Member prior to the date hereof.

6.09(i) A copy of all material documents relating to the Company and the Apartment Complex have been delivered to the Investor Member, including, without limitation, the timely delivery of all reports required under Article 12.

6.09(j) The Company has good and marketable title to the Apartment Complex free and clear of all material Liens, except for (A) those easements, reservations, restrictions or other matters that (i) would not materially adversely affect the Apartment Complex or its contemplated use or (ii) have been bonded against in such a manner as to preclude the holder of the Lien or claimant from having any recourse to the Company or the Company’s property, (B) Liens for taxes and assessments which are not yet due and payable, and (C) Permitted Liens.

6.09(k) There are no outstanding loans or advances (excluding, for this purpose, any loans pursuant to Section 6.12 and development advances with respect to the Apartment Complex) from such Member or its Affiliates to the Company, and the Company has no unsatisfied obligation to make any payments of any kind to any Member or its Affiliates, except as set forth in Article 7 hereof.

6.09(l) Such Member is not, to its Best Knowledge, in default in the observance or performance of any provision of this Agreement to be observed or performed by such Member.

6.09(m) To its Best Knowledge, no event has occurred which has caused, and such Member has not acted in any manner which will cause (i) the Company to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Company to fail to qualify as a limited liability company under the Uniform Act, or (iii) any
Investor Member to be liable for Company obligations in excess of its agreed-to Capital Contributions.

6.09(n) The Land upon which the Apartment Complex is located is zoned in a manner that provides for operation of the Apartment Complex as a permitted use, and neither the Company nor such Member has received any notice of any violation with respect to the Apartment Complex of any law, rule, regulation, order or judgment of any governmental authority having jurisdiction over the Apartment Complex which would have a material adverse effect on the Apartment Complex or the use, operation or occupancy thereof.

6.09(o) The Apartment Complex will be constructed in a timely manner in conformity with the Project Documents. There is no violation by the Company or such Member of any zoning, environmental or similar regulation applicable to the Apartment Complex which could have a material adverse effect thereon, and the Company has complied with all applicable municipal and other laws, ordinances and regulations relating to such construction and use of the Apartment Complex and has obtained (or will obtain when necessary) all permits and licenses necessary for the construction, use, occupancy and operation of the Apartment Complex. All appropriate public roadways, public utilities, including sanitary and storm sewers, water, and electricity are or will be available and operating properly for each unit in the Apartment Complex at the time of the first occupancy of such unit.

6.09(p) There shall be no personal liability of the Investor Member for the repayment of the principal of or payment of interest on the Mortgage Loans during their respective terms.

6.09(q) Except as previously disclosed by such Member in writing to the Investor Member or by the Environmental Reports, neither the Company nor the Apartment Complex, to such Member's Best Knowledge after reviewing the Environmental Reports, is in violation of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Response, Compensation and Liability Act, Occupational Safety and Health Act or any other federal, state or local law relating to hazardous substances. Neither such Member nor the Company has received any notice from any governmental agency that the Company, Apartment Complex or land upon which it is located is in violation of any such law.

6.09(r) All payments and expenses required to be made or incurred to the date of this representation in order to complete construction of the Apartment Complex in conformity with the Project Documents, to fund any reserves hereunder or under any other Project Document and/or to satisfy all requirements under the Project Documents have been paid or incurred. In addition, no failure or refusal of a Lender or other party to make any advance under the Company's loan documents has occurred and is continuing.

6.09(s) The Apartment Complex will contain twelve (12) market rate units. The Apartment Complex will not contain any commercial areas.
6.09(t) The Company owns no property other than the Apartment Complex.

6.09(u) The Administrative Member owns no property other than its Interest in the Company. The Managing Member owns no property other than its Interest in the Company and its interest in other limited liability companies or limited partnerships.

6.09(v) None of the proceeds of the Mortgage Loans has been provided through the issuance of tax-exempt bonds.

6.09(w) All federal, state, or other municipal wetlands permits required for the development of the Apartment Complex have been issued.

6.09(x) The Investor Member will not be required to file a HUD Form 2530 or its equivalent for corporate investors, in connection with the acquisition of its Interest.

6.09(y) The Investor Member will not be required to pay a transfer tax in connection with its acquisition of its Interest. The Company has paid all transfer taxes due in connection with the acquisition of the Land, or will do so on the Closing Date.

6.09(z) Each Mortgage Loan has a fixed maturity date that is prior to the anticipated economic life of the Apartment Complex and the Company will be able to repay each Mortgage Loan as it matures.

6.09(aa) O-SDA Industries, LLC, a Texas limited liability company, the sole member of the Managing Member (the "**MM Sole Member**"), is a "Historically Underutilized Business" as certified by the Texas Comptroller of Public Accounts, and complies, through its ownership interest, profits and developer fee interest, with all requirements for a Historically Underutilized Business, and shall Materially Participate in the development and operation of the Apartment Complex throughout the Compliance Period. The MM Sole Member has, or has caused the Company to, submit a certification from the Texas Comptroller of Public Accounts certifying that the MM Sole Member is a "Historically Underutilized Business" in accordance with the Historically Underutilized Business Guidelines and the qualified allocation plan applicable to the Credits for the Apartment Complex.

6.10 Covenants Relating to the Apartment Complex and the Company. The Administrative Member shall have the following duties and obligations with respect to the Apartment Complex and the Company, and covenants that:

6.10(a) The Administrative Member shall cause the completion of the construction of the Apartment Complex substantially in accordance with the Plans approved by the Lender and the Investor Member and all requirements necessary to obtain the required certificates of occupancy for dwelling units, or cause the same to be completed, in a good and workmanlike manner, free and clear of all mechanics', materialmen's or similar Liens, and shall equip the Apartment Complex or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, including
refrigerators and ranges, and shall cause all necessary certificates of occupancy for all apartment units in the Apartment Complex to be obtained, all in accordance with the Project Documents. If the available debt, equity, rental income (provided that rental income may only be used for this purpose if and to the extent of Net Operating Income) or other proceeds are insufficient to (i) acquire and complete the construction of the Apartment Complex and satisfy all other Construction Completion obligations as provided in this Section 6.10(a), and (ii) provide for all other payments and expenses required to be made or incurred, including for this purpose the payment in full of (A) all change orders and Budget increases (regardless of amounts and regardless of whether they have been approved by the Lenders or the Investor Member), to the extent that available Company funds are insufficient to pay for such change orders or Budget increases and (B) the funding of any reserves required hereunder or under any other Project Document to be funded on or prior to the funding of the Final Installment, the Administrative Member shall be responsible for and obligated to pay such deficiency at the time such deficiency is determined, and any such payments shall be treated as a Capital Contribution to the Company. The Members shall determine such deficiency as soon after Construction Completion as reasonably possible. Notwithstanding the prior sentence, if the Administrative Member becomes obligated to make such a Capital Contribution, the Administrative Member first shall be entitled to use any due and currently payable (but unfunded) equity proceeds that were originally anticipated in the Budget to exclusively provide for the payment of the Developer Fee to pay such deficiency (which shall result in a like amount of payment deferral with respect to the Developer Fee) and second, shall be entitled to reimbursement for any such Capital Contribution made by the Administrative Member hereunder of up to (i) $650,000 from the proceeds of the 95% Construction Completion Installment, and (ii) $651,638 from the proceeds of the Final Installment otherwise intended to pay Developer Fee, if and when due and payable pursuant to this Agreement (which shall also result in a like amount of payment deferral with respect to the Developer Fee). The reimbursements referred to in the prior sentence shall be subject to the conditions precedent that the Investor Member shall have received evidence satisfactory to it that (i) the resulting increase in the Developer Loan will not jeopardize the Company’s ability to have a “reasonable expectation of payment” during the Compliance Period of that portion of the Developer Fee necessary for the Company to have sufficient eligible basis to allocate the Projected Aggregate Credit Amount to the Investor Member, (ii) the Administrative Member has made any payment to achieve any loan reduction necessary for Permanent Loan Conversion, (iii) the Operating Reserve shall have been fully funded, and (iv) all Adjuster Distributions due to the Investor Member have been made, and such sums are not otherwise necessary to pay Costs of Improvements. If Construction Completion occurs without full utilization of the then available debt and equity proceeds (the parties hereto agree that such debt and equity proceeds shall be used to finance the construction of the Apartment Complex before any use of Net Operating Income for such purpose), any construction cost savings in the amount of such differential (or, if less, the amount of the budgeted construction contingency) shall be applied to the reduction of the outstanding balances of the First Mortgage Loan to the extent required by the lender of the First Mortgage Loan, or held in reserve and used, with the Consent of all Lenders and the Investor Member, for Apartment Complex amenities or other depreciable costs, provided, however, if the Eligible Basis of the Apartment Complex equals an amount sufficient to generate the amount of Credits specified in Section 6.09(g), any construction
cost savings may be used to pay the Developer Fee. Remaining proceeds made available because of construction cost savings may be used to pay down the principal balance of the First Mortgage Loan to the extent permitted by the lender of the First Mortgage Loan without penalty, or shall be deposited into the Replacement Reserve.

Prior to the date required by the First Mortgage Loan, the Company shall satisfy on a timely basis all conditions and requirements for Permanent Loan Conversion. The Administrative Member shall contribute to the Company such funds as are necessary to fully repay the Construction Loan, re-size the First Mortgage Loan if the amount of the First Mortgage Loan is not determined until Permanent Loan Conversion, and achieve Permanent Loan Conversion. In addition, at no time after the Ninety Five Percent Construction Completion Installment shall the outstanding balance of the Construction Loan exceed $3,500,000.

6.10(b) The Apartment Complex will be developed and operated in a manner that satisfies and shall continue to satisfy all requirements and restrictions, including tenant income and rent restrictions, (i) applicable to projects generating Credits, (ii) imposed by any Project Document, and (iii) necessary to comply with, or generate the benefits, amenities and services described in, the Company’s tax credit application. The Administrative Member shall cause the Apartment Complex to be placed in service within the meaning of the Code on or before December 31, 2017. All requirements shall be met which are necessary to obtain or achieve (i) compliance with the 40-60 “set-aside test” as defined in Section 42(g)(1)(B) of the Code, the “rent restriction” test as defined in Section 42(g)(2) of the Code, special set aside requirements pertaining to handicapped, impaired, homeless and other special tenants, if any, and any other requirements necessary for the Apartment Complex to initially qualify, and to continue to qualify, for Credits as to 83 residential rental units, (such requirement shall not include any manager units and shall be met from and after the end of the first year of the Credit Period) and (ii) issuance of all necessary certificates of occupancy, including all governmental approvals required to permit occupancy of all of the apartment units in the Apartment Complex. The Company shall execute and record an Extended Use Agreement that is binding on all successors of the Company and otherwise qualifies as a valid “extended low-income housing commitment” under Code Section 42(h)(6), and shall maintain the Extended Use Agreement in full force and effect for each year of the Compliance Period. No portion of the financing or operation of the Apartment Complex will be funded with grants or federal subsidies (as defined in Code Section 42(i)(2)) and the Eligible Basis of the Apartment Complex shall not include any costs financed with the proceeds of a federally funded grant (within the meaning of Code Section 42(d)(5)(A);

6.10(c) While conducting the business of the Company, it shall not act in any manner which it knows or should have known after due inquiry would (i) cause the termination of the Company for federal income tax purposes without the Consent of the Investor Member, (ii) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation, (iii) cause the Company to fail to qualify as a limited liability company under the Uniform Act or (iv) cause a Investor Member to be liable for Company obligations in excess of its unpaid Capital Contributions plus any distributions required to be returned pursuant to the Uniform Act, provided that such Member shall not be in breach of this Section 6.10(c)(iv) if such liability is caused by an action or inaction of any
Investor Member. The Company will not (A) own or acquire any asset or property other than the Apartment Complex and incidental personal property necessary for the ownership or operation of the Apartment Complex or (B) engage in any business other than that related to acquiring, owning, constructing and operating the Apartment Complex;

6.10(d) The Administrative Member shall own no other property other than its Interest and shall engage in no business activity other than serving as Administrative Member of the Company. It shall exercise good faith in all activities relating to the conduct of the business of the Company, including the acquisition, operation and maintenance of the Apartment Complex, and shall take no action in its capacity as Administrative Member with respect to the business and property of the Company which is not reasonably related to the achievement of the purpose of the Company;

6.10(e) The Administrative Member is exclusively responsible for negotiating and performing all services incident to (i) the Company’s acquisition of the Land underlying the Apartment Complex, (ii) the arranging of appropriate zoning and equity and permanent financing with respect to the Apartment Complex (including, but not limited to, reviewing the State of Texas’ qualified allocation plan, applying for Credits and obtaining such marketing and feasibility studies and appraisals as it deems reasonably necessary) and (iii) the organization and formation of the Company. In addition, the Administrative Member is responsible for the management and operation of the Company, including the oversight of the leasing and operational stages of the Apartment Complex, and it shall promptly take all action that may be necessary or appropriate for the proper development, maintenance and operation of the Apartment Complex in accordance with the provisions of this Agreement and the Project Documents. In this regard, among other things, it shall have the obligations to keep the Apartment Complex in good working order and condition, reasonable wear and tear excepted, to not commit waste with respect to the Apartment Complex and to promptly repair or replace any damage to the Apartment Complex;

6.10(f) Such Member covenants that it shall cause the Company to depreciate all of its applicable property under the Modified Accelerated Cost Recovery System (MACRS) set forth in Code Section 168 and that no election will be made under Code Section 168(g)(7) to use the Alternative Depreciation System (ADS) without the Consent of the Investor Member. In addition, no lease of any portion of the Apartment Complex will be entered into if such lease would cause any portion of the Apartment Complex to be treated as tax-exempt use property under the Code;

6.10(g) The Apartment Complex and all of (i) the fixtures, maintenance supplies, tools, equipment and the like now and to be owned by the Company or to be appurtenant to, or to be used in the operation of, the Apartment Complex, as well as (ii) the rents, revenues and profits earned from the operation of the Apartment Complex, will be free and clear of all security interests and encumbrances except for the Mortgages and any additional security agreements (including financing statements) executed in connection with the Mortgage Loans;
6.10(h) The Company will make on a timely basis all tax return and other filings necessary to qualify for the Credits. In addition, it will execute on behalf of the Company all documents necessary to elect, pursuant to Sections 732, 734, 743 and 754 of the Code, to adjust the basis of the Company’s property upon the request of the Investor Member. Additionally, Investor Member may compel the Company to make an election to defer commencement of the Credit Period to 2018 pursuant to Code Section 42(f)(1) in order to avoid the application of Code Section 42(f)(3). In connection with its preparation of all tax returns and forms (including initial Forms 8609 for each Building) from the date hereof, the Company shall receive (and provide to the Investor Member) (i) from the Accountants, the Cost Certification, in form and substance acceptable to the Investor Member, to be used by the Company in applying to Agency for the issuance of (A) a carryover allocation of Credit, including satisfaction of the “10% cost incurrence” requirement of Code Section 42(h)(1)(E) and (B) Form 8609 with respect to each Building and (ii) from the Accountants, a written agreed-upon procedure report addressing, based upon a review of the applicable tenant certifications and documents with respect to all units performed by such entity, the Qualified Basis (as such term is defined in Section 42(c)(1) of the Code) of each Building. The Administrative Member covenants that it will provide or cause to be provided to such entity (with a contemporaneous copy to the Investor Member) all information requested by such entity to determine the Qualified Basis of each Building, including, but not limited to, a copy of all tenant files, leases, certifications and income verification documentation. The Administrative Member shall provide the initial Forms 8609 to the Investor Member at least 14 calendar days (but in all events within 10 days of receipt thereof by the Administrative Member) prior to the date such Forms are required to be filed with the Service and the Consent of the Investor Member shall be received before any election is made to defer commencement of the Credit Period pursuant to Code Section 42(f)(1).

6.10(i) The Administrative Member will hire the Accountants and provide them with such information in its possession and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns (and in all events such returns shall be filed with respect to the year of the Investor Member’s admission to the Company and each year thereafter). The parties hereto covenant and agree that the Accountants identified in Section 2.01 shall be the accountants for the Company for the purposes of preparing such returns, the audit of the Company and the matters set forth in Section 6.10(h) from the date hereof and through at least the first three tax years commencing with the year in which the first Building in the Apartment Complex is placed in service by the Company or, if later, the first year of the Credit Period. Thereafter, the Administrative Member may change Accountants with the Consent of the Investor Member. The Administrative Member and the Company hereby agree, authorize and direct the Accountants to contemporaneously provide to the Investor Member copies of all tax returns, audits and any other information described in this Article 6 or Section 12.06 that the Accountants deliver to the Administrative Member or to the Company. The Administrative Member agrees and acknowledges that all Company Tax Returns shall be provided to the Investor Member for its review and approval at least ten (10) Business Days prior to the date such tax returns are required to be filed (and the approval of the Investor Member to such returns shall be deemed received if no objection is received by the Administrative Member prior to the due date for filing; provided, however,
approval of tax returns by the Investor Member shall not be treated or construed as a waiver of any of its rights or remedies under any provisions of this Agreement);

6.10(j) It will take all actions necessary to comply with the Project Documents and keep them in full force and effect and it will not intentionally take any action or intentionally fail to take an action which would result in (a) acceleration of payments owed under any Company loan or (b) an uncured default under any Project Document. The Administrative Member shall provide to the Investor Member fully executed copies of all construction and permanent loan documents (including, without limitation, the applicable construction or permanent loan note, loan agreement, mortgage, deed of trust and all other security agreements, assignments, financing statements, guarantees, agreements, certificates and instruments executed in connection with such loan) within 30 days of the applicable loan closing;

6.10(k) The Administrative Member shall furnish to the Investor Member within five Business Days of receipt thereof, a copy of any notice of default or other material notice under the Mortgage or any of the Project Documents (including any loan commitment) given to the Company or to the Administrative Member by the Lender. It shall also furnish to the Investor Member within five Business Days of execution a copy of all amendments or changes to the articles, bylaws, certificate, partnership agreement, operating agreement or other organizational documents of the Managing Member, the Administrative Member, the Company or any Guarantor (without implying the consent of Investor Member to any such amendment or change to any such organizational document). In addition, it shall promptly respond to any reasonable requests or inquiries made in writing by the Investor Member regarding matters affecting the Apartment Complex or the Company;

6.10(l) The Administrative Member will use all reasonable efforts to cause the Apartment Complex to be: (i) developed in compliance with all applicable laws including, without limitation, laws pertaining to (A) wetlands and (B) endangered, threatened, or rare species; and (ii) kept in compliance with all applicable zoning regulations, ordinances, and subdivision laws, rules, and regulations;

6.10(m) The Administrative Member shall use all reasonable efforts to maintain the Apartment Complex and the Land so that there is no discharge, release, spillage, uncontrolled loss or seepage of any oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (as such terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980) which causes a genuine risk to the health or safety of the residents or employees of the Apartment Complex. The Administrative Member shall also use all reasonable efforts to maintain the Apartment Complex and the land upon which it is located so as not to violate the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Response, Compensation and Liability Act, Occupational Safety and Health Act and other federal, state and local laws governing hazardous substances. In the event that the Investor Member becomes personally liable for Company violations with respect to the Apartment Complex under any federal, state or local hazardous substance law, the Administrative
Member shall indemnify and hold harmless the Investor Member (except to the extent attributable to direct actions of the Investor Member) for any and all costs, expenses (including reasonable attorneys’ fees), damages, or liabilities to the extent that the Investor Member is required personally to discharge such costs, expenses, damages, or liabilities in whole or in part from any source other than Company resources. The foregoing indemnification (i) shall be a recourse obligation of the Administrative Member, (ii) shall survive the dissolution of the Company with respect to violations which occurred prior to the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the Administrative Member against whom the indemnification provided in this paragraph is sought to be enforced, (iii) shall continue to benefit the Investor Member subsequent to its transfer of its Interest, and (iv) shall benefit the Investor Member’s successors and assigns. In addition, the Administrative Member shall provide the Investor Member with prompt written notice (i) upon any Administrative Member or Affiliate thereof obtaining knowledge of any potential or known release, or threat of release, of any hazardous material at or from the Apartment Complex or any other property owned, occupied or operated by any Administrative Member, any Affiliate of a Managing Member or any Person for whose conduct any Administrative Member or Affiliate of a Administrative Member is or was responsible and whose liability may result in a Lien on the Apartment Complex, (ii) upon any Administrative Member or Affiliate thereof receiving any notice to such effect from any federal, state, or other governmental authority, or (iii) upon any Administrative Member or Affiliate thereof obtaining knowledge of any incurrence of any expense or loss by any such governmental authority in connection with the assessment, containment, or removal of any hazardous material for which expense or loss a Lien may be imposed on the Apartment Complex;

6.10(n) The Administrative Member shall provide the Investor Member with prompt written notice (and with copies of appropriate correspondence) within five calendar days in the event that the Company receives any writing from the Service or the Agency that the Apartment Complex or any portion thereof is not in compliance with the requirements of Section 42 or is subject to a Credit recapture event or any other event that could result in an adjustment to the Credits or losses allocable to the Investor Member. In addition, it shall promptly provide to the Investor Member a copy of the annual certification required to be submitted by the Company to the Agency pursuant to Treas. Reg. § 1.42-5, including a copy of all required reports with respect to building code violations and the certification with respect to compliance with the Fair Housing Act;

6.10(o) If any of the low-income residential rental units in the Apartment Complex fail at any time during the Compliance Period to constitute eligible low-income units or if the Apartment Complex is not in compliance with the requirements contained in Section 42 of the Code, the Administrative Member agrees to notify the Investor Member within five calendar days of its knowledge of such event or occurrence and the Administrative Member shall promptly commence and diligently prosecute to completion all actions reasonably necessary to bring the dwelling units or the Apartment Complex, as the case may be, into compliance with the requirements of Section 42, such that the Apartment Complex will qualify and continue to qualify for Credits during the Compliance Period as projected. In addition, if at any time after attainment of Permanent Loan Conversion, less than 90% of the low-income units in the Apartment Complex are
physically occupied by Qualified Tenants who are current in the payment of rent under their leases, then the Administrative Member shall within 5 calendar days of such event provide written notification of same to the Investor Member;

6.10(p) The Administrative Member shall establish and maintain reasonable reserves to provide for working capital needs, improvements, replacements and any other contingencies of the Company;

6.10(p)(i) At a minimum, the Administrative Member shall cause the Company to establish and maintain a Replacement Reserve with Wells Fargo Bank, National Association (or with the First Mortgage Lender if required under its loan documents), to be funded monthly throughout the term of this Agreement, commencing the earlier of (A) 30 months after the Closing Date; or (B) Permanent Loan Conversion at an annualized rate of $300 per dwelling unit per year (such amounts to be increased three percent (3%) each twelve month period), or such higher amount as is required by any Lender. Funds in the Replacement Reserve shall not be used for any purpose other than capital improvements. All amounts remaining in the Replacement Reserve at the end of the last expiring Compliance Period with respect to any Building shall either be used for Company expenses or capital expenditures or distributed in accordance with Section 4.02(a).

6.10(p)(ii) In addition, the Administrative Member shall cause the Company to establish, from a portion of the proceeds of the Final Installment, and thereafter maintain, a segregated operating reserve account with Wells Fargo Bank, National Association (or with the First Mortgage Lender if required under its loan documents), in an amount not less than $257,910 (the "Operating Reserve"). The Operating Reserve shall require the signatures of both the Administrative Member and the Investor Member before withdrawals therefrom can be made. The Operating Reserve may only be used to pay any operating expenses, debt service obligations or other expenses of the Company approved by the Members and accrued or paid subsequent to the expiration of Period 1 (as such term is defined in Section 6.12). The treatment and disbursement of sums remaining in the Operating Reserve upon the expiration of the last Compliance Period will be governed by the terms of the First Mortgage Loan documents; provided, however, that at such time as the First Mortgage Loan documents do not restrict the use of the funds in the Operating Reserve after the expiration of the last Compliance Period with respect to any Building, then such funds shall be distributed to the Members in accordance with Section 4.02(a).

6.10(q) The Administrative Member shall cause the Company to maintain in full force and effect with reputable licensed insurers (each insurer must have rating from A. M. Best Co. of A-VI or better), such insurance policies, including fire and extended coverage insurance, as may be required by any Lender; provided that in all events, the Company shall obtain and maintain in favor of the Company, the Investor Member (as a "Loss Payee" with respect to items (i) and (iii) below and as an "Additional Insured" with respect to item (ii) below) and the Lender as named insureds as their interests appear: (i) fire
and extended coverage insurance in an amount equal to at least the full replacement cost of the Apartment Complex, and with not more than $25,000 deductible from the loss payable for any casualty, (except that the deductible for wind damage shall not be more than 5% of the full replacement cost of the Apartment Complex); (ii) single limit comprehensive general liability insurance (including coverage for elevators, if any, in the Apartment Complex) on an "occurrence basis" against claims for personal injury in an amount of at least $1,000,000 coverage for any single occurrence and $2,000,000 aggregate coverage for any single year (inclusive of umbrella policies); (iii) business interruption insurance and/or rental loss insurance commencing on or before the date of Construction Completion and adjusted annually thereafter in an amount equal to the greater of (a) the maximum amount of rental income that could be generated over 12 months assuming each unit in the Apartment Complex was rented at the then maximum permitted rent under Code Section 42 or (b) rental income for the prior 12 months or (c) the amount of such insurance required by a Lender; and (iv) workers’ compensation insurance in an amount not less than the statutory minimum. Flood insurance will also be required if the Apartment Complex is located in a Special Flood Hazard Area (Zones A or V) as designated by the Federal Emergency Management Agency ("FEMA") in an amount equal to the lesser of: (a) the minimum amount required under the terms of coverage to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Company’s outstanding mortgage indebtedness plus the total amount of the Investor Member’s Capital Contribution obligation if replacement cost coverage is not available for the type of building insured); or (b) the maximum insurance available under the appropriate National Flood Insurance Administration program. Unless a higher minimum amount is required by FEMA or other law, the maximum deductible clause for such flood insurance should be no more than $3,000 per Building. Title to the Apartment Complex shall be insured at all times by a reputable title insurance company in an amount equal to at least the sum of the then outstanding debt secured by the Apartment Complex plus the amount of the Investor Members’ Capital Contribution commitment reflected on Exhibit H hereto. All required insurance will be and shall be in effect and will be kept in full force and effect during the Company’s ownership of the Apartment Complex and each policy will include a provision requiring the insurance company to notify the Investor Member in writing 30 days (10 days for cancellation due to nonpayment of premium) prior to the cancellation of any such policy. The Administrative Member shall deliver to the Investor Member copies of the policies for all insurance required to be maintained hereunder and/or under the Mortgage Loan documents. The Administrative Member shall deliver to the Investor Member evidence that all insurance required hereunder has been obtained, continued or replaced with a policy meeting the conditions of this Agreement on or before 15 calendar days prior to any expiration or cancellation of a policy. The Administrative Member shall cause the Company to comply with the insurance provisions of all Project Documents. Subject to the rights of Lenders of Mortgage Loans, the proceeds of property insurance required by this Agreement shall be used to restore or rebuild the Apartment Complex, unless the Members mutually agree otherwise;

6.10(r) The Investor Member may, at its sole option and sole cost, require that the Company obtain types and amounts of insurance in addition to those described in Section 6.10(q). In such event, the Administrative Member shall cooperate with the Investor Member in coordinating the various policies such that each insurer is aware of the other
policies and shall ensure that the Company’s policies obtained pursuant to Section 6.10(q) (i) constitute primary coverage, and (ii) do not contain provisions that reduce the obligations under such policies due to the existence of the additional policies required by the Investor Member under this Section 6.10(r):

6.10(s) The Administrative Member shall cause the Company to display such financing signs at the Apartment Complex as reasonably requested by the Investor Member;

6.10(t) Except as otherwise required by applicable governmental agencies or regulations, neither the Administrative Member nor the Managing Member shall discuss or otherwise disclose any of the terms or conditions of the Investor Member’s investment in the Company without the Consent of the Investor Member; provided, however, any of the Members (and each employee, representative, or other agent of any of the Members) may, without limitation of any kind, disclose to any and all Persons the tax treatment and tax structure of the Investor Member’s investment in the Company and all materials of any kind (including, opinions or other tax analyses) that are provided to any of the Members relating to such tax treatment and tax structure. The Administrative Member and/or the Managing Member will notify the Investor Member of any “reportable transaction” under Treasury Regulation Section 1.6011–4 in which the Company or Administrative Member and/or the Managing Member shall engage.

6.10(u) The Administrative Member shall provide to the Investor Member at least thirty (30) days’ advance written notice of any ribbon cutting, groundbreaking, project opening or similar ceremony relating to the Apartment Complex and the Investor Member shall be entitled to attend any such ceremony and be publicly recognized;

6.10(v) The Managing Member and the Administrative Member acknowledge that the Investor Member is required, pursuant to Federal law and the applicable sections of the “Patriot Act,” to obtain, verify, and record certain financial and personal information in the fight to stop the funding of terrorism and money laundering activities in the United States. With respect to the Investor Member’s compliance with such laws, the Managing Member and the Administrative Member agree to assist, cooperate and, to the extent reasonably requested to do so, supply such information to the Investor Member;

6.10(w) The Administrative Member shall cause itself, the Managing Member and the Company to remain in good standing in accordance with the requirements of the State and the State of Texas, to the extent required under applicable laws of the State and the State of Texas, and shall annually provide to the Investor Member a current certificate of good standing for each entity at the same time it submits the Company Tax Returns pursuant to Section 6.10(i).

6.10(x) The Administrative Member shall provide Tenant Services to tenants of the Apartment Complex of the type, number and duration necessary for compliance with the requirements of the application for Credits provided to the Agency.
6.10(y) The Administrative Member shall cause the Company to make the election pursuant to Section 42(f)(1)(B) of the Code prior to the end of the first year of the Credit Period with respect to a Building unless the Administrative Member provides satisfactory evidence to the Investor Member that 100% of the low-income set-aside units in such Building were leased and occupied by Qualified Tenants prior to the end of the first year of the Credit Period.

6.10(z) The Administrative Member represents, warrants and covenants that the Apartment Complex will at all times have the right of direct pedestrian and vehicular ingress to and egress from the Apartment Complex to an open and publicly-dedicated street.

6.10(aa) No portion of the cost of the acquisition, construction or operation of the Apartment Complex has been (or will be) funded with (i) any loan funded in whole or in part, directly or indirectly, with proceeds of obligations the interest on which is exempt from federal income tax under Code Section 103 or (ii) federal grants within the meaning of Code Section 42(d)(5)(A) and not described in Code Section 42(i)(9).

6.10(bb) It is reasonable to expect that the fair market value of the Apartment Complex upon Construction Completion and, throughout the terms of the Mortgage Loans, will exceed, the aggregate principal amounts of, and all outstanding accrued but unpaid interest on, the Mortgage Loans. Each Mortgage Loan has a fixed maturity date which is prior to the anticipated economic life of the Apartment Complex and the Company will be able to repay the Mortgage Loans as they mature.

6.10(cc) Throughout the term of the Section 811 Agreement, the Administrative Member shall: (a) comply with, and shall cause the Company and the Management Agent to comply with, all provisions of the Section 811 Agreement and the applicable statutes, HUD regulations, HUD handbooks, HUD notices and other HUD policy directives (collectively, the "HUD Requirements"); (b) timely submit and update and/or cause the Management Agent to timely submit and update all filings, certifications, financial information, disclosures and other instruments and documentation as required pursuant to the HUD Requirements (and in the form and manner specified in the HUD Requirements) including, without limitation: (i) if required, all previous participation clearance filings (2530) pertaining to the Administrative Member and/or the Management Agent (ii) all audited financial statements pertaining to the Company, (iii) all owner/management certifications and other HUD-required certifications of the Company, the Administrative Member and/or the Management Agent; and (iv) all disclosures of identity-of-interest relationships pertaining to the Company, the Administrative Member and/or the Management Agent; (c) if required, shall not permit any distribution of “surplus cash” (as defined pursuant to the HUD Requirements), except as otherwise expressly permitted pursuant to the HUD Requirements; and (d) comply with, and cause the Management Agent to comply with, all HUD Requirements relating to the maintenance of records relating to the Apartment Complex, the payment and reasonableness of fees and expenses incurred by the Apartment Complex, and the maintenance of accounts relating to the Apartment Complex.
6.10(dd) If HUD-2530's are required or will be required with respect to any current or future financing, from and after the date that HUD issues a public notice requiring electronic submission of such filings, the Administrative Member shall cause the Company and each of its principals and/or Affiliates, (A) to promptly complete their respective registrations and baseline submissions and (B) to submit any future HUD-2530 to HUD. As of the date of this Agreement, the Administrative Member and all other principals (as defined in the HUD-2530 regulations) that are required to obtain HUD-2530 clearance for participation in owning, developing, operating and managing the Apartment Complex have received such clearance from HUD.

6.11 Construction of the Apartment Complex. Prior to Construction Completion, the Administrative Member shall have the following duties and obligations with respect to the Apartment Complex:

6.11(a) The Administrative Member shall provide, at the Company’s expense, all manner of materials, labor, implements and cartage of every description for the proper and complete construction of the Apartment Complex in accordance with the Plans. In addition, the Company shall take all necessary steps to assure that construction and installation of the Apartment Complex improvements shall begin within 30 days following the date of receipt of a notice to proceed, and, in any event, not later than 30 days following the date of this Agreement, shall proceed continuously and diligently, and shall be completed in a timely manner in accordance with the Plans and the applicable construction documents. In addition, the Administrative Member shall provide the Investor Member with the construction development schedule for the Apartment Complex, and any amendments thereto, prior to the commencement of construction of the Apartment Complex.

6.11(b) The Administrative Member agrees that it will correct any work performed and replace any materials that do not comply with the Plans, and correct any latent defects, regardless of when discovered. In the event of any dispute between the Company and Lender or Investor Member with respect to the interpretation and meaning of the Plans, the same shall be determined by an independent architect selected by Lender and Investor Member.

6.11(c) All labor and materials contracted for and in connection with construction of the Apartment Complex shall be used and employed solely on the Apartment Complex and in said construction, and only in accordance with the Plans. The moneys disbursed to or for the account of the Company under this Agreement shall constitute a trust fund in the hands of the Company or other payee and shall be used solely by such payee for the payment of the Cost of Improvements and for no other purpose unless another use is specifically provided for in this Agreement or Consented to by Investor Member and Lender.

6.11(d) The Administrative Member shall on behalf of the Company promptly pay and discharge or cause to be paid and discharged, as and when due, any and all income taxes (federal or otherwise) lawfully assessed and imposed upon the Company, and any and all lawful taxes, rates, levies and assessments whatsoever upon the Company's
properties and every part thereof, or upon the income or profits therefrom and all claims for labor, materials or supplies which, if unpaid, might be or become a Lien or charge upon any of the Company's property; provided, however, that nothing herein contained shall be construed as prohibiting the Company from diligently contesting in good faith by appropriate proceedings the validity of any such taxes, rates, levies or assessments, provided the Company has established adequate reserves therefor in conformity with generally accepted accounting principles consistently applied on the books of the Company.

6.11(e) The Administrative Member shall cause the construction and equipping of the Apartment Complex (including, without limitation, all tenant improvement work) to be performed in a timely and good and workmanlike manner in accordance with the construction schedule approved by Investor Member prior to the Admission Date (the "Construction Schedule"), and to be prosecuted with diligence and continuity and, in all respects, in accordance with the approved Plans and otherwise in accordance with this Agreement, the Project Documents (as applicable) and in compliance with all Laws.

6.11(f) Subject to the requirements of any Mortgage Loan, the Administrative Member agrees to use all commercially reasonable means to cause Lender to apply all insurance proceeds resulting from casualty or damage of the Apartment Complex and all payments or awards resulting from a taking, for any public or quasi-public purpose, by any lawful power or authority by exercise of the power of condemnation or eminent domain, promptly toward the restoration, replacement or rebuilding of the Apartment Complex, or any part thereof, as nearly as possible to its value, condition and operational character immediately prior to any such damage, destruction or taking, free and clear from any and all Liens and claims other than Permitted Liens.

6.11(g) The Administrative Member shall not consent to the sale, assignment or transfer of any loan of any Lender, or any portion thereof, without first obtaining the Consent of the Investor Member.

6.11(h) The Administrative Member shall at all times during the construction of the Apartment Complex maintain or cause to be maintained (i) "builder's all-risk" coverage insurance, which, upon Construction Completion, the Company shall convert to "all risk" coverage insurance against loss or damage as may now or hereafter be covered by the standard "all-risk" form of insurance policy, with claims to be settled on a replacement-cost basis. In addition, the Administrative Member shall promptly deliver to the Investor Member original certificates of insurance satisfactory to the Investor Member evidencing such insurance, together with the amount of the annual premium therefor, the name and address of the insurers and the name and telephone number of the individual insurance representative. Any changes in such insurance or insurers must be approved by the Investor Member and evidenced by replacement certificates of insurance satisfactory to the Investor Member. The Administrative Member shall promptly deliver to Investor Member copies of all insurance policies and other insurance information, as required under the Project Documents or as required in this Agreement.

6.11(i) The Company shall not accept or permit materials to be stored on the real property upon which the Apartment Complex is being constructed if such materials
are not intended to be used in connection with the Apartment Complex. No Capital Contributions will be made or funds advanced for materials stored at the Apartment Complex unless the Administrative Member furnishes satisfactory evidence, as determined by the Investor Member in its sole discretion, that such materials are properly stored and secured at the Apartment Complex and subject to such terms and conditions as the Investor Member may determine, which may include proof of sufficient insurance against risk of loss for full replacement cost with a standard loss payee endorsement. The Investor Member may impose limitations on the aggregate cost of materials stored at the Apartment Complex. All stored materials must be incorporated into the Apartment Complex within thirty (30) days of the request for funding regarding such materials, and the Investor Member may impose such additional conditions and requirements as it deems appropriate in its sole discretion. In the event any materials stored at the Apartment Complex are stolen, lost or in any other manner misplaced, destroyed or rendered unusable prior to the making of a Capital Contribution with respect thereto, the Investor Member shall not be obligated to make any Capital Contribution with respect thereto or on account of the cost of replacement thereof. Capital Contributions may be made for deposits placed with suppliers or for materials in fabrication or for costs incurred by the Company with respect to materials stored offsite of the Apartment Complex in the sole discretion of the Investor Member, and if such Capital Contributions are so permitted by the Investor Member, they shall be made subject to such terms and conditions as the Investor Member may require.

6.11(j) The Administrative Member shall disclose to the Investor Member any event that would prevent payment or reduce the amount of the Capital Contribution to be paid when due under this Agreement and, as a condition to the payment of each Installment, the Administrative Member shall furnish evidence satisfactory to Investor Member that the undisbursed proceeds of the Capital Contribution, plus the amount of the Construction Loan and any additional sums deposited by Administrative Member, less any deferred fees due Administrative Member (or its Affiliate) or Contractor, will be sufficient to pay the Costs of Improvements of the Apartment Complex.

6.11(k) The Administrative Member shall furnish to the Investor Member such other approvals, opinions, certificates, documents or agreements as Investor Member may reasonably request, in form and substance reasonably acceptable to Investor Member.

6.11(l) The Administrative Member agrees to provide notice to the Investor Member of any change in the financial condition of the Administrative Member or Guarantor which could have a material adverse effect on the ability of the Administrative Member or Guarantor to satisfy their respective obligations under the Project Documents or this Agreement.

6.11(m) The Administrative Member agrees to provide the Investor Member with copies of all monthly construction draw requests submitted to any Lender along with copies of any exhibits thereto and supporting documentation therefor, including without limitation, any Inspector's reports and AIA forms.

6.11(n) The Administrative Member agrees that all change orders of a material amount that effect a change in the Plans or Budget must be approved in writing by
Lenders (as required under their respective loan documents) and Investor Member before the Company becomes committed to the same, provided that no change order shall increase the total Costs of Improvements unless the Company or the Administrative Member contributes sufficient additional equity to cover such increase in the total Costs of Improvements as determined by Investor Member in its sole and absolute discretion (provided, such additional equity shall not be required if funds are otherwise available as described in Section 6.10(a), and provided further, such funding may be subject to the reimbursement provisions set forth in Section 6.10(a)). In addition, any proposed material increase in the Budget, or any material changes in the various categories thereof shall be submitted to and approved by Lenders and Investor Member prior to the time that Company shall become committed to making any such increases or changes. For purposes of this paragraph, a change in the Budget or a change order shall be deemed to be a material amount if the same in any single instance equals or exceeds $50,000, or if the change, together with all prior changes, aggregates a sum exceeding $100,000.

6.11(o) The Administrative Member shall provide to the Investor Member executed copies of all Major Subcontracts within ten (10) days of the execution thereof.

6.11(p) Notwithstanding anything to the contrary contained herein or in any Project Document, the Administrative Member shall provide to the Investor Member for its approval, copies of all “construction draws” for Construction Loan proceeds (and all Capital Contribution Installment proceeds (other than the Final Installment) as described herein) with back-up supporting documentation at least five (5) Business Days prior to submission of such draw to the Construction Lender. The Investor Member agrees to use commercially reasonable efforts to review each such draw within three (3) Business Days after receipt of such draw. To the extent any such draw is not approved by the Investor Member, the Administrative Member shall not submit such draw for payment to any Lender.

6.11(q) The Administrative Member shall obtain a foundation survey of the Apartment Complex within thirty (30) days following the completion of the foundation for the last Building in the Apartment Complex to have its foundation completed.

6.12 Operating Deficit Loans. If, at any time prior to the satisfaction of all conditions precedent to the making of the Final Installment (“Period 1”), an Operating Deficit exists, the Administrative Member shall fund the Operating Deficit without limitation as to amount by making Operating Deficit Loans. For a minimum of 36 months following Period 1, the Administrative Member’s obligation to fund Operating Deficits through Operating Deficit Loans shall continue in an additional amount (i.e., not reduced by any Operating Deficit Loans made in Period 1) not to exceed $390,000 in the aggregate. Commencing with the 37th month following Period 1, if the Operating Reserve is fully funded to the amount of $257,910, the Administrative Member shall have no further obligation to fund Operating Deficits through Operating Deficit Loans. Notwithstanding anything to the contrary set forth in this Agreement, after Period 1, funds in the Operating Reserve may be used to pay Operating Deficits before the Administrative Member is required to make Operating Deficit Loans; provided, however, that any release of funds from such reserves is subject to the Investor Member’s approval under Section 6.10(p)(ii) hereof, and further provided that funds in the Operating Reserve used to pay Operating Deficits shall not be credited against Administrative Member’s obligation to fund Operating Deficits.
An Operating Deficit Loan shall not be treated as funded for purposes of determining application of the limits on the Administrative Member’s Operating Deficit Loan obligations set forth in the prior paragraph if and to the extent the principal amount of any Operating Deficit Loan has been repaid to the Administrative Member pursuant to Section 4.02 after Period 1.

All Operating Deficit Loans shall bear interest at the rate of 10% per annum, compounded annually, and shall be repayable from Cash Flow or Net Proceeds as provided in Article 4. No Person who is not a party to this Agreement (including, without limitation, any creditor of the Company) shall be entitled to rely on the Administrative Member’s undertaking to make Operating Deficit Loans as set forth in this Section 6.12.

The parties hereto agree that nothing in this Section 6.12 shall reduce, limit or otherwise affect the obligations of the Administrative Member to make Adjuster Contributions as set forth in Section 3.05 of this Agreement.

The Administrative Member shall have the right, but not the obligation, to make Operating Deficit Loans to cover any Operating Deficit in excess of any limits on the Administrative Member’s Operating Deficit Loan obligations in this Section 6.12. Notwithstanding the prior sentence, the Investor Member shall have grounds to automatically remove the Administrative Member if (i) an Operating Deficit (which is not the subject of a good faith dispute) continues to exist for 60 consecutive days after receipt by the Administrative Member from the Investor Member of written notice of such Operating Deficit (which written notice shall state that failure by the Administrative Member to comply with the requirements of this Section 6.12 shall be grounds for automatic removal and shall request that the Administrative Member provide to the Investor Member a satisfactory work out plan) and the Administrative Member fails to provide in good faith a reasonable work out plan to the Investor Member during such 60 day period; or (ii) the Administrative Member fails to fund an Operating Deficit (which is not the subject of a good faith dispute) within 25 days after its receipt from the Investor Member of written notice that the Investor Member intends to fund such Operating Deficit (which written notice shall state that failure by the Administrative Member to comply with the requirements of this Section 6.12 shall be grounds for automatic removal), the Investor Member then funds such Operating Deficit after the expiration of such 25 day period in an amount greater than $10,000, and the Administrative Member then fails to reimburse the Investor Member in full within 5 days after the Investor Member funds such Operating Deficit. The Members agree that funds in the Operating Reserve shall be used to fund Operating Deficits prior to the application of the prior sentence.

6.13 Obligation to Purchase Interest of Investor Member.

6.13(a) Notwithstanding any other provision contained herein, if (i) building permits have not been obtained and construction of the Apartment Complex has not commenced by November 1, 2016; (ii) each Building is not placed in service on or before December 31, 2017, or, if earlier, the date required by any Lender or governmental agency; (iii) the Company’s basis in the Apartment Complex for federal income tax purposes as finally determined by the Accountants or pursuant to any audit by the Service, as of the date required by the Agency, is less than 10% of the Company’s reasonably expected basis in the Apartment Complex as required by Section 42(h)(1)(E) of the Code or the requirements of the Agency’s allocation of Credits are otherwise not satisfied; (iv) the Company fails to meet the minimum set-aside test, the rent restriction test of Code Section 42(g) within 12
months of the date that the Apartment Complex is placed in service, or any other requirement necessary for the Apartment Complex to qualify for Credits; (v) the Apartment Complex has not achieved occupancy by Qualified Tenants of at least 90% of its low-income set-aside units by October 1, 2019 or the Company fails to qualify for at least 70% of the projected Credits as referenced in Section 6.09(g) in any year after the first year in the Credit Period; provided, however, that if all Credit Adjuster Contributions have been made prior to the expiration of the fifth full tax year of property operations (provided the Investor Member has received final Company Tax Returns for all such years) (the first year in which the Investor Member is allocated Credits in an amount not less than 99.99% of the Credits for which the Company is determined to be eligible based upon the final Cost Certification and Forms 8609 for each building in the Apartment Complex for such year shall constitute the first full year of property operations for purposes hereof), then such event shall not constitute a grounds for repurchase under this Section 6.13(a); (vi) the Company has not achieved Permanent Loan Conversion by September 30, 2019 or, if earlier, the maturity date of the Construction Loan, or if prior thereto a commitment for any Company loan is cancelled, withdrawn or substantially modified without the Consent of the Investor Member; (vii) prior to Construction Completion, any substantial damage to or destruction of the Apartment Complex shall occur and the applicable insurance proceeds shall not be made available by the Lender for the restoration of the Apartment Complex or shall not, in the reasonable opinion of the Investor Member, be sufficient to repair and restore the Apartment Complex in a manner that would qualify for the aggregate projected Credit allocable to the Investor Member or the Apartment Complex is not restored within 24 months following such casualty; (viii) prior to Construction Completion, there shall have occurred an Abandonment; (ix) prior to the making of the Final Installment, a foreclosure action is commenced against the Apartment Complex and not dismissed within 45 days; or (x) the Company fails to receive the approval of the Investor Member’s admission into the Company from any lender or governmental agency (whose approval is required) within 60 days of the Admission Date; then the Administrative Member shall be obligated to repurchase the Interest of the Investor Member (which shall include, for this purpose, the Interest of the Special Member) for an amount specified in Section 6.13(b). For purposes of this Agreement, “Abandonment” means the complete abandonment of the Apartment Complex such that all work by all contractors, subcontractors, materialmen, suppliers and any other tradespersons performing any work and supplying any materials or supplies for the Apartment Complex shall have ceased for at least 45 days.

6.13(b) If the Administrative Member becomes obligated to purchase the Investor Member’s Interest as provided in Section 6.13(a), the Administrative Member shall immediately give written notice to the Investor Member of the occurrence of such event and of the Administrative Member’s obligation to purchase the Investor Member’s Interest. By written notice to the Administrative Member (regardless of receipt of the Administrative Member’s notice), the Investor Member may elect to require the Administrative Member to purchase the Investor Member’s Interest upon the occurrence of an event specified in Section 6.13(a). The amount of the purchase price (the “Buyout Price”) shall equal, as of the actual date of purchase, the sum of (A) the aggregate amount of Capital Contributions and advances made by the Investor Member to the Company plus (B) the legal, accounting and internal costs incurred by the Investor Member in connection with its investment in the Company (subject to an aggregate cap of $80,000 for the various costs included in this
clause (B)) plus (C) the amount of any interest, penalties and recapture amounts imposed (or determined by the Accountants to likely be imposed) on the Investor Member as a result of such purchase or its prior claiming of Credits with respect to the Company, plus (D) an amount that, on an After-Tax Basis, equals all transfer taxes or similar assessments incurred by the Investor Member in connection with its investment in the Company or the sale of its Interest pursuant to this Agreement, such amount representing the parties' good faith estimate of damages incurred by the Investor Member, less (E) Credits taken by the Investor Member and not recaptured.

If the Investor Member elects to have its Interest purchased, the Administrative Member shall purchase such Interest for the Buyout Price in cash within 30 days after notice from the Investor Member of its election to have its Interest purchased. Upon receipt of the Buyout Price, the Investor Member shall then transfer (and shall, for no additional consideration, cause the Special Member to transfer) its Company Interest to the Administrative Member or its designee free and clear of any Liens or interests of any third party and shall execute or cause to be executed any documents reasonably required to fully transfer such Company Interest. As of the effective date of such transfer, the Investor Member shall withdraw from the Company and shall have no further interest in or obligation to the Company, and, if required by the Uniform Act, the Administrative Member shall promptly file an amendment to the Certificate in the Filing Office reflecting the withdrawal of the Investor Member (and the Special Member).

The Investor Member may waive in writing its right to require the Administrative Member to purchase its Interest by reason of the application of any of the provisions of Section 6.13(a) at any time. After such waiver the Administrative Member shall have no further obligation to purchase the Interest of the Investor Member by reason of the application of the provision to which such waiver relates.

6.14 Tenant Services. The Administrative Member is obligated to cause the Company to provide Tenant Services for the full Compliance Period of each Building. The Members currently anticipate that a third party social services provider or the Management Agent will provide Tenant Services at no cost to the Company. If, however, the Company must pay for Tenant Services at any time, the Administrative Member shall pay the costs and expenses of providing Tenant Services. Neither the Company nor any other Member shall be obligated to reimburse the Administrative Member for any sums expended by the Administrative Member in paying for Tenant Services.

ARTICLE 7

PAYMENTS TO MEMBERS AND AFFILIATES AND OTHERS

7.01 Property Management Fee. Subject to any restrictions set forth in the Project Documents, the Company shall pay to the Management Agent for its services in managing the Apartment Complex a monthly fee in an amount equal to the greater of (i) 5% of the Effective Gross Income for the preceding month, or (ii) $2,000 per month. In no event shall the property management fee be paid to the Management Agent by the Company prior to the receipt of final approval of the Management Agreement by the Investor Member.

7.02 Developer Fee. For services rendered in connection with the Company’s development and construction of the Apartment Complex, the Company shall pay a Developer
Fee (including overhead) to the Developer in an amount equal to $2,138,345 or such other amount as may be permitted by the Agency. The Developer Fee shall be the sole sum due the Developer for its services under the Development Agreement, and the Developer shall not be reimbursed for internal overhead or internal or third party expenses. If the Developer has expended funds on the Company’s behalf prior to the Closing Date, it may be reimbursed pursuant to the Reimbursement Agreement. The Developer Fee shall be deemed earned in its entirety as of the date of Construction Completion and otherwise in accordance with the terms of the Development Agreement provided, however, that the amount and timing of payments of the Developer Fee shall be governed by this Agreement. Notwithstanding anything to the contrary contained in this Agreement or in the Development Agreement, the Developer Fee, or any rights thereto, shall not be assigned or transferred to any third party without the Consent of the Investor Member. The Developer shall be paid such portion of its Developer Fee as possible from available debt and equity proceeds of the Company, to the extent such proceeds are not required for other Company purposes (e.g., payment of any Adjuster Distributions required pursuant to Section 3.05 hereunder). The remainder of the Developer Fee shall constitute a loan from the Developer to the Company with interest at the long-term Applicable Federal Rate (the "Developer Loan"), payable to the Developer from Cash Flow and/or Net Proceeds as described in Article 4. In all events, however, a portion of the Developer Loan necessary for the Company to have sufficient eligible basis to allocate the Projected Aggregate Credit Amount to the Investor Member, (as determined by the Accountants and approved by the Investor Member), (the "Required Paydown"), shall be due on the fifteenth (15th) anniversary of Construction Completion. To the extent that Cash Flow and/or Net Proceeds through such date (or, if earlier, the date of liquidation of the Company) are insufficient to repay that portion of the Developer Loan, the Administrative Member shall make a Capital Contribution to the Company in the amount of the Required Paydown and the Company shall pay such amount to the Developer in reduction of the Developer Loan. If an Event of Bankruptcy occurs with respect to the Developer, the Administrative Member or any Guarantor, the Administrative Member shall be required to make a Capital Contribution to the Company in the amount necessary to pay the balance of the Developer Loan, if any. The Company shall use such Capital Contribution to repay the Developer Loan. The Developer shall not be a third party beneficiary of these covenants.

Subject to the provisions of this Agreement and to the extent funds are available as described above, it is anticipated (but not required) that the Developer Fee will be paid as follows: (i) $650,000 upon the Initial Installment (iii) $650,000 upon satisfaction of all conditions of the 95% Construction Completion Installment; (iv) $651,638 upon satisfaction of all conditions of the Final Installment; and (v) the balance from Cash Flow and/or Net Proceeds.

7.03 Incentive Management Fee. In consideration for the efficient management of the Company and the business thereof as described in the Incentive Management Fee Agreement, the Administrative Member and the Managing Member shall be paid a noncumulative Incentive Management Fee from Cash Flow in the priority set forth in Section 4.02(a), in accordance with the Incentive Management Fee Agreement. In no event may the amount of Incentive Management Fee paid in any year exceed the lesser of (i) $40,000 less fees paid to the Management Agent for such year or (ii) a sum equal to 12% of the Company’s Effective Gross Income for such year less fees paid to the Management Agent for such year. The Administrative Member and the Managing Member hereby represent that the Incentive Management Fee
payable pursuant to this Section 7.03 constitutes reasonable compensation for its provision of the services described in Section 1 of the Incentive Management Fee Agreement.

7.04 Grant of Security Interest. In order to secure the performance by the Administrative Member, the Managing Member and the Developer of their obligations under this Agreement, the Development Agreement and all other agreements or instruments delivered concurrently herewith, the Administrative Member, the Managing Member and the Developer hereby assign to the Investor Member, subject only to the security interest of the Construction Lender, all amounts otherwise payable to the Administrative Member, the Managing Member and the Developer under this Agreement and the Development Agreement (as fees, distributions or otherwise), which assignment shall be deemed a grant of a security interest. The Administrative Member, the Managing Member and the Developer hereby represent and warrant to the Investor Member that the security interest granted hereunder is and shall remain a security interest in the collateral herein described subject only to the security interest of the Construction Lender. At the request of the Investor Member, the Administrative Member, the Managing Member and the Developer shall execute and deliver such documents and take such other actions as may be necessary or appropriate in the discretion of the Investor Member to further evidence and perfect the security interest granted hereby. To the extent permitted by applicable law, the Administrative Member, the Managing Member and the Developer hereby authorize the Investor Member to file Uniform Commercial Code financing statements in the name of such Persons, as applicable.

Notwithstanding any of the foregoing, unless and until there occurs an event of default of an obligation of the Administrative Member, the Managing Member or the Developer hereunder, which remains uncured after expiration of the applicable cure period, the Investor Member agrees to forebear exercising its right under this Section 7.04 to any Developer Fee payable to Developer or fees or distributions payable to the Managing Member or Administrative Member under this Agreement, and the Developer, the Administrative Member and the Managing Member shall have the right to receive all Developer Fee or fees/distributions payable to them under this Agreement or the Development Agreement.

ARTICLE 8

RIGHTS AND OBLIGATIONS OF INVESTOR MEMBERS

8.01 Liability of Investor Members. The Investor Member shall be liable only to make Capital Contributions as and when due hereunder. After its Capital Contribution is fully paid, no Investor Member shall be required to make any further Capital Contribution or lend any funds to the Company, and no Investor Member shall be liable for any debts, liabilities, contracts, or obligations of the Company, except as otherwise required by the Uniform Act.

8.02 No Right To Manage, Partition or Dissolve. No Investor Member shall take part in the management, control, conduct or operation of the Company (or the Apartment Complex), or have any right, power or authority to act for or bind the Company. Notwithstanding the foregoing, the Administrative Member, the Managing Member and the Company expressly agree that the Investor Member shall have the right, exercisable in its sole discretion, to contact at any time any Lender to ascertain the status of payment and/or
performance by the Company under the applicable loan documents and the Accountants with respect to any financial or tax information with respect to the Company. No provision of this Agreement which makes the Consent of the Investor Member a condition for the effectiveness of an action taken by the Administrative Member or Managing Member is intended, and no such provision shall be construed, to give the Investor Member the right to participate in the control of the Company business. No Investor Member shall have the right to bring an action for partition or dissolution against the Company as long as the Company is operated in accordance with Section 1.04, and the Investor Member hereby waives, to the full extent permitted by law, the right to institute an action for partition or dissolution as long as the Company is operated in accordance with Section 1.04.

8.03 Death or Disability of Investor Member. The Company shall not be dissolved by the death, insanity, adjudication of incompetency, bankruptcy, insolvency or Withdrawal of any Investor Member, by the assignment of the Interest of a Investor Member, or by the admission of a Substituted Investor Member.

8.04 Removal of a Member.

8.04(a) The Investor Member shall have all rights and remedies available at law, in equity, and/or under this Agreement and the other Project Documents including, without limitation, the right to remove a Managing Member or Administrative Member and elect or appoint a new Managing Member or Administrative Member, upon the occurrence of any of the following events (a "Removal Event"):

8.04(a)(i) in the event of (A) fraud or any Felony Conviction of such Member, any partner or member of such Member, any Guarantor, or any Affiliates thereof (collectively, the "Principals"), or (B) any Principal’s other violation of laws that, in the case of this clause (B) only, would or could have a material adverse impact on the Company or the Investor Member;

8.04(a)(ii) in the event that HUD or the Agency requires the removal of the Administrative Member as a requirement of maintaining the Rental Subsidy. Notwithstanding the foregoing, in the event that HUD and the Agency agree in writing to an alternative arrangement (the "811 Alternative") that would allow the Company to proceed without the Rental Subsidy and without the removal of the Administrative Member (provided such 811 Alternative shall not cause, or reasonably be expected to cause, a materially adverse impact on the Company or the Investor Member), then the Investor Member will not exercise its removal rights pursuant to this subsection 8.04(a)(ii), provided that the Investor Member has provided its Consent to such alternative prior to its implementation, which Consent shall not be unreasonably conditioned, withheld or delayed;

8.04(a)(iii) such Member’s performance constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty;

8.04(a)(iv) such Member, or any Affiliate thereof, shall have violated any provisions of any Project Document or any document required in connection
with any Mortgage and shall not have cured such violation within applicable grace periods, if any (but in no event more than 10 days after its receipt of written notice of the violation);

8.04(a)(v) such Member shall have violated, and not cured within 10 days after written notice from the Investor Member, any provision of this Agreement, including, but not limited to, any of its representations and covenants in Article 6, any obligation to provide funds under Sections 3.05, 6.10 or 6.12, and such violation causes a material adverse effect on the Company or any of its Members (provided that the parties hereto agree that any uncured violation to provide funds under Section 3.05, 6.10 or 6.12 shall be deemed to have a material adverse effect, as will any violation of Section 10.01; similarly, any violation under Section 12.06 that has not been cured within 60 days of receipt by such Member of written notice of such violation shall be deemed to have a material adverse effect);

8.04(a)(vi) any Mortgage shall have gone into default and not been cured within any applicable cure period provided therein;

8.04(a)(vii) an Event of Bankruptcy shall have occurred with respect to the Managing Member, the Administrative Member, the Company, or any Guarantor (or a Guarantor shall fail to comply with all material terms of the Guaranty) or if any Guarantor that is (i) an Entity shall have dissolved, liquidated or otherwise terminated or (ii) an individual shall have died or become otherwise legally incapacitated;

8.04(a)(viii) without the Consent of the Investor Member, an event of Withdrawal shall have occurred with respect to such Member as a result of one or more sales, transfers or other assignments to other than an Affiliate of a controlling interest in a Member which is a corporation or limited liability company or of a general partner interest in a Member which is a limited partnership;

8.04(a)(ix) any event (other than a Change in Law) that causes the Credits available to the Company in any year after the first year in which the Company claims Credits to be less than 85% of the Projected Annual Credit Amount for such year as referenced in Section 6.09(g);

8.04(a)(x) such Member shall have conducted its own affairs or the affairs of the Company in such a manner as would (x) cause the termination of the Company for federal income tax purpose or (y) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation; or

8.04(a)(xi) such Member’s failure to fund any excess Operating Deficits as described in Section 6.12.

8.04(b) Upon the removal of a Member pursuant to this Section 8.04, without any further action by any Member, the Special Member or its designee shall
automatically become a Managing Member or Administrative Member, as applicable, and the Company shall acquire the Interest of the removed Member for an amount equal to the greater of (i) $100 or (ii) the Capital Account balance of the removed Member on the date of removal, less any amounts owed by the Member for Adjuster Contributions, operating deficits, or other obligations under this Agreement which have not been paid. Amounts owed to the removed Member pursuant to the preceding sentence shall be payable by the Company, without interest, upon the earlier of fifteen years from the date of removal or the sale of all or substantially all of the Company’s assets. The economic Interest of the Special Member as the Special Member shall continue unaffected by the new status of the Special Member or its designee as a Managing Member or Administrative Member, and the new Member shall automatically be irrevocably delegated all of the powers and duties of the removed Managing Member or Administrative Member, as applicable, pursuant to this Agreement. Nothing in this Section 8.04(b) shall reduce or otherwise limit the rights, remedies or other actions available to the Investor Member against the removed Member. If a Member withdraws or is removed from the Company for any reason whatsoever, then such Member shall be and shall remain liable for all damages to the Company resulting from such Member’s breach of this Agreement and for all its obligations and liabilities under this Agreement, including, without limitation, all its liabilities and obligations under Article 6 (and including, without limitation, its obligation to make the payments required under Section 7.02 herein), and liabilities and obligations based on facts and circumstances that occur prior to its withdrawal or removal except that (i) the former Member shall not be liable for any liabilities and obligations directly arising from the gross negligence, intentional misconduct or breach of this Agreement by any successor Member, and (ii) the former Member shall not have the obligation to continue to act as a Member of the Company. A Member so removed will not be liable for any obligations of the Company incurred or attributable to events or actions occurring after the effective date of its removal (including, without limitation, any obligation to make payments pursuant to Sections 3.05, 6.05, or 6.10 or loans pursuant to Section 6.12 to the extent attributable to events or actions occurring after the effective date of its removal), but shall continue to be liable for all obligations and liabilities incurred or attributable to events occurring prior to the effective date of its removal no matter when discovered. A Member so removed shall fully indemnify and hold harmless the Special Member (or its designee), as a substitute Member, as well as any other remaining Members, against any and all losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained in connection with its capacity as a Member to the extent that any such losses, judgments, liabilities, expenses and settlement payments relate to, arise from, or are attributable to claims, actions, omissions or events arising prior to the date of removal. Each Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to execute and deliver any and all documents and instruments on behalf of such Member and the Company as the Special Member may deem to be necessary or appropriate in order to effect the provisions of this Section 8.04 and to enable the new Administrative Member to manage the business of the Company. Nothing in this Section 8.04(b) shall limit or reduce the rights of the removed Member or any Affiliate thereof to receive any fees for services previously performed or repayment of Operating Deficit Loans, if any, in accordance with the terms thereof; provided, however, the parties hereto agree that any cash distributions, fees, loans or other payments otherwise distributable or owed to the removed
Member or its Affiliates (including, without limitation, the amount of any Developer Loan or Operating Deficit Loan) shall, in the sole and absolute discretion of the substitute Member, be satisfied by applying all or any of such amounts to any unpaid obligation of the removed Member pursuant to this Agreement (including, without limitation, any obligations of the removed Member pursuant to Section 3.05, 6.05, 6.10, 6.12 or 7.02). In addition, notwithstanding any longer term of any Management Agreement or other contract, the Investor Member shall have the right in the event the Administrative Member is removed as such Administrative Member pursuant to this Agreement, to terminate without penalty the Management Agreement (if the Management Agent is an Affiliate of the Administrative Member) and every other contract between the Company and the removed Member and/or Affiliates of the removed Member by notice, effective simultaneously with such removal.

8.05 Outside Activities. Nothing herein contained shall be construed to constitute any Investor Member hereof the agent of any other Member hereof or to limit in any manner the Investor Member in the carrying on of its own business or activities. Any Investor Member may engage in and/or possess any interest in other business ventures (including partnerships of whatever kind) of every nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence. Neither the Company nor any other Member hereof shall have any rights in or to any such independent ventures or the income or profits derived therefrom and nothing shall be construed to render them partners or members in any such other business ventures.

ARTICLE 9

TRANSFERABILITY OF INVESTOR MEMBER INTERESTS

9.01 Consent of Members Not Required for Assignment. The Investor Member may sell, transfer, assign or otherwise Dispose of all or any part of its Interest without the prior written consent of the Managing Member or the Administrative Member, provided the assignee assumes liability for all unpaid Capital Contribution obligations. Each assignee shall automatically become a Substituted Investor Member. Every assignee of an Investor Member’s Interest who desires to make a further assignment of its Interest shall be subject to all the provisions of this Article 9 to the same extent and in the same manner as an Investor Member.

9.02 Member Cooperation. In conjunction with any sale, transfer, assignment or other Disposition by the Investor Member of all or any part of its Interest in accordance with the provisions of this Article 9, the Investor Member is authorized to obtain updated UCC, judgment and tax lien searches with respect to the Managing Member, the Administrative Member and the Company and to disclose information concerning the Company, the Administrative Member, the Managing Member, the Guarantor and any other Persons involved in the development and operation of the Apartment Complex and to initiate contact (and take any other actions needed to obtain required consents) with any Lender or other third-party whose consent to such Disposition may be required. The Managing Member and the Administrative Member represent and agree that they will take all actions reasonably necessary (or requested by the Investor Member) to cooperate with the Investor Member and facilitate the Investor Member’s Disposition of its Interest and/or the receipt of such consents, including, but not limited to, providing financial statements, information and reports with respect to the Managing Member, the Administrative
Member, Guarantor and/or the Company and reaffirming the accuracy of the representations and covenants set forth in Sections 6.09 and 6.10 and the Investor Member shall reimburse the Managing Member and the Administrative Member for all costs reasonably incurred by it pursuant to this Section 9.02.

ARTICLE 10

WITHDRAWAL OF A MEMBER; DISPOSITION OF A MEMBER’S INTEREST

10.01 Transfer and Withdrawal. No Managing Member or Administrative Member may voluntarily Withdraw from the Company or transfer all or any part of its Interest in the Company without the Consent of the Investor Member and all other Members, except that if the Special Member or a designee thereof becomes a Managing Member or Administrative Member pursuant to this Agreement, it shall not require the consent of any other Member to transfer all or any portion of its Interest as a Member, other than as may be required under the Uniform Act. In the event of any Withdrawal by a Managing Member or Administrative Member in violation of this Section 10.01, such Member, in addition to being subject to any and all other legal remedies which may be pursued by the Members, shall forfeit to the Special Member or its designee, such Member’s Interest and all unpaid fees from (and any loans to) the Company and shall remain liable for all of the Withdrawning Member’s obligations under this Agreement. In addition, upon such Withdrawal, the Special Member or its designee shall automatically become a Member without further action by the Withdrawning Member or any other Member, and each Member hereby consents to such transfer and to the admission of the Special Member or its designee as a Member in such a situation. Such transfer shall occur automatically upon such Withdrawal without further action by such Withdrawning Member.

10.02 Obligation To Continue. Upon the Withdrawal of a Member, the Company shall terminate except that any remaining Member shall have the right and obligation to elect to continue the business of the Company and shall, within 30 days, notify the Investor Member of such Withdrawal and such election. If the Investor Member elects and admits a successor Member, the relationship among the then Members shall be governed by this Agreement.

10.03 Intentionally Omitted.

10.04 Interest of Member After Permitted Withdrawal. In the event of the Withdrawal of a Member not in violation of Section 10.01, the Withdrawning Member hereby covenants and agrees to transfer to any remaining Member(s) or to a successor Member selected in accordance with Section 10.02, as the case may be, such portion of the Withdrawning Member’s Interest as such remaining or successor Member(s) may designate. Such transfer shall be made in consideration of the payment by the transferee of the fair value of such Interest, which, in the absence of agreement between such parties, shall be determined by a committee of three appraisers, one selected by the Withdrawning Member, one selected by the transferee and a third selected by the other two appraisers. The proceedings of such committee shall conform to the rules of the American Arbitration Association, as far as appropriate, and its decision shall be final and binding. The portion of the Withdrawning Member’s Interest to be transferred in accordance with the provisions of this Section 10.04 shall be sufficient to ensure the continued treatment of the Company as a partnership under the Code, and, for the purposes of Article 4.
shall be deemed to be effective as of the date of Withdrawal, but the Company shall not make any distributions to the designated transferee until the transfer has been made. Any holder of any portion of the interest of a Withdrawing Member which is not designated to be transferred to the remaining or successor Member(s) pursuant to the provisions of this Section 10.04 shall become a Special Member and shall be entitled to the same share of the Profits and Losses, Cash Flow and other distributions to which such Interest was entitled.

10.05 Additional Members. With the Consent of the Investor Member, the Administrative Member shall have the right to designate one or more Persons as additional Members. Notice of any such designation shall be promptly given to all the other Members. The Administrative Member shall assign to such Persons such portion of its Interests as may be agreed upon by the Administrative Member and such Persons, provided such assignment does not cause a loss or recapture of the Credit to the Investor Member and does not jeopardize the classification of the Company as a partnership under the Code.

ARTICLE 11

MANAGEMENT AGENT AND MANAGEMENT FEE

11.01(a) The Administrative Member shall have the responsibility for supervising the management of the Apartment Complex and the Management Agent. The Company shall not enter into any Management Agreement or modify, terminate or extend any Management Agreement unless (i) it shall have obtained the Consent of the Investor Member to the identity of the Management Agent and the terms of the Management Agreement or the modification, termination or extension thereof, (ii) such Management Agreement or modified or extended Management Agreement provides that it is terminable without penalty by the Company on 30 days' notice by the Company and (iii) the Lenders shall have consented, to the extent required under the Project Documents, to the new or modified Management Agreement. The Administrative Member shall cause each Management Agreement entered into by the Company to provide that the Management Agent shall take all actions reasonably necessary (or requested by the Investor Member or Administrative Member) to cooperate with the Investor Member or Administrative Member in monitoring the Management Agent's compliance with the terms of the Management Agreement and this Agreement, including, but not limited to, maintaining tenant files and records in accordance with Section 12.01, verification of fees and expenses incurred by the Management Agent, verification of compliance with the tenant certification and other requirements of Code Section 42 and the Agency, and verification of compliance with the Fair Housing Act and other applicable laws.

11.01(b) The Management Agent shall receive a management fee, which fee shall be paid in accordance with the terms of Section 7.01 and the Management Agreement, which shall be executed by the Company. If (i) the Apartment Complex shall be subject to a substantial building code violation which shall not have been cured within two months after notice from the applicable governmental agency or department, (ii) an Event of Bankruptcy shall occur with respect to the Management Agent, (iii) the Management Agent shall commit misconduct or negligence in its conduct of its duties and obligations under the Management Agreement and/or any Lender-approved management plan for the Apartment
Complex, (iv) the Apartment Complex has incurred Operating Deficits for two (2) consecutive months following the making of the Final Installment (provided, however, that if the Administrative Member has made loans or Capital Contributions to the Company sufficient to cover such Operating Deficits, the termination and appointment rights of the Investor Member in this section shall not be exercised as a result of a violation of this subsection (iv)), (v) after the first year of the Credit Period, less than 95% of the low-income set-aside units are qualified “low-income units” under Code Section 42(i)(3), (vi) the Management Agent is cited by any Credit monitoring or compliance agency of the State of Texas or any other governmental agency for (and has not cured within a reasonable period of time the particular violation(s)) a material violation of any applicable rule, regulation or requirement, including, but not limited to, noncompliance with the minimum set-aside test, the rent restriction test or any other Credit-related provision, or (vii) the Management Agent fails to cooperate with the Investor Member or Administrative Member in monitoring the Management Agent’s compliance with the terms of the Management Agreement, then, upon request by the Investor Member and after providing the Management Agent with thirty (30) days notice and opportunity to cure (and the receipt of any required approval of the Lender), the Administrative Member shall cause the Company to promptly terminate the Management Agreement with the Management Agent and appoint a new Management Agent approved by the Investor Member. The Administrative Member hereby grants to the Special Member an irrevocable (to the extent permitted by applicable law) power of attorney coupled with an interest to take any action and to execute and deliver any and all documents and instruments on behalf of the Administrative Member and the Company as the Special Member may deem necessary or appropriate to effectuate the provisions of this Section 11.01(b). The Company shall not enter into any future management arrangement or renew or extend any existing management arrangement unless such arrangement is terminable without penalty upon the occurrence of the events described in this Article 11. During the pendency of any proceeding to remove a Administrative Member from the Company, the Investor Member shall have the right to control all Company decisions as to the Management Agent.

11.01(c) The Administrative Member will have the duty to manage the Apartment Complex during any period when there is no Management Agent (until such time as a replacement Management Agent satisfactory to the Administrative Member and the Investor Member is found, and the parties hereto agree to use their best efforts to agree on an acceptable replacement Management Agent within 30 days) and the Company will pay the Administrative Member for such services a management fee equal to such amount as may be deemed to be reasonable by the Investor Member and no greater than the amount that would be paid to an unrelated party performing substantially similar services. If the Management Agent is not an Affiliate of a Administrative Member, the Administrative Member represents and agrees that it or its Affiliates shall not, directly or indirectly, receive any payment or other form of compensation from the Management Agent or any of its Affiliates.
ARTICLE 12

BOOKS AND RECORDS; ACCOUNTING; TAX ELECTIONS; ETC.

12.01 Books and Records. The Company shall maintain all books and records which are required under the Uniform Act, the Code and Regulations, or by any governmental agencies having jurisdiction and may maintain such other books and records as the Administrative Member deems advisable. All records required to determine the Company’s ability to claim Credits (including, without limitation, records regarding Eligible Basis of the Apartment Complex and records pertaining to the qualification and recertification of tenants) shall be kept and maintained during the entire Compliance Period plus six years thereafter (provided that records with respect to tenants who are other than the initial occupants of a unit need be maintained only for a period of six years). All such records shall be turned over to the Investor Member upon any removal or withdrawal of the Administrative Member or upon any termination of a Management Agent appointed pursuant to Article 11. Upon the request of the Investor Member, the Administrative Member shall promptly provide to the Investor Member copies of all records and files with respect to initial and other tenants, income certifications and such other information as is necessary to establish at any time the number of units treated as occupied by Qualified Tenants (and the Investor Member agrees to reimburse the Administrative Member for all costs reasonably incurred by the Administrative Member in providing such information to the Investor Member). The Company will also maintain a list of the names and addresses of all Members. The books and records and list of Members shall be available for examination by any Member, or its duly authorized representatives, at the principal office of the Company at any and all reasonable times. In addition, the Investor Member is authorized to conduct a physical inspection of the Apartment Complex at any and all reasonable times.

12.02 Bank Accounts. The bank accounts of the Company shall be maintained with Wells Fargo Bank, National Association, unless otherwise required by the First Mortgage Lender, or such other financial institution as determined by the Administrative Member. Withdrawals shall be made only in the regular course of Company business on such signature(s) as the Administrative Member may determine. All deposits and other funds not needed in the operation of the business in the discretion of the Administrative Member shall be deposited in Qualified Investments selected in the sole and absolute discretion of the Administrative Member.

12.03 Accrual Basis. The books of the Company shall be kept on the accrual basis and the fiscal and tax year of the Company shall be the calendar year.

12.04 Accountants. The Accountants shall prepare, for execution by the Administrative Member, all Company Tax Returns and shall prepare all annual financial reports to the Members, which shall be in such detail as the Investor Member may reasonably require. If the Accountants provide any required returns, reports, calculations or other items that this Agreement requires them to provide more than 60 days late, or more than 30 days late in two consecutive calendar years, Investor Member shall have the absolute right to cause the Company to terminate the Accountants and engage substitute accountants selected by the Administrative Member that are acceptable to the Investor Member in its sole and absolute discretion.
12.05 Federal Income Tax Elections. Subject to Article 4 and Section 6.10(h) all elections made by the Company under the Code shall be made by the Administrative Member, and the Administrative Member shall provide notice to the Investor Member of such elections (provided that the Consent of the Investor Member shall be required for any election that could affect the timing and/or amount of Credits or losses allocable to the Investor Member). Notwithstanding any other notice requirements contained herein, furnishing copies of the Company Tax Returns shall constitute notice under this Section 12.05.

12.06 Information to Investor Member.

12.06(a) For each year of the Company’s existence, the Company shall deliver to the Investor Member, within 60 days after the end of the Company Taxable Year, the following:

12.06(a)(i) copies of all completed and executed forms that are required to be filed with the Internal Revenue Service. For the first year in which Credits are allocated to the Members (and any year in which a technical termination of the Company occurs), a draft copy of the tax return shall be delivered to Investor Member at least 10 days prior to the filing of the return, and the return shall not be filed prior to receiving the Consent of Investor Member;

12.06(a)(ii) internally prepared financial statements for the Administrative Member and the Managing Member and compiled financial statements for each Guarantor that is not an individual or a single purpose entity (including an annual net worth statement for each such Member) and internally prepared financial statements for each Guarantor who is an individual or a single purpose entity, certified by the appropriate individuals and officers, together with all other information and/or materials required to be delivered on behalf of the Guarantor pursuant to the Guaranty;

12.06(a)(iii) audited financial statements for the Company (in a format reasonably acceptable to the Investor Member) for the preceding Company Accounting Year, beginning with respect to Accounting Year 2017; and

12.06(a)(iv) all Schedules K-1 for the Company.

12.06(b) An annual pro forma operating budget shall be prepared by the Administrative Member for the Management Agent and furnished to the Investor Member no later than 30 days before the beginning of each Company Accounting Year.

12.06(c) After the earlier of (i) twelve months following Construction Completion and (ii) Permanent Loan Conversion, within 30 days after the end of each quarter of a fiscal year of the Company (provided, however, that if the Apartment Complex fails to attain a Debt Service Coverage Ratio of not less than 1.10 to 1 for any three (3) consecutive months the Investor Member shall, upon written notification to the Administrative Member, have the right to require the delivery of the information in this Section 12.06(c) to it within 30 days after the end of each month until such time as the Debt Service Coverage Ratio has increased to 1.10 to 1 for three (3) consecutive months), the
Administrative Member shall cause to be prepared and distributed to the Investor Member a report containing:

12.06(c)(i) a Company balance sheet, which may be unaudited;

12.06(c)(ii) a statement of Company income and expenses for the quarter then ended, which may be unaudited;

12.06(c)(iii) a statement of Company cash flows, reserves and capital proceeds for the quarter then ended, which may be unaudited;

12.06(c)(iv) a certification of the Administrative Member that the Apartment Complex and its tenants are in compliance with all applicable federal, state and local requirements and regulations;

12.06(c)(v) a copy of the rent roll for the Apartment Complex and an occupancy/rental report, all in the form specified by the Investor Member;

12.06(c)(vi) a copy of the reports completed by the Management Agent and Administrative Member in the form satisfactory to the Investor Member; and

12.06(c)(vii) all other information which is reasonably requested by the Investor Member regarding the Company and its activities during the time period covered by the report, including, but not limited to, copies of any filings and correspondence with the United States Treasury or the Agency (and its successors and assigns) regarding the Apartment Complex.

12.06(d) Commencing the month of initial occupancy by the first tenant of the Apartment Complex until Permanent Loan Conversion, within 30 days after the end of each month, the Company shall provide to the Investor Member the following:

12.06(d)(i) a statement of Company income and expenses for the month then ended, which may be unaudited; and

12.06(d)(ii) a copy of the rent roll for the Apartment Complex and an occupancy/rental report, all in the form specified by the Investor Member.

12.06(e) Within 30 days prior to the payment of insurance and property taxes, the Company shall supply to the Investor Member copies of insurance renewals and property tax bills, and within 10 days of the payment thereof, proof of the same.

12.06(f) Within ten (10) Business Days of the receipt of any HUD Notice (as defined herein), the Administrative Member shall provide the Investor Limited Member with a copy of such HUD Notice. "HUD Notice" includes any of the following items relating to the Apartment Complex, the Company, the Management Agent and/or any "principal" (as defined in the HUD regulations) of any of the foregoing: (i) management review; (ii) physical inspection report; (iii) notice of violation; (iv) notice of default; (v) Inspector General report; (vi) notice of any "flag" or other restriction relating to previous
participation clearance (2530); (vii) notice of any debarment, suspension or other similar restriction; and/or (viii) any other notice or communication relating to any administrative action or proceeding taken or proposed to be taken by HUD or any other governmental agency with respect to the Apartment Complex, the Company, any Member and/or the Management Agent. The Administrative Agent shall also provide the Investor Limited Partner with a copy of any additional communications to and/or from HUD relating to any HUD Notice within ten (10) Business Days following the date any such communication is received or sent by the Partnership, the Administrative Member, Managing Member and/or Management Agent, as applicable.

12.06(g) Within 10 days of the receipt of any correspondence or notice from a taxing authority (state or federal), any lender or housing agency, the Company shall supply a copy of the correspondence or notice to the Investor Member.

12.06(h) If the Administrative Member or Company shall fail to deliver any of the information required by this Section 12.06 within the specified time limits, the Administrative Member shall pay damages to the Investor Member in the sum of $100 per day thereafter until such information is received by the Investor Member. Such damages shall be paid forthwith by the Administrative Member, and failure to so pay shall constitute a material default of the Administrative Member under this Agreement. In addition, if the Administrative Member fails to so pay, the Administrative Member shall forthwith cease to be entitled to the payment or distribution of any Cash Flow or Net Proceeds to which it may otherwise be entitled under Article 4 hereof. Such payments or distributions of Cash Flow and Net Proceeds shall be restored and allowed only upon the payment of such damages in full, and any amount of such damages not so paid shall be deducted against payments or distributions of the Cash Flow or Net Proceeds otherwise due to the Administrative Member. In addition, if any delinquent delivery of the information required by this Section 12.06 is not cured within 30 days of the Administrative Member’s receipt of written notice specifying the delinquency, then the Administrative Member, promptly upon the Investor Member’s written request, shall replace the Accountants with a firm approved by the Investor Member.

12.06(i) Within ninety (90) days after the end of each Company Accounting Year, updated information for each of the Guarantors identifying (i) direct or indirect interests in real estate owned, (ii) contingent liabilities, and (iii) any material adverse change in such Guarantor’s financial position.

12.06(j) Such other financial information regarding the Company, the Administrative Member, the Managing Member, the Guarantors or their Affiliates as may be reasonably requested by the Investor Member.

12.07 HUD 2530s. If HUD-2530s are required or will be required with respect to any current or future financing, from and after the date that HUD issues a public notice requiring electronic submission of such filings, the Administrative Member shall cause the Company and each of its principals and/or affiliates, (A) to promptly complete their respective registrations and baseline submissions through the HUD Active Participation Performance System ("APPS") and (B) to submit any future HUD-2530 electronically through the APPS.
ARTICLE 13

DEBT AND EQUITY

Subject to any other provisions of this Agreement applicable to Mortgage Loans, Wells Fargo or any Affiliate thereof (a “Wells Fargo Lender”) may at any time make, guarantee, own, acquire, or otherwise credit enhance, in whole or in part, a loan or other financing secured by a mortgage, deed of trust, trust deed, or other security instrument encumbering the Apartment Complex owned by the Company (a “Wells Fargo Loan”). Under no circumstances whatsoever will any Wells Fargo Lender be considered to be acting on behalf of or as an agent of or as the alter ego of any Member that is an Affiliate of such Wells Fargo Lender (an “Affiliated Member”). Any Wells Fargo Lender may take any action or fail to take any action that it determines, in its sole and absolute discretion, to be advisable in connection with the applicable Wells Fargo Loan (including, but not limited to, in connection with the enforcement of its rights and remedies related to such Wells Fargo Loan). Each Member hereby unconditionally agrees that no Wells Fargo Lender owes the Company or any Member any fiduciary duty or other duty or obligation whatsoever by virtue of such Wells Fargo Lender being an Affiliate of an Affiliated Member. Neither the Company nor any Member (i) will make any claim whatsoever against any Wells Fargo Lender or against any Affiliated Member or (ii) will allege any breach of any fiduciary duty, duty of care or other duty whatsoever based in any way upon any affiliation or relationship between any Wells Fargo Lender and any Affiliated Member. The Company and each Member hereby acknowledge and agree that any Wells Fargo Loan shall be treated as debt for all purposes and no claim whatsoever shall be made that any Wells Fargo Loan should be treated as equity under any circumstance whatsoever. The Company and each Member hereby further acknowledge and agree that any Wells Fargo Loan shall be viewed for all purposes as a separate transaction and not related in any way to the investment of an Affiliated Member in the Company. Any claim whatsoever that any Wells Fargo Loan should be treated as equity under any circumstance whatsoever is hereby irrevocably and unconditionally waived, to the fullest extent permitted by applicable law, by the Company and each Member.

ARTICLE 14

MISCELLANEOUS

14.01 Brokers. To the extent permitted by law, each Member shall and does hereby covenant and agree, absolutely, unconditionally and irrevocably, to indemnify and hold harmless the Company and the other Members from any damages, claims, expenses or losses incurred by the indemnitee by reason of any third-party brokerage or finder’s agreement made by the indemnifying Member with respect to the transactions contemplated by this Agreement.

14.02 Notice. All notices, demands, requests or other communications to be sent by one party to another hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid,
registered or certified mail, return receipt requested, in any event addressed to the intended address as follows:

If to the Administrative Member:

Wolfpack LaMadrid, LLC
421 W. 3rd Street
#1504
Austin, TX 78701
Attention: Louis Wolfson III

with a copy to:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 South Biscayne Boulevard, Suite 4100
Miami, FL 33131

If to the Managing Member:

O-SDA LaMadrid, LLC
5714 Sam Houston Circle
Austin, TX 78731
Attention: Megan Lasch

If to the Investor Member:

Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street
Charlotte, NC 28288
Attention: Director of Tax Credit Asset Management

with a copy to:

Philip C. Spahn
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603

and

Joel Hjelmaas
Senior Counsel
Wells Fargo Bank, N.A.
MAC x2401-06T
All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier or three (3) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other parties hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

14.03 Amendments. This Agreement may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by each of the parties hereto. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

14.04 Meetings. Meetings of the Company may be called by the Administrative Member for any matter for which the Members may vote as set forth in this Agreement or to obtain information concerning the Company. A list of names and addresses of all Members shall be maintained as part of the books and records of the Company and shall be made available upon request to any Member or its representative at cost. Upon receipt of a request by a Member, either in person or by registered mail, stating the purposes of the meeting, the Administrative Member shall provide the Members, within ten days after receipt of such request, written notice of a meeting and the purpose of such meeting to be held on a date not less than 15 nor more than 30 days after receipt of such request, at a time and place within or without the State convenient to the Members.

14.05 Entire Agreement. This Agreement and all other written agreements referred to herein constitute the entire agreement among the parties and supersede any prior agreements or understandings among them with respect to the subject matter hereof.

14.06 Headings: References. All article and section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any article or section. Unless otherwise stated, references to Articles, Sections and Exhibits refer to Articles or Sections of, and Exhibits to, this Agreement.

14.07 Separability and Severability Provisions. If the operation of any provision of this Agreement would contravene the provisions of the Uniform Act, or would result in the imposition of general liability on any Investor Member, such provision only shall be void and ineffectual. If any provision of this Agreement is determined to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of each party hereto, and the Company. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the greatest possible extent.
14.08 **Binding Agreement.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, except as otherwise provided herein. Among other things, the parties specifically intend that this Agreement inure to the benefit of any transferee of the Investor Member in accordance with the terms of Article 9 hereof.

14.09 **Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto. Any counterpart of this Agreement, which has attached to it separate signature pages which together contain the signatures of all Members or is executed by an attorney-in-fact on behalf of some or all of the Members, shall for all purposes be deemed a fully executed instrument.

This Agreement (and any document or certification required to be provided to the Investor Member in conjunction with a requested Capital Contribution) may be executed as facsimile originals and each copy of this Agreement (or contribution request documents) bearing the facsimile transmitted signature of any party's authorized representative shall be deemed to be an original. Notwithstanding the validity of the facsimile originals, it is intended that this Agreement (and contribution request documents) be manually executed and delivered to the Investor Member and the Investor Member shall have the right to require that executed original documents be provided to it. The Investor Member will then have the appropriate signature manually affixed to the Agreement and return executed copies to the appropriate parties.

14.10 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to principles of conflicts of laws. The parties agree and consent that venue for purposes of resolving any dispute or controversy relating to this Agreement shall be in the State.

14.11 **Time of Admission.** The Investor Member shall be deemed to have been admitted to the Company as of the day of the month in which it becomes a Investor Member for all purposes of this Agreement, including Article 4.

14.12 **Special Member.** The Administrative Member and the Investor Member agree that (a) the Investor Member may, in its sole discretion, identify at any time in the future a Person who will become the Special Member and assign to such Person up to a 1% Interest in the Company as specified in writing by the Investor Member, (b) upon execution by such Person of this Agreement, the Special Member will be entitled to all of the rights and powers specified in this Agreement without any additional consents being required, (c) both prior to and after the admission of the Special Member, this Agreement shall be binding and in full force and effect and (d) prior to the admission of the Special Member, all rights, powers and obligations of the Special Member, including its rights under Article 4, shall be considered possessed and owned by the Investor Member.

14.13 **Waiver of Jury Trial.** (a) Each of the parties hereto hereby knowingly, voluntarily and intentionally, after opportunity for consultation with independent counsel, waives its right to trial by jury in any action or proceeding to enforce or defend any rights or obligations (i) under this Agreement, (ii) arising from the financial relationship between the parties existing in connection with this Agreement or any loan document or (iii) arising from any course of
dealing, course of conduct, statement (verbal or written) or action of the parties in connection with such financial relationship; (b) no party hereto will seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial has not been or cannot be waived; (c) the provisions of this Section have been fully negotiated by the parties hereto, and these provisions shall be subject to no exceptions; (d) no party hereto has in any way agreed with or represented to any other party that the provisions of this Section will not be fully enforced in all instances; and (e) this Section is a material inducement for the Investor Member to enter into this Agreement.

14.14 Anticipated Funding Schedule. A summary of the Installments to be made by the Investor Member is set forth on Exhibit G for the convenience of the Members.

14.15 Waiver of Certain Defenses. THE PARTIES HERETO ACKNOWLEDGE THAT THEY WERE REPRESENTED BY COMPETENT COUNSEL IN CONNECTION WITH THE NEGOTIATION, DRAFTING AND EXECUTION OF THIS AGREEMENT. THE INVESTOR MEMBER SHALL NOT BE SUBJECT TO ANY LIMITATION WHATSOEVER IN THE EXERCISE OF ANY RIGHTS OR REMEDIES AVAILABLE TO IT UNDER THIS AGREEMENT OR UNDER ANY OTHER DOCUMENTS EVIDENCING OR RELATING TO THE APARTMENT COMPLEX DESCRIBED HEREIN BY VIRTUE OF THE EXTENSION OF A MORTGAGE LOAN SECURED BY THE APARTMENT COMPLEX BY IT, OR ANY PARENT, SUBSIDIARY, OR AFFILIATE OF THE INVESTOR MEMBER, AND THE MANAGING MEMBER AND ADMINISTRATIVE MEMBER HEREBY IRREVOCABLY WAIVE THE RIGHT TO RAISE ANY DEFENSE OR TAKE ANY ACTION ON THE BASIS OF THE FOREGOING WITH RESPECT TO THE INVESTOR MEMBER’S EXERCISE OF ANY SUCH RIGHTS OR REMEDIES.
IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

ADMINISTRATIVE MEMBER:
WOLFPACK LAMADRID, LLC, a Florida limited liability company

By: [Signature]
Louis Wolfson III, its president

MANAGING MEMBER:
O-SDA LAMADRID, LLC, a Texas limited liability company

By: [Signature]
Megan Lasch, its President

INVESTOR MEMBER:
WELLS FARGO AFFORDABLE HOUSING COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation

By: [Signature]
Name: J. Frederick Davis, III
Title: Senior Vice President

WITHDRAWING MEMBER:
[Signature]
Name: Louis Wolfson III
IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

ADMINISTRATIVE MEMBER:
WOLFPACK LAMADRID, LLC, a Florida limited liability company

By: ____________________________
   - Louis Wolfson III, its President

MANAGING MEMBER:
O-SDA LAMADRID, LLC, a Texas limited liability company

By: ____________________________
   Megan Lasch, its President

INVESTOR MEMBER:
WELLS FARGO AFFORDABLE HOUSING COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation

By: ____________________________
   Name: J. Frederick Davis, III
   Title: Senior Vice President

WITHDRAWING MEMBER:

Name: Louis Wolfson III
IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

ADMINISTRATIVE MEMBER:

WOLFPACK LAMADRID, LLC, a Florida limited liability company

By: ________________________________
    Louis Wolfson III, its President

MANAGING MEMBER:

O-SDA LAMADRID, LLC, a Texas limited liability company

By: ________________________________
    Megan Lasch, its President

INVESTOR MEMBER:

WELLS FARGO AFFORDABLE HOUSING COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation

By: ________________________________
    Name: J. Frederick Davis, III
    Title: Senior Vice President

WITHDRAWING MEMBER:

Name: Louis Wolfson III
DEVELOPER CONSENT

By its signature below, the Developer acknowledges and agrees that, notwithstanding the terms of the Development Agreement, the payments of its Developer Fee may be delayed, reduced or offset in accordance with the provisions of this Agreement, including, without limitation, Section 3.05, 4.02, 4.03, 7.02, 7.04 and 8.04. Developer further acknowledges and agrees, (i) In the event of any conflict between the provisions of this Agreement and the Development Agreement, including, without limitation, a conflict regarding the timing or amount of payments, the terms of this Agreement shall prevail, (ii) apart from this Developer Consent, it is not a party to this Agreement and has no rights hereunder, and (iii) it is not an intended third beneficiary of this Agreement and has no right to enforce any provisions hereunder.

WOLFPACK GROUP, LLC, a Florida limited liability company

By: Louis Wolfson III, its President

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: Megan Lasch, President
DEVELOPER CONSENT

By its signature below, the Developer acknowledges and agrees that, notwithstanding the terms of the Development Agreement, the payments of its Developer Fee may be delayed, reduced or offset in accordance with the provisions of this Agreement, including, without limitation, Section 3.05, 4.02, 4.03, 7.02, 7.04 and 8.04. Developer further acknowledges and agrees, (i) In the event of any conflict between the provisions of this Agreement and the Development Agreement, including, without limitation, a conflict regarding the timing or amount of payments, the terms of this Agreement shall prevail, (ii) apart from this Developer Consent, it is not a party to this Agreement and has no rights hereunder, and (iii) it is not an intended third beneficiary of this Agreement and has no right to enforce any provisions hereunder.

WOLFPACK GROUP, LLC, a Florida limited liability company

By: __________________________
    Louis Wolfson III, its President

O-SDA INDUSTRIES, LLC, a Texas limited liability company

By: __________________________
    Megan Lasch, President
MANAGEMENT AGENT CONSENT

By its signature below, the Management Agent hereby agrees to the provisions Article 11 of this Agreement pertaining to, among other things, modification or termination of the Management Agreement and the provisions of Article 11 shall control notwithstanding anything to the contrary in the Management Agreement. Management Agent further acknowledges and agrees, (i) apart from this Management Agent Consent, it is not a party to this Agreement and has no rights hereunder, and (ii) it is not an intended third beneficiary of the Company or of this Agreement and has no right to enforce any provisions hereunder.

ACCOLADE PROPERTY MANAGEMENT, INC., a Texas corporation

By: [Signature]
Name: STEPHANIE BAUER
Title: PRESIDENT
EXHIBIT A

GENERAL CONDITIONS FOR ALL INSTALLMENTS

In addition to any other requirements and conditions set forth in this Agreement, the Investor Member shall not be required to make any further Capital Contribution to the Company unless the following requirements have been satisfied:

(A) All conditions to the attached Schedule applicable to the particular Installment and all prior Installments have been satisfied;

(B) Receipt by the Investor Member of (i) a Capital Contribution Request in the form of Exhibit C (other than with respect to the Initial Installment payable on the Closing Date) and (ii) a Company/Administrative Member Certification in the form of Exhibit D (other than with respect to the Initial Installment payable on the Closing Date). The Capital Contribution Request shall disclose all relevant facts, (including dates), regarding draw requests submitted with respect to, and advances made with respect to, the Construction Loan and the RHDA Loan;

(C) Investor Member shall have independently verified the accuracy of all statements made in the Company/Administrative Member Certification if it so desires.

(D) No Lender shall have denied any request for advance under its respective Mortgage Loan.

(E) Investor Member shall have received copies of all Project Documents executed concurrently with or following the prior Installment (or construction draw portion thereof).

(F) No further Capital Contributions or portions thereof shall be made subsequent to the 60th day following the Closing Date unless the Investor Member shall have received and approved a duplicate original of the Title Policy.

(G) No further Capital Contributions or portions thereof shall be made subsequent to the 30th day following the completion of the foundation for last Building in the Apartment Complex to have its foundation completed unless the Investor Member shall have received and approved a foundation survey of the Apartment Complex.

(H) No further Capital Contributions or portions thereof shall be made subsequent to the Closing Date unless the Investor Member shall have received and approved, in form and substance acceptable to the Investor Member (i) evidence that the Company has obtained hazard, builder’s risk, liability and such other insurance as required by any Lender and this Agreement; (ii) building permits for the construction of all improvements; (iii) the Notice to Proceed between the Company and the Contractor, (iv) a recorded affidavit of commencement; and (v) final issuance of the Letter of Credit.
Pursuant to an email from the Agency, dated July 22, 2016, the Agency has received all the 10% test materials, except for the utility certification, which is due by December 15, 2016. No further Capital Contributions or portions thereof shall be made subsequent to December 15, 2016, unless the Investor Member shall have received and approved evidence that the utility certification was delivered to the Agency by December 15, 2016.

No further Capital Contributions or portions thereof shall be made subsequent to December 31, 2016, unless the Investor Member shall have received and approved evidence that the Texas Department of Transportation Right of Way Utility Permit for offsite wastewater and the Site Development Permit for the downstream wastewater upgrade have been issued to Company.

No further Capital Contributions or portions thereof shall be made subsequent to July 31, 2017, unless the Investor Member shall have received and approved evidence on or before that all work required under the Wastewater Pipeline Cost-Sharing Agreement has been completed pursuant to the terms and conditions of said agreement.
SCHEDULE A

INITIAL INSTALLMENT; 50% CONSTRUCTION COMPLETION INSTALLMENT; 95% CONSTRUCTION COMPLETION INSTALLMENT; “CONSTRUCTION DRAWS”

Pursuant to the terms and conditions of Section 3.03, the obligation of the Investor Member to make any “construction draw” of any portion of the Initial Installment, the 50% Construction Completion Installment, and the 95% Construction Completion Installment shall be further conditioned on the following:

(a) **Compliance With Representations and Warranties.** The Administrative Member and the Company shall have fully complied with all of their representations, covenants and warranties hereunder and in the Project Documents, as applicable and shall provide the Company/Administrative Member Certificate to the Investor Member (in the form of Exhibit D hereto).

(b) **Receipts for Payment of Costs.** The Administrative Member has (i) procured and delivered copies to the Investor Member of any general contractor’s and mechanics’ lien waivers, releases, affidavits and accepted bills as may be required by the Investor Member, the Title Insurer, or a Lender, as the case may be, showing payment of all parties who have furnished materials or performed labor of any kind entering into the construction or installation of any of the improvements of the Apartment Complex for work performed and materials furnished prior to the date of the most recent preceding Capital Contribution hereunder, and (ii) delivered invoices for any soft costs that individually exceed $5,000. The Company will promptly secure the release of the Apartment Complex from all Liens other than Permitted Liens and Liens securing the Mortgages.

(c) **Title Report/Endorsement.** The Investor Member has received a title search report conducted by Title Insurer insuring the Mortgage and an acceptable title opinion, dated as of the date of the Installment, reflecting no new title exceptions (except as previously approved by Investor Member) and showing that no intervening claim or Lien has been filed or recorded affecting the Apartment Complex, with no survey exceptions (except as previously approved by Investor Member). If any Lender has received a current endorsement from Title Insurer insuring same and Administrative Member delivers a copy thereof to Investor Member, no such title search report shall be required.

(d) **Contractor and Contractor’s Certificate.** Contractor shall have been paid all amounts properly due it to date (except amounts contained in the Capital Contribution Request under consideration) and all advances previously made, if any, with respect to the Capital Contribution and the Mortgage Loans, as applicable, have been properly applied. Contractor shall also have delivered to the Investor Member a certificate executed by Contractor and Administrative Member in the form attached hereto as Exhibit I, certifying that the improvements constituting the Apartment Complex have been constructed, as applicable, substantially in compliance with the Plans, the construction and materials used therein are substantially according to the Plans, all bills for labor, material and services then incurred and payable in connection with the Apartment Complex have been paid or will be paid from the Installment being requested, and such other matters as Investor Member may reasonably require.
(e) **Approval of Architect and Architect’s Certificate.** Architect shall have delivered to Investor Member a certificate executed by Architect and Administrative Member, in the form attached hereto as Exhibit J, certifying in part, that the improvements constituting the Apartment Complex have been constructed, as applicable, substantially in compliance with the Plans, the construction and materials used therein are substantially according to the Plans, the work has been accomplished to entitle Company to the Advance requested, the percentage of completion, and such other matters as the Investor Member may reasonably require.

(f) **Approval of Inspector.** The Investor Member shall have received an Inspector’s report (including a certificate certifying to such matters as Investor Member may require) from its Inspector, in form and substance satisfactory to Investor Member.

(g) **Mortgage Loan Closing.** The Investor Member shall have received executed copies of all documents executed in connection with the Mortgage Loans, together with evidence reasonably satisfactory to the Investor Member that initial advances of the Mortgage Loans have been made to the Company as set forth in the final settlement or closing statement.

(h) **Structural Drawings.** The Investor Member shall have received updated structural drawings with respect to the Geotechnical Report, dated September 19, 2016, which shall be signed and sealed as issued for construction.

(i) **Exhibit A: Additional Conditions.** The Company shall have satisfied the conditions precedent to each Installment, as set forth on Exhibit A to this Agreement.

(j) **10% Cost Information.** No further Capital Contributions or portions thereof shall be made subsequent to December 15, 2016 unless the Investor Member shall be provided, in form and substance satisfactory to the Investor Member, the Accountants’ Cost Certification (and documentation) supporting the costs stated to have been incurred with respect to the Company’s satisfaction of the 10% test set forth in Code Section 42(h)(1)(E) at least 10 days before such certificate is provided (or required to be provided) to Agency. The Agency shall have approved the Company’s 10% test submission, including but not limited to the utility certification, and acknowledged in writing that the Company has met the requirements of Code Section 42(h)(1)(E).

(k) **Initial Installment.** No portion of the Initial Installment shall be made until the Investor Member has received evidence, in form and substance satisfactory to Investor Member, that (1) the Company has obtained builder’s risk, hazard, liability and such other insurance as required by any Lender and this Agreement; (2) the Letter of Credit has been issued; (3) the Letter of Credit Agreement has been executed and is in full force and effect, and (4) the conditions set forth in Exhibit A, item (H) have been satisfied. Notwithstanding the foregoing, in no event will the Developer Fee be paid until all building permits are issued for the construction of the Apartment Complex.

(l) **50% Completion.** No portion of the 50% Construction Completion Installment shall be made until 50% Construction Completion shall have occurred. The 50% Construction Completion Installment shall be used to pay Costs of Improvements and to pay down the Construction Loan.
(m) **95% Completion.** No portion of the 95% Construction Completion Installment shall be made until 95% Construction Completion shall have occurred. The 95% Construction Completion Installment shall first be disbursed directly to the Construction Lender to pay down the Construction Loan to an amount not greater than $3,500,000. Thereafter, at the discretion of the Administrative Member, remaining funds from the Installment will be used to pay (i) the Costs of Improvements, (ii) down the Construction Loan and/or (iii) the Developer Fee. In the event Administrative Member reduces the Construction Loan to an amount below $3,500,000 the Administrative Member may, subject to the terms of the Construction Loan documents, redraw funds from the Construction Loan up to a maximum outstanding principal balance of $3,500,000.

(n) **Developer Fee/95% Completion Installment.** No portion of the 95% Construction Completion Installment shall be used to pay Developer Fees until (i) the Investor Member shall have received the final, unconditional certificate of use and occupancy for each unit in the Apartment Complex or a temporary certificate of occupancy allowing full use of the unit, if applicable laws permit, and (ii) the attainment of Construction Completion (as defined in Article 2 and receipt of an acceptable title opinion showing no new title exceptions (except as previously approved by Investor Member) as may be required by Investor Member.

(o) **Construction Loan/95% Completion Installment.** If the Construction Loan is greater than the Approved Loan Amount of the First Mortgage Loan, a portion of the 95% Completion Installment shall first be disbursed directly to the Construction Lender to pay down the Construction Loan to the Approved Loan Amount of the First Mortgage Loan. The Administrative Member and Managing Member hereby authorize the Investor Member to make such disbursement of its Capital Contribution in such manner.
SCHEDULE B

FINAL INSTALLMENT

Pursuant to the terms and conditions of Section 3.03, the obligation of the Investor Member to make the Final Installment in the amount of $909,548 (subject to adjustment as set forth in this Agreement) is further conditioned as set forth below:

(a) **Exhibit A: Additional Conditions.** The Company shall have satisfied the conditions precedent to each Installment, as set forth on **Exhibit A** to this Agreement.

(b) **Use of Funds.** Subject to the obligation to pay Adjuster Distributions, the Final Installment (together with other sources available upon the funding of the Final Installment) shall be used to fund the Operating Reserve in the amount of $257,910 and to pay Developer Fee. The Administrative Member hereby directs the Investor Member to contribute sums necessary to establish such reserves directly to Wells Fargo Bank National Association. Such funding shall satisfy the Investor Member's obligation to make Capital Contributions. Any remaining portion of the Final Installment not used for the foregoing purposes shall be used to pay Developer Fees.

(c) **Certificate of Occupancy.** The Investor Member shall have received the final, unconditional certificate of use and occupancy for each unit in the Apartment Complex (the "**Certificate of Occupancy**").

(d) **Lien-free Completion.** The attainment of Construction Completion (as defined in Article 2 and receipt of an acceptable title opinion showing no new title exceptions (except as previously approved by Investor Member) as may be required by Investor Member.

(e) **As-Built Survey.** The Investor Member shall have received and approved a final ALTA "as-built" survey, reasonably satisfactory to Investor Member and Title Insurer, showing the completed improvements of the Apartment Complex and all utility locations, set-backs and easements, together with an additional endorsement to Company's owner's Title Policy ("**Final Survey**").

(f) **Architect's, Contractor's and Company/Administrative Member Certificates.** The Investor Member shall have received and approved an Architect's Certificate in the form attached hereto as **Exhibit J** and a Contractor's Certificate in the form attached hereto as **Exhibit I**, each stating that the improvements of the Apartment Complex have been completed substantially in accordance with the Plans.

(g) **Company/Contractor No Lien Affidavit.** The Investor Member shall have received and approved an affidavit of Administrative Member and Contractor in the form attached hereto as Exhibit F, and such other evidence satisfactory to the Investor Member, stating that each person providing any material or performing any work in connection with a Capital Contribution installment has been (or will be, with the proceeds of and immediately following receipt by Administrative Member of such Capital Contribution installment) paid in full or bonded to the satisfaction of the Investor
Member, and that all withholding taxes have been paid and lien waivers have been obtained from all contractors, subcontractors and suppliers who have performed work or supplied materials in connection with the construction of the improvements of the Apartment Complex, and covering such other matters as Investor Member may require ("Company/Contractor No-Lien Affidavit").

(h) **As-Built Plans.** The Investor Member shall have received and approved detailed as-built Plans ("As-Built Plans and Specifications").

(i) **Final Loan Disbursement.** The Investor Member shall have received evidence satisfactory to the Investor Member that all conditions have been satisfied under the Project Documents for final disbursement of all loans to the Company, and such disbursements have been made and funds are available in amounts sufficient to pay in full all Costs of Improvements ("Final Loan Disbursement").

(j) **Insurance.** The Investor Member shall have received evidence satisfactory to Investor Member that the Company has obtained hazard, liability and such other insurance as required by any Lender and this Agreement ("Required Insurance").

(k) **Estimate of Eligible Basis and Lease-up Schedule.** The Company shall cause the Administrative Member, and the Administrative Member agrees, to provide information with respect to the Eligible Basis of the Apartment Complex and the current and projected lease-up of units therein so that the Accountants will be able to make the preliminary determinations with respect to required Credit Adjuster Distributions, Current Adjuster Distributions, Additional Adjuster Distributions, and Timing Adjuster Distributions, if any, which Accountants certification and calculation shall be delivered to the Investor Member.

(l) **Permanent Loan Conversion.** The Construction Loan has been repaid in full and the First Mortgage Loan has closed and been fully funded.

(m) **Administrative Member and Accountant's DSCR Certificate.** The Investor Member shall have received evidence satisfactory to Investor Member that the Apartment Complex has attained a Debt Service Coverage Ratio of 1.15 or better for 90 consecutive days (such period to be taken as a whole) ("Administrative Member and Accountant's DSCR Certificate"). For purposes of the foregoing, the amount of required debt service payments for a period shall be computed assuming that permanent financing having the terms set forth in Section 5.04 is in effect.

(n) **Qualified Tenant Certificate.** The Investor Member shall have received and approved a certification from the Accountants, based on a review of the applicable tenant certifications and other documents with respect to all set-aside units in the Apartment Complex, 100% (or such percentage as approved by Investor Member) of the low-income set-aside residential units in the Apartment Complex have been leased to and physically occupied by Qualified Tenants ("Qualified Tenant Certificate"), as well as a copy of all tenant files, leases, certifications, income verification information and other documentation required to be provided to the Investor Member under Section 6.10(g).
(o) **Title Policy from Initial Closing; Access.** Investor Member shall have received and approved a duplicate original of the Title Policy issued upon execution of this Agreement. Such Title Policy shall have been amended by endorsement to add an access endorsement insuring vehicular and pedestrian access to and from a publicly dedicated roadway.

(p) **Title Report/Endorsement.** The Investor Member has received a title search report conducted by Title Insurer insuring the Mortgage and an acceptable title opinion dated as of the date of the Installment reflecting no new title exceptions (except as previously approved by Investor Member) and showing that no intervening claim or Lien has been filed or recorded affecting the Apartment Complex, with no survey exceptions (except as previously approved by Investor Member). If any Lender has received a current endorsement from Title Insurer insuring same and Administrative Member delivers a copy thereof to Investor Member, no such title search report shall be required.

(q) **Other Evidences.** The Investor Member shall have received and approved copies of all documents, instruments and agreements and all insurance policies and certificates required to be delivered pursuant to any Project Document and, any other evidence required by Investor Member that the improvements constituting the Apartment Complex have been substantially completed in accordance with the Plans in compliance with all applicable laws and requirements of any governmental agency and free of all Liens except Permitted Liens. Additionally, the Administrative Member shall have satisfied, or caused the Company to satisfy, all contractor certification and audit procedures required by the Agency, if any.

(r) **Final Cost Certification.** The final Cost Certification for the Apartment Complex prepared by Accountants in form and substance as approved by Investor Member, which approval shall not be unreasonably withheld, to be used by Administrative Member in applying to the Agency for the issuance of Internal Revenue Form 8609 with respect to each Building.

(s) **Adjuster Distributions.** Evidence of payment of Adjuster Distributions, if any, owed to Investor Member pursuant to Section 3.05 of this Agreement.

(t) **Form 8609.** The Internal Revenue Form 8609 issued by the Agency with respect to each Building ("Form 8609"), fully executed by the Agency and the Company.

(u) **Extended Use Agreement.** The Investor Member shall have received a copy of the duly recorded Extended Use Agreement.

(v) **Major Subcontracts.** The Investor Member shall have received a list of all contractors for all Major Subcontracts and executed copies of all Major Subcontracts (if available at closing), entered into since the prior construction draw.
EXHIBIT B

SUMMARY OF CONDITIONS TO CERTAIN INSTALLMENTS

1. The Initial Installment, the 50% Completion Installment, and the 95% Construction Completion Installment will be contributed pursuant to construction draws in accordance with Exhibit A and Schedule A.

2. Final Installment

(a) Exhibit A: Additional Conditions;
(b) Use of Funds;
(c) Certificate of Occupancy;
(d) Lien-Free Completion;
(e) As-Built Survey;
(f) Architect’s, Contractor’s and Company/Administrative Member Certificates;
(g) Company/Contractor No Lien Affidavit;
(h) As-Built Plans;
(i) Final Loan Disbursement;
(j) Insurance;
(k) Estimate of Basis and Lease Up;
(l) Permanent Loan Conversion;
(m) Administrative Member and Accountant’s DSCR Certificate;
(n) Qualified Tenant Certificate;
(o) Title Policy from Initial Closing; Access;
(p) Title Report/Endorsement;
(q) Other Evidences;
(r) Final Cost Certification;
(s) Adjuster Distributions;
(t) Form 8609;
(u) Extended Use Agreement; and
(v) Major Subcontracts.
EXHIBIT C

CAPITAL CONTRIBUTION REQUEST
[FORM]

[__________, 201_]_

Wells Fargo Affordable Housing
Community Development Corporation
MACD1053-170
301 South College Street
Charlotte, NC 28288
Attention: Director of Tax Credit Asset Management

Re: Capital Contribution Installment No. [___] as per the Amended and Restated Operating Agreement dated as of [__________], 2016 (the “Agreement”) of LaMadrid Apartments, LLC (the “Company”), by and between Wolfpack LaMadrid, LLC (“Administrative Member”), O-SDA LaMadrid, LLC (“Managing Member”) and Wells Fargo Affordable Housing Community Development Corporation (“Investor Member”)

Ladies and Gentlemen:

We request, subject to the terms and conditions of the Agreement, that the Investor Member advance $[_______], which shall be used in accordance with the Budget, on [_____, 201_].

COMPANY:

LAMADRID APARTMENTS, LLC, a Florida limited liability company

By: Wolfpack LaMadrid, LLC,
a Florida limited liability company, its administrative member

By: ____________________________
Louis Wolfson III, its President

Attachments include:
a) Company/Administrative Member Certificate
b) Architect’s Certificate
c) Contractor’s Certificate

Exhibit C - 1
d) Other required documents as set forth in the Agreement or as may be requested by Investor Member
EXHIBIT D

COMPANY/ADMINISTRATIVE MEMBER CERTIFICATE

[FORM]

[________], 201[____]

Signatory is the President of Wolfpack LaMadrid, LLC, the Administrative Member of LaMadrid Apartments, LLC, (the “Company”), and has made due investigation as to the matters hereinafter set forth and does hereby certify the following to induce Wells Fargo Affordable Housing Community Development Corporation (the “Investor Member”) to make and contribute the aggregate sum of $[________] (the “Installment”) to Company pursuant to the terms of the Company’s Amended and Restated Operating Agreement (the “Agreement”) and Capital Contribution Request No. [________], dated [________], 201[____], which is being submitted to the Investor Member herewith. (Capitalized terms used and not otherwise defined herein shall have the respective meanings given to them in the Agreement.)

1. All of the representations and warranties contained in the Agreement and all of the Project Documents are true and correct in all material respects as of the date hereof.

2. No default and no event of default exist under any Mortgage Loan or the Agreement.

3. Construction of the Apartment Complex has been carried on with reasonable dispatch and has not been discontinued at any time in excess of that allowed under the Agreement. The Apartment Complex has not been damaged by fire or other casualty, and no part of the property underlyng the Apartment Complex has been taken by eminent domain and no proceedings or negotiations therefor are pending or threatened.

4. Construction of the Apartment Complex is progressing in accordance with all applicable Laws and in good and workmanlike manner, in such manner so as to assure the completion thereof in accordance with the Plans, and there have been no changes in the Plans or substantial deviations from the Construction Schedule, except as approved by the Investor Member or as authorized by the Agreement. The construction of the Apartment Complex, as of the date hereof is [____]% complete. The unpaid portion of the Cost of the Improvements, whether complete or incomplete, will not exceed the undisbursed portion of the proceeds of the Loans, the Capital Contribution and any sums deposited by Company.

5. All funds previously received from the Investor Member as Capital Contributions under the Agreement have been expended or are being held in trust for the sole purpose of paying Costs of Improvements previously certified to the Investor Member in Capital Contribution Requests, and no part of such funds have been used, and the funds to be received pursuant to the Capital Contribution Request submitted herewith shall not be used, for any other purpose. No item of Costs of Improvements previously covered in a Capital Contribution Request remains unpaid as of the date of this Certificate.

Exhibit D - 1
6. All of the statements and information set forth in the request for an Installment being submitted to Lender and/or the Capital Contribution Request being submitted to the Investor Member in connection herewith are true and correct in every material respect as of the date hereof. The Capital Contribution Request being submitted to the Investor Member accurately reflects the work accomplished to entitle the Company to the disbursement requested and the precise amounts due and payable during the period covered by such Capital Contribution Request. All of the funds to be received pursuant to such Capital Contribution Request shall be used solely for the purpose of reimbursing Company for such items previously paid by Company and paying the items of cost comprising the current Capital Contribution Request.

7. Nothing has occurred subsequent to the date of the Agreement which has or may result in the creation of any lien, charge or encumbrance upon the Apartment Complex or any part thereof, or anything affixed thereto or used in connection therewith, or which has or may substantially and adversely impair the ability of Company to make all payments of principal and interest on the Mortgage Note, the ability of Administrative Member to meet its obligations under the Agreement, or the ability of the Guarantor to meet its obligations under any guaranty delivered in connection with the Agreement.

8. None of the labor, materials, overhead or other items of expense covered by the Capital Contribution Request submitted herewith have previously been the basis of (i) any Capital Contribution Request; (ii) any request for an advance from Lender(s); or (iii) any payment by the Investor Member.

9. The Cost of Improvements has not increased since the date of the Agreement. The aggregate sum of direct and hard costs currently included in the Apartment Complex is $[ ], and the aggregate sum of indirect and soft costs currently included in the Apartment Complex is $[ ].

10. All required permits, certificates, licenses and other governmental approvals required to commence, continue and complete the work described in the Plans have been obtained and are in full force and effect.
11. All conditions to the Installment to be made in accordance with the Capital Contribution Request submitted herewith have been met in accordance with the terms of the Agreement.

ADMINISTRATIVE MEMBER:

Wolfpack LaMadrid, LLC, a Florida limited liability company

By: ____________________________
Louis Wolfson III, its President

All representations, warranties, obligations and covenants contained in Sections 6.09, 6.10, 6.11 and 6.12 respectively, of the Agreement are true and correct in all material respects as of the date hereof. Managing Member, Administrative Member, the Company and Guarantor (as applicable) are in good standing and authorized to engage in the activities as set forth in the Agreement. In addition, there have been no changes or amendments to the articles, bylaws, certificates or other organizational documents, as appropriate, of Managing Member, Administrative Member, the Company and Guarantor (as applicable), except as provided to the Investor Member. All obligations of Managing Member and Administrative Member set forth in the Agreement (including, without limitation, the delivery of all required financial and other reports pursuant to Article 12 of the Agreement) have been satisfied.

COMPANY:

LAMADRID APARTMENTS, LLC, a Florida limited liability company

By: Wolfpack LaMadrid, LLC,
a Florida limited liability company, its administrative member

By: ____________________________
Louis Wolfson III, its President
EXHIBIT E

LEGAL DESCRIPTION OF APARTMENT COMPLEX

LOT 1, BLOCK A, OF LAMADRID APARTMENTS SUBDIVISION, A PLAT RECORDED UNDER COUNTY CLERK'S FILE NO. 2016010381, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

TOGETHER WITH EASEMENT RIGHTS CREATED PURSUANT TO THAT CERTAIN TEMPORARY CONSTRUCTION EASEMENT AGREEMENT DATED SEPTEMBER 8, 2016 AND RECORDED SEPTEMBER 22, 2016 IN COUNTY CLERK'S FILE NO. 2016583201, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.
EXHIBIT F

NO LIEN AFFIDAVIT

Company/Contractor No Lien Affidavit

Property: LaMadrid Apartments

Advance at Construction Completion ("Construction Completion Installment").

I hereby certify the following:

☐ The Administrative Member certifies that each person providing any material or performing any work in connection with the Capital Contribution Installment ("Advance") at Construction Completion ("Construction Completion Installment") has been (or will be, with the proceeds of and immediately following receipt by Administrative Member of such Capital Contribution Installment) paid in full or bonded. All withholding taxes have been paid and lien waivers have been obtained from all contractors, subcontractors and suppliers who have performed work or supplied materials in connection with the construction of the improvements of the Apartment Complex.

☐ The Contractor certifies that each person providing any material or performing any work in connection with the Capital Contribution Installment ("Advance") at Construction Completion ("Construction Completion Installment") has been (or will be, with the proceeds of and immediately following receipt by Contractor of such Capital Contribution Installment) paid in full or bonded. All withholding taxes have been paid and lien waivers have been obtained from all contractors, subcontractors and suppliers who have performed work or supplied materials in connection with the construction of the improvements of the Apartment Complex.

Legal Name of Owner or Ownership Entity of Project:
LaMadrid Apartments, LLC

Contractor: PINROC CONSTRUCTION, LLC, a Florida limited liability company

ADMINISTRATIVE MEMBER: WOLFPACK LAMADRID, LLC, a Florida limited liability company

By: ____________________________ By: ____________________________
Name: __________________________ Name: Louis Wolfson III, its President
Its: ____________________________
EXHIBIT G

ANTICIPATED FUNDING SCHEDULE

Subject to the terms and provisions of this Agreement, including without limitation, the provisions set forth in Exhibit A and the Schedules thereto, the Investor Member shall be obligated to make Capital Contributions to the Company in four (4) installments (the “Installments”), which Installments shall be due and payable by the Investor Members as follows: (i) $4,777,610 (the “Initial Installment”), (ii) $4,777,610 (the “50% Construction Completion Installment”), and (iii) $3,185,547 (the “95% Construction Completion Installment”) shall each be disbursed on a “construction draw” basis and such disbursements shall commence pursuant to and upon receipt by the Investor Member of the items set forth on Schedule A hereto; and (iv) $909,548 (the “Final Installment”) shall be disbursed pursuant to and upon satisfaction of all of the items on Schedule B hereto.
### EXHIBIT H

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<td>Attention: Director of Tax Credit Asset Management</td>
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EXHIBIT I

CONTRACTOR’S CERTIFICATE

The undersigned ("Contractor") has made due investigation as to the matters hereinafter set forth and does hereby certify the following to induce Wells Fargo Affordable Housing Community Development Corporation (the "Investor Member") to make and advance the aggregate sum of $[______] (the "Advance") to Company pursuant to the terms of that certain Amended and Restated Operating Agreement, dated as of [______], 2016, between the Investor Member, Managing Member and Administrative Member (together with any amendments, modifications, supplements and replacements thereof, the “Agreement”) and the Advance Request No. [______], dated [______], 201[______], which is being submitted to the Investor Member herewith. (Capitalized terms used and not otherwise defined herein shall have the respective meanings given to them in the Agreement.) Contractor certifies as follows:

(i) The improvements constituting the Apartment Complex have been completed in a good and workmanlike manner, substantially in accordance with the Plans for the Apartment Complex, the construction and materials used therein are substantially according to the Plans, and the work has been accomplished to entitle the Company to the Advance requested.

(ii) All material permits, licenses, certificates and related governmental approvals required to construct the Apartment Complex were obtained. All permits, licenses, certificates and related governmental approvals required to occupy and operate the Apartment Complex for its intended purpose have been obtained and Company may commence or has commenced normal operation of the Apartment Complex.

(iii) Each person providing any material or performing any work in connection with the Advance has been (or will be, with the proceeds of and immediately following receipt by Administrative Member of such Advance) paid in full or bonded. All withholding taxes have been paid and lien waivers have been obtained from all contractors, subcontractors and suppliers who have performed work or supplied materials in connection with the construction of the improvements of the Apartment Complex.

Dated ________________, 201__

CONTRACTOR:

PINROC CONSTRUCTION, LLC, a Florida limited liability company

By: ____________________________
Name: ____________________________
Its: ____________________________

Exhibit I - 1
Certified to the Investor Member to be true, correct and complete to the best of the undersigned's knowledge.

ADMINISTRATIVE MEMBER:

WOLFPACK LAMADRID, LLC,
a Florida limited liability company

By: _______________________
   Louis Wolfson III, its President
EXHIBIT J

ARCHITECT'S CERTIFICATE

The undersigned ("Architect") has made due investigation as to the matters hereinafter set forth and does hereby certify the following to induce Wells Fargo Affordable Housing Community Development Corporation (the "Investor Member") to make and advance the aggregate sum of $[_________] (the "Advance") to Company pursuant to the terms of that certain Amended and Restated Operating Agreement, dated as of [______], 2016, between the Investor Member, Managing Member and Administrative Member, and the Advance Request No. [______], dated [______], 201[______], which is being submitted to the Investor Member herewith. (Capitalized terms used and not otherwise defined herein shall have the respective meanings given to them in the Agreement.)

Architect certifies as follows:

(i) The improvements constituting the Apartment Complex have been completed in a good and workmanlike manner, substantially in accordance with the Plans for the Apartment Complex, the construction and materials used therein are substantially according to the Plans, and the work has been accomplished to entitle the Company to the Advance requested.

(ii) All material permits, licenses, certificates and related governmental approvals required to construct the Apartment Complex were obtained. All permits, licenses, certificates and related governmental approvals required to occupy and operate the Apartment Complex for its intended purpose have been obtained and Company may commence or has commenced normal operation of the Apartment Complex as a _______

Dated ______________________, 201[______].

ARCHITECT:

MILLER SLAYTON ARCHITECTS INC.

By: ____________________________
Name: __________________________
Its: ____________________________

Exhibit J - 1
Certified to the Investor Member to be true, correct and complete to the best of the undersigned’s knowledge.

ADMINISTRATIVE MEMBER:

WOLFPACK LAMADRID, LLC,
a Florida limited liability company

By: __________________________
    Louis Wolfson III, its President

Exhibit J - 2
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.01</td>
<td>Name; Formation; Filings</td>
</tr>
<tr>
<td>1.02</td>
<td>Place of Business</td>
</tr>
<tr>
<td>1.03</td>
<td>Names and Addresses of Members</td>
</tr>
<tr>
<td>1.04</td>
<td>Purposes</td>
</tr>
<tr>
<td>1.05</td>
<td>Term and Dissolution</td>
</tr>
<tr>
<td>1.06</td>
<td>Title to Apartment Complex</td>
</tr>
<tr>
<td>2.01</td>
<td>Meanings</td>
</tr>
<tr>
<td>2.02</td>
<td>Pronouns and Plurals</td>
</tr>
<tr>
<td>3.01</td>
<td>Capital Contribution of Managing Member and Administrative Member</td>
</tr>
<tr>
<td>3.02</td>
<td>Withdrawal of Withdrawing Member and Admission of Investor Member</td>
</tr>
<tr>
<td>3.03</td>
<td>Capital Contribution of Investor Member</td>
</tr>
<tr>
<td>3.04</td>
<td>Default</td>
</tr>
<tr>
<td>3.05</td>
<td>Credit Adjuster Distributions to the Investor Member</td>
</tr>
<tr>
<td>3.06</td>
<td>No Interest on Capital Contribution; Return of Capital</td>
</tr>
<tr>
<td>3.07</td>
<td>No Third-party Beneficiary</td>
</tr>
<tr>
<td>3.08</td>
<td>Investor Member Put Option</td>
</tr>
</tbody>
</table>

Page: 1
<table>
<thead>
<tr>
<th>ARTICLE 4 PROFITS AND LOSSES; DISTRIBUTIONS; CAPITAL ACCOUNTS</th>
<th>32</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.01 Profits, Losses and Credits</td>
<td>32</td>
</tr>
<tr>
<td>4.02 Cash Distributions Prior to Dissolution</td>
<td>33</td>
</tr>
<tr>
<td>4.03 Termination Distributions</td>
<td>36</td>
</tr>
<tr>
<td>4.04 Special Allocations</td>
<td>36</td>
</tr>
<tr>
<td>4.05 Section 704(c) Allocations</td>
<td>40</td>
</tr>
<tr>
<td>4.06 Miscellaneous Allocations</td>
<td>40</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 5 COMPANY BORROWINGS</th>
<th>41</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.01 Authorization to the Administrative Member</td>
<td>41</td>
</tr>
<tr>
<td>5.02 Right To Mortgage</td>
<td>41</td>
</tr>
<tr>
<td>5.03 Loans</td>
<td>41</td>
</tr>
<tr>
<td>5.04 Loans Amounts</td>
<td>41</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 6 RIGHTS, POWERS AND OBLIGATIONS OF MEMBERS</th>
<th>43</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.01 Exercise of Management</td>
<td>43</td>
</tr>
<tr>
<td>6.02 Powers</td>
<td>43</td>
</tr>
<tr>
<td>6.03 Restrictions on Authority</td>
<td>46</td>
</tr>
<tr>
<td>6.04 Other Activities</td>
<td>48</td>
</tr>
<tr>
<td>6.05 Liability to Company and Investor Member and Indemnification of Investor Member and Company</td>
<td>49</td>
</tr>
<tr>
<td>6.06 Indemnification of Members</td>
<td>50</td>
</tr>
<tr>
<td>6.07 Dealing With Affiliates</td>
<td>51</td>
</tr>
<tr>
<td>6.08 No Salary Payable to Members</td>
<td>51</td>
</tr>
<tr>
<td>6.09 Representations and Warranties</td>
<td>51</td>
</tr>
<tr>
<td>6.10 Covenants Relating to the Apartment Complex and the Company</td>
<td>55</td>
</tr>
<tr>
<td>6.11 Construction of the Apartment Complex</td>
<td>66</td>
</tr>
<tr>
<td>6.12 Operating Deficit Loans</td>
<td>69</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>12.01</td>
<td>Books and Records</td>
</tr>
<tr>
<td>12.02</td>
<td>Bank Accounts</td>
</tr>
<tr>
<td>12.03</td>
<td>Accrual Basis</td>
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<tr>
<td>12.04</td>
<td>Accountants</td>
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<td>12.05</td>
<td>Federal Income Tax Elections</td>
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<tr>
<td>12.06</td>
<td>Information to Investor Member.</td>
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<td>HUD 2530s</td>
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**ARTICLE 13 DEBT AND EQUITY** 86

**ARTICLE 14 MISCELLANEOUS** 86

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.01</td>
<td>Brokers</td>
<td>86</td>
</tr>
<tr>
<td>14.02</td>
<td>Notice</td>
<td>86</td>
</tr>
<tr>
<td>14.03</td>
<td>Amendments</td>
<td>88</td>
</tr>
<tr>
<td>14.04</td>
<td>Meetings</td>
<td>88</td>
</tr>
<tr>
<td>14.05</td>
<td>Entire Agreement</td>
<td>88</td>
</tr>
<tr>
<td>14.06</td>
<td>Headings: References</td>
<td>88</td>
</tr>
<tr>
<td>14.07</td>
<td>Separability and Severability Provisions</td>
<td>88</td>
</tr>
<tr>
<td>14.08</td>
<td>Binding Agreement</td>
<td>89</td>
</tr>
<tr>
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<td>Counterparts</td>
<td>89</td>
</tr>
<tr>
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<td>Anticipated Funding Schedule</td>
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<td>Waiver of Certain Defenses</td>
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</tbody>
</table>
EXHIBIT A—GENERAL CONDITIONS FOR ALL INSTALLMENTS
   SCHEDULE A—Initial Installment; "Construction Draws"
   SCHEDULE B—Final Installment
EXHIBIT B—SUMMARY OF CONDITIONS TO CERTAIN INSTALLMENTS
EXHIBIT C—CAPITAL CONTRIBUTION REQUEST [FORM]
EXHIBIT D—COMPANY/MANAGING MEMBER CERTIFICATE [FORM]
EXHIBIT E—LEGAL DESCRIPTION OF APARTMENT COMPLEX
EXHIBIT F—NO LIEN AFFIDAVIT
EXHIBIT G—ANTICIPATED FUNDING SCHEDULE
EXHIBIT H—COMPANY INTERESTS
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(ii)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name LaMadrid Apartments

ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent (Example: Letter from the Applicant or an Affiliate requesting that the above Third Party give permission that if the 2019 Application is awarded, the Existing Development can be committed to the Section811 PRA Program)

Describe and attach the request made by the Applicant or Affiliate to the Third Party asking for consent:
Request letter to Wells Fargo to add 811 units to LaMadrid Apartments

ATTACH PDF OF THE REQUEST FROM THE APPLICANT OR AFFILIATE TO THE THIRD PARTY BEHIND THIS PAGE.
February 18, 2019

Mr. Jason Brow  
Vice President  
Well Fargo  
Via email: jason.brow@wellsfargo.com

Re: 811 Units – LaMadrid Apartments

Dear Jason:

Per the 2019 TDHCA Qualified Allocation Plan, I am hereby submitting a request for your consideration to add an additional ten 811 program units at LaMadrid Apartments, in Austin, Texas.

Under the Amended and Restated Operating Agreement for LaMadrid Apartments, the Managing Member’s authority is restricted under section 6.01 and operational authority is vested in the Administrative Member. Further, neither the Managing Member nor the Administrative Member has the authority without consent of the Investor Member to modify the Project Document or create and permit any encumbrances other than the Mortgages and Mortgage Loans. As such, Investor Member consent would be required to add 811 units which require a Use Restriction be recorded for the property. LaMadrid Apartments already has a Use Agreement for 10 existing 811 units and adding 10 additional 811 units would result in more than 21% of the property being 811 tenants.

A written response is required by TDHCA for submission in our 2019 applications. If you have any questions about this request, you may reach me at 830-330-0762.

Sincerely,

Megan D. Lasch

5501-A Balcones Dr., #302 Austin, Texas 78731
Section 811 Project Rental Assistance ("PRA") Program Supplement Packet
Documentation of Request for Consent Cover Page §11.9(c)(6)(A)(iii)

2019 Uniform Multifamily Application #19276 & 19295 & 19288

Existing Development Name: LaMadrid Apartments

iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent (Example: Letter from the Third Party that they are denying an Existing Development from participation).

Describe and attach the response from the Third Party that was received by the Applicant or Owner that reflects their decision not to provide the requested consent:
Letter from Wells Fargo denying the request to add 811 units.

ATTACH PDF OF THE RESPONSE FROM THE THIRD PARTY THAT REFLECTS THEIR DECISION TO DENY THE REQUESTED CONSENT BEHIND THIS PAGE.
February 28, 2019

Ms. Megan Lasch, President
O-SDA LaMadrid, LLC
5501-A Balcones Dr. #302
Austin, TX 78731

Re: LaMadrid Apartments, LLC

Dear Ms. Lasch:

We have received your request regarding adding ten 811 program units to LaMadrid Apartments, in Austin, TX.

At the time of our investment, Wells Fargo had completed a lengthy underwriting and market analysis process, based upon the information and due diligence on hand at that time. The requested change in unit mix would require additional underwriting and marketing analysis, as well as resubmission through the consent process. As it does not appear that the property is in need of these units, and is continuing to serve the needs of the originally anticipated tenant market, at this time we do not approve the requested additional 811 program units.

If you have any questions and/or concerns, please do not hesitate to contact me.

Sincerely,

Jason Brow
Vice President
704-715-1768
2019 HTC
Full Application

Part 3 Tab 19

Historic Preservation
This Tab is Not Applicable
2019 HTC Full Application

Part 3 Tab 20

Existing Development Information
This Tab is Not Applicable
2019 HTC
Full Application

Part 3 Tab 21

Occupied Developments
This Tab is Not Applicable
2019 HTC
Full Application

Part 3 Tab 22

Architectural Drawings
Architectural Drawings Must be Submitted Behind this Tab [§11.204(b)(9)]
(If development is scattered site, consult staff.)

In order to reduce the file size and speed review of drawings, Applicants are encouraged to submit plans as 300dpi images. Following these steps in Adobe Acrobat will convert most plans: File > Print > Printer: Adobe PDF > Advanced > Settings: Custom > [V] Print As Image 300dpi > OK

Site Plan which:

- states the size of the site on its face;
- includes a unit and building type table matrix that is consistent with the Rent Schedule and Building and Unit Configuration forms in labeling the buildings and Units, stating sizes, etc;
- includes a table matrix specifying the square footage of Common Area space on a building by building basis;
- identifies all residential and common buildings, in place on the Development Site, and labels them consistently with the Building/Unit Type Configuration form;
- shows the locations (by unit and floor) of mobility and hearing/visual accessible units (unless included in residential building floor plans);
- indicates the location and number of parking spaces, garages and carports, as applicable;
- indicates the location and number of accessible parking spaces, including van accessible spaces;
- includes information regarding local parking requirements, as applicable;
- indicates compliant accessible routes or, if a route is not accessible, a cite to the provision in the Fair Housing Design Manual providing for its exemption;
- indicates placement of detention/retention pond(s) or states there are no detention ponds;
- clearly delineates the flood plain boundary lines or states there is no floodplain;
- describes, if applicable, how flood mitigation or other required mitigation will be accomplished; and
- identifies all pipeline easements on or adjacent to the Development Site (§11.101(2)(I)).

Residential Building floor plans should include the following, building by building:

- separate tabulation of the square footage of each of these areas: breezeways, corridors, utility closets, balconies, porches and patios, and any other square footage not included in NRA; and
- location of accessible units (unless included on Site Plan).

Common Building floor plans should include tabulations of the square footage of the following spaces that are outside of Net Rentable Area, whether conditioned or unconditioned, building by building:

- spaces that are accessible to tenants, e.g., offices for tenant/management contact, resident services offices, clubrooms, kitchens, community restrooms, exercise rooms, laundries, porches, patios, mailbox areas, etc. (state each area separately);
- spaces that are restricted to employees, only, e.g., administrative offices, maintenance areas, equipment rooms, storage areas, etc. (state each area separately); and

For Supportive Housing only, specification of space to be used for 75 sq ft/unit common space.

Unit floor plans for each type of Unit:

- must include the square footage of each type of Unit; and
- must include floor plans for the accessible Units.

Elevations for each side of each building type which include:

- a percentage estimate of the exterior composition of each elevation; and
- roof pitch.

Photos of building elevations for Rehab and Adaptive Reuse developments not altering the unit configuration.

2/26/2019
PARKING SUMMARY
101 TOTAL SPACES
91 FULL SIZE SPACES
10 HC SPACES

SITE NOTES
1. SITE AREA: TOTAL 4.558 ACRES
2. ENTIRE SITE IS IN FLOOD ZONE X
3. ALL ONSITE CONSTRUCTION IS NEW CONSTRUCTION
4. MINIMUM 8'-0" CEILING HEIGHT
5. PARKING SHOWN MEETS REQUIREMENTS OF LOCAL JURISDICTION

ARCHITECTURAL SITE PLAN
VI COLLINA

Austin, Texas
# BUILDING SUMMARY - Vi Collina

<table>
<thead>
<tr>
<th>BUILDING DESIGNATION</th>
<th>SPACE TYPE</th>
<th>BUILDING CONFIGURATION</th>
<th>AREAS</th>
<th>TOTAL N.R.A. **</th>
<th>UNITS/ BLDG</th>
<th># OF STORIES</th>
<th>G.S.F./ BLDG ***</th>
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<td>873</td>
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** NET RENTABLE AREA (TDHCA) IS THE UNIT SPACE THAT IS AVAILABLE EXCLUSIVELY TO THE TENANT AND IS HEATED & COOLED BY A MECHANICAL HVAC SYSTEM. NRA IS MEASURED TO THE OUTSIDE OF THE STUDS OF A UNIT OR TO THE MIDDLE OF WALLS IN COMMON WITH OTHER UNITS. NRA DOES NOT INCLUDE COMMON HALLWAYS, STAIRWells, ELEVATOR SHAFTS, JANITOR CLOSETS, ELECTRICAL CLOSETS, BALCONIES, PORCHES, PATIOS, OR OTHER AREAS NOT ACTUALLY AVAILABLE TO THE TENANTS FOR THEIR FURNISHINGS.

---

**2010 ADA UNITS SUMMARY**

**MOBILITY, HEARING & VISUAL**

5% x 84 = 5 UNITS - (2)1/1, (2)2/2 & (1)3/2 Labeled HC unit on building plans

**HEARING & VISUAL**

2% x 84 = 2 UNITS Provided (1)1/1, (1)2/2 & (1)3/2 Labeled HV unit on building plans

---

**VI COLLINA**

Austin, Texas

[Architectural firm logo]
BUILDING 1 NOTES

1. NET RENTABLE AREA 0sf
2. TOTAL COMMON SPACE 2,773sf – SEE BREAKDOWN ON BUILDING TYPE SUMMARY
3. MINIMUM 8’-0” CEILING HEIGHT
4. ROOF SLOPE – 5:12

Building 1 - Clubhouse Plan

VI COLLINA
1. NET RENTABLE AREA 0 sf
2. TOTAL COMMON SPACE 2,773 sf - SEE BREAKDOWN ON BUILDING TYPE SUMMARY
3. MINIMUM 8'-0" CEILING HEIGHT
4. ROOF SLOPE - 5:12
BUILDING 1 NOTES
1. NET RENTABLE AREA 0sf
2. TOTAL COMMON SPACE 2,773sf – SEE BREAKDOWN ON BUILDING TYPE SUMMARY
3. MINIMUM 8’-0” CEILING HEIGHT
4. ROOF SLOPE – 5:12

REAR ELEVATION

SIDE ELEVATION

EXTERIOR MATERIALS:
TDHCA MASONRY 65.0%
CEMENTITIOUS SIDING 35.0%

EXTERIOR MATERIALS:
TDHCA MASONRY 76.0%
CEMENTITIOUS SIDING 24.0%

Building 1 - Clubhouse Elevations
VI COLLINA
Austin, Texas
Building 2 - First Level

VI COLLINA

Building 2 NOTES
1. NET RENTABLE AREA 24,430sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,868sf - SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE - 4:12 & 3:12
Building 2 - Third Level

VI COLLINA

Austin, Texas

BUILDING 2 NOTES

1. NET RENTABLE AREA 24,430sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,868sf – SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE — 4:12 & 3:12
VI COLLINA

Building 2 - Fourth Level

BUILDING 2 NOTES

1. NET RENTABLE AREA 24,430sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,868sf - SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE - 4:12 & 3:12

Austin, Texas
**Building 3 - First Level**

**VI COLLINA**

---

**BUILDING 3 NOTES**

1. NET RENTABLE AREA: 24,970sf
2. PORCH AREA: 1,064sf
3. TOTAL COMMON SPACE: 4,965sf — SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE: 4:12 & 3:12

---

Austin, Texas
Building 3 - Second Level

VI COLLINA

Austin, Texas

BUILDING 3 NOTES

1. NET RENTABLE AREA 24,970sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,965sf – SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8’-0” CEILING HEIGHT
5. ROOF SLOPE – 4:12 & 3:12
Building 3 - Third Level

VI COLLINA

Austin, Texas

BUILDING 3 NOTES

1. NET RENTABLE AREA 24,970sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,965sf – SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE – 4:12 & 3:12
Building 3 - Fourth Level

VI COLLINA

Austin, Texas

BUILDING 3 NOTES

1. NET RENTABLE AREA 24,970sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,965sf — SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8’-0” CEILING HEIGHT
5. ROOF SLOPE — 4:12 & 3:12
BUILDING 4 NOTES

1. NET RENTABLE AREA 23,532sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,851sf – SEE
   BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE = 4:12 & 3:12

Building 4 - First Level

VI COLLINA
Building 4 - Second Level

VI COLLINA

Austin, Texas

BUILDING 4 NOTES

1. NET RENTABLE AREA 23,532sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,851sf – SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE – 4:12 & 3:12
Building 4 - Third Level

VI COLLINA

Building 4 NOTES

1. NET RENTABLE AREA 23,532sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,851sf — SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE — 4:12 & 3:12
Building 4 - Fourth Level

VI COLLINA

Austin, Texas

BUILDING 4 NOTES

1. NET RENTABLE AREA 23,532sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,851sf — SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE — 4:12 & 3:12
Building 2 - Elevations

VI COLLINA

Austin, Texas
Building 2 - Elevations

VI COLLINA

Austin, Texas
Building 3 - Elevations

VI COLLINA

Austin, Texas
Building 3 - Elevations

VI COLLINA

Austin, Texas
Building 4 - Elevations

VI COLLINA

Austin, Texas
Building 4 - Elevations

VI COLLINA

Austin, Texas

BUILDING 4 NOTES

1. NET RENTABLE AREA 23,532sf
2. PORCH AREA 1,064sf
3. TOTAL COMMON SPACE 4,851sf - SEE BREAKDOWN ON BUILDING TYPE SUMMARY
4. MINIMUM 8'-0" CEILING HEIGHT
5. ROOF SLOPE - 4:12 & 3:12
One Bedroom Unit

VI COLLINA

Austin, Texas
Two Bedroom Unit

VI COLLINA

Austin, Texas
Three Bedroom Unit

VI COLLINA

NET RENTABLE AREA: 1,051 SF
PORCH AREA: 38 SF

UNIT MEETS ALL ACCESSIBILITY REQUIREMENTS
2019 HTC
Full Application

Part 3 Tab 23

Specifications and
Building/Unit Type Configuration
and
Tab 23a, 23b, 23c Forms
## SPECIFICATIONS AND BUILDING/UNIT TYPE CONFIGURATION

Unit types should be entered from smallest to largest based on "# of Bedrooms" and "Sq. Ft. Per Unit." "Unit Label" should correspond to the unit label or name used on the unit floor plan. "Building Label" should conform to the building label or name on the building floor plan. The total number of units per unit type and totals for "Total # of Units" and "Total Sq Ft. for Unit Type" should match the rent schedule and site plan. If additional building types are needed, they are available by un-hiding columns Q through AA, and rows 51 through 79.

### Building Configuration (Check all that apply):
- Single Family Construction
- SRO
- Transitional (per 421(i)(3)(B))
- Duplex
- Scattered Site
- Fourplex
- x > 4 Units Per Building
- Townhome

Development will have:
- x Fire Sprinklers
- x Elevators
- x # of Elevators
- x 3500 Wt. Capacity

### Number of Parking Spaces (consistent with Architectural Drawings):
- Free Paid
- Shed or Flat Roof Carport Spaces
- Detached Garage Spaces
- Attached Garage Spaces
- Uncovered Spaces
- Structured Parking Garage Spaces

### Floor Composition/Wall Height:
- % Carpet/Vinyl/Resilient Flooring
- Ceiling Height
- % Ceramic Tile
- Upper Floor(s) Ceiling Height (Townhome Only)
- % Other
- Describe:

### Unit Type Details:

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<th>Unit Type</th>
<th>Number of Stories</th>
<th>Building Label</th>
<th>Number of Buildings</th>
<th>Total # of Residential Buildings</th>
<th>Total # of Units</th>
<th>Total Sq Ft for Unit Type</th>
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<td>3</td>
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</tbody>
</table>

| Totals    | 28               | 28             | 28                 | 4                              | 84              | 72,932                   |

Supportive Housing Applicants Only

Enter the total development common area from the architect's plans:

Ensure that this number matches your architectural drawings.

The additional square footage allowed for Supportive Housing per 11.9(e)(2) is:

The lesser of these two numbers added to NRA:

Use this number to figure points under 11.9(e)(2)

Note revised definition of "Common Area" at 10 TAC §11.1 (d)(22).

Net Rentable Square Footage from Rent Schedule: 72,932

2/27/2019
# Accessible Mobility Units Calculation

Include this worksheet in the Application (or a signed and certified worksheet provided by your accessibility professional that shows the calculations).

To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

1. Distributed throughout the Unit types AND the Development; and
2. Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

Multifamily Housing Developments covered by 10 TAC 11.101(b)(8)(A) must have a minimum of 5% of all units in the development set aside for the mobility impaired and an additional 2% must be set aside for the hearing and/or visually impaired.

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<th>Mobility</th>
<th>Total Units</th>
<th>Required %</th>
<th>Calculated Units</th>
<th>Units Required</th>
<th>Units Proposed</th>
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<td>5%</td>
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<td>5</td>
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*NOTE: If total is more than what is required, Applicant will select which Unit(s) not to include Under "Units Proposed"

## EXAMPLE:

<table>
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<tr>
<th>Unit Description</th>
<th>Total Units</th>
<th>Required %</th>
<th>Calculated Units</th>
<th>Units Required</th>
<th>Units Proposed</th>
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<tr>
<td>1/1 (874sqft &amp; 806)</td>
<td>28</td>
<td>5%</td>
<td>1.4</td>
<td>1.4</td>
<td>1</td>
</tr>
<tr>
<td>2/2 (950 sqft &amp; 100)</td>
<td>36</td>
<td>5%</td>
<td>1.8</td>
<td>1.8</td>
<td>2</td>
</tr>
<tr>
<td>3/2 (1120 sqft &amp; 11)</td>
<td>4</td>
<td>5%</td>
<td>0.2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>D</td>
<td>5%</td>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>E</td>
<td>5%</td>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>68</td>
<td>5%</td>
<td>3.4</td>
<td>4.2</td>
<td>4</td>
</tr>
</tbody>
</table>

*NOTE: Required is 4, but calculation yields 4.2. Applicant selected which to round down Under "Units Proposed"

By signing below, I (WE) certify that the information above meets the requirements in Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8 as described in 10 TAC Chapter 1, Subchapter B. At least five percent (5%) of all dwelling units will be designed and built to be accessible for persons with mobility impairments.

By: ________________________________

Date: 2/24/2019

Paul C. Slayton III
Printed Name

Miller Slayton Architects, Inc
Firm Name (If applicable)

2/24/2019
# Accessible Hearing/Visual Units Calculation

Include this worksheet in the Application (or a signed and certified worksheet provided by your accessibility professional that shows the calculations).

To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

1. Distributed throughout the Unit types AND the Development; and
2. Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

Multifamily Housing Developments covered by 10 TAC 11.101(b)(8)(A) must have a minimum of 5% of all units in the development set aside for the mobility impaired and an additional 2% must be set aside for the hearing and/or visually impaired.

<table>
<thead>
<tr>
<th>Hearing/Visual</th>
<th>Total Units</th>
<th>Required %</th>
<th>Calculated Units</th>
<th>Units Required (Rounded)</th>
<th>Units Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Description</td>
<td>84</td>
<td>2%</td>
<td>1.68</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>One Bedroom</td>
<td>22</td>
<td>2%</td>
<td>0.44</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Two Bedroom</td>
<td>42</td>
<td>2%</td>
<td>0.84</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Three Bedroom</td>
<td>20</td>
<td>2%</td>
<td>0.4</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2%</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2%</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>84</td>
<td>2%</td>
<td>1.68</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

*NOTE: If total is more than what is required, Applicant will select which to include under "Units Proposed"

---

**EXAMPLE**

<table>
<thead>
<tr>
<th>Hearing/Visual</th>
<th>Total Units</th>
<th>Required %</th>
<th>Calculated Units</th>
<th>Units Required (Rounded)</th>
<th>Units Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Description</td>
<td>68</td>
<td>2%</td>
<td>1.36</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>1/1</td>
<td>28</td>
<td>2%</td>
<td>0.56</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2/2</td>
<td>36</td>
<td>2%</td>
<td>0.72</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>3/3</td>
<td>4</td>
<td>2%</td>
<td>0.08</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>D</td>
<td>2</td>
<td>2%</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>E</td>
<td>2</td>
<td>2%</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>68</td>
<td>2%</td>
<td>1.36</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>

*NOTE: Required is 2, but calculation yields 3. Applicant selected which Unit(s) to include under "Units Proposed"

By signing below, I (WE) certify that the information above meets the requirements in Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8 as described in 10 TAC Chapter 1, Subchapter B. At least two percent (2%) of all dwelling units will be designed and built to be accessible for persons with hearing and/or visual impairment.

By: [Signature]

**2/24/2019**

**Paul C. Slayton III**

Printed Name

**Miller Slayton Architects, Inc**

Firm Name (If applicable)

2/24/2019
## Accessible Parking Calculation

Submit this worksheet or a comparable document certified by an accessibility professional.

Although Fair Housing Standards may apply in unusual circumstances, ADA Standards typically determine the required number of Accessible Parking Spaces (APSs). This worksheet is intended to handle typical (ADA) cases, where all parking spaces are within a single parking lot. However, it might be possible to determine the APS requirements of multiple lots (or facilities) by completing this same worksheet for each of the lots. The worksheet might also be usable for Developments with less than one parking space to serve each dwelling unit, by filling in the information on page one, bypassing inapplicable spaces in the first section of page two, and completing the second section of page two, "Distribution of APSs Among the Various Types of Parking", referencing ADA Table 208.2. In unique cases where Fair Housing applies, or where this worksheet cannot be applied, create a certification specifying the types and numbers of the parking spaces applicable, including standard and accessible parking for dwelling units and amenities (e.g., office, mail kiosk, laundry, dumpster, pool, playground, etc., collectively, "amenities"), and for each type of parking facility, e.g., surface spaces, carports, garages, etc., for staff review. Links to the applicable accessibility rules are provided below.


# Accessible Parking for Facilities and Amenities

Determining the number of APSs that serve the dwelling units requires accounting for APSs that do not serve dwelling units. In the yellow spaces below, identify the individual amenities served by an APS. Groups of amenities in close proximity typically are allowed to share a single APS. If groups of amenities share one APS (or APSs), identify each such group. In the yellow space to the right of each of these identifications, state the number of APSs designated to serve the amenity or group identified. If parking is provided near dumpsters, at least 1 dumpster must have an APS. The total of these APSs will be subtracted from the total of all types of parking spaces to determine the number of parking spaces that serve the dwelling units and the APSs required for the dwelling units.

### Amenity: Identification of amenity, or amenities of a group, that the APS serves

<table>
<thead>
<tr>
<th>Amenity</th>
<th>Identification of amenity, or amenities of a group, that the APS serves</th>
<th>APSs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office, etc.:</td>
<td>Clubhouse/Pool</td>
<td>2</td>
</tr>
<tr>
<td>Amenity 1:</td>
<td>Dumpster</td>
<td>2</td>
</tr>
<tr>
<td>Amenity 2:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amenity 3:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amenity 4:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amenity 5:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amenity 6:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total of Accessible Parking Spaces that Do Not Serve Dwelling Units:** 4
### Accessible Parking for Residential Units

This portion of the worksheet was written for Developments having at least one parking space serving each dwelling unit, having surface parking spaces as the APSs that are not for dwelling units, and having only one parking lot, i.e., none of the parking spaces are physically segregated from the others by gates or by curbs or other barriers that require vehicles to exit the Development to travel between separate parking lots that serve it. The worksheet might, or might not be, useful for other cases.

#### Enter the information indicated below.

| Total dwelling Units in the Development: | 84 |
| Total surface parking spaces: | 101 |
| Total carports: |  |
| Total garages: |  |
| Total parking spaces of all types: | Calculated from above: 101 |
| Total APSs that serve non-residential purposes (i.e. office, amenities, etc.): | Calculated on prior page: 4 |
| Total of all types of parking spaces that serve dwelling units: | Calculated from above: 97 |
| APSs for mobility accessible units (5% of unit count, if spaces are sufficient): | Calculated from above: 5 |
| Parking spaces that serve dwelling units in excess of one per unit (if applicable): | Calculated from above: 13 |
| APSs required in excess of one per mobility accessible unit: | Calculated from above: 3 |
| **Total APSs required (including dwelling units and facilities/amenities):** | Calculated from above: 10 |

All Developments, including those having fewer than one parking space serving each dwelling unit, should use this portion of the worksheet. Enter the number of APSs indicated by ADA Table 208.2 for the total of each type of parking space, i.e., surface spaces, carports, etc., including both amenity spaces and dwelling unit spaces.

#### Distribution of APSs Among the Various Types of Parking

- **Minimum number of surface parking spaces (include dwelling unit and amenity spaces) that must be APSs:** 10
- **Minimum number of carports that must be APSs:**  |
- **Number of garages that must be APSs:**  |

#### APSs that Must Be Van Spaces

- **Total Van APSs required, including all types of spaces:** 2
- **Minimum number of surface parking spaces that must be van APSs:** 2
- **Minimum number of carports that must be van APSs:** 0
- **Minimum number of garages that must be van APSs:** 0

By signing below, I (WE) certify that the information above meets the requirements in the 2010 ADA Standards for Accessible Design Title III regulations at 28 CFR part 36, subpart D, and the 2004 ADA Accessibility Guidelines at 36 CFR part 1191, appendices B and D. There will be at least one accessible parking space per accessible unit located on the closest route to the accessible unit. For every 6 or fraction of 6 accessible spaces required, at least one will be van accessible. Accessible spaces will be dispersed amongst the parking types provided. Where parking for amenities or non-residents is provided, a sufficient number of accessible spaces will be provided.

**Signature**

Paul C. Slayton III

**Date:** 2/24/2019

**Miller Slayton Architects, Inc**

**Printed Name**

**Firm Name (If applicable)**
2019 HTC
Full Application

Part 4 Tab 24

Rent Schedule
## Rent Schedule

**Self Score Total:** 117

Unit types must be entered from smallest to largest based on "# of Bedrooms" and "Unit Size", then within the same "# of Bedrooms" and "Unit Size" from lowest to highest "Rent Collected/Unit".

**Private Activity Bond Priority (For Tax-Exempt Bond Developments ONLY):**

### Rent Designations (select from Drop down menu)

<table>
<thead>
<tr>
<th>HTC Units</th>
<th>MF Direct Loan Units (HOME Rent/Inc)</th>
<th>Nat'l HTF Units</th>
<th>TDHCA MRB Units</th>
<th>Other/Subsidy</th>
<th># of Units</th>
<th># of Bedrooms</th>
<th># of Baths</th>
<th>Unit Size (Net Rentable Sq. Ft.)</th>
<th>Total Net Rentable Sq. Ft.</th>
<th>Program Rent Limit</th>
<th>Tenant Paid Utility Allow.</th>
<th>Rent Collected /Unit</th>
<th>Total Monthly Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>TC 30%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
<td>1</td>
<td>1.0</td>
<td>693</td>
<td>2079</td>
<td>483</td>
<td>54</td>
<td>429</td>
<td>1,287</td>
</tr>
<tr>
<td>TC 50%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8</td>
<td>1</td>
<td>1.0</td>
<td>693</td>
<td>5,544</td>
<td>806</td>
<td>54</td>
<td>752</td>
<td>6,016</td>
</tr>
<tr>
<td>TC 60%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>9</td>
<td>2</td>
<td>2.0</td>
<td>873</td>
<td>3,492</td>
<td>580</td>
<td>71</td>
<td>509</td>
<td>2,036</td>
</tr>
<tr>
<td>MR</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td>1</td>
<td>1.0</td>
<td>693</td>
<td>1,386</td>
<td>967</td>
<td></td>
<td>967</td>
<td>1,934</td>
</tr>
<tr>
<td>TC 30%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
<td>2</td>
<td>2.0</td>
<td>873</td>
<td>3,492</td>
<td>580</td>
<td>71</td>
<td>509</td>
<td>2,036</td>
</tr>
<tr>
<td>TC 60%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>17</td>
<td>2</td>
<td>2.0</td>
<td>873</td>
<td>14,841</td>
<td>1,161</td>
<td>71</td>
<td>1,090</td>
<td>18,530</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>16</td>
<td>2</td>
<td>2.0</td>
<td>873</td>
<td>13,968</td>
<td>967</td>
<td>71</td>
<td>896</td>
<td>14,336</td>
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<tr>
<td>TC 30%</td>
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<td></td>
<td></td>
<td></td>
<td>1</td>
<td>3</td>
<td>2.0</td>
<td>1051</td>
<td>1,051</td>
<td>670</td>
<td>86</td>
<td>584</td>
<td>1,129</td>
</tr>
<tr>
<td>TC 50%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
<td>3</td>
<td>2.0</td>
<td>1051</td>
<td>6,306</td>
<td>1,118</td>
<td>86</td>
<td>1,032</td>
<td>6,192</td>
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<tr>
<td>MR</td>
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<td></td>
<td></td>
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<td>9</td>
<td>3</td>
<td>2.0</td>
<td>1051</td>
<td>9,459</td>
<td>1,341</td>
<td>86</td>
<td>1,255</td>
<td>11,295</td>
</tr>
<tr>
<td>TC 30%</td>
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<td></td>
<td></td>
<td>4</td>
<td>3</td>
<td>2.0</td>
<td>1051</td>
<td>4,204</td>
<td>1,341</td>
<td>86</td>
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<td>TC 50%</td>
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<td></td>
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<td>1</td>
<td>3</td>
<td>2.0</td>
<td>1051</td>
<td>4,204</td>
<td>1,341</td>
<td>86</td>
<td>1,255</td>
<td>5,364</td>
</tr>
<tr>
<td>TC 60%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
<td>2</td>
<td>2.0</td>
<td>873</td>
<td>4,365</td>
<td>1,161</td>
<td></td>
<td>5,805</td>
<td>-</td>
</tr>
<tr>
<td>MR</td>
<td></td>
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<td></td>
<td>1</td>
<td>3</td>
<td>2.0</td>
<td>1051</td>
<td>1,051</td>
<td>670</td>
<td>86</td>
<td>584</td>
<td>-</td>
</tr>
<tr>
<td>TC 30%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
<td>3</td>
<td>2.0</td>
<td>1051</td>
<td>6,306</td>
<td>1,118</td>
<td>86</td>
<td>1,032</td>
<td>-</td>
</tr>
<tr>
<td>TC 50%</td>
<td></td>
<td></td>
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<td>1051</td>
<td>9,459</td>
<td>1,341</td>
<td>86</td>
<td>1,255</td>
<td>-</td>
</tr>
<tr>
<td>MR</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
<td>3</td>
<td>2.0</td>
<td>1051</td>
<td>4,204</td>
<td>1,341</td>
<td>86</td>
<td>1,255</td>
<td>-</td>
</tr>
</tbody>
</table>

### AMFI %

<table>
<thead>
<tr>
<th>AMFI %</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>$301</td>
<td>$322</td>
<td>$387</td>
<td>$447</td>
</tr>
<tr>
<td>30</td>
<td>$451</td>
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<td>$580</td>
<td>$670</td>
</tr>
<tr>
<td>40</td>
<td>$602</td>
<td>$645</td>
<td>$774</td>
<td>$894</td>
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<tr>
<td>50</td>
<td>$752</td>
<td>$806</td>
<td>$967</td>
<td>$1,118</td>
</tr>
<tr>
<td>60</td>
<td>$903</td>
<td>$967</td>
<td>$1,161</td>
<td>$1,341</td>
</tr>
</tbody>
</table>

### Number of

- **TOTAL**: 84
- **Non Rental Income**: $0.00 per unit/month for: app fees, late fees, retained deposits and NSF charges
- **TOTAL NONRENTAL INCOME**: $15.00 per unit/month
- **= POTENTIAL GROSS MONTHLY INCOME**: $82,856

- Provision for Vacancy & Collection Loss

% of Potential Gross Income: 7.50%
### Rent Schedule (Continued)

| TC20% | 0  |
| TC30% | 11% 10% 8  |
| TC40% | 0  |
| TC50% | 41% 36% 30  |
| TC60% | 48% 42% 35  |
| TC70% | 0  |
| TC80% | 0  |

| MRB20% | 0  |
| MRB30% | 0  |
| MRB40% | 0  |
| MRB50% | 0  |
| MRB60% | 0  |
| MRB70% | 0  |
| MRB80% | 0  |

| HTC LI Total | 73  |
| EO | 0  |
| MR | 15% 13% 11  |
| MR Total | 13% 11  |

| Total HTC Units | 84  |

| National Housing Trust Fund | 0  |
| HTF30% | 0  |
| HTF LI Total | 0  |
| MR | 0  |
| MR Total | 0  |
| HTF Total | 0  |

| MORTGAGE REVENUE | 0  |
| MRB20% | 0  |
| MRB30% | 0  |
| MRB40% | 0  |
| MRB50% | 0  |
| MRB60% | 0  |
| MRB70% | 0  |
| MRB80% | 0  |

| HTC LI Total | 0  |
| MRB LI Total | 0  |
| MRBMR Total | 0  |
| MRB Total | 0  |

| DIRECT LOAN | 0  |
| 30% | 0  |
| 40% | 0  |
| LH/50% | 0  |
| HH/60% | 0  |
| HH/80% | 0  |
| Direct Loan LI Total | 0  |
| EO | 0  |
| MR | 0  |
| MR Total | 0  |
| Direct Loan Total | 0  |

| OTHER | 0  |
| Total OT Units | 0  |

### ACQUISITION + HARD

- **Cost Per Sq Ft**: $128.87
- **HARD**: $128.87
- **BUILDING**: $98.47

DO NOT USE THIS CALCULATION TO SCORE POINTS UNDER 11.9(e)(2). At the end of the Development Cost Schedule, you will have the ability to adjust your eligible costs to qualify. Points will be entered there.
### Utility Allowances [§10.614]

Applicant must attach documentation to this form to support the “Utility Allowance” estimate used in completing the Rent Schedule provided in the Application. Where the Applicant uses any method that requires Department review, such review must have been requested prior to submission of the Application. Please see 10 TAC §10.614(k). This exhibit must clearly indicate which utility costs are included in the estimate.

If tenants will be required to pay any other mandatory fees (e.g. renter’s insurance) please provide an estimate, description and documentation of those as well.

<table>
<thead>
<tr>
<th>Utility</th>
<th>Who Pays</th>
<th>Energy Source</th>
<th>0BR</th>
<th>1BR</th>
<th>2BR</th>
<th>3BR</th>
<th>4BR</th>
<th>Source of Utility Allowance &amp; Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heating</td>
<td>Tenant</td>
<td>$7</td>
<td>$9</td>
<td>$11</td>
<td></td>
<td></td>
<td></td>
<td>Austin Housing Authority</td>
</tr>
<tr>
<td>Cooking</td>
<td>Tenant</td>
<td>$4</td>
<td>$5</td>
<td>$7</td>
<td></td>
<td></td>
<td></td>
<td>6/1/2018</td>
</tr>
<tr>
<td>Other Electric</td>
<td>Tenant</td>
<td>$24</td>
<td>$30</td>
<td>$35</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Air Conditioning</td>
<td>Tenant</td>
<td>$11</td>
<td>$16</td>
<td>$20</td>
<td></td>
<td></td>
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</tr>
<tr>
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<td></td>
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<td></td>
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<tr>
<td>Sewer</td>
<td>Landlord</td>
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<td></td>
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<tr>
<td>Trash</td>
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<tr>
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<tr>
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</table>

Other (Describe)

If a revised form is submitted, date of submission: 2/26/2019
### Allowances for Tenant-Furnished Utilities and Other Services

#### Locality:
Housing Authority of the City of Austin, TX

#### Unit Type: Multi-Family (Elevator)

#### Date (mm/dd/yyyy)
6-1-2018

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<th>Utility or Service:</th>
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<th>2 BR</th>
<th>3 BR</th>
<th>4 BR</th>
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<td>$10.00</td>
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<td>d. Oil / Other</td>
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<tr>
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<td>$10.00</td>
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<tr>
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<tr>
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<tr>
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<td>$7.00</td>
<td>$8.00</td>
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<td>$13.00</td>
<td>$16.00</td>
<td>$18.00</td>
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<tr>
<td>d. Oil / Other</td>
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<tr>
<td>Range / Microwave</td>
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<td>$11.00</td>
<td>$11.00</td>
<td>$11.00</td>
<td>$11.00</td>
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<tr>
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<td>$12.00</td>
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<td>Other specify: Gas Charge $17.80</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Utility or Service</th>
<th>per month cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heating</td>
<td>$</td>
</tr>
<tr>
<td>Cooking</td>
<td>$</td>
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<tr>
<td>Other Electric</td>
<td>$</td>
</tr>
<tr>
<td>Air Conditioning</td>
<td>$</td>
</tr>
<tr>
<td>Water Heating</td>
<td>$</td>
</tr>
<tr>
<td>Water</td>
<td>$</td>
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<tr>
<td>Sewer</td>
<td>$</td>
</tr>
<tr>
<td>Trash Collection</td>
<td>$</td>
</tr>
<tr>
<td>Range / Microwave</td>
<td>$</td>
</tr>
<tr>
<td>Refrigerator</td>
<td>$</td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
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</tbody>
</table>

### Actual Family Allowances
To be used by the family to compute allowance. Complete below for the actual unit rented.

#### Address of Unit

#### Number of Bedrooms

---

The Nelrod Company 1/2018 Update

form HUD-52667 (04/15)
ref Handbook 7420.8
Annual Operating Expenses
## General & Administrative Expenses

<table>
<thead>
<tr>
<th>Expense</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting</td>
<td>$12,000</td>
</tr>
<tr>
<td>Advertising</td>
<td>$10,920</td>
</tr>
<tr>
<td>Legal fees</td>
<td>$6,825</td>
</tr>
<tr>
<td>Leased equipment</td>
<td>$</td>
</tr>
<tr>
<td>Postage &amp; office supplies</td>
<td>$5,460</td>
</tr>
<tr>
<td>Telephone</td>
<td>$4,095</td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total General &amp; Administrative Expenses:</strong></td>
<td><strong>$39,300</strong></td>
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</table>

### Management Fee:
- **Percent of Effective Gross Income:** 5.00%
- **Amount:** $45,985

### Payroll, Payroll Tax & Employee Benefits

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management</td>
<td>$45,000</td>
</tr>
<tr>
<td>Maintenance</td>
<td>$52,000</td>
</tr>
<tr>
<td>Other (taxes/benefits/insurance)</td>
<td>$27,160</td>
</tr>
<tr>
<td><strong>Total Payroll, Payroll Tax &amp; Employee Benefits:</strong></td>
<td><strong>$124,160</strong></td>
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</table>

### Repairs & Maintenance

<table>
<thead>
<tr>
<th>Expense</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elevator</td>
<td>$18,000</td>
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<tr>
<td>Exterminating</td>
<td>$1,764</td>
</tr>
<tr>
<td>Grounds</td>
<td>$20,000</td>
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<tr>
<td>Make-ready</td>
<td>$11,760</td>
</tr>
<tr>
<td>Repairs</td>
<td>$17,640</td>
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<tr>
<td>Pool</td>
<td>$3,500</td>
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<tr>
<td>Other</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total Repairs &amp; Maintenance:</strong></td>
<td><strong>$72,664</strong></td>
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</table>

### Utilities (Enter Only Property Paid Expense)

<table>
<thead>
<tr>
<th>Expense</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electric</td>
<td>$14,700</td>
</tr>
<tr>
<td>Trash</td>
<td>$9,600</td>
</tr>
<tr>
<td>Water/Sewer</td>
<td>$54,600</td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
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<tr>
<td><strong>Total Utilities:</strong></td>
<td><strong>$78,900</strong></td>
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</tbody>
</table>

### Annual Property Insurance:
- **Rate per net rentable square foot:** $0.35
- **Total:** $25,200

### Property Taxes:
- **Published Capitalization Rate:** 8.75%
- **Source:** Travis
- **Annual Property Taxes:** $96,000
- **Payments in Lieu of Taxes:** $0
- **Total Property Taxes:** $96,000

### Reserve for Replacements:
- **Annual reserves per unit:** $250
- **Total:** $21,000

### Other Expenses

<table>
<thead>
<tr>
<th>Expense</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Cable TV</td>
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<tr>
<td>Supportive Services (Staffing/Contracted Services)</td>
<td>$15,000</td>
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<tr>
<td>TDHCA Compliance fees ($40/HTC unit)</td>
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<tr>
<td>TDHCA Direct Loan Compliance Fees ($34/MDL unit)</td>
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<tr>
<td>TDHCA Bond Compliance Fees (TDHCA as Bond Issuer Only - $25/MRB unit)</td>
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<tr>
<td>Bond Trustee Fees</td>
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<tr>
<td>Security</td>
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<tr>
<td>Other</td>
<td>$</td>
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<tr>
<td><strong>Total Other Expenses:</strong></td>
<td><strong>$17,920</strong></td>
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</table>

### TOTAL ANNUAL EXPENSES
- **Expense per unit:** $6204
- **Expense to Income Ratio:** 56.66%
- **Total Actual Operating Expenses:** $521,129

### NET OPERATING INCOME (before debt service)
- **Amount:** $398,573

### Annual Debt Service

<table>
<thead>
<tr>
<th>Lender</th>
<th>Amount</th>
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<tbody>
<tr>
<td>First Mortgage Lender</td>
<td>$333,493</td>
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<tr>
<td>Second Mortgage Lender</td>
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<tr>
<td>Other</td>
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<tr>
<td><strong>Total Annual Debt Service:</strong></td>
<td>$333,493</td>
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</tbody>
</table>

### Debt Coverage Ratio
- **Debt Coverage Ratio:** 1.20
- **Total Annual Debt Service:** $333,493

### NET CASH FLOW
- **Amount:** $65,080

---

If a revised form is submitted, date of submission: 2/26/2019
2019 HTC
Full Application

Part 4 Tab 27

Proforma
### Income

<table>
<thead>
<tr>
<th>Year</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 10</th>
<th>Year 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>POTENTIAL GROSS ANNUAL RENTAL INCOME</td>
<td>$979,152</td>
<td>$998,735</td>
<td>$1,018,710</td>
<td>$1,039,084</td>
<td>$1,059,866</td>
<td>$1,170,177</td>
<td>$1,291,970</td>
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<td>$15,120</td>
<td>$15,422</td>
<td>$15,731</td>
<td>$16,045</td>
<td>$16,366</td>
<td>$18,070</td>
<td>$19,951</td>
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<tr>
<td>POTENTIAL GROSS ANNUAL INCOME</td>
<td>$994,272</td>
<td>$1,014,157</td>
<td>$1,034,441</td>
<td>$1,055,129</td>
<td>$1,076,232</td>
<td>$1,188,247</td>
<td>$1,311,921</td>
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<tr>
<td>Provision for Vacancy &amp; Collection Loss</td>
<td>$(74,570)</td>
<td>$(76,062)</td>
<td>$(77,583)</td>
<td>$(79,135)</td>
<td>$(80,717)</td>
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<td>$(98,394)</td>
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<td>Rental Concessions</td>
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<td>EFFECTIVE GROSS ANNUAL INCOME</td>
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### Expenses

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<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 10</th>
<th>Year 15</th>
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</thead>
<tbody>
<tr>
<td>General &amp; Administrative Expenses</td>
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<td>$41,693</td>
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<td>$44,232</td>
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<td>$49,776</td>
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<td>Payroll, Payroll Tax &amp; Employee Benefits</td>
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<td>$127,885</td>
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<td>$135,673</td>
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<td>$16,545</td>
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<td>Water, Sewer &amp; Trash Utilities</td>
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<tr>
<td>Reserve for Replacements</td>
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<td>$27,106</td>
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<tr>
<td>TOTAL ANNUAL EXPENSES</td>
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<td>$536,303</td>
<td>$551,923</td>
<td>$568,002</td>
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<td>NET OPERATING INCOME</td>
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<td>$407,992</td>
<td>$410,960</td>
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### Debt Service

<table>
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<tr>
<th>Year</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 10</th>
<th>Year 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Deed of Trust Annual Loan Payment</td>
<td></td>
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<td></td>
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<tr>
<td>Third Deed of Trust Annual Loan Payment</td>
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<tr>
<td>Other Annual Required Payment</td>
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<tr>
<td>ANNUAL NET CASH FLOW</td>
<td>$65,080</td>
<td>$68,300</td>
<td>$71,441</td>
<td>$74,499</td>
<td>$77,467</td>
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<td>CUMULATIVE NET CASH FLOW</td>
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<td>$279,320</td>
<td>$356,787</td>
<td>$477,265</td>
<td>$1,255,724</td>
</tr>
</tbody>
</table>

### By signing below (we) are certifying that the above 15 Year pro forma, is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on the bank's current underwriting parameters and consistent with the loan terms indicated in the term sheet and preliminarily considered feasible pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)
# 15 Year Rental Housing Operating Pro Forma (All Programs)

A pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental one and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the pro forma period should be attached to this exhibit.

<table>
<thead>
<tr>
<th>INCOME</th>
<th>YEAR 1</th>
<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>YEAR 5</th>
<th>YEAR 10</th>
<th>YEAR 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Gross Annual Rents</td>
<td>$979,152</td>
<td>$998,735</td>
<td>$1,018,710</td>
<td>$1,039,084</td>
<td>$1,059,866</td>
<td>$1,170,177</td>
<td>$1,291,970</td>
</tr>
<tr>
<td>Condo Income</td>
<td>$15,120</td>
<td>$15,422</td>
<td>$15,731</td>
<td>$16,045</td>
<td>$16,366</td>
<td>$16,700</td>
<td>$19,951</td>
</tr>
<tr>
<td>ITENTIAL GROSS ANNUAL RENTAL</td>
<td>$994,272</td>
<td>$1,014,157</td>
<td>$1,034,441</td>
<td>$1,055,129</td>
<td>$1,076,232</td>
<td>$1,188,247</td>
<td>$1,311,921</td>
</tr>
<tr>
<td>Expense for Vacancy &amp; Collection Loss</td>
<td>$(74,570)</td>
<td>$(76,062)</td>
<td>$(77,583)</td>
<td>$(79,135)</td>
<td>$(80,717)</td>
<td>$(82,683)</td>
<td>$(89,324)</td>
</tr>
<tr>
<td>Non-Concessions</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Effective Gross Annual Income</td>
<td>$919,702</td>
<td>$938,096</td>
<td>$956,858</td>
<td>$975,995</td>
<td>$995,515</td>
<td>$1,099,129</td>
<td>$1,213,527</td>
</tr>
</tbody>
</table>

**EXPENSES**

| General & Administrative Expenses | $39,300 | $40,479 | $41,693 | $42,944 | $44,232 | $51,278 | $59,445 |
| Management Fee                  | $46,906 | $46,400 | $46,400 | $46,400 | $46,400 | $51,578 | $59,445 |
| Yo, Payroll Tax & Employee Benefits | $124,160 | $127,885 | $131,721 | $135,673 | $139,743 | $162,001 | $187,803 |
| Maintenance                      | $72,664 | $74,844 | $77,089 | $79,402 | $81,784 | $94,109 | $109,911 |
| Utilities & Gas Utilities        | $14,700 | $15,141 | $15,595 | $16,063 | $16,545 | $19,180 | $22,235 |
| Water, Sewer & Trash Utilities  | $64,200 | $66,126 | $68,110 | $70,153 | $72,258 | $83,766 | $97,108 |
| Natural Gas Premiums             | $25,200 | $25,956 | $26,735 | $27,537 | $28,363 | $32,880 | $38,117 |
| Property Taxes                   | $96,000 | $98,880 | $101,846 | $104,902 | $108,049 | $125,258 | $145,209 |
| Service Charge                   | $96,000 | $98,880 | $101,846 | $104,902 | $108,049 | $125,258 | $145,209 |
| **Total Operating Income**       | $521,129 | $536,303 | $551,923 | $568,002 | $584,554 | $674,911 | $779,274 |

**DEBT SERVICE**


**INCREASED NET CASH FLOW**

| $65,080 | $68,300 | $71,441 | $74,499 | $77,467 | $90,724 | $100,660 |

**INCREASED NET CASH FLOW**

| $65,080 | $133,379 | $204,821 | $279,320 | $356,787 | $777,256 | $1,255,724 |

| 1:20 | 1:20 | 1:21 | 1:22 | 1:23 | 1:27 | 1:30 |

| (Describe) | (Describe) | (Describe) | (Describe) | (Describe) | (Describe) | (Describe) |

*Signature, Authorized Representative, Construction or Permanent Lender*

*Signature, Authorized Representative, Syndicator*

*Printed Name*

*Phone:*

*Email:*

*Date: 2/28/19*

*Signature*

2/24/20
# 15 Year Rental Housing Operating Pro Forma (All Programs)

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

## Income

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 10</th>
<th>Year 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>POTENTIAL GROSS ANNUAL RENTAL INCOME</td>
<td>$979,152</td>
<td>$998,735</td>
<td>$1,018,710</td>
<td>$1,039,084</td>
<td>$1,059,866</td>
<td>$1,170,177</td>
<td>$1,291,970</td>
</tr>
<tr>
<td>Secondary Income</td>
<td>$15,120</td>
<td>$15,422</td>
<td>$15,731</td>
<td>$16,045</td>
<td>$16,366</td>
<td>$18,070</td>
<td>$19,951</td>
</tr>
<tr>
<td>POTENTIAL GROSS ANNUAL INCOME</td>
<td>$994,272</td>
<td>$1,014,157</td>
<td>$1,034,441</td>
<td>$1,055,129</td>
<td>$1,076,232</td>
<td>$1,188,247</td>
<td>$1,311,921</td>
</tr>
<tr>
<td>Provision for Vacancy &amp; Collection Loss</td>
<td>($74,570)</td>
<td>($76,062)</td>
<td>($77,583)</td>
<td>($79,135)</td>
<td>($80,717)</td>
<td>($89,119)</td>
<td>($98,394)</td>
</tr>
<tr>
<td>Rental Concessions</td>
<td>$0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EFFECTIVE GROSS ANNUAL INCOME</td>
<td>$919,702</td>
<td>$938,096</td>
<td>$956,858</td>
<td>$975,955</td>
<td>$985,515</td>
<td>$1,099,129</td>
<td>$1,213,527</td>
</tr>
</tbody>
</table>

## Expenses

- General & Administrative Expenses: $39,300
- Management Fee: $45,985
- Payroll, Payroll Tax & Employee Benefits: $124,160
- Repairs & Maintenance: $72,664
- Electric & Gas Utilities: $14,700
- Water, Sewer & Trash Utilities: $64,200
- Annual Property Insurance Premiums: $25,200
- Property Tax: $96,000
- Reserve for Replacements: $21,000
- Other Expenses: $17,920
- TOTAL ANNUAL EXPENSES: $521,129
- NET OPERATING INCOME: $398,573

## Debt Service

- First Deed of Trust Annual Loan Payment: $333,493
- Second Deed of Trust Annual Loan Payment: $333,493
- Third Deed of Trust Annual Loan Payment: $333,493
- Other Annual Required Payment: $333,493
- ANNUAL NET CASH FLOW: $65,080
- CUMULATIVE NET CASH FLOW: $65,080
- Debt Coverage Ratio: 1.20
- Other (Describe): [Signature]

By signing below I (we) are certifying that the above 15 Year pro forma, is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on the bank's current underwriting parameters and consistent with the loan terms indicated in the term sheet and preliminarily considered feasible pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio. (Signature only required if using this pro forma for points under $11.5(e)(1) relating to Financial Feasibility)

Signature, Authorized Representative, Construction or Permanent Lender

Signature, Authorized Representative, Syndicator

---

Stephen W. Rose
2/27/2019

Phone: (713) 388-5754
Email: srose@cbbdx.com

Vi Collina
2/24/2019
2019 HTC
Full Application

Part 4 Tab 28

Offsite Cost Breakdown
**VI COLLINA Off-Site Cost Breakdown**

This form must be submitted with the Development Cost Schedule if the development has offsite costs, whether those costs are included in the budget as a line item, embedded in the acquisition costs, or referenced in utility provider letters. Therefore, the total costs listed on this worksheet may or may not exactly correspond with those off-site costs indicated on the Development Costs Schedule. However, all costs listed here should be able to be justified in another place in the application.

**Column A:** The offsite activity reflected here should correspond to the offsite activity reflected in the Development Cost Schedule or other supporting documentation.

**Columns B and C:** In determining actual construction cost, two different methods may be used:

**Column D:** To arrive at total construction costs in Column D:

**Column E:** Any proposed activity involving the acquisition of real property, easements, rights-of-way, etc., must have the projected costs of this acquisition for the activity.

**Column F:** Engineering/architectural costs must be broken out by the offsite work activity.

**Column G:** Figures for Column G, Total Activity Cost, are obtained by adding together Columns D, E, and F to get the total costs.

**ALL contingency must be included in the Contingency line item on the Development Cost Schedule and NOT on this form**

**This form must be completed by a professional engineer licensed to practice in the State of Texas. His or her signature and registration seal must be on the form.**

<table>
<thead>
<tr>
<th>A.</th>
<th>B.</th>
<th>C.</th>
<th>D.</th>
<th>E.</th>
<th>F.</th>
<th>G.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity</td>
<td>Labor or Unit Price</td>
<td>Materials or # of Units</td>
<td>Total Construction Costs</td>
<td>Acquisition Costs</td>
<td>Engineering / Architectural Costs</td>
<td>Total Activity Costs</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total**

$0.00

**Signature of Registered Engineer responsible for Budget Justification**

Shea Kirkman

Printed Name

2/22/19

Seal

If a revised form is submitted, date of submission:
2019 HTC
Full Application

Part 4 Tab 29

Site Work Cost Breakdown
This form must be submitted with the Development Cost Schedule as justification of Site Work costs.

Column A: The Site Work activity reflected here must match the Site Work activity reflected in the Development Cost Schedule.

Columns B and C: In determining actual construction cost, two different methods may be used:
- The construction costs may be broken into labor (Column B) and materials (Column C) for the activity; OR
- The use of unit price (Column B) and the number of units (Column C) data for the activity.

Column D: To arrive at total construction costs in Column D:
- If based on labor and materials, add Column B and Column C together to arrive at total construction costs.
- If based on unit price measures, Column B is multiplied by Column C to arrive at total construction costs.

Column E: Any proposed activity involving the acquisition of real property, easements, rights-of-way, etc., must have the projected costs of this acquisition for the activity.

Column F: Engineering/architectural costs must be broken out by the Site Work activity.

Column G: Figures for Column G, Total Activity Cost, are obtained by adding together Columns D, E, and F to get the total costs.

**This form must be completed by a Third-Party engineer licensed to practice in the State of Texas. His or her signature and registration seal must be on the form.**

For Site Work costs that exceed $15,000 per Unit and are included in Eligible Basis, a CPA letter allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible must be submitted behind this tab.

### A. Activity
### B. Labor or Unit Price
### C. Materials or # of Units
### D. Total Construction Costs
### E. Acquisition Costs
### F. Engineering / Architectural Costs
### G. Total Activity Costs

<table>
<thead>
<tr>
<th>Activity</th>
<th>Labor or Unit Price</th>
<th>Materials or # of Units</th>
<th>Total Construction Costs</th>
<th>Acquisition Costs</th>
<th>Engineering / Architectural Costs</th>
<th>Total Activity Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demolition</td>
<td>$10,000.00</td>
<td>1</td>
<td>$10,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Rough Grading</td>
<td>$252,000.00</td>
<td>1</td>
<td>$252,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$252,000.00</td>
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<tr>
<td>Fine Grading</td>
<td>$108,000.00</td>
<td>1</td>
<td>$108,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$108,000.00</td>
</tr>
<tr>
<td>On-site Concrete</td>
<td>$85,000.00</td>
<td>1</td>
<td>$85,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$85,000.00</td>
</tr>
<tr>
<td>On-Site Electrical</td>
<td>$150,000.00</td>
<td>1</td>
<td>$150,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>On-Site Paving</td>
<td>$500,000.00</td>
<td>1</td>
<td>$500,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>On-Site Utilities</td>
<td>$380,000.00</td>
<td>1</td>
<td>$380,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$380,000.00</td>
</tr>
<tr>
<td>Striping &amp; Signs</td>
<td>$35,000.00</td>
<td>1</td>
<td>$35,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>Site Lighting</td>
<td>$50,000.00</td>
<td>1</td>
<td>$50,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>Retaining Walls</td>
<td>$100,000.00</td>
<td>1</td>
<td>$100,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>Detention/Retention Structure</td>
<td>$115,000.00</td>
<td>1</td>
<td>$115,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$115,000.00</td>
</tr>
<tr>
<td>Other - Mobilization</td>
<td>$35,000.00</td>
<td>1</td>
<td>$35,000.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$35,000.00</td>
</tr>
</tbody>
</table>

Total: $1,820,000

**Signature of Registered Engineer**

Shea Kirkman

Printed Name: Shea Kirkman

Seal

2/22/19

Date

If a revised form is submitted, date of submission: 2/22/19
2019 HTC
Full Application

Part 4 Tab 30

Development Cost Schedule
### Development Cost Schedule

This Development Cost Schedule must be consistent with the Summary Sources and Uses of Funds Statement. All Applications must complete the total development cost column and the Tax Payer Identification column. Only HTC applications must complete the Eligible Basis columns and the Requested Credit calculation below:

<table>
<thead>
<tr>
<th>TOTAL DEVELOPMENT SUMMARY</th>
<th>Eligible Basis (If Applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Cost</td>
<td>Acquisition</td>
</tr>
</tbody>
</table>

#### ACQUISITION
- Site acquisition cost
- Existing building acquisition cost
- Closing costs & acq. legal fees
- Other (specify) - see footnote 1
- Other (specify) - see footnote 1

**Subtotal Acquisition Cost**

| Total Cost | $3,400,000 | $0 | $0 |

#### OFF-SITES
- Off-site concrete
- Storm drains & devices
- Water & fire hydrants
- Off-site utilities
- Sewer lateral(s)
- Off-site paving
- Off-site electrical
- Other (specify) - see footnote 1
- Other (specify) - see footnote 1

**Subtotal Off-Sites Cost**

| Total Cost | $0 | $0 | $0 |

#### SITE WORK
- Demolition
- Asbestos Abatement (Demolition Only)
- Detention
- Rough grading
- Fine grading
- On-site concrete
- On-site electrical
- On-site paving
- On-site utilities
- Decorative masonry
- Bumper stops, striping & signs
- Mob., Lighting, SWPPP & Ret. Wall

**Subtotal Site Work Cost**

| Total Cost | $1,820,000 | $0 | $1,260,000 |

#### SITE AMENITIES
- Landscaping
- Pool and decking
- Athletic court(s), playground(s)
- Fencing
- Picnic Tables/Benches/Grills

**Subtotal Site Amenities Cost**

| Total Cost | $473,000 | $0 | $473,000 |

#### BUILDING COSTS*
- Concrete
- Masonry
- Metals
- Woods and Plastics
- Thermal and Moisture Protection
- Roof Covering

2/26/2019
<table>
<thead>
<tr>
<th>Category</th>
<th>Before 11.9(e)(2)</th>
<th>After 11.9(e)(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doors and Windows</td>
<td>335,033</td>
<td>335,033</td>
</tr>
<tr>
<td>Finishes</td>
<td>1,285,483</td>
<td>1,285,483</td>
</tr>
<tr>
<td>Specialties</td>
<td>96,042</td>
<td>96,042</td>
</tr>
<tr>
<td>Equipment</td>
<td>204,910</td>
<td>204,910</td>
</tr>
<tr>
<td>Furnishings</td>
<td>212,197</td>
<td>212,197</td>
</tr>
<tr>
<td>Special Construction</td>
<td>169,886</td>
<td>169,886</td>
</tr>
<tr>
<td>Conveying Systems (Elevators)</td>
<td>270,000</td>
<td>270,000</td>
</tr>
<tr>
<td>Mechanical (HVAC; Plumbing)</td>
<td>874,569</td>
<td>874,569</td>
</tr>
<tr>
<td>Electrical</td>
<td>696,165</td>
<td>696,165</td>
</tr>
</tbody>
</table>

**Individually itemize costs below:**

- Detached Community Facilities/Building
- Carports and/or Garages
- Lead-Based Paint Abatement
- Asbestos Abatement (Rehabilitation Only)
- Structured Parking
- Commercial Space Costs

**Other (specify) - see footnote 1**

**Subtotal Building Costs Before 11.9(e)(2)**

|                      | $7,181,899 | $0 | $7,181,899 |

**Voluntary Eligible Building Costs (After 11.9(e)(2))**

|                      | $81.89 psf | $5,971,899 |

**TOTAL BUILDING COSTS & SITE WORK**

|                      | $9,474,899 | $0 | $7,704,899 |

**Contingency**

|                      | 7.00%      | $663,243 | $539,343 |

**TOTAL HARD COSTS**

|                      | $10,138,142 | $0 | $8,244,242 |

**OTHER CONSTRUCTION COSTS**

<table>
<thead>
<tr>
<th></th>
<th>%THC</th>
<th>%EHC</th>
</tr>
</thead>
<tbody>
<tr>
<td>General requirements (&lt;6%)</td>
<td>6.00%</td>
<td>608,289</td>
</tr>
<tr>
<td>Field supervision (within GR limit)</td>
<td>202,763</td>
<td>164,885</td>
</tr>
<tr>
<td>Contractor overhead (&lt;2%)</td>
<td>2.00%</td>
<td>608,289</td>
</tr>
<tr>
<td>G &amp; A Field (within overhead limit)</td>
<td>6.00%</td>
<td>608,289</td>
</tr>
</tbody>
</table>

**TOTAL CONTRACTOR FEES**

|                      | $1,419,341 | $0 | $1,154,195 |

**TOTAL CONSTRUCTION CONTRACT Before 11.9(e)(2)**

|                      | $11,557,483 | $0 | $9,398,437 |

**Voluntary Eligible “Hard Costs” (After 11.9(e)(2))**

|                      | $0.00 psf |

**TOTAL CONSTRUCTION CONTRACT After 11.9(e)(2)**

|                      | $11,557,483 | $0 | $9,398,437 |

**SOFT COSTS**

<table>
<thead>
<tr>
<th></th>
<th>300,000</th>
<th>300,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Architectural - Design fees</td>
<td>75,000</td>
<td>75,000</td>
</tr>
<tr>
<td>Architectural - Supervision fees</td>
<td>300,000</td>
<td>300,000</td>
</tr>
<tr>
<td>Engineering fees</td>
<td>225,000</td>
<td>225,000</td>
</tr>
<tr>
<td>Real estate attorney/other legal fees</td>
<td>75,000</td>
<td>75,000</td>
</tr>
<tr>
<td>Impact Fees</td>
<td>15,187</td>
<td>15,187</td>
</tr>
<tr>
<td>Building permits &amp; related costs</td>
<td>12,500</td>
<td>12,500</td>
</tr>
<tr>
<td>Market analysis</td>
<td>8,500</td>
<td>8,500</td>
</tr>
</tbody>
</table>

The fee waiver has been applied to permitting and impact fees and is already reflected. Therefore, $270,000.

2/26/2019
## Environmental assessment
- Costs: $21,450

## Soils report
- Costs: $21,450

## Survey
- Costs: $22,100

## Marketing
- Costs: $50,000

## Hazard & liability insurance
- Costs: $25,200

## Real property taxes
- Costs: $167,622

## Personal property taxes
- Costs: $107,433

## Tenant Relocation
- Costs: $141,625

## Bldr’s Risk, GL, Comp Ops Ins.
- Costs: $175,000

## FFE and Int Des
- Costs: $220,000

## Franchise Utility Fees
- Costs: $220,000

### Subtotal Soft Cost
- Total: $1,927,774

## FINANCING:

### CONSTRUCTION LOAN(S)
- **Interest**: $1,204,667
- **Loan origination fees**: $278,000
- **Title & recording fees**: $195,000
- **Closing costs & legal fees**: $165,000
- **Inspection fees**: $85,000
- **Credit Report**
- **Discount Points**
- **Other (specify) - see footnote 1**
- **Other (specify) - see footnote 1**

### PERMANENT LOAN(S)
- **Loan origination fees**: $46,000
- **Title & recording fees**
- **Closing costs & legal**
- **Bond premium**
- **Credit report**
- **Discount points**
- **Credit enhancement fees**
- **Prepaid MIP**
- **Other (specify) - see footnote 1**
- **Other (specify) - see footnote 1**

### BRIDGE LOAN(S)
- **Interest**
- **Loan origination fees**
- **Title & recording fees**
- **Closing costs & legal fees**
- **Other (specify) - see footnote 1**
- **Other (specify) - see footnote 1**

### OTHER FINANCING COSTS
- **Tax credit fees**: $67,340
- **Tax and/or bond counsel**
- **Payment bonds**
- **Performance bonds**: $136,178
- **Credit enhancement fees**
- **Mortgage insurance premiums**
- **Cost of underwriting & issuance**
- **Syndication organizational cost**
- **Tax opinion**
- **Refinance (existing loan payoff amt)**
- **Other (specify) - see footnote 1**
- **Other (specify) - see footnote 1**

### Subtotal Financing Cost
- Total: $2,192,185

---

*waiver is not included as a source of funds. Estimated to reduce costs by approximately $327,738.98.*
### DEVELOPER FEES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (200,000$)</th>
<th>Rate</th>
<th>Subtotal (15.00%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing consultant fees</td>
<td>200,000</td>
<td></td>
<td>200,000</td>
</tr>
<tr>
<td>General &amp; administrative</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit or fee</td>
<td>2,021,860</td>
<td></td>
<td>1,737,775</td>
</tr>
<tr>
<td><strong>Subtotal Developer Fees</strong></td>
<td>2,221,860</td>
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<td>1,937,775</td>
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### RESERVES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent-up - new funds</td>
<td>87,015</td>
</tr>
<tr>
<td>Rent-up - existing reserves*</td>
<td></td>
</tr>
<tr>
<td>Operating - new funds</td>
<td>427,311</td>
</tr>
<tr>
<td>Operating - existing reserves*</td>
<td></td>
</tr>
<tr>
<td>Replacement - new funds</td>
<td></td>
</tr>
<tr>
<td>Replacement - existing reserves*</td>
<td></td>
</tr>
<tr>
<td>Escrows - new funds</td>
<td></td>
</tr>
<tr>
<td>Escrows - existing reserves*</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal Reserves</strong></td>
<td>$514,326</td>
</tr>
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</table>

*Any existing reserve amounts should be listed on the Schedule of Sources.

### TOTAL HOUSING DEVELOPMENT COSTS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (200,000$)</th>
<th>Rate</th>
<th>Subtotal (15.00%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL HOUSING DEVELOPMENT COSTS</strong></td>
<td>$21,813,628</td>
<td>0</td>
<td>$14,856,275</td>
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</tbody>
</table>

### Deduct From Basis:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (200,000$)</th>
<th>Rate</th>
<th>Subtotal (15.00%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal grants used to finance costs in Eligible Basis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-qualified non-recourse financing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-qualified portion of higher quality units §42(d)(5)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Historic Credits (residential portion only)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Eligible Basis</strong></td>
<td>$0</td>
<td>$14,856,275</td>
<td></td>
</tr>
<tr>
<td><strong>High Cost Area Adjustment (100% or 130%)</strong></td>
<td>130%</td>
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<tr>
<td><strong>Total Adjusted Basis</strong></td>
<td>$0</td>
<td>$19,313,158</td>
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<tr>
<td><strong>Applicable Fraction</strong></td>
<td>86%</td>
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<tr>
<td><strong>Total Qualified Basis</strong></td>
<td>$16,676,912</td>
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<td>$16,676,912</td>
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<tr>
<td><strong>Applicable Percentage</strong></td>
<td></td>
<td>9.00%</td>
<td></td>
</tr>
<tr>
<td><strong>Credits Supported by Eligible Basis</strong></td>
<td>$1,500,922</td>
<td>0</td>
<td>$1,500,922</td>
</tr>
</tbody>
</table>

### Requested Score for 11.9(e)(2)

| Requested Score for 11.9(e)(2) | 12 |

*11.9(c)(2) Cost Per Square Foot: DO NOT ROUND! Applicants are advised to ensure that the figure is not rounding down to the maximum dollar figure to support the elected points.

Name of contact for Cost Estimate: Lisa Stephens

Phone Number for Contact: 352-213-8700

If a revised form is submitted, date of submission: 2/26/2019
### Schedule of Sources of Funds and Financing Narrative

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

<table>
<thead>
<tr>
<th>Financing Participants</th>
<th>Funding Description</th>
<th>Construction Period</th>
<th>Permanent Period</th>
<th>Lien Position</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Loan/Equity Amount</td>
<td>Interest Rate</td>
<td>Loan/Equity Amount</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(%)</td>
<td>(%)</td>
</tr>
<tr>
<td>Debt</td>
<td></td>
<td>$0</td>
<td>$ -</td>
<td>0.00%</td>
</tr>
<tr>
<td>TDHCA</td>
<td>MF Direct Loan Const. to Perm. (Repayable)</td>
<td>$0</td>
<td>0.00%</td>
<td>30</td>
</tr>
<tr>
<td>TDHCA</td>
<td>MF Direct Loan Const. Only (Repayable)</td>
<td>$0</td>
<td>0.00%</td>
<td>30</td>
</tr>
<tr>
<td>TDHCA</td>
<td>Multifamily Direct Loan (Soft Repayable)</td>
<td>$0</td>
<td>0.00%</td>
<td>30</td>
</tr>
<tr>
<td>TDHCA</td>
<td>Mortgage Revenue Bond</td>
<td>$0</td>
<td>0.00%</td>
<td>30</td>
</tr>
<tr>
<td>Community Bank of Texas</td>
<td>Conventional Loan</td>
<td>$13,900,000</td>
<td>6.50%</td>
<td>1st</td>
</tr>
<tr>
<td>City of Austin</td>
<td>Local Government Loan</td>
<td>$2,800,000</td>
<td>0.00%</td>
<td>2nd</td>
</tr>
<tr>
<td>Third Party Equity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redstone Equity Partners</td>
<td>HTC</td>
<td>$1,500,000</td>
<td>$2,699,730</td>
<td>$13,498,650</td>
</tr>
<tr>
<td>Grant</td>
<td>$11.9(d)(2)LPS Contribution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deferred Developer Fee</td>
<td>O-SDA Industries</td>
<td>$1,010,930</td>
<td>$914,978</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>Direct Loan Match</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Total Sources of Funds | $20,410,660 | $21,813,628 |
| Total Uses of Funds    | $21,813,628 |            |
INSTRUCTIONS: Describe the sources of funds that will finance Development. The description must include construction, permanent, and bridge loans, and all other types of funds to be used for development. The information must be consistent with all other documentation in this section. Provide sufficient detail to identify the source and explain the use (in terms of the timing and any specific uses) of each type of funds to be contributed. In addition, describe/explain replacement reserves. Finally, describe/explain operating items. The narrative must include rents, operating subsidies, project based assistance, and all other sources of funds for operations. In the foregoing discussion of both development and operating funds, specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

Describe the sources and uses of funds (specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments). For Direct Loan or Tax-Exempt Bond Applications that contemplate an FHA-insured loan, this includes the anticipated date that FHA application will be submitted to HUD (if not already submitted).

CBOT will provide construction financing in the form of a construction loan. The amount of the construction loan will be $13,900,000 and will be interest-only at an interest rate of 6.50%. CBOT will also provide the permanent financing in the form of a conventional loan. The conventional perm loan will be in the amount of $4,600,000 at an interest rate of 6.50%. The conventional loan will be amortized over 35 years and carry a 15 year term. Redstone will be providing the equity for the project at a syndication rate of $0.90. The total equity contribution will be $13,498,650 with 20% of the equity coming in during construction, or $2,699,730. It is currently estimated that $914,978 in developer fee will be deferred. An application has been made to the City of Austin for a soft loan in the amount of $2,800,000 which will be subject to surplus cash flow.

Describe the replacement reserves. Are there any existing reserve accounts that will transfer with the property? If so, describe what will be done with these funds.

Annual replacement reserves are estimate to be $250/unit. Operating reserves are being required in the amount of $427,311 and rent-up reserves are being required in the amount of $87,015.

Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

Per the City of Austin RFP requirements, the development will need to provide supportive services currently estimated to cost $15,000 annually.

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

Signature, Authorized Representative, Construction or Permanent Lender

Printed Name

Date

Telephone: ______________________________

Email address: ______________________________

2/27/2019
## Schedule of Sources of Funds and Financing Narrative

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

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<thead>
<tr>
<th>Financing Participants</th>
<th>Funding Description</th>
<th>Construction Period</th>
<th>Lien Position</th>
<th>Permanent Period</th>
<th>Lien Position</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Interest Rate (%)</td>
<td>Loan/Equity Amount</td>
<td>Interest Rate (%)</td>
</tr>
<tr>
<td>Debt</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>MC Direct Loan Const. to Perm. (Repayable)</td>
<td>5%</td>
<td>$ -</td>
<td>0.00%</td>
<td>30</td>
</tr>
<tr>
<td>TDHCA</td>
<td>MG Direct Loan Const. Only (Repayable)</td>
<td>0.00%</td>
<td>$ -</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>TDHCA</td>
<td>Multifamily Direct Loan (Soft Repayable)</td>
<td>0.00%</td>
<td>$ -</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>TDHCA</td>
<td>Mortgage Revenue Bond</td>
<td>0.00%</td>
<td>$ -</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>First Mortgage Lender</td>
<td>Conventional Loan</td>
<td>$13,900,000</td>
<td>6.50%</td>
<td>1st</td>
<td>$4,600,000</td>
</tr>
<tr>
<td>City of Austin</td>
<td>Local Government Loan</td>
<td>$2,800,000</td>
<td>0.00%</td>
<td>2nd</td>
<td>$2,800,000</td>
</tr>
<tr>
<td>Third Party Equity</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redstone Equity Partners</td>
<td>HTC</td>
<td>$1,500,000</td>
<td>$2,699,730</td>
<td>$13,498,650</td>
<td>0.9</td>
</tr>
<tr>
<td>Grant</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$11,946 (2HPS Contribution)</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Deferred Developer Fee</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>O-5OA Industries</td>
<td></td>
<td>$1,010,930</td>
<td>$914,978</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Direct Loan Match</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Sources of Funds</td>
<td></td>
<td>$20,410,660</td>
<td>$21,813,628</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Uses of Funds</td>
<td></td>
<td>$21,813,628</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**INSTRUCTIONS:** Describe the sources of funds that will finance Development. The description must include construction, permanent, and bridge loans, and all other types of funds to be used for development. The information must be consistent with all other documentation in this section. Provide sufficient detail to identify the source and explain the use (in terms of the timing and any specific uses) of each type of funds to be contributed. In addition, describe/explain replacement reserves. Finally, describe/explain operating items. The narrative must include rents, operating subsidies, project based assistance, and all other sources of funds for operations. In the foregoing discussion of both development and operating funds, specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

Describe the sources and uses of funds (specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments). For Direct Loan or Tax-Exempt Bond Applications that contemplate an FHA-insured loan, this includes the anticipated date that FHA application will be submitted to HUD (if not already submitted).

The first mortgage lender will provide construction financing in the form of a construction loan. The amount of the construction loan will be $13,900,000 and will be interest-only at an interest rate of 6.50%. The first mortgage lender will also provide the permanent financing in the form of a conventional loan. The conventional perm loan will be in the amount of $4,600,000 at an interest rate of 6.50%. The conventional loan will be amortized over 35 years and carry a 15 year term. Redstone will be providing the equity for the project at a syndication rate of 5.0%. The total equity contribution will be $13,498,650 with 20% of the equity coming in during construction, or $13,498,650. It is currently estimated that $914,978 in developer fee will be deferred. An application has been made to the City of Austin for a soft loan in the amount of $2,800,000 which will be subject to surplus cash flow.

Describe the replacement reserves. Are there any existing reserve accounts that will transfer with the property? If so, describe what will be done with these funds.

Annual replacement reserves are estimate to be $250/unit. Operating reserves are being required in the amount of $427,311 and rent-up reserves are being required in the amount of $87,015.

Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.)
Per the City of Austin RFP requirements, the development will need to provide supportive services currently estimated to cost $15,000 annually.

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

Signature, Authorized Representative, Construction or Permanent Lender

Printed Name

Date

Telephone: (202) 225-8094
Email address: Drew.Foster@USEquity.com

If a revised form is submitted, date of submission: ________________________
### Schedule of Sources of Funds and Financing Narrative

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

<table>
<thead>
<tr>
<th>Financing Participants</th>
<th>Funding Description</th>
<th>Construction Period</th>
<th>Permanent Period</th>
<th>Loan/Equity Amount</th>
<th>Interest Rate (%)</th>
<th>Loan/Equity Amount</th>
<th>Interest Rate (%)</th>
<th>Term (Yrs)</th>
<th>Syndication Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td>Debt</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>MF Direct Loan Const. to Perm. (Repayable)</td>
<td>$0</td>
<td>$0</td>
<td>0.00%</td>
<td>30</td>
<td>0</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>MF Direct Loan Const. Only (Repayable)</td>
<td>$0</td>
<td>$0</td>
<td>0.00%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>Multifamily Direct Loan (Soft Repayable)</td>
<td>$0</td>
<td>$0</td>
<td>0.00%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>Mortgage Revenue Bond</td>
<td>$0</td>
<td>$0</td>
<td>0.00%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Mortgage Lender</td>
<td>Conventional Loan</td>
<td>$13,900,000</td>
<td>6.50%</td>
<td>1st</td>
<td>$4,600,000</td>
<td>6.50%</td>
<td>35</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>City of Austin</td>
<td>Local Government Loan</td>
<td>$2,900,000</td>
<td>0.00%</td>
<td>2nd</td>
<td>$2,800,000</td>
<td>0.00%</td>
<td>na</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third Party Equity</td>
<td>Redstone Equity Partners</td>
<td>HTC</td>
<td>1,500,000</td>
<td>2,699,730</td>
<td>13,498,650</td>
<td>0.9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grant</td>
<td></td>
<td>$11,966/2/3/4/5/6/7/8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deferred Developer Fee</td>
<td>O-SEDA Industries</td>
<td>$1,010,930</td>
<td>914,978</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Sources of Funds</td>
<td></td>
<td>$20,410,660</td>
<td>$13,498,650</td>
<td>$21,813,628</td>
<td>$21,813,628</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Describe the sources and uses of funds (specify the status and dates for applications, approvals and closings, etc., associated with the commitments). For Direct Loan or Tax-Exempt Bond Applications that contemplate an FHA-insured loan, this includes the anticipated date that FHA application will be submitted to HUD (if not already submitted).

The first mortgage lender will provide construction financing in the form of a construction loan. The amount of the construction loan will be $13,900,000 and will be interest-only at an interest rate of 6.50%. The first mortgage lender will also provide the permanent financing in the form of a conventional loan. The conventional perm loan will be in the amount of $4,600,000 at an interest rate of 6.50%. The conventional loan will be amortized over 35 years and carry a 15 year term. Redstone will be providing the equity for the project at a syndication rate of 0.90. The total equity contribution will $13,498,650 with 20% of the equity coming in during construction, or $13,498,650. It is currently estimated that $914,978 in developer fee will be deferred. An application has been made to the City of Austin for a soft loan in the amount of $2,800,000 which will be subject to surplus cash flow.

Describe the replacement reserves. Are there any existing reserve accounts that will transfer with the property? If so, describe what will be done with these funds.

Annual replacement reserves are estimate to be $250/unit. Operating reserves are being required in the amount of $427,311 and rent-up reserves are being required in the amount of $87,015.

Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.
Per the City of Austin RFP requirements, the development will need to provide supportive services currently estimated to cost $15,000 annually.

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

Signature, Authorized Representative, Construction or Permanent Lender

Printed Name

Date

Telephone: (713) 308-5754

Email address: srose@cbtec.com

If a revised form is submitted, date of submission: 
2019 HTC
Full Application

Part 4 Tab 32
Multifamily Direct Loan
Financial Capacity

NA
Financial Capacity, Owner Equity, and Appraisal Requirements
(Multifamily Direct Loan Applications Only, if applicable)

[§13.8(c)(6) and (7)]

Financial Capacity (10 TAC §13.8(c)(6))
except for Developments also financed through the USDA §515 program, the Application MUST include:

- A letter from a Third Party CPA verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10% of the Total Housing Development Cost as a short term loan for Development; OR
- Evidence of a line of credit or equivalent tool equal to at least 10% of the Total Housing Development Cost from a financial institution that is available for use during the proposed development activities.

Owner Equity and Appraisal Requirements (10 TAC §13.8(c)(7))
If the Direct Loan is the only source of Department funding for the Development (no HTC being requested), the Development Owner MUST provide:

- equity in an amount not less than 20% of Total Housing Development Costs; and
- if proposing new construction, an "as completed" appraisal pursuant to 10 TAC §11.304 which results in total repayable loan to value of not greater than 80%; or
- if proposing rehabilitation, the "as is" appraisal required by 10 TAC §11.205(4) may meet this requirement without needing an "as completed" appraisal provided the loan to value is not greater than 80%

As a result of providing owner equity in an amount greater than 5% of Total Housing Development Costs, the following must be provided in accordance with 10 TAC §11.204(7)(C):

- A letter - not older than 6 months from the date the of Application submission - from a Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed or pledged; and
- A letter - not older than 6 months from the date the of Application submission - from the Development Owner's bank or banks confirming that such funds are and will remain available at commitment and until the required investment is completed.
This Tab is Not Applicable
2019 HTC
Full Application

Part 4 Tab 34

Finance Scoring
## Finance Scoring (for Competitive HTC Applications ONLY)

**Commitment of Development Funding by Local Political Subdivision (§11.9(d)(2))**

Name of the Local Political Subdivision providing the funding:

City of Austin

- A letter from an official of the political subdivision stating that the political subdivision will provide a loan, grant, reduced fees or contribution of other value type, and the terms under which it will be provided is in the application.

- The dollar value of the contribution must be in the letter and must equal $500 or more if Urban and $250 or more if Rural or USDA.

- The commitment of development funding is reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs.

**Total Points Claimed:** 1

**Financial Feasibility (§11.9(e)(1))**

- Eligible Pro-Forma and letter stating the Development is financially feasible. 0

- Eligible Pro-Forma and letter stating Development and Principals are acceptable. 18

**Total Points Claimed:** 18

**Leveraging of Private, State, and Federal Resources (§2306.6725(a)(3); §11.9(e)(4))**

- Percent of Units restricted to serve households at or below 30% of AMGI 9.52%

- HTC funding request as a percent of Total Housing Development Cost 6.88%

**Eligibility for points:**

- Development Leverages CDBG Disaster Recovery, HOPE VI, RAD or Choice Neighborhood Funding 0

- Housing Tax Credit Request 3

- Housing Tax Credit Request 2

- Housing Tax Credit Request 1

* Be sure no more than 50% of Developer fees are deferred.

**Total Points Claimed:** 3

Self Score Total: 117
2019 HTC
Full Application

Part 4 Tab 35

Finance Supporting Documents
ALL SUPPORTING DOCUMENTS MUST BE CONSISTENT WITH THE SOURCES AND USES

- Executed Pro Forma from Permanent or Construction Lender
- Letter from lender regarding approval of Principals (consistent with Template)
- Evidence of all Permanent and Construction Financing (term sheets, loan agreements)

**NOTE:** Term sheets and/or loan documents from debt and equity providers must include a statement confirming they are aware the Applicant intends to elect income averaging. If the term sheet speaks to unit designations, ensure those unit designations are consistent with the rent schedule and site plan.

- Evidence of any Gap Financing, terms included
- Evidence of any Owner Contributions, with financial support if required
- Evidence of Equity Financing (HTC applications only)
- Letter from Texas Historical Commission (THC) indicating preliminary eligibility for historic (rehabilitation) tax credits and documentation of Certified Historic Structure status as detailed in QAP §11.9(e)(6) was submitted behind TAB 19.
- Letter from Local Political Subdivision evidencing a loan, grant, reduced fees or contribution of other value to benefit the Development. [QAP §11.9(d)(2)]
- Evidence of Rental Assistance/Subsidy
2019 HTC
Full Application

Part 4 Tab 35

Supporting Documents:
Construction and Permanent Financing Letters
and
Gap Financing and/or Owner Contributions
February 27, 2019

O-SDA Industries
Ms. Megan D. Lasch
Vi Collina, LLC
5501-A Balcones Dr., #302
Austin, Texas 78731

Re: Vi Collina Apartments

Dear Megan,

CommunityBank of Texas (the “Bank”) is pleased to provide the following term sheet for construction and permanent financing to Vi Collina, LLC (the “Borrower”) for the development of Vi Collina Apartments, an 84-unit family LIHTC project to be built in Austin, Texas. The proposed terms and conditions are as follows:

**Summary of Terms**

**Borrower:** Vi Collina, LLC

**Guaranty:** Construction loan guaranty will be provided by O-SDA Collina, LLC. The permanent loan will be non-recourse except as to “bad-boy” carve outs.

**Project:** Vi Collina Apartments

**Credit Facilities:**

A) Construction loan of up to $13,900,000:

- Priced at a variable rate of Prime Floating subject to a minimum all-in rate of 6.50% (floor of 6.50%)
- 24-month construction loan, plus one 6-month extension as below
- one 6-month extension subject to 1) completion of project, 2) project sources and uses being balanced, 3) receipt of required tax credit equity payments, 4) No event of default has occurred or potential for default to occur, 5) 85% occupancy and 6) No material adverse change in the financial condition of the Project, Borrower and Guarantor(s).
- Interest only due monthly during construction period
- **Total construction loan period including extension is 30-months**
E) Permanent loan of approximately $4,600,000 at an assumed underwriting rate of interest of 6.50%:

- Permanent loan rate to be locked at no later than construction loan closing of 30-month construction loan. The permanent loan rate would be 6.50% locked today.
- 15-year term upon conversion to permanent status based on 90% occupancy for 90 days and a 1.15:1 debt service coverage.
- No pre-payment penalty – you may pre-pay the construction or permanent loan off at any time without penalty.
- Principal and interest due monthly during permanent period based on a 35-year amortization; balloon payment due at maturity.
- Replacement reserves to be $250 per unit per year with agreed upon increases for future years.
- Operating deficit and other reserve requirements subject to Bank review and approval. It is expected that these reserve requirements will mirror the equity LOI.

Note: Construction draws will be processed through the Bank, Title Company, and with approval of a 3rd party construction engineering firm hired by or acceptable to the Bank.

Loan-to-value:
1) Actual loan amount will be based on LTV not to exceed 80% during construction period, based on rent-restricted value plus value of the tax credits; 2) LTV not to exceed 80% during permanent period, based on stabilized rent-restricted value. Appraisal report will be in form and substance acceptable to the Bank.

Collateral:
- 1st lien deed of trust and assignment of leases and rents on the subject property
- UCC filing on furniture, fixtures, and equipment
- Assignment of Tax Credits
- Security interest in operating and replacement reserve funds
- Assignment and subordination of deferred developer fee and other management fees collected by general partner or a related entity.
- Assignment and subordination of management, construction, architectural contracts, etc.

Fees:
Origination fee of 2.00% of the construction loan (payable at construction loan closing), a 0.25% fee for the extension (payable upon exercise) and a 1.00% fee for the permanent loan (payable at construction loan closing). Borrower will also pay for all reasonable costs incurred by the Bank in connection with the loans including, but not limited to, legal fees and expenses, appraisal/survey fees, title insurance premiums and search fees, UCC searches, environmental assessment fees, and inspecting architect fees, whether the facilities contemplated herein are funded or not. This obligation will survive whether the loans are approved or not.

Reporting Requirements: Include but are not limited to:

- Annual audited financial statements of Borrower
- Annual financial statements of Guarantors
- Annual evidence of tax credit compliance
- Monthly operating statements on the property once construction is complete
- Quarterly operating statements on the property during the permanent loan period
Summary of Conditions

This proposal is subject to all the following conditions being met prior to construction closing:

Tax Credit Allocation: Receipt of an annual allocation of Low-Income Housing Tax Credits from the Texas Department of Housing & Community Affairs (TDHCA) in a minimum amount of $1,500,000.

Other Funds: The Bank acknowledges other anticipated project financing to include the following:
- City of Austin Loan - $2,800,000

Tax Credit Equity: Tax credit investor and equity terms (including price and pay-in schedule) subject to Bank approval. Current model has Redstone purchasing the tax credits at $0.90/credit, providing total equity of $13,496,650.

Developer Fee: Timing of payment of developer profit to be mutually agreed upon between Bank and Borrower. It is expected that the developer fee payment will mirror the developer fee payment schedule negotiated in the equity agreement. Current model has estimated deferred developer fee of $914,978.

Project Budget: The Bank’s current understanding of the project budget is based on initial verbal discussions and files provided by the Borrower on February 25, 2019. The Bank acknowledges that this project budget is subject to change.

However, significant changes to the budget that materially affect the project may result in changes to the terms and conditions proposed herein.

Underwriting Considerations: Property Pro forma utilizes $15,000 annual expense for Supportive Services

Other Conditions: Receipt and approval of those items listed in the Due Diligence Checklist.

The attached 15-year pro forma was prepared by Vi Collina, LLC (Applicant) for Vi Collina Apartments to be located in Austin, Texas. The pro forma is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on Community Bank of Texas’s current underwriting parameters and consistent with the loan terms indicated in the term sheet and is preliminarily considered feasible, pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio.

Additionally, we have performed a preliminary review of the credit worthiness of Vi Collina, LLC and its Principals. At this time, Community Bank of Texas has no reservations with the Development Owner or any of the Principals. We anticipate no additional guarantors or financial strength will be needed to facilitate a loan to this borrower, other than those requirements disclosed herein.
This discussion letter does not represent a commitment by the Bank for the proposed financing, nor does it define all the terms and conditions of loan documents, but is a framework upon which a loan request may be submitted and considered. Issuance of a commitment by the Bank is subject to the approval of the loan request under the Bank's internal approval process, which includes, but is not limited to, a review of the Borrower's then current financial condition and review and approval of all third-party reports, in addition to completion of loan documents in form and substance acceptable to the Bank.

If you should have any questions concerning these terms and conditions, please feel free to call me at (713) 308-5754. Megan, thank you for giving us the opportunity to consider financing for this project.

Sincerely,

CommunityBank of Texas, N.A.

By:  
Stephen W. Rose, Executive Vice President

Agreed to:

O-SDA Collina, LLC

By:  
Megan D. Lasch, President
# 15 Year Rental Housing Operating Pro Forma (All Programs)

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

## INCOME

<table>
<thead>
<tr>
<th></th>
<th>YEAR 1</th>
<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>YEAR 5</th>
<th>YEAR 10</th>
<th>YEAR 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>POTENTIAL GROSS ANNUAL RENTAL INCOME</td>
<td>$979,152</td>
<td>$998,735</td>
<td>$1,018,710</td>
<td>$1,039,084</td>
<td>$1,059,866</td>
<td>$1,170,177</td>
<td>$1,291,970</td>
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<tr>
<td>Secondary Income</td>
<td>$15,120</td>
<td>$15,422</td>
<td>$15,731</td>
<td>$16,045</td>
<td>$16,366</td>
<td>$18,070</td>
<td>$19,951</td>
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<tr>
<td>POTENTIAL GROSS ANNUAL INCOME</td>
<td>$994,272</td>
<td>$1,014,157</td>
<td>$1,034,441</td>
<td>$1,055,129</td>
<td>$1,076,232</td>
<td>$1,188,247</td>
<td>$1,311,921</td>
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<tr>
<td>Provision for Vacancy &amp; Collection Loss</td>
<td>($74,570)</td>
<td>($76,062)</td>
<td>($77,583)</td>
<td>($79,135)</td>
<td>($80,717)</td>
<td>($89,119)</td>
<td>($98,394)</td>
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<tr>
<td>Rental Concessions</td>
<td>$0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EFFECTIVE GROSS ANNUAL INCOME</td>
<td>$919,702</td>
<td>$938,096</td>
<td>$956,858</td>
<td>$975,995</td>
<td>$985,515</td>
<td>$1,099,129</td>
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</table>

## EXPENSES

<table>
<thead>
<tr>
<th></th>
<th>YEAR 1</th>
<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>YEAR 5</th>
<th>YEAR 10</th>
<th>YEAR 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>General &amp; Administrative Expenses</td>
<td>$39,300</td>
<td>$40,479</td>
<td>$41,693</td>
<td>$42,944</td>
<td>$44,232</td>
<td>$51,278</td>
<td>$59,449</td>
</tr>
<tr>
<td>Management Fee</td>
<td>$45,985</td>
<td>$46,905</td>
<td>$47,843</td>
<td>$48,800</td>
<td>$49,776</td>
<td>$54,956</td>
<td>$60,676</td>
</tr>
<tr>
<td>Payroll, Payroll Tax &amp; Employee Benefits</td>
<td>$124,160</td>
<td>$127,885</td>
<td>$131,721</td>
<td>$135,673</td>
<td>$139,743</td>
<td>$162,001</td>
<td>$187,803</td>
</tr>
<tr>
<td>Repairs &amp; Maintenance</td>
<td>$72,664</td>
<td>$74,844</td>
<td>$77,089</td>
<td>$79,402</td>
<td>$81,784</td>
<td>$94,810</td>
<td>$109,911</td>
</tr>
<tr>
<td>Electric &amp; Gas Utilities</td>
<td>$14,700</td>
<td>$15,141</td>
<td>$15,595</td>
<td>$16,063</td>
<td>$16,545</td>
<td>$19,180</td>
<td>$22,235</td>
</tr>
<tr>
<td>Water, Sewer &amp; Trash Utilities</td>
<td>$64,200</td>
<td>$66,126</td>
<td>$68,110</td>
<td>$70,153</td>
<td>$72,258</td>
<td>$83,766</td>
<td>$97,108</td>
</tr>
<tr>
<td>Annual Property Insurance Premiums</td>
<td>$25,200</td>
<td>$25,956</td>
<td>$26,735</td>
<td>$27,537</td>
<td>$28,363</td>
<td>$32,880</td>
<td>$38,117</td>
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<tr>
<td>Property Tax</td>
<td>$96,000</td>
<td>$98,880</td>
<td>$101,846</td>
<td>$104,902</td>
<td>$108,049</td>
<td>$125,258</td>
<td>$145,209</td>
</tr>
<tr>
<td>Reserve for Replacements</td>
<td>$21,000</td>
<td>$21,630</td>
<td>$22,279</td>
<td>$22,947</td>
<td>$23,636</td>
<td>$27,400</td>
<td>$31,764</td>
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<tr>
<td>Other Expenses</td>
<td>$17,920</td>
<td>$18,458</td>
<td>$19,011</td>
<td>$19,582</td>
<td>$20,169</td>
<td>$23,832</td>
<td>$27,106</td>
</tr>
<tr>
<td>TOTAL ANNUAL EXPENSES</td>
<td>$521,129</td>
<td>$536,303</td>
<td>$551,923</td>
<td>$568,002</td>
<td>$584,554</td>
<td>$674,911</td>
<td>$779,374</td>
</tr>
<tr>
<td>NET OPERATING INCOME</td>
<td>$398,573</td>
<td>$401,793</td>
<td>$404,934</td>
<td>$407,992</td>
<td>$410,960</td>
<td>$424,217</td>
<td>$434,153</td>
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## DEBT SERVICE

<table>
<thead>
<tr>
<th></th>
<th>YEAR 1</th>
<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>YEAR 5</th>
<th>YEAR 10</th>
<th>YEAR 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Deed of Trust Annual Loan Payment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third Deed of Trust Annual Loan Payment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Annual Required Payment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Other Annual Required Payment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANNUAL NET CASH FLOW</td>
<td>$65,080</td>
<td>$66,300</td>
<td>$71,441</td>
<td>$74,499</td>
<td>$77,467</td>
<td>$90,724</td>
<td>$100,660</td>
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<tr>
<td>CUMULATIVE NET CASH FLOW</td>
<td>$65,080</td>
<td>$133,379</td>
<td>$204,821</td>
<td>$279,320</td>
<td>$356,787</td>
<td>$777,265</td>
<td>$1,255,724</td>
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<tr>
<td>Debt Coverage Ratio</td>
<td>1.20</td>
<td>1.20</td>
<td>1.21</td>
<td>1.22</td>
<td>1.23</td>
<td>1.27</td>
<td>1.30</td>
</tr>
</tbody>
</table>

By signing below (I/we) are certifying that the above 15 Year pro forma is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on the departments current underwriting parameters and consistent with the loan terms indicated in the term sheet and preliminary considered feasible pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio. (Signature only required if using this pro forma for points under $11.5(e)(1) relating to Financial Feasibility)

Signature, Authorized Representative, Construction or Permanent Lender

Signature, Authorized Representative, Syndicator

Date

Printed Name

Phone: (713) 365-5754

Email: srose@cdtx.com

Date

Vi Collina

2/24/2019
# Schedule of Sources of Funds and Financing Narrative

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e., Financing Narrative, Term Sheets and Development Cost Schedule).

<table>
<thead>
<tr>
<th>Financing Participants</th>
<th>Funding Description</th>
<th>Construction Period</th>
<th>Permanent Period</th>
<th>Loan/Equity Amount</th>
<th>Interest Rate (%)</th>
<th>Amort./Stabilization</th>
<th>Term (Yrs)</th>
<th>Syndication Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>MF Direct Loan Const. &amp; Perm. (Repayable)</td>
<td>$0</td>
<td>-</td>
<td>0.00%</td>
<td>30</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>MF Direct Loan Const. Only (Repayable)</td>
<td>$0</td>
<td>0.00%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>Multifamily Direct Loan (Soft Repayable)</td>
<td>$0</td>
<td>0.00%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA</td>
<td>Mortgage Revenue Bond</td>
<td>$0</td>
<td>0.00%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Mortgage Lender</td>
<td>Conventional Loan</td>
<td>$13,900,000</td>
<td>6.50%</td>
<td>1st</td>
<td>$4,600,000</td>
<td>6.50%</td>
<td>35</td>
<td>15</td>
</tr>
<tr>
<td>City of Austin</td>
<td>Local Government Loan</td>
<td>$2,900,000</td>
<td>0.00%</td>
<td>2nd</td>
<td>$2,800,000</td>
<td>0.00%</td>
<td>na</td>
<td>40</td>
</tr>
</tbody>
</table>

| Third Party Equity     |                      |                     |                  |                    |                  |                     |           |                 |
| Redstone Equity Partners | HTG | $1,500,000 | $1,500,000 | $13,498,650 | 0.9 | | | |

| Grant                  | $11,967 (Z/LPS Contribution) | | | | | | | |

| Deferred Developer Fee |                      |                     |                  |                    |                  |                     |           |                 |
| O-SEDA Industries      | | $1,010,930 | $914,978 | | | | | |

| Other                  | Direct Loan Match | | | | | | | |

| Total Sources of Funds | $20,410,660 | $21,813,628 | | | | | | |
| Total Uses of Funds    | $21,813,628 | | | | | | | |

**INSTRUCTIONS:** Describe the sources of funds that will finance development. The description must include construction, permanent, and bridge loans, and all other types of funds to be used for development. The information must be consistent with all other documentation in this section. Provide sufficient detail to identify the source and explain the use (in terms of the timing and any specific uses) of each type of funds to be contributed. In addition, describe/explain replacement reserves. Finally, describe/explain operating items. The narrative must include rents, operating subsidies, project based assistance, and all other sources of funds for operations. In the following discussion of both development and operating funds, specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

Describe the sources and uses of funds (specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments). For Direct Loan or Tax-Exempt Bond Applications that contemplate an FHA-insured loan, this includes the anticipated date that FHA application will be submitted to HUD (if not already submitted).

The first mortgage lender will provide construction financing in the form of a construction loan. The amount of the construction loan will be $13,900,000 and will be interest-only at an interest rate of 6.50%. The first mortgage lender will also provide the permanent financing in the form of a conventional loan. The conventional perm loan will be in the amount of $4,600,000 at an interest rate of 6.50%. The conventional loan will be amortized over 35 years and carry a 15 year term. Redstone will be providing the equity for the project at a syndication rate of $0.90. The total equity contribution will $13,498,650 with 20% of the equity coming in during construction, or $13,498,650. It is currently estimated that $914,978 in developer fee will be deferred. An application has been made to the City of Austin for a soft loan in the amount of $2,800,000 which will be subject to surplus cash flow.

Describe the replacement reserves. Are there any existing reserve accounts that will transfer with the property? If so, describe what will be done with these funds.

Annual replacement reserves are estimated to be $250/unit. Operating reserves are being required in the amount of $427,311 and rent-up reserves are being required in the amount of $87,015.

Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.
Per the City of Austin RFP requirements, the development will need to provide supportive services currently estimated to cost $15,000 annually.

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

[Signature]  [Printed Name]  [Date]

Signature, Authorized Representative, Construction or Permanent Lender

Telephone: (713) 308-5754
Email address: srrose@cbiz.com

If a revised form is submitted, date of submission: ____________________________
February 25, 2019

Megan Lasch
Saigebrook Development
421 West 3rd Street, suite 1504
Austin, TX 78701

Re: Application for Gap Funding for Vi Collina

Dear Ms. Lasch,

The Austin Housing Finance Corporation (AHFC) has received your request for a below-market interest rate loan in the amount of $2,800,000 for the development of Vi Collina to be located at 2401 East Oltorf Street, Austin, Texas.

Terms of the loan will be for a minimum of 40 years at zero percent interest non-amortizing. If approved, this loan will be funded through General Obligation Bonds or other sources as available.

Applications will be reviewed by the AHFC Board of Directors on August 8, 2019.

Sincerely,

James May
Community Development Manager
2019 HTC
Full Application

Part 4 Tab 35

Supporting Documents:
Equity Letter
February 26, 2019

Megan Lasch,
O-SDA Industries, LLC
5501-A Balcones Dr., #302
Austin, TX 78731

Re: Vi Collina Apartments
Austin, TX

Dear Megan,

Red Stone Equity Partners, LLC (“Red Stone”) is pleased to be given an opportunity to submit a proposal on the Vi Collina Apartments (“Project”) located in Austin, Texas. This letter serves as an outline of the business terms regarding the acquisition of Investor Member interests in Vi Collina, LLC, (the “Company”) that will own the Project. Red Stone or its designee (the “Investor Member”) will acquire a 99.98% investor member interest (the “IM Interest”) and a 0.001% special investor member interest (the “SIM Interest”) in the Company. The terms of this proposal are subject to ratification and countersignature by Red Stone’s investment committee as described below. Furthermore, this proposal is neither an expressed nor implied commitment by Red Stone or any of its affiliates to provide equity financing to the Project. Any such commitment shall only be as set forth in a to-be-negotiated operating agreement and will be subject to, among other things, (i) satisfactory transaction structure and documentation, (ii) satisfactory due diligence, including third party reports and (iii) other standard conditions for transactions of this type as described more fully in Paragraphs 13 and 14 below.

1. **Project Information.** The Company has been formed to acquire, own, develop and operate the Project, which is anticipated to be eligible to claim Low Income Housing Tax Credits (“Housing Credits”) under Section 42 of the Internal Revenue Code. The Project will consist of 84 residential units for rent to low-income families. The Project will consist of 3 residential buildings plus a clubhouse located in the City of Austin, Travis County, within the State of Texas. Within the Project, 73 of the units are expected to be Housing Credit compliant, and 11 units will be available at market rate. The residential units mix shall reflect the detail below and shall conform to any other set-asides as required by the Texas Department of Housing and Community Affairs. The means for such conformance shall be reviewed by and be acceptable to Red Stone.
<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Number of Units</th>
<th>Income Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 BR / 1 BA</td>
<td>3</td>
<td>30% AMI</td>
</tr>
<tr>
<td>1 BR / 1 BA</td>
<td>8</td>
<td>50% AMI</td>
</tr>
<tr>
<td>1 BR / 1 BA</td>
<td>9</td>
<td>60% AMI</td>
</tr>
<tr>
<td>2 BR / 2 BA</td>
<td>4</td>
<td>30% AMI</td>
</tr>
<tr>
<td>2 BR / 2 BA</td>
<td>16</td>
<td>50% AMI</td>
</tr>
<tr>
<td>2 BR / 2 BA</td>
<td>17</td>
<td>60% AMI</td>
</tr>
<tr>
<td>3 BR / 1 BA</td>
<td>1</td>
<td>30% AMI</td>
</tr>
<tr>
<td>3 BR / 1 BA</td>
<td>6</td>
<td>50% AMI</td>
</tr>
<tr>
<td>3 BR / 1 BA</td>
<td>9</td>
<td>60% AMI</td>
</tr>
<tr>
<td>1 BR / 1 BA</td>
<td>2</td>
<td>MKT</td>
</tr>
<tr>
<td>2 BR / 2 BA</td>
<td>5</td>
<td>MKT</td>
</tr>
<tr>
<td>3 BR / 1 BA</td>
<td>4</td>
<td>MKT</td>
</tr>
</tbody>
</table>

The construction and lease-up schedule expected for the Project, and upon which the credit pricing and deal terms are contemplated herein, are as follows:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closing Date</td>
<td>December 1, 2019</td>
</tr>
<tr>
<td>Completion Date</td>
<td>December 1, 2020</td>
</tr>
<tr>
<td>First Unit Leased</td>
<td>January 1, 2021</td>
</tr>
<tr>
<td>Last Unit Leased</td>
<td>June 30, 2021</td>
</tr>
<tr>
<td>Stabilized Operations</td>
<td>October 1, 2021</td>
</tr>
</tbody>
</table>

2. **Project Ownership.** O-SDA Collina, LLC (the “Managing Member”) will be a taxable, single purpose, bankruptcy remote entity with a 0.01% ownership interest in the Company. Any change in the ownership of the Managing Member shall be subject to Red Stone’s consent. The anticipated ownership structure and other key Project participants are set forth below.

<table>
<thead>
<tr>
<th>Entity</th>
<th>Name</th>
<th>Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing Member</td>
<td>O-SDA Collina, LLC</td>
<td>0.01%</td>
</tr>
<tr>
<td>Investor Member</td>
<td>RSEP Holding , LLC, or its designee</td>
<td>99.98%</td>
</tr>
<tr>
<td>Special Investor</td>
<td>Red Stone Equity Manager, LLC, or its designee</td>
<td>0.001%</td>
</tr>
<tr>
<td>Developer</td>
<td>O-SDA Industries, LLC</td>
<td></td>
</tr>
<tr>
<td>Guarantors¹</td>
<td>O-SDA Collina, LLC</td>
<td></td>
</tr>
<tr>
<td>General Contractor</td>
<td>TBD</td>
<td></td>
</tr>
<tr>
<td>Property Manager</td>
<td>TBD</td>
<td></td>
</tr>
</tbody>
</table>

¹ The Guarantors will guarantee certain of the Managing Member’s obligations set forth in Paragraph 7 herein, will do so on a joint and several basis, and will be subject to the review and approval of Red Stone.
3. **Tax Credits.** The Project expects to receive an allocation of 9% Housing Credits from the Texas Department of Housing and Community Affairs (the “Agency”) for the year 2019 in an annual amount of $1,500,000. The total Housing Credits anticipated to be delivered to the Company is $15,000,000 (the “Projected Federal LIHTC”).

Any decision to delay the commencement date of the Housing Credit period beyond 2021 is subject to Red Stone’s consent. In addition, any decision to commence the Housing Credit period prior to January, 2021, is subject to Red Stone’s consent.

4. **Capital Contribution.** Red Stone will acquire its Investor Member Interest in the Company for a total capital contribution of $13,498,650, subject to adjustment in Paragraph 5 below. This capital contribution is based on the following pricing:

<table>
<thead>
<tr>
<th>Credit Type</th>
<th>Total amount</th>
<th>LP amount</th>
<th>Pricing Factor</th>
<th>Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected Federal LIHTC</td>
<td>$15,000,000</td>
<td>$14,998,500</td>
<td>$0.90</td>
<td>$13,498,650</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$13,498,650</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The above pricing assumes 100% of residential depreciation being taken over 30 years; 100% of depreciation on site improvements being taken over 1 year; and 100% of depreciation on personal property being taken over 1 year. The allocation of the depreciable line items is subject to Red Stone’s review and approval.

Red Stone will fund its capital contribution pursuant to the following schedule:

A. **20%** ($2,699,730) shall be paid upon the later of (a) the execution of the Company Agreement, (b) receipt and approval of all due diligence items on Red Stone’s due diligence checklist, (c) receipt by the Company of commitment for a non-recourse permanent loan acceptable to Red Stone, (d) receipt of commitments of the additional financing sources described in Paragraph 11, and (e) closing and initial funding of the construction loan.

B. **60%** ($8,099,190) upon the later of (a) satisfaction of the funding conditions described in (A) above, (b) receipt of temporary certificates of occupancy, (c) AIA form G704, receipt of an architect’s certificate of lien-free substantial completion, and (d) January 1, 2021.

C. **15%** ($2,024,798) upon the later of (a) satisfaction of the funding conditions described in (B) above, (b) receipt of permanent certificates of occupancy, (c) receipt of the final cost certification from an independent certified public accountant, (d) repayment of the construction loan and funding of the Project’s permanent mortgage (or such condition will be met concurrently with the payment of this installment), (e) satisfaction of all funding conditions required for the permanent mortgage, including without limitation, three consecutive months of a 1.15 to 1.00 Debt Service Coverage ratio (“DSC”) and 90
days of 90% occupancy, (f) achievement of 100% qualified occupancy, (g) calculations of the preliminary adjusters have been prepared, and (h) October 1, 2021.

D. 5% ($675,932) upon the later of (a) satisfaction of the funding conditions described in (C) above, (b) achievement of Stabilized Operations, (c) receipt of IRS Form 8609s and a recorded extended use agreement, (d) receipt and review of an acceptable initial tenant file audit, and (e) calculations of final adjusters have been prepared.

5. **Adjusters.**

   A. **Increase or Decrease in Housing Credits.** In the event that actual Housing Credits as determined by the cost certification and 8609s exceeds Projected Federal LIHTC, Red Stone will pay an additional capital contribution equal to the product of (i) $0.90 multiplied by (ii) the difference between the actual Federal LIHTC and the Projected Federal LIHTC. In the event that actual Housing Credits as determined by the cost certification and 8609s are less than Projected Federal LIHTC, Red Stone’s capital contribution will be reduced by an amount equal to the product of (i) $0.90 multiplied by (ii) the difference between the Projected Federal LIHTC and the actual Federal LIHTC ("Adjustment Amount"). If the Adjustment Amount exceeds the total of all unfunded capital contributions, then the Managing Member will make a payment (which payment shall be guaranteed by the Guarantors) to the Company equal to the amount of such excess, and the Company will immediately distribute such amount to Red Stone as a return of its capital contribution.

   B. **Timing of Housing Credit Delivery.** In addition to the Adjustment Amount, Red Stone’s capital contribution will be similarly reduced in the event that the actual delivery of Housing Credits is slower than the anticipated schedule set forth in Paragraph 3. The amount (the “Late Delivery Adjustment”) of this reduction will equal the product of (i) $0.55 multiplied by (ii) the difference in the Projected Federal LIHTC and actual Housing Credits for such years are less than the amounts shown in Paragraph 3. Conversely, in the event that the actual delivery of Housing Credits exceeds the anticipated schedule set forth in Paragraph 3, Red Stone will pay an additional capital contribution (the “Early Delivery Adjustment”) equal to the product of (i) $0.55 multiplied by (ii) the difference between actual Housing Credits and the Projected Federal LIHTC. Red Stone will pay such additional capital contribution at the funding of its final capital contribution installment.

Notwithstanding the above, in no event will the net additional Capital Contribution to be paid by Red Stone exceed 5% of the total original Capital Contribution amount, and Red Stone will pay such additional Capital Contribution at the funding of its final capital contribution. Such additional Capital Contribution will be used to pay any outstanding fees owed to Red Stone and then will be distributed in accordance with the provisions of Paragraph 10(B), below.
6. **Reserves.** The Company will fund the following reserves:

A. **Operating Reserve.** The Company will fund and maintain an Operating Reserve to be funded from the Third Capital Contribution in an amount of $427,311. Any release of funds from the Operating Reserve will be subject to Red Stone’s consent. Pursuant to Paragraph 10(B), the Operating Reserve will be replenished up to $427,311 (the “Minimum Balance”) from cash flow to the extent withdrawals are made. The Managing Member may draw up to 50% of the initial operating reserve balance prior to funding any obligation under the ODG. No further withdrawals may be made from the Operating Reserve until the Maximum ODG Amount (as defined in Paragraph 7(B) below) is funded by the Managing Member, as required pursuant to Paragraph 7(B)(ii) below. To the extent the balance of the Operating Reserve is less than the Minimum Balance at the expiration of the ODG Period as described in Paragraph 7(B)(ii) below, the Managing Member shall cause the Operating Reserve to be replenished back to the Minimum Balance and the ODG Period shall be extended until such Operating Reserve has been replenished. The Operating Reserve shall remain an asset of the Company and shall be subject to distribution in accordance with Paragraph 10(C) below, subject to the approval of any project lenders.

B. **Replacement Reserve.** The Project operating expenses will include the funding of a Replacement Reserve in the amount of $250 per unit or such other amount specified by the project lenders increasing by 3% per annum. Any release of funds from the Replacement Reserve will be subject to Red Stone’s consent.

C. **Lease Up Reserve.** The Company will fund a lease up reserve in the amount of $87,015 to be used for leasing and marketing expenses prior to stabilization.

7. **Guarantees.** The Guarantors will guarantee the following obligations of the Managing Member:

A. **Construction Completion Guarantee.** The Guarantors shall guarantee the Managing Member’s obligation of lien-free completion of the Project in accordance with the plans and specifications approved by Red Stone for the amount set forth in the approved project development budget. The Construction Completion Guarantee will provide that the Guarantors shall pay any amount in excess of the approved project development budget as well as any Project deficiency arising prior to Stabilized Operations (as defined in Paragraph 7(B) below). Payments made under this guaranty will not constitute loans to the Company or capital contributions and no Guarantors will have any right to receive any repayment on account of such payments.

B. **Operating Deficit Guarantee.** The Guarantors will agree to advance to the Company any amounts required to fund operating deficits arising after the expiration of the Construction Completion Guarantee, if needed, as follows:

1. The guarantee shall be unlimited until the Project achieves “Stabilized Operations”. Stabilized Operations is to be defined as the later to occur of (i)
construction loan payoff and conversion to approved non-recourse permanent financing; and (ii) rental income generated from the Project is sufficient to pay all operating expenses of the Project, including, without limitation, all actual or anticipated mandatory debt service; real estate taxes; insurance premiums; management fees; and replacement and operating reserve deposits and maintain a debt service coverage ratio of not less than 1.15 to 1.00 for 3 consecutive months after funding and commencement of amortization of the Project’s permanent loan. To the extent applicable, if Project income is insufficient to enable the Project to attain the required debt service coverage necessary for the closing or conversion of all permanent loans, the Guarantors will agree to pay down the construction loan in an amount necessary to allow the Project to cause the closing or conversion of all permanent loans by the conversion date required by the lender(s). Payments made under this guarantee will not constitute loans to the Company or capital contributions and no Guarantors will have any right to receive any repayment on account of such payments.

(ii) Following (i) above, for a period of 60 months following the achievement of Stabilized Operations (the “ODG Period”), the amount shall be limited to $427,311 (the “Maximum ODG Amount”), and will be released provided the Project maintains a minimum of 1.15 to 1.0 debt service coverage ratio over each of the last consecutive 12 months of the ODG Period. Any amounts so advanced will constitute interest-free loans (“Operating Deficit Loan”) repayable out of future available cash flow or out of available proceeds of a sale or refinancing described in Paragraph 10.

C. Repurchase Guarantee. The Guarantors will repurchase Red Stone’s interest upon the occurrence of certain events described in the Company Agreement.

D. Housing Credit Shortfall and Recapture Guarantee. In addition to the Housing Credit and Timing Adjusters set forth in Paragraph 5, if the actual amount of Housing Credits for any year is less than Projected Federal LIHTC set forth in Paragraph 3, as adjusted by Paragraph 5, the Guarantors will guarantee payment to the Investor Member of an amount equal to the shortfall, or recapture amount, plus all applicable fees, penalties or other costs incurred by the Company and/or Red Stone as a result of such shortfall or recapture. The Guarantors will pay, on an after-tax basis, the Investor Member $1.00 for each dollar of Housing Credits lost, plus any related interest or penalties. Notwithstanding the foregoing, the Guarantors shall not be responsible for loss or recapture of Housing Credits attributable to changes to the Code after the achievement of Stabilized Operations or that may be directly attributable to the transfer of the LP interest.

F. Environmental Indemnification. The Company and the Guarantors, jointly and severally, shall indemnify and hold harmless the Investor Member from and against all claims, actions, causes of action, damages, costs, liability and expense incurred or
suffered based upon a violation of environmental laws, or respecting the presence of environmental hazards.

G. Guarantors. The Guarantors will guarantee all of the Managing Member’s obligations including those set forth above. The Guarantors will maintain an aggregate minimum liquidity of $1,000,000 and a minimum net worth of $5,000,000. The Guarantors will provide Red Stone with annual financial statements evidencing compliance with the liquidity and net worth covenants above.

8. Construction. The Managing Member will arrange for a fixed or guaranteed maximum price construction contract in the anticipated amount of $10,894,240. The Managing Member shall cause lien-free completion to occur and shall provide either a payment and performance bond or letter of credit to secure the contractor’s obligations. Red Stone may, in its sole discretion, engage a construction consultant to review plans and specifications and evaluate the construction progress by providing monthly reports to the Company. The cost of the construction consultant shall be borne by the Company.

9. Fees. The following fees will be paid by the Company for services rendered in organizing, developing and managing the Company and the Project.

   A. Developer Fee. The Developer will earn a developer fee of $2,021,860. The portion of the developer fee that will not be paid out of the Capital Contributions will be deferred and payable by the Company to the Developer as a distribution of net cash flow in accordance with Paragraph 10(B). The deferred amount is projected to be $914,978 and will accrue interest at the rate of 5% per annum, or such other interest rate acceptable to tax counsel, in effect as of the placed-in-service date of the project. The balance of the developer fee that is not projected to be permanently deferred is projected to be $1,106,882 (“Cash Development Fee”) will be paid out of the Capital Contributions in amounts to be determined.

   The deferred amount will be payable out of available cash flow and will mature on the 15th anniversary of the placed-in-service date (“Maturity Date”). If the deferred portion of the developer fee has not been repaid upon the Maturity Date, the Managing Member will be required to advance the Company the amount equal to the unpaid balance of the deferred amount.

   B. Property Management Fee. The property management fee will be the greater of $2,000/month or 5% of gross collected rents. The appointment of, and terms of the property management agreement, are subject to the prior approval of Red Stone.

   C. Asset Management Fee. The Company will pay Red Stone an annual asset management fee in an amount equal to $5,000 per annum. The asset management fee will be paid annually and such fee shall accrue beginning on January 1, 2020, with the first payment due and payable on or before March 1, 2021, and each anniversary thereafter. The asset management fee will increase annually by 3%.
Incentive Management Fee. An incentive management fee may be payable to the Managing Member on an annual basis in an amount equal to 90% of net cash flow and not to exceed $15,000 per year.

10. **Distribution of Tax and Cash Benefits.**

A. **Tax Benefits.** Tax profits, tax losses, and tax credits arising prior to the sale or other disposition of the Project will be allocated 99.98% to the Investor Member, .001% to the Special Investor Member and .01% to the Managing Member. The Investor Member will have the right in its sole discretion to undertake a limited deficit restoration obligation at any time during the term of the Company.

B. **Net Cash Flow Distributions.** Distributions of net cash flow, as defined in the Company Agreement, but generally all cash receipts less cash expenditures (e.g., payment of debt service and property management fee), will be made as follows:

   (i) to the Investor Member in proportion to any tax liability incurred by such partner;

   (ii) to the Investor Member, to make any payment of any unpaid tax credit adjuster or any tax credit shortfall or other debts owed to the Investor Member;

   (iii) to the Investor Member as payment of any unpaid Asset Management Fee;

   (iv) to the payment of any unpaid developer fee, until such fee has been paid in full;

   (v) to replenish the Operating Reserve account to the Minimum Balance;

   (vi) to the payment of any debts owed to the Managing Member;

   (vii) $15k to the payment of any incentive management fee, or such other amount as determined by and acceptable to tax counsel; and

   (viii) the balance, 90% to the Managing Member, .001% to the Special Investor Member, and 9.99% to the Investor Member, or such other amount determined by and acceptable to tax counsel.

C. **Distributions upon Sale or Refinance.** Net proceeds resulting from any sale or refinance will be distributed as follows:
(i) in accordance with subparagraphs 10B(i) through (iii) above;

(ii) in accordance with subparagraphs 10B(v) through (vi) above;

(iii) to the Investor Member in an amount equal to any projected exit taxes:

(iv) the balance, 90% to the Managing Member, 9.999% to the Investor Member, and 0.001% to the Special Investor Member, or such other amount as determined by and acceptable to tax counsel.

11. **Debt Financing.** As a condition to funding the capital contribution described in Paragraph 4, the Managing Member will deliver the loan commitments described below. The terms of these loans and/or financing sources are subject to Red Stone’s consent and all loans will be made directly from the lenders to the Company.

A. **Permanent Loan.** The Company expects to receive non-recourse permanent loan commitments in the maximum amounts, and with the terms set forth below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Hard / Soft Debt</th>
<th>Interest Rate</th>
<th>Term (mos.)</th>
<th>Amort. (mos.)</th>
<th>% of cash flow</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perm Lender - $4,600,000</td>
<td>Hard</td>
<td>6.50%</td>
<td>180</td>
<td>420</td>
<td>N/A</td>
</tr>
<tr>
<td>City of Austin - $2,800,000</td>
<td>Soft</td>
<td>0.0%</td>
<td>480</td>
<td>N/A</td>
<td>TBD</td>
</tr>
</tbody>
</table>

B. **Construction Loan.** In addition to the permanent financing sources described above, it is expected that the project will be financed with a first-lien position construction loan in the maximum amount of $13,900,000 with an approximate interest rate of 6.50% and a term of no less than 24 months.

12. **Due Diligence, Opinions and Financial Projections.** The Managing Member will satisfy all of Red Stone’s due diligence requirements, including an acceptable local law opinion. The Investor Member’s tax counsel will provide the tax opinion. The Company will reimburse the Investor Member an amount equal to $50,000 toward the costs incurred by the Investor Member in conducting its due diligence review and for the costs and expenses of Red Stone’s counsel and in connection with the preparation of the tax opinion, and for the costs of Red Stone’s other third party reports. Red Stone may deduct this amount from its first Capital Contribution. The financial projections to be attached to the Company Agreement and that support the tax opinion will be prepared by Red Stone based on financial projections provided by the Managing Member. The Managing Member financial projections will include eligible basis calculations, sources and uses, and cash flow statements. Red Stone acknowledges that the Owner’s
operating expenses include $15,000 annually for supportive services as required by the City of Austin.

13. **Company Closing.** Final Company closing will be contingent upon Red Stone’s receipt, review and approval in its sole discretion of all due diligence including the items set forth on its due diligence checklist to be delivered to the Managing Member. Final Company closing also is contingent upon (i) a satisfactory site visit conducted by Red Stone to determine overall market feasibility, including an analysis of proforma rents and expenses, (ii) Red Stone’s review and approval of all third party reports, and (iii) final approval of Red Stone’s investor. Red Stone’s agreement to acquire the LP Interest on the pricing, terms and conditions contained in this letter are further based on the assumption that the Company closing will occur on or before the Closing Date set forth in Paragraph 1. Terms and credit pricing herein shall be valid until the Closing Date.

14. **Exclusivity.** Upon the execution of this Letter of Intent, the Managing Member agrees to cease its efforts to obtain financing from other sources. This exclusive arrangement shall terminate should Red Stone notify the Managing Member in writing that it does not intend to proceed with this investment any time prior to ratification by the Red Stone investment committee.

Remainder of page left intentionally blank
Please confirm your acceptance of the terms described in this letter by signing the enclosed counterpart and returning to us at the address set forth on the first page of this letter.

Sincerely,

By: _________________________
Name: Andrew J. Foster
Title: Director

The undersigned approves and accepts the terms of this letter agreement and agrees to work with Red Stone.

MANAGING MEMBER:

By: _________________________
Its: President
Date: 2-26-19

GUARANTOR:

By: _________________________
Its: President
Date: 2-26-19
# 15 Year Rental Housing Operating Pro Forma (All Programs)

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

<table>
<thead>
<tr>
<th>INCOME</th>
<th>YEAR 1</th>
<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>YEAR 5</th>
<th>YEAR 10</th>
<th>YEAR 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>ITENTIAL GROSS ANNUAL RENTAL INCOME</td>
<td>$979,152</td>
<td>$998,735</td>
<td>$1,018,710</td>
<td>$1,039,084</td>
<td>$1,059,866</td>
<td>$1,170,177</td>
<td>$1,291,970</td>
</tr>
<tr>
<td>Condo Income</td>
<td>$15,120</td>
<td>$15,422</td>
<td>$15,731</td>
<td>$16,045</td>
<td>$16,366</td>
<td>$18,070</td>
<td>$19,951</td>
</tr>
<tr>
<td>ITENTIAL GROSS ANNUAL INCOME</td>
<td>$994,272</td>
<td>$1,014,157</td>
<td>$1,034,441</td>
<td>$1,055,129</td>
<td>$1,076,232</td>
<td>$1,188,247</td>
<td>$1,311,921</td>
</tr>
<tr>
<td>Operation &amp; Maintenance</td>
<td>($74,570)</td>
<td>($76,062)</td>
<td>($77,583)</td>
<td>($79,135)</td>
<td>($80,717)</td>
<td>($89,119)</td>
<td>($98,394)</td>
</tr>
<tr>
<td>Other Concessions</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FECTIVE TOTAL INCOME</td>
<td>$919,702</td>
<td>$938,096</td>
<td>$956,858</td>
<td>$975,955</td>
<td>$995,512</td>
<td>$1,099,128</td>
<td>$1,213,527</td>
</tr>
</tbody>
</table>

**EXPENSES**

| Management Fee | $45,985 | $46,905 | $47,843 | $48,800 | $49,776 | $49,776 | $54,956 | $60,676 |
| Payroll Tax & Employee Benefits | $124,160 | $127,885 | $131,721 | $135,673 | $139,743 | $162,001 | $187,803 |
| Taxes & Insurance | $72,664 | $74,844 | $77,089 | $79,402 | $81,784 | $94,810 | $109,911 |
| Electric & Gas Utilities | $14,700 | $15,141 | $15,595 | $16,063 | $16,545 | $19,180 | $22,235 |
| Water, Sewer & Trash Utilities | $64,200 | $66,126 | $68,110 | $70,153 | $72,258 | $83,766 | $97,108 |
| Property Insurance Premiums | $25,200 | $25,956 | $26,735 | $27,537 | $28,363 | $32,880 | $38,117 |
| Property Tax | $96,000 | $98,880 | $101,846 | $104,902 | $108,049 | $125,258 | $145,209 |
| Service for Replacements | $21,000 | $21,630 | $22,279 | $22,947 | $23,636 | $27,400 | $31,764 |

**TOTAL ANNUAL EXPENSES** | $521,129 | $536,303 | $551,923 | $568,002 | $584,554 | $674,911 | $779,274 |

**OPERATING INCOME** | $398,573 | $401,793 | $404,934 | $407,992 | $410,960 | $424,217 | $434,153 |

**DEBT SERVICE**


**INVESTMENT NET CASH FLOW**

| $65,080 | $68,300 | $71,441 | $74,499 | $77,467 | $90,724 | $100,660 |

**MULTIPLIER NET CASH FLOW**

| $65,080 | $133,379 | $204,821 | $279,320 | $356,787 | $777,265 | $1,255,724 |

| Debt Coverage Ratio | 1.20 | 1.20 | 1.21 | 1.22 | 1.23 | 1.27 | 1.30 |

**Signature, Authorized Representative, Construction or Permanent Lender**

[Signature]

[Name]

[Date]

**Signed below (we) are certifying that the above 15 Year pro forma, is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based upon the bank's current underwriting parameters and consistent with the loan terms indicated in the term sheet and preliminarily considered feasible pending further diligence review. The debt service for the first year maintains no less than a 1.15 debt coverage ratio. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility).**

**Printed Name**

[Name]

**Phone:**

Email:

**Date:**

[Date]

[Signature, Authorized Representative, Syndicator]

[Signature]

[Date]

2/24/20
### Schedule of Sources of Funds and Financing Narrative

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (e.g., Financing Narrative, Term Sheets and Development Cost Schedule).

<table>
<thead>
<tr>
<th>Financing Participants</th>
<th>Funding Description</th>
<th>Construction Period</th>
<th>Lien Position</th>
<th>Permanent Period</th>
<th>Lien Position</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Loan/Equity Amount</td>
<td>Interest Rate (%)</td>
<td>Loan/Equity Amount</td>
</tr>
<tr>
<td>Debt</td>
<td>TDHCA</td>
<td>MF Direct Loan Const. to Perm. (Repayable)</td>
<td>50</td>
<td>$ -</td>
<td>0.00%</td>
</tr>
<tr>
<td></td>
<td>TDHCA</td>
<td>MF Direct Loan Const. Only (Repayable)</td>
<td>50</td>
<td>0.00%</td>
<td>$ -</td>
</tr>
<tr>
<td></td>
<td>TDHCA</td>
<td>Multifamily Direct Loan (Soft Repayable)</td>
<td>50</td>
<td>0.00%</td>
<td>$ -</td>
</tr>
<tr>
<td></td>
<td>TDHCA</td>
<td>Mortgage Revenue Bond</td>
<td>50</td>
<td>0.00%</td>
<td>$ -</td>
</tr>
<tr>
<td></td>
<td>First Mortgage Lender</td>
<td>Conventional Loan</td>
<td>$13,900,000</td>
<td>6.50%</td>
<td>1st</td>
</tr>
<tr>
<td></td>
<td>City of Austin</td>
<td>Local Government Loan</td>
<td>$2,800,000</td>
<td>0.00%</td>
<td>2nd</td>
</tr>
</tbody>
</table>

**Third Party Equity**

| Redstone Equity Partners | HTC | 1,500,000 | $ 2,699,730 | $ 13,498,650 | 0.9 |

**Grant**

$11,961,214 CPS Contribution

**Deferred Developer Fee**

| O-SDA Industries | $ 1,010,930 | $ 914,978 |

**Other**

Direct Loan Match

Total Sources of Funds: $ 20,410,660

Total Uses of Funds: $ 21,813,628

**INSTRUCTIONS:** Describe the sources of funds that will finance Development. The description must include construction, permanent, and bridge loans, and all other types of funds to be used for development. The information must be consistent with all other documentation in this section. Provide sufficient detail to identify the source and explain the use (in terms of the timing and any specific uses) of each type of funds to be contributed. In addition, describe/explain replacement reserves. Finally, describe/explain operating items. The narrative must include rents, operating subsidies, project based assistance, and all other sources of funds for operations. In the foregoing discussion of both development and operating funds, specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

Describe the sources and uses of funds (specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments). For Direct Loan or Tax-Exempt Bond Applications that contemplate an FHA-insured loan, this includes the anticipated date that FHA application will be submitted to HUD (if not already submitted).

The first mortgage lender will provide construction financing in the form of a construction loan. The amount of the construction loan will be $13,900,000 and will be interest-only at an interest rate of 6.50%. The first mortgage lender will also provide the permanent financing in the form of a conventional loan. The conventional perm loan will be in the amount of $4,600,000 at an interest rate of 6.50%. The conventional loan will be amortized over 35 years and carry a 15 year term. Redstone will provide the equity for the project at a syndication rate of 0.90. The total equity contribution will be $13,498,650 with 20% of the equity coming in during construction, or $13,498,650. It is currently estimated that $914,978 in developer fee will be deferred. An application has been made to the City of Austin for a soft loan in the amount of $2,800,000 which will be subject to surplus cash flow.

Describe the replacement reserves. Are there any existing reserve accounts that will transfer with the property? If so, describe what will be done with these funds.

Annual replacement reserves are estimated to be $250/unit. Operating reserves are being required in the amount of $427,311 and rent-up reserves are being required in the amount of $87,015.

Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.)
Per the City of Austin RFP requirements, the development will need to provide supportive services currently estimated to cost $15,000 annually.

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

Signature, Authorized Representative, Construction or Permanent Lender

Printed Name

Drew Foster

Date

2/26/19

Telephone: (202) 225-8094

Email address: Drew.Foster@Rsecurities.com

If a revised form is submitted, date of submission: _______________________
February 21, 2019

Mami Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: TDHCA Application No. 19288 - Vi Collina

Dear Ms. Holloway:

I am writing to confirm the de minimis contribution of development funding by the City of Austin (the "City") for the Vi Collina.

This project is eligible to have certain development fees waived through the City's S.M.A.R.T. Housing Ordinance. The ordinance allows full or partial fee waivers in developments in which a portion of the units are affordable for households who earn no more than 80% of the median family income.

Contingent upon the developments compliance with the City's S.M.A.R.T. Housing Ordinance, the fee waivers the City will provide are for a direct benefit of the project by reducing development costs approximately $327,738.98.

Please contact Sandra Harkins by phone 512.974.3128 or by email at Sandra.harkins@austin.tx.us if you need additional information.

Sincerely,

[Signature]

Regina M. Copic, Real Estate Manager
Neighborhood Housing and Community Development
2019 HTC
Full Application

Part 4 Tab 35

Supporting Documents:
Rental Assistance

NA
Pursuant to §11.9(b)(2) of the Qualified Allocation Plan, an Application may qualify to receive up to two (2) points provided the ownership structure meets one of the following requirements in parts 1 OR 2 below:

1. Application is attempting to score as a Qualified Nonprofit or certified HUB with ownership interest and material participation and meets the criteria below:
   - Yes If attempting to score as a Qualified Nonprofit, Application is applying under the Nonprofit Set-Aside
   - Yes If attempting to score as a certified HUB, evidence of the HUB’s existence from the Texas Comptroller of Accounts is provided behind this Tab
   - Yes The Qualified Nonprofit or certified HUB has some combination of ownership interest, cash flow from operations, and developer fee which taken together equal at least 50% and no less than 5% for any category.
     - Ownership Interest: 100.00%
     - Cash flow from operations: 100.00%
     - Developer Fee: 100.00%
     - Total: 300.00% (Must equal at least 50% regardless of structure)
   - Yes The Qualified Nonprofit or certified HUB will materially participate in the Development and the operation of the Development throughout the Compliance Period.
   - Yes A detailed narrative describing how that material participation will be achieved is included.
   - Yes The Qualified Nonprofit or certified HUB has experience directly related to the housing industry.
   - Yes A detailed narrative describing experience in each category is included.

   Mark all that apply
   - Property Management
   - Construction
   - Development
   - Financing
   - Compliance
   - No Principals of the Qualified Nonprofit or HUB are related Parties to any other Principals of the Applicant or Developer.
   - Evidence of experience in the housing industry and a statement regarding material participation are provided behind this tab.

   Points Claimed: 2

2. Application is attempting to score as a participating Nonprofit or certified HUB and meets the criteria below:
   - Yes A certified HUB will participate in Development Services or provide onsite tenant services, and evidence of the HUB’s existence from the Texas Comptroller of Accounts is provided behind this Tab.
   - Yes A Nonprofit will participate in Development Services or provide onsite tenant services, and evidence from a state or federal source of the organization’s nonprofit status is provided behind this Tab.
   - Evidence of experience in the provision of Development Services or in the provision of on-site tenant services as well as a detailed narrative describing how the HUB or Nonprofit will provide such services must be included behind this tab.

   Points Claimed: 0

Total Points Claimed: 2
2019 HTC
Full Application

Part 5 Tab 36

NP or HUB evidence
The Texas Comptroller of Public Accounts (CPA) administers the Statewide Historically Underutilized Business (HUB) Program for the State of Texas, which includes certifying minority-, woman- and service disabled veteran-owned businesses as HUBs and facilitates the use of HUBs in state procurement and provides them with information on the state's procurement process. The CPA has established Memorandums of Agreement with other organizations that certify minority-, woman- and service disabled veteran-owned businesses that meet certification standards as defined by the CPA. The agreements allow for Texas-based minority-, woman- and service disabled veteran-owned businesses that are certified with one of our certification partners to become HUB certified through one convenient application process.

In accordance with the Memorandum of Agreement between the City of Austin (COA) and the Texas Comptroller of Public Accounts (CPA), the CPA hereby certifies that O-SDA INDUSTRIES, LLC has successfully met the established requirements of the State of Texas Historically Underutilized Business (HUB) Program to be recognized as a HUB. This certificate, printed 05-JUN-2017, supersedes any registration and certificate previously issued by the COA’s program, you must immediately (within 30 days of such changes) notify the COA in writing. The CPA reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked upon findings of ineligibility. If your firm ceases to remain certified in the COA’s program, you must apply and become certified through the State of Texas HUB program to maintain your HUB certification.

Laura Cagle-Hinojosa, Statewide HUB Program Manager
Statewide Support Services Division

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies, universities and prime contractors are encouraged to verify the company’s HUB certification prior to issuing a notice of award by accessing the Internet (https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp) or by contacting the HUB Program at 512-463-5872 or toll-free in Texas at 1-888-863-5881.
2019 HTC
Full Application

Part 5 Tab 36

NP or HUB
Experience and Material Participation
Statements
Material Participation of HUB

The HUB for this application, O-SDA Industries has existing housing experience and is qualified to be a HUB owner on this application. Please see the attached resume that documents expertise and recent experience. The principal for O-SDA, Megan Lasch, has a degree in engineering and been specifically involved in multifamily development since 2010. Ms. Lasch, has developed and constructed a multi-family portfolio in excess of 1,900 units.

O-SDA has thus far provided site identification according to TDHCA QAP requirements, site assessments, reviewed preliminary engineering site plans, developed architectural schematics, worked with local governments, and neighborhoods, compiled budgets and provided other essential input for the development plan on this application.

O-SDA will be involved in this development from construction through lease-up and operation through the compliance period. In addition to off-site monitoring, O-SDA will visit the property at least quarterly throughout construction, lease-up, and operation. Monitoring and visits will include inspection of landscape, buildings, and general maintenance; inspection of leasing records with regard to program requirements; supervision of the property management company, analysis of vacancy rates and marketing success; and interaction with residents for feedback on the property. O-SDA has prior experience in landscape design and construction management and has the ability to identify potential issues with site maintenance. O-SDA also has prior experience with reporting requirements and has the ability to monitor the property for compliance.
Megan Lasch- Mrs. Lasch has eleven years of experience in the project management and development industry. Having received her Bachelor's degree in Biosystems Engineering from Oklahoma State University, Ms. Lasch began her career as an engineering consultant where she helped design a variety of public and private development projects.

In 2010 Ms. Lasch formed O-SDA Industries, LLC to provide real estate development consulting services to clients in the affordable housing industry in Texas. O-SDA is a City of Austin MBE/WBE/Texas HUB certified real estate development firm.

O-SDA is a full-service real estate development company committed to solving the need for affordable housing in Texas urban centers and suburban areas. Ms. Lasch has helped secure nineteen (19) allocations of 9% Housing Tax Credits in the last eight application cycles in Texas. Ms. Lasch also holds an experience certification for affordable housing from Texas Department of Housing and Community Affairs (TDHCA). Ms. Lasch is based in Austin, Texas and serves as a project manager, developer or consultant on developments financed by TDHCA. Ms. Lasch helps to manage all aspects of the project life cycle from site identification, TDHCA application process, to managing third party consultants throughout the design process and ultimately to project completion. Ms. Lasch serves on the Board of Directors for Skillpoint Alliance, a non-profit providing technology based workforce training, is a member of the Real Estate Council of Austin and was a finalist in the 2018 Austin Under 40 Awards. Recent development experience includes the following:

<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>Units</th>
<th>Affordable</th>
<th>Market Rate</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aria Grand</td>
<td>Austin, Texas</td>
<td>70</td>
<td>60</td>
<td>10</td>
<td>Permitting</td>
</tr>
<tr>
<td>Elysium Grand</td>
<td>Austin, Texas</td>
<td>90</td>
<td>75</td>
<td>15</td>
<td>Permitting</td>
</tr>
<tr>
<td>Mistletoe Station</td>
<td>Fort Worth, TX</td>
<td>100</td>
<td>74</td>
<td>26</td>
<td>Permitting</td>
</tr>
<tr>
<td>Alton Plaza</td>
<td>Longview, TX</td>
<td>49</td>
<td>33</td>
<td>16</td>
<td>Permitting</td>
</tr>
<tr>
<td>Edgewood Place</td>
<td>Longview, TX</td>
<td>74</td>
<td>58</td>
<td>16</td>
<td>Under Construction</td>
</tr>
<tr>
<td>Kaia Pointe</td>
<td>Georgetown, TX</td>
<td>102</td>
<td>80</td>
<td>22</td>
<td>Under Construction</td>
</tr>
<tr>
<td>Stillhouse Flats</td>
<td>Harker Heights, TX</td>
<td>96</td>
<td>88</td>
<td>8</td>
<td>Stabilized</td>
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<tr>
<td>LaMadrid Apartments</td>
<td>Austin, TX</td>
<td>95</td>
<td>83</td>
<td>12</td>
<td>Under Construction</td>
</tr>
<tr>
<td>Tupelo Vue</td>
<td>Winter Haven, FL</td>
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<td>70</td>
<td>0</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Liberty Pass</td>
<td>Selma, TX</td>
<td>104</td>
<td>96</td>
<td>8</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Barron’s Branch II</td>
<td>Waco, TX</td>
<td>76</td>
<td>76</td>
<td>0</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Art at Bratton’s Edge</td>
<td>Austin, TX</td>
<td>76</td>
<td>68</td>
<td>8</td>
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</tr>
<tr>
<td>Barron’s Branch I</td>
<td>Waco, TX</td>
<td>92</td>
<td>77</td>
<td>15</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Saige Meadows</td>
<td>Tyler, TX</td>
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<td>82</td>
<td>10</td>
<td>Stabilized</td>
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<tr>
<td>Summit Parque</td>
<td>Dallas, TX</td>
<td>100</td>
<td>75</td>
<td>25</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Amberwood</td>
<td>Longview, TX</td>
<td>78</td>
<td>68</td>
<td>10</td>
<td>Stabilized</td>
</tr>
<tr>
<td>La Ventana</td>
<td>Abilene, TX</td>
<td>84</td>
<td>72</td>
<td>12</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Tylor Grand</td>
<td>Abilene, TX</td>
<td>120</td>
<td>120</td>
<td>0</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Singing Oaks (Rehab)</td>
<td>Denton, TX</td>
<td>126</td>
<td>122</td>
<td>4</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Pinnacle at North Chase</td>
<td>Tyler, TX</td>
<td>120</td>
<td>120</td>
<td>0</td>
<td>Stabilized</td>
</tr>
<tr>
<td>Palms on Lamar</td>
<td>Austin, Texas</td>
<td>476</td>
<td>476</td>
<td>0</td>
<td>Stabilized</td>
</tr>
</tbody>
</table>
2019 HTC
Full Application

Part 5 Tab 37

Owner, Developer, and Guarantor Org Charts
Owner and Developer Organization Charts

Applicants should note that subsequent changes to the Development Ownership structure presented in this section will require the written consent of the Department.

Pursuant to §11.204(13)(A) of the QAP, submit three separate charts. One showing the complete organizational structure of each of the following entities: Development Owner, Developer, and Guarantor.

The organization charts must include:

- The names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer, and/or Guarantor.
- Nonprofit entities, public housing authorities, publicly traded corporations, individual board members and executive directors must be included in Organization charts.
- Any and all trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

In the case of:

(A) Partnerships - Principals include all general Partners and Special LPs (any LP that is not the Syndicator is a "Special LP");

(B) Corporations - Principals include the executive director and all members of the board (shown with "0%" ownership as applicable). For to-be formed instrumentalities of PHAs, where the executive director and board remain to be determined, include the PHA, itself, and its members;

(C) Limited liability companies - Principals include all the managing members and all other members.

Org. Chart Example:

Be advised that the definition of "Control" has been revised. Refer to 10 TAC §11.1(d)(30) to ensure compliance.

Information about Organizations that will own or control the Applicant or other related organizations will be provided in the List of Organizations with an Ownership Special Interest in the Applicant form.

If a revised chart is submitted, include the date of submission!
Vi Collina, LLC

ORGANIZATIONAL CHART

APPLICANT / OWNER

Applicant / Owner
Vi Collina, LLC

Managing Member
O-SDA Collina, LLC
0.01%

Syndicator
99.99% investor “LP” Member

O-SDA Industries, LLC
(A Texas HUB)
100%

Megan D. Lasch
100%
Ability to Exercise Control
Vi Collina
ORGANIZATIONAL CHART

DEVELOPER

O-SDA Industries, LLC
(A Texas HUB)

100% Developer and Fee

Megan D. Lasch

100%

Ability to Exercise Control
Vi Collina
ORGANIZATIONAL CHART

GUARANTOR

Guarantor
O-SDA Collina, LLC

O-SDA Industries, LLC
(A Texas HUB)
100%

Megan D. Lasch
100%
Ability to Exercise Control
2019 HTC
Full Application

Part 5 Tab 38

List of Organizations and Principals
List of Organizations and Principals

Provide the requested information for all partnerships, corporations, limited liability companies, trusts, or any other public or private entity and their Affiliates identified on the Owner and Developer Organization Charts. Organizations that own or control other organizations should also be identified until the only remaining sub-entity would be natural persons. Organizations that are Developers and/or Guarantors must also be listed on this form as must any organization (and natural person whose ownership interest in an applicable entity is direct instead of via membership in an organization) that will receive any portion of the developer fee whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. (Note - Entity Names, Principals, and ownership percentage should coincide with the Owner and Developer Organization Charts)

<table>
<thead>
<tr>
<th>Applicant Legal Name:</th>
<th>Vi Collina, LLC</th>
<th>Organization Legal Name:</th>
<th>O-SDA Collina, LLC</th>
<th>O-SDA Industries, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address: 5501-A Balcones Dr., #302</td>
<td>Austin, TX Zip: 78731</td>
<td>Address: 5501-A Balcones Dr., #302</td>
<td>Austin, TX Zip: 78731</td>
<td>Address: 5501-A Balcones Dr., #302</td>
</tr>
<tr>
<td>Name(s) of Entities the Organization Owns or Controls:</td>
<td>100% Development Owner</td>
<td>0.01% of Vi Collina, LLC and 100% Guarantor</td>
<td>100% of O-SDA Collina, LLC and 100% Guarantor</td>
<td></td>
</tr>
<tr>
<td>Organization legally formed?</td>
<td>No</td>
<td>Date formed: TBF</td>
<td>Date formed: 9/2/2010</td>
<td>Date formed:</td>
</tr>
<tr>
<td>Previous TDHCA Experience?</td>
<td>No</td>
<td>Phone: (830) 330-0762</td>
<td>Phone: 8303300762</td>
<td>Email: <a href="mailto:megan@o-sda.com">megan@o-sda.com</a></td>
</tr>
<tr>
<td>Organization is identified on Org. Chart:</td>
<td>Yes</td>
<td>Ability to exercise Control over the Development?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>List of Sub-Entities or Principals:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TDHCA Experience:</td>
<td>Yes</td>
<td>TDHCA Experience:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td>5.</td>
<td>TDHCA Experience:</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Organization Legal Name:</td>
<td>O-SDA Industries, LLC</td>
<td>Role/Title: Sole Member &amp; Developer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address: 5501-A Balcones Dr., #302</td>
<td>Austin, TX Zip: 78731</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name(s) of Entities the Organization Owns or Controls:</td>
<td>100% of O-SDA Collina, LLC and 100% Developer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Organization legally formed?</td>
<td>Yes</td>
<td>Date formed: 9/2/2010</td>
<td>Date formed:</td>
<td></td>
</tr>
<tr>
<td>Previous TDHCA Experience?</td>
<td>Yes</td>
<td>Phone: 8303300762</td>
<td>Phone:</td>
<td></td>
</tr>
<tr>
<td>Organization is identified on Org. Chart:</td>
<td>Yes</td>
<td>Ability to exercise Control over the Development?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>List of Sub-Entities or Principals:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Megan D. Lasch</td>
<td>2.</td>
<td>NA</td>
<td>3.</td>
</tr>
<tr>
<td>TDHCA Experience:</td>
<td>Yes</td>
<td>TDHCA Experience:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td>5.</td>
<td>TDHCA Experience:</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Organization Legal Name:</td>
<td>NA</td>
<td>Role/Title:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
<td>City:</td>
<td>State:</td>
<td>Zip:</td>
</tr>
<tr>
<td>Name(s) of Entities the Organization Owns or Controls:</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Organization legally formed?</td>
<td></td>
<td>Date formed:</td>
<td></td>
<td>Legal Org is or will be:</td>
</tr>
<tr>
<td>Previous TDHCA Experience?</td>
<td></td>
<td>Phone:</td>
<td>Email:</td>
<td></td>
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<tr>
<td>Organization is identified on Org. Chart:</td>
<td></td>
<td>Ability to exercise Control over the Development?</td>
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<tr>
<td>List of Sub-Entities or Principals:</td>
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</tr>
<tr>
<td>1.</td>
<td></td>
<td>2.</td>
<td>TDHCA Experience:</td>
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</tr>
<tr>
<td>3.</td>
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<td>5.</td>
<td>TDHCA Experience:</td>
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<tr>
<td>4.</td>
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<td>6.</td>
<td>TDHCA Experience:</td>
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</tbody>
</table>

Be advised that the definition of "Control" has been revised. Refer to 10 TAC §11.1(d)(30) to ensure compliance.

2/26/2019
2019 HTC
Full Application

Part 5 Tab 39

Previous Participation
Previous Participation Form

Form must be completed separately for each entity (i.e. person, organization, etc.) that has or will have a controlling interest or oversight in the contract, award, agreement, or ownership transfer being considered. This form should also be completed for each board member, individual with signature authority, executive director, or elected official that represents the person/entity (as applicable).

Person/Role: Vi Collina, LLC  
O-SDA Collina, LLC

Email Address: megan@o-sda.com

City & State of Home Addr: Austin, TX

Applicant Legal Name: Vi Collina, LLC

1. List experience with all TDHCA rental development programs (including: HTC, HTC Exchange, Direct Loan (HOME, TCAP, SHTF, RHD), and BOND) that you have controlled at any time.

By selecting this box I certify that I have no prior experience with any TDHCA administered affordable rental program.

<table>
<thead>
<tr>
<th>TDHCA ID#</th>
<th>Property Name</th>
<th>Property City</th>
<th>Program</th>
<th>Control began (mm/yy)</th>
<th>Control End (mm/yy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

2. Identify all Community Affairs and Single Family department programs that you have participated in within the last three(3) years by placing an "x" next to the program name.

By selecting this box I certify that I have no prior experience with any TDHCA Single Family or Community Affairs Programs.

<table>
<thead>
<tr>
<th>Community Affairs:</th>
<th>CEAP</th>
<th>DOE</th>
<th>HHSP</th>
<th>WAP</th>
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<tbody>
<tr>
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<tr>
<td>HHSP</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>LIHEAP</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HOME</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>CFDC</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>HBA</td>
<td></td>
<td></td>
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<tr>
<td>PWD</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>TBRA</td>
<td></td>
<td></td>
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<tr>
<td>HTF/OCI:</td>
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<td></td>
</tr>
<tr>
<td>AYBR</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bootstrap</td>
<td></td>
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<tr>
<td>CFDC</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Other:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NSP</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1. List experience with all TDHCA rental development programs (including: HTC, HTC Exchange, Direct Loan (HOME, TCAP, SHTF, RHD), and BOND) that you have controlled at any time.

By selecting this box I certify that I have no prior experience with any TDHCA administered affordable rental program.

<table>
<thead>
<tr>
<th>TDHCA ID#</th>
<th>Property Name</th>
<th>Property City</th>
<th>Program</th>
<th>Control began (mm/yy)</th>
<th>Control End (mm/yy)</th>
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</thead>
<tbody>
<tr>
<td>12065</td>
<td>La Ventana</td>
<td>Abilene</td>
<td>HTC</td>
<td>in 07/12</td>
<td>NA</td>
</tr>
<tr>
<td>12067</td>
<td>Amberwood Place</td>
<td>Longview</td>
<td>HTC</td>
<td>in 07/12</td>
<td>NA</td>
</tr>
<tr>
<td>14226</td>
<td>Art at Bratton’s Edge</td>
<td>Austin</td>
<td>HTC</td>
<td>in 07/14</td>
<td>NA</td>
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<tr>
<td>15190</td>
<td>Stillhouse Flats</td>
<td>Harker Heights</td>
<td>HTC</td>
<td>in 07/15</td>
<td>NA</td>
</tr>
<tr>
<td>15185</td>
<td>LaMadrid</td>
<td>Austin</td>
<td>HTC</td>
<td>in 07/15</td>
<td>NA</td>
</tr>
<tr>
<td>16188</td>
<td>Kaia Pointe</td>
<td>Georgetown</td>
<td>HTC</td>
<td>in 07/16</td>
<td>NA</td>
</tr>
<tr>
<td>17347</td>
<td>Alton Plaza (dev fee only)</td>
<td>Longview</td>
<td>HTC</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>17268</td>
<td>Edgewood Place (dev fee only)</td>
<td>Longview</td>
<td>HTC</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>17250</td>
<td>Mistletoe Station</td>
<td>Fort Worth</td>
<td>HTC</td>
<td>in 07/17</td>
<td>NA</td>
</tr>
<tr>
<td>17275</td>
<td>Aria Grand</td>
<td>Austin</td>
<td>HTC</td>
<td>in 07/17</td>
<td>NA</td>
</tr>
<tr>
<td>18361</td>
<td>Canova Palms</td>
<td>Irving</td>
<td>HTC</td>
<td>in 12/18</td>
<td>NA</td>
</tr>
<tr>
<td>18422</td>
<td>Elysium Grand</td>
<td>Austin</td>
<td>4% HTC</td>
<td>in 10/18</td>
<td>NA</td>
</tr>
<tr>
<td>18015</td>
<td>Cambrian East Riverside (dev fee only)</td>
<td>Austin</td>
<td>HTC</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

2. Identify all Community Affairs and Single Family department programs that you have participated in within the last three(3) years by placing an "x" next to the program name.

By selecting this box I certify that I have no prior experience with any TDHCA Single Family or Community Affairs Programs.

<table>
<thead>
<tr>
<th>Community Affairs:</th>
<th>CEAP</th>
<th>DOE</th>
<th>HHSP</th>
<th>WAP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CSBG</td>
<td>ESG</td>
<td>LIHEAP</td>
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<tr>
<td>HOME:</td>
<td>CFDC</td>
<td>HBA</td>
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<td></td>
<td>DR</td>
<td>HRA</td>
<td>SFD</td>
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<tr>
<td>HTF/OCI:</td>
<td>AYBR</td>
<td>Bootstrap</td>
<td>CFDC</td>
<td>Self-Help</td>
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<td>Other:</td>
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<td>NSP</td>
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</table>
2019 HTC
Full Application

Part 5 Tab 40

Nonprofit Participation

NA
2019 HTC
Full Application

Part 5 Tab 41

Nonprofit Support Documentation

NA
2019 HTC
Full Application

Part 5 Tab 42

Development Team Members
# Development Team Members

The requested information on all known Development Team members must be provided. In addition to the categories listed below, the “Other” category should be used to list all known Development Team members that are included in the “Development Cost Schedule.” If the team member that will be utilized is not yet known, indicate “TBD.” If it is anticipated that the Development Team category will not be utilized, indicate “N/A.”

*If there is a direct or indirect, financial, or other interest with Applicant or other team members, provide an attachment behind this form in the Application that explains the relationship(s).*

## Developer:

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone</th>
<th>Certified Texas HUB?</th>
<th>This is a direct or indirect, financial, or other interest with Applicant or other team members*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Megan Lasch</td>
<td>TBD</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>O-SDA Industries</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(830) 330-0762</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><a href="mailto:megan@O-SDA.com">megan@O-SDA.com</a></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>80-0641068</td>
<td></td>
<td></td>
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## Housing General Contractor:

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone</th>
<th>Certified Texas HUB?</th>
<th>This is a direct or indirect, financial, or other interest with Applicant or other team members*</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
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## Infrastructure General Contractor:

<table>
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<tr>
<th>Contact Name</th>
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<th>This is a direct or indirect, financial, or other interest with Applicant or other team members*</th>
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</thead>
<tbody>
<tr>
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</table>

## Cost Estimator:

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<tr>
<th>Contact Name</th>
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<th>Certified Texas HUB?</th>
<th>This is a direct or indirect, financial, or other interest with Applicant or other team members*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lisa Stephens</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Saigebrook Development, LLC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(352) 213-8700</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><a href="mailto:lisa@saigebrook.com">lisa@saigebrook.com</a></td>
<td></td>
<td></td>
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<tr>
<td>45-3062708</td>
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## Architect:

<table>
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<th>Phone</th>
<th>Certified Texas HUB?</th>
<th>This is a direct or indirect, financial, or other interest with Applicant or other team members*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paul Slayton</td>
<td></td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Miller Slayton Architects</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(352) 377-0505</td>
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<tr>
<td><a href="mailto:pslayton@millerslayton.com">pslayton@millerslayton.com</a></td>
<td></td>
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<tr>
<td>20-1755942</td>
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2/28/2019
<table>
<thead>
<tr>
<th>Role</th>
<th>Contact Name</th>
<th>Phone</th>
<th>Email</th>
<th>Proposed Fee</th>
<th>Tax ID Number (TIN)</th>
<th>Certified Texas HUB?</th>
<th>This is a direct or indirect, financial, or other interest with Applicant or other team members?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineer:</td>
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<tr>
<td>Civil Engineer:</td>
<td>Kirkman Engineering</td>
<td>Shea Kirkman</td>
<td>(214) 536-3971</td>
<td></td>
<td></td>
<td>No</td>
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<tr>
<td></td>
<td><a href="mailto:shea.kirkman@trustke.com">shea.kirkman@trustke.com</a></td>
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</tr>
<tr>
<td>Market Analyst:</td>
<td>Apartment Market Data, LLC</td>
<td>Darrell G. Jack</td>
<td>(210) 241-4323</td>
<td></td>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:amd@atic.net">amd@atic.net</a></td>
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<tr>
<td>Appraiser:</td>
<td>N/A</td>
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</tr>
<tr>
<td>Attorney:</td>
<td>Shutts &amp; Bowen, LLP</td>
<td>Robert Cheng</td>
<td>(305) 415-9083</td>
<td></td>
<td></td>
<td>No</td>
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<tr>
<td></td>
<td><a href="mailto:rcheng@shutts.com">rcheng@shutts.com</a></td>
<td></td>
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<tr>
<td>Accountant:</td>
<td>Tidwell Group</td>
<td>Ashley Northcut</td>
<td>(512) 693-2180</td>
<td></td>
<td></td>
<td>No</td>
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<tr>
<td></td>
<td><a href="mailto:ashley.northcut@tidwellgroup.com">ashley.northcut@tidwellgroup.com</a></td>
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<tr>
<td>Property Manager:</td>
<td>Stephanie Baker</td>
<td>(214) 496-0600</td>
<td></td>
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<tr>
<td>Accolade Property Management</td>
<td><a href="mailto:sbaker@accoladepm.com">sbaker@accoladepm.com</a></td>
<td>TBD 04-3694643</td>
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</tr>
<tr>
<td>Email</td>
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<tr>
<td>Certified Texas HUB?</td>
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<tr>
<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
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<table>
<thead>
<tr>
<th>Originator of Underwriter:</th>
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<tbody>
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<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
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<thead>
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<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
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<td>Email</td>
<td>Proposed Fee</td>
<td>Tax ID Number (TIN)</td>
</tr>
<tr>
<td>Certified Texas HUB?</td>
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<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
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<table>
<thead>
<tr>
<th>Supportive Services Provider:</th>
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<tbody>
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<td>TBD</td>
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<td>Email</td>
<td>Proposed Fee</td>
<td>Tax ID Number (TIN)</td>
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<tr>
<td>Title Company</td>
<td>Contact Name</td>
<td>Phone</td>
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<tr>
<td>---------------</td>
<td>--------------</td>
<td>-------</td>
</tr>
<tr>
<td>Capstone Title</td>
<td>Belinda Zapata</td>
<td>(512) 270-4755</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:belindaz@capstonetitletx.com">belindaz@capstonetitletx.com</a></td>
<td>TBD</td>
</tr>
<tr>
<td>Certified Texas HUB?</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Application Consultant:</th>
<th>Contact Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. Anderson Consulting, LLC</td>
<td>Alyssa Carpenter</td>
<td>(512) 789-1295</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:ajcarpen@gmail.com">ajcarpen@gmail.com</a></td>
<td>TBD</td>
</tr>
<tr>
<td>Certified Texas HUB?</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ESA Provider:</th>
<th>Contact Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECS Southwest, LLP</td>
<td>Craig Hiatt</td>
<td>(512) 837-8005</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:chiatt@ecslimited.com">chiatt@ecslimited.com</a></td>
<td>TBD</td>
</tr>
<tr>
<td>Certified Texas HUB?</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
<td>Yes</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>PCA Provider:</th>
<th>Contact Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>Lisa Stephens</td>
<td>(352) 213-8700</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:lisa@saigebrook.com">lisa@saigebrook.com</a></td>
<td>TBD</td>
</tr>
<tr>
<td>Certified Texas HUB?</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other:</th>
<th>Contact Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saigebrook Development, LLC (consultant)</td>
<td>Lisa Stephens</td>
<td>(352) 213-8700</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:lisa@saigebrook.com">lisa@saigebrook.com</a></td>
<td>TBD</td>
</tr>
<tr>
<td>Certified Texas HUB?</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>This is a direct or indirect, financial, or other interest with Applicant or other team members*</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other:</th>
<th>Contact Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Development Team Member Relationships with Applicant

The Applicant and Developer are related entities through a principal.
2019 HTC
Full Application

Part 5 Tab 43

Architect Certification
The form for the certification will be posted to the Department's website at http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm.

NOTE: The certification requires a separate statement be submitted that describes how the accessibility requirements for the physically accessible /hearing and visual impaired Units will be met, along with related parking requirements. Be sure this statement is attached to this certification. Forms signed by the architect in Tabs 23(a), (b), and (c) may meet this requirement.
Architect Certification

I (We) certify that the Development will be designed and built to meet the accessibility requirements of the Federal Fair Housing Act as implemented by HUD at 24 C.F.R. Part 100 and the Fair Housing Act Design Manual, Titles II and III of the Americans with Disabilities Act (42 U.S.C. Sections 12131-12189) as implemented by the Department of Justice regulations at 28 C.F.R. Parts 35 and 36, and the Department’s Accessibility rules in 10 TAC Chapter 1, Subchapter B, in effect at the time of certification.

I (we) certify that all materials submitted to the Department by the Architect or Applicant constitute records of the Department subject to Chapter 552, Tex. Gov’t Code, and the Texas Public Information Act.

I (We) certify that in accordance with Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8, if the Development includes the New Construction or substantial rehabilitation of multifamily units (4 or more units per building), at least five percent (5%) of all dwelling units will be designed and built to be accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise compliant with the 2010 ADA Standards with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities” (Federal Register 79 FR 29671) meets this requirement. In addition, at least two percent (2%) of all dwelling units will be designed and built to be accessible for persons with hearing or vision impairments.

I (We) have attached a statement describing how the requirements of Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8 will be met as described in 10 TAC Chapter 1, Subchapter B. At a minimum, the statement will include (1) The total number of Units (2) Number and description of Unit types, the number of Units of each Type, (3) Number of Units of each Type that will meet the accessibility requirements, and (4) a description of how the accessibility requirements relating to Unit distribution will be met.

I (We) certify that I (We) have reviewed and understand the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

I (We) certify that all persons who have a property interest in the Development plan hereby acknowledge that the Department may publish the full Development plan on the Department’s website, release the Development plan in response to a request for public information, and make other use of the Development plan as authorized by law.
I (We) certify that if the Development includes the New Construction or Rehabilitation of single family units (1 to 3 units per building), every unit will be designed and built to meet the accessibility requirements of Tex. Gov't Code §2306.514, as it may be amended from time to time.

I (We) have attached a statement describing how, regardless of building type, all Units accessed by the ground floor or by elevator ("affected units") meet the requirements at 10 TAC §11.101(b)(8)(B).

I(We) certify that all accessible Units under 10 TAC Chapter 1, Subchapter B, and all affected Units meeting the requirements under 10 TAC 11.101(b)(8)(B) will be dispersed throughout the Development.

If the Applicant is applying for HOME funds and the Development consists of New Construction, I (We) further certify that the Development meets the Construction Site Standards in 24 C.F.R §983.57(e)(1).

This certification meets the requirement that the Applicant provide a certification from the Development engineer or an accredited architect. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

By: ________________

Signature

2/19/2019

Date

Paul C. Slayton III

Printed Name

Texas 21866

License Number and State

Miller Slayton Architects, Inc.

Firm Name (If applicable)
Additional Architect Statement

As referenced in the 2019 Architect Certification, this Additional Architect Statement includes the following:

1. The requirements of Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8 will be met as shown in the following calculation forms and in the Architectural Plans contained in this Application. A minimum of 5% of all dwelling units will be designed and built to be accessible for persons with mobility impairments and a minimum of 2% of all dwelling units will be designed and built to be accessible for persons with hearing or vision impairments. The calculation forms include the total number of units, number and description of unit types, and number of units of each type that will meet accessibility requirements. This statement confirms that accessible units are distributed across unit types and also the development site as shown in the architectural plans.

2. Regardless of building type, all units accessed by the ground floor or by elevator ("affected units") meet the requirements of 10 TAC §11.101(b)(8)(B). The statement confirms that the proposed development complies with visitability requirements per Fair Housing Act Design Manual standards and includes the following:

   (i) All common use facilities are in compliance with the Fair Housing Design Act Manual;

   (ii) As required by the Fair Housing Design Act Manual, there is an accessible or exempt route from common use facilities to the "affected units" as shown on the architectural site plan; and

   (iii) Each "affected unit" includes the following features:

      (I) at least one zero-step, accessible entrance;

      (II) at least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath complies with one of the specifications set forth in the Fair Housing Act Design Manual;

      (III) the bathroom or half-bath will have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

      (IV) there is an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom will provide usable width; and

      (V) light switches, electrical outlets, and thermostats on the entry level will be at accessible heights.

By: ________________________________
Signature

2/19/2019
Date

Paul C. Slayton III
Printed Name
# Accessible Mobility Units Calculation

Include this worksheet in the Application (or a signed and certified worksheet provided by your accessibility professional that shows the calculations).

To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:
(1) Distributed throughout the Unit types AND the Development; and
(2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

Multifamily Housing Developments covered by 10 TAC 11.101(b)(8)(A) must have a minimum of 5% of all units in the development set aside for the mobility impaired and an additional 2% must be set aside for the hearing and/or visually impaired.

<table>
<thead>
<tr>
<th>Mobility</th>
<th>Total Units</th>
<th>Required %</th>
<th>Calculated Units</th>
<th>Units Required</th>
<th>Units Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Description</td>
<td>84</td>
<td>5%</td>
<td>4.2</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>One Bedroom</td>
<td>22</td>
<td>5%</td>
<td>1.1</td>
<td>1.1</td>
<td>2</td>
</tr>
<tr>
<td>Two Bedroom</td>
<td>42</td>
<td>5%</td>
<td>2.1</td>
<td>2.1</td>
<td>2</td>
</tr>
<tr>
<td>Three Bedroom</td>
<td>20</td>
<td>5%</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

*NOTE: If total is more than what is required, Applicant will select which Unit(s) not to include Under "Units Proposed"*

**EXAMPLE:**

<table>
<thead>
<tr>
<th>Mobility</th>
<th>Total Units</th>
<th>Required %</th>
<th>Calculated Units</th>
<th>Units Required</th>
<th>Units Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Description</td>
<td>68</td>
<td>5%</td>
<td>3.4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>1/1 (874sqft &amp; 806</td>
<td>28</td>
<td>5%</td>
<td>1.4</td>
<td>1.4</td>
<td>1</td>
</tr>
<tr>
<td>2/2 (950 sqft &amp; 100</td>
<td>36</td>
<td>5%</td>
<td>1.8</td>
<td>1.8</td>
<td>2</td>
</tr>
<tr>
<td>3/2 (1120 sqft &amp; 1</td>
<td>4</td>
<td>5%</td>
<td>0.2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>D</td>
<td>5%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>5%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

*NOTE: Required is 4, but calculation yields 4.2. Applicant selected which to round down Under "Units Proposed"*

By signing below, I (WE) certify that the information above meets the requirements in Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8 as described in 10 TAC Chapter 1, Subchapter B. At least five percent (5%) of all dwelling units will be designed and built to be accessible for persons with mobility impairments.

By: ____________________________  
Signature

**Date:** 2/24/2019

**Paul C. Slayton III**  
Printed Name

**Miller Slayton Architects, Inc**  
Firm Name (If applicable)
**Accessible Hearing/Visual Units Calculation**

Include this worksheet in the Application (or a signed and certified worksheet provided by your accessibility professional that shows the calculations).

To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:
1. Distributed throughout the Unit types AND the Development; and
2. Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

Multifamily Housing Developments covered by 10 TAC 11.101(b)(8)(A) must have a minimum of 5% of all units in the development set aside for the mobility impaired and an additional 2% must be set aside for the hearing and/or visually impaired.

<table>
<thead>
<tr>
<th>Hearing/Visual</th>
<th>Total Units</th>
<th>Required %</th>
<th>Calculated Units</th>
<th>Units Required (Rounded)</th>
<th>Units Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Description</td>
<td>84</td>
<td>2%</td>
<td>1.68</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>One Bedroom</td>
<td>22</td>
<td>2%</td>
<td>0.44</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Two Bedroom</td>
<td>42</td>
<td>2%</td>
<td>0.84</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Three Bedroom</td>
<td>20</td>
<td>2%</td>
<td>0.4</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2%</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2%</td>
<td>0</td>
<td>0</td>
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<tr>
<td></td>
<td>84</td>
<td>1.68</td>
<td>3</td>
<td>3</td>
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</tbody>
</table>

*NOTE: If total is more than what is required, Applicant will select which to include under "Units Proposed"*

**EXAMPLE**

<table>
<thead>
<tr>
<th>Hearing/Visual</th>
<th>Total Units</th>
<th>Required %</th>
<th>Calculated Units</th>
<th>Units Required (Rounded)</th>
<th>Units Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Description</td>
<td>68</td>
<td>2%</td>
<td>1.36</td>
<td>2</td>
<td>2</td>
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<tr>
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<td>28</td>
<td>2%</td>
<td>0.56</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2/2</td>
<td>36</td>
<td>2%</td>
<td>0.72</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>3/3</td>
<td>4</td>
<td>2%</td>
<td>0.08</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td></td>
<td>2%</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>E</td>
<td></td>
<td>2%</td>
<td>0</td>
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<tr>
<td></td>
<td>68</td>
<td>1.36</td>
<td></td>
<td></td>
<td>3</td>
</tr>
</tbody>
</table>

*NOTE: Required is 2, but calculation yields 3. Applicant selected which Unit(s) to include under "Units Proposed"*

By signing below I (WE) certify that the information above meets the requirements in Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8 as described in 10 TAC Chapter 1, Subchapter B. At least two percent (2%) of all dwelling units will be designed and built to be accessible for persons with hearing and/or visual impairment.

By: [Signature]

**2/24/2019**

Paul C. Slayton III

Printed Name

Miller Slayton Architects, Inc

Firm Name (If applicable)

2/24/2019
**Accessible Parking Calculation**

Submit this worksheet or a comparable document certified by an accessibility professional.

Although Fair Housing Standards may apply in unusual circumstances, ADA Standards typically determine the required number of Accessible Parking Spaces (APSs). This worksheet is intended to handle typical (ADA) cases, where all parking spaces are within a single parking lot. However, it might be possible to determine the APS requirements of multiple lots (or facilities) by completing this same worksheet for each of the lots. The worksheet might also be usable for Developments with less than one parking space to serve each dwelling unit, by filling in the information on page one, bypassing inapplicable spaces in the first section of page two, and completing the second section of page two, "Distribution of APSs Among the Various Types of Parking", referencing ADA Table 208.2. In unique cases where Fair Housing applies, or where this worksheet cannot be applied, create a certification specifying the types and numbers of the parking spaces applicable, including standard and accessible parking for dwelling units and amenities (e.g., office, mail kiosk, laundry, dumpster, pool, playground, etc., collectively, "amenities"), and for each type of parking facility, e.g., surface spaces, carports, garages, etc., for staff review. Links to the applicable accessibility rules are provided below.


### Accessible Parking for Facilities and Amenities

Determining the number of APSs that serve the dwelling units requires accounting for APSs that do not serve dwelling units. In the yellow spaces below, identify the individual amenities served by an APS. Groups of amenities in close proximity typically are allowed to share a single APS. If groups of amenities share one APS (or APSs), identify each such group. In the yellow space to the right of each of these identifications, state the number of APSs designated to serve the amenity or group identified. If parking is provided near dumpsters, at least 1 dumpster must have an APS. The total of these APSs will be subtracted from the total of all types of parking spaces to determine the number of parking spaces that serve the dwelling units and the APSs required for the dwelling units.

<table>
<thead>
<tr>
<th>Amenity:</th>
<th>Identification of amenity, or amenities of a group, that the APS serves</th>
<th>APSs:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office, etc.:</td>
<td>Clubhouse/Pool</td>
<td>2</td>
</tr>
<tr>
<td>Amenity 1:</td>
<td>Dumpster</td>
<td>2</td>
</tr>
<tr>
<td>Amenity 2:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amenity 3:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amenity 4:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amenity 5:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amenity 6:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total of Accessible Parking Spaces that Do Not Serve Dwelling Units:** 4
# Accessible Parking for Residential Units

This portion of the worksheet was written for Developments having at least one parking space serving each dwelling unit, having surface parking spaces as the APSs that are not for dwelling units, and having only one parking lot, i.e., none of the parking spaces are physically segregated from the others by gates or by curbs or other barriers that require vehicles to exit the Development to travel between separate parking lots that serve it. The worksheet might, or might not be, useful for other cases.

**Enter the information indicated below.**

<table>
<thead>
<tr>
<th>Item</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total dwelling Units in the Development:</td>
<td>84</td>
</tr>
<tr>
<td>Total surface parking spaces:</td>
<td>101</td>
</tr>
<tr>
<td>Total carports:</td>
<td></td>
</tr>
<tr>
<td>Total garages:</td>
<td></td>
</tr>
<tr>
<td>Total parking spaces of all types:</td>
<td>101</td>
</tr>
<tr>
<td>Total APSs that serve non-residential purposes (i.e. office, amenities, etc.):</td>
<td>4</td>
</tr>
<tr>
<td>Total of all types of parking spaces that serve dwelling units:</td>
<td>97</td>
</tr>
<tr>
<td>APSs for mobility accessible units (5% of unit count, if spaces are sufficient):</td>
<td>5</td>
</tr>
<tr>
<td>Parking spaces that serve dwelling units in excess of one per unit (if applicable):</td>
<td>13</td>
</tr>
<tr>
<td>APSs required in excess of one per mobility accessible unit:</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total APSs required (including dwelling units and facilities/amenities):</strong></td>
<td>10</td>
</tr>
</tbody>
</table>

All Developments, including those having fewer than one parking space serving each dwelling unit, should use this portion of the worksheet. Enter the number of APSs indicated by ADA Table 208.2 for the total of each type of parking space, i.e., surface spaces, carports, etc., including both amenity spaces and dwelling unit spaces.

**Distribution of APSs Among the Various Types of Parking**

Minimum number of surface parking spaces (include dwelling unit and amenity spaces) that must be APSs: 10

Minimum number of carports that must be APSs: 0

Number of garages that must be APSs: 0

**APSs that Must Be Van Spaces**

Total Van APSs required, including all types of spaces: 2

Minimum number of surface parking spaces that must be van APSs: 2

Minimum number of carports that must be van APSs: 0

Minimum number of garages that must be van APSs: 0

By signing below, I (WE) certify that the information above meets the requirements in the 2010 ADA Standards for Accessible Design Title III regulations at 28 CFR part 36, subpart D, and the 2004 ADA Accessibility Guidelines at 36 CFR part 1191, appendices B and D. There will be at least one accessible parking space per accessible unit located on the closest route to the accessible unit. For every 6 or fraction of 6 accessible spaces required, at least one will be van accessible. Accessible spaces will be dispersed amongst the parking types provided. Where parking for amenities or non-residents is provided, a sufficient number of accessible spaces will be provided.

Signature: Paul C. Slayton III

Date: 2/24/2019

Firm Name: Miller Slayton Architects, Inc
2019 HTC
Full Application

Part 5 Tab 44

Evidence of Experience
Evidence of Experience Must be Provided Behind this Tab

Pursuant to §11.204(6) of the QAP, a Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development of 150 units or more.

Evidence of experience behind this tab includes:

- An Experience certificate issued by the Department under the 2014-2018 Uniform Multifamily Rules.
- An Experience certificate issued by the Department under the 2019 QAP.
- An Application for experience and supporting documentation in accordance with §11.204(6)(A)(i)-(ix).
- Evidence from the Department that the application for experience was received and is being processed by the Department.

Alternatively, pursuant to §13.5(d)(1) of the Multifamily Direct Loan Rule, Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement by providing evidence of the successful development and operation for at least 5 years of at least twice as many affordability restricted units as requested in the Application.

Documentation provided behind this tab meets the alternative Experience Requirement in §13.5(d)(1).

DUNS Number and System for Award Management (SAM.gov) registration (Direct Loan Applications Only)

The Office of Management and Budget (OMB) requires grant applicants to provide a Dunn and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for Federal grants, including Direct Loan funds, on or after October 1, 2003. The DUNS number will supplement other identifiers required by statute or regulation, such as tax identification numbers. To apply for a DUNS number applicants can go to the Dunn & Bradstreet website:

http://fedgov.dnb.com/webform

Once applicants have obtained a DUNS number, they must register with the SAM database:
https://sam.gov/portal/public/SAM

Applicants may provide this information with the Application or upon award.

Evidence of SAM.gov registration for the applicant entity is attached behind this tab.
Evidence of SAM.gov registration for the applicant entity will be provided upon award.

Davis Bacon Labor Standards (Direct Loan Applications Only)

NOTE: The Department’s Section 811 PRA program is designed such that Davis Bacon generally does not apply.

24 CFR §92.354, Davis-Bacon Act (40 U.S.C. §§276(a)-276(a)(5), the Davis-Bacon Related Acts, the Contract Work Hours and Safety Standards Act, and the Copeland (Anti-Kickback) Act (40 U.S.C. §276(c)) apply to developments being assisted with Direct Loan funds if (Select all that apply):

- Twelve (12) or more Direct Loan-assisted units will be rehabilitated or constructed under one construction contract.
- Community Development Block Grant (CDBG) funds (including NSP1 PI) are being used to support the Development, which requires a lower number of units (8) be used as a threshold.
2019 HTC
Full Application

Part 5 Tab 44

Experience Certificate
Mrs. Megan Lasch  
c/o Alyssa Carpenter  
1305 East 6th Street, Suite 12  
Austin, Texas 78702  

RE: REQUEST FOR EXPERIENCE CERTIFICATE UNDER 2016 UNIFORM MULTIFAMILY RULES  

Dear Mrs. Lasch:  

We have reviewed your request for an experience certificate, which is provided to individuals that meet the requirements of §10.204(6) of the Uniform Multifamily Rules. In order to meet the experience requirements an individual must establish that they have experience in the development and placement in service of at least 150 residential units. We find that the documentation you have provided is sufficient to establish this required experience. Additionally, you have certified to compliance with the requirements of §10.204(6)(B), including the following requirements:  

(ii) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state, in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence. …  

(iv) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.  

Should you choose to participate as a member of the Development Team or an individual providing experience for any Application submitted for funding, a Previous Participation Review (10 TAC §1.5) may be conducted prior to any award of funds. Additionally, should it be determined at any point in time that the information provided in your request for experience is fraudulent, knowingly falsified, intentionally or negligibly materially misrepresented, or omits relevant information, this certificate of experience is null and void and you may be subject to other sanctions under the Texas Department of Housing and Community Affairs’ rules and requirements.
If you have any questions or concerns regarding this certificate or the experience requirements, please contact Marni Holloway at marni.holloway@tdhca.state.tx.us.

Sincerely,

Marni Holloway
Director of Multifamily Finance
### Applicant Credit Limit Documentation and Certification (Competitive HTC Only)

Pursuant to §11.4(a) of the Qualified Allocation Plan, the Department shall not allocate more than $3 million of Competitive Housing Tax Credits from the current Application Round to any Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer, or Affiliate of the Development Owner). All Applications must be identified herein to ensure that the Department is advised of all Applications, Applicants, Affiliates, Developers, General Partners or Guarantors involved to avoid any statutory violation of Texas Government Code, §2306.6711(b).

**Instructions:**

Complete Part I of this form. For each person or entity in Part I that answers “Yes” to Part I b., a Part II form must be submitted (i.e., if 4 persons/entities answer “Yes” to Part I b., then 4 separate Part II forms must be provided).

#### Part I. Applicant Credit Limit Documentation

<table>
<thead>
<tr>
<th>a. Applicant, Developers, Affiliates, and Guarantors - List below all entities or Persons meeting the definition of Applicant, Affiliate, Developer or Guarantor.</th>
<th>b. Person/entity has at least one other application in the current Application Round.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. VI Collina, LLC</td>
<td>No</td>
</tr>
<tr>
<td>2. O-SDA Collina, LLC</td>
<td>No</td>
</tr>
<tr>
<td>3. O-SDA Industries, LLC</td>
<td>Yes</td>
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<tr>
<td>4. Megan D. Lasch</td>
<td>Yes</td>
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</table>

Individually, or as the General Partner(s) of officer(s) of the Applicant entity, I (we) certify that we are submitting behind this tab one signed Credit Limit Certification form for each person and/or entity that answered “Yes” to Part I b., above.

By: [Signature of Applicant]  [Date]

2/11/2019
Part II. Credit Limit Certification

Instructions:
Each Person and/or Entity that answered "Yes" to Part 1 (b) must complete this form.

Name and role of Person or Entity completing this form: O-SDA Industries, LLC

Which is:  
- [x] The Applicant (Entity that generally manages or controls the "Applicant," i.e. General Partner, Managing Partner, etc.)
- [ ] a Special Limited Partner or Class B Limited Partner or equivalent of the Applicant
- [x] a Developer for the Applicant for this specific Application
- [ ] an Affiliate to the Applicant
- [x] a Guarantor on the Application

Pursuant to §11.4(a) of the Qualified Allocation Plan, the Department shall not allocate more than $3 million of tax credits from the current Application Round to any Applicant, Developer, Affiliate or Guarantor. The undersigned represents to the Department that the following is a list of all developments for which the Applicant, the Developer, Affiliate, or Guarantor, has applied for an allocation of tax credit authority from the Department in the current Application Round.

<table>
<thead>
<tr>
<th>Development Name</th>
<th>Region</th>
<th>City</th>
<th>% Ownership</th>
<th>% of Dev. Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>VI Collina</td>
<td>7</td>
<td>Austin</td>
<td>100.00%</td>
<td>100.00%</td>
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<tr>
<td>The Aball</td>
<td>7</td>
<td>Austin</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
<tr>
<td>Sunset at Fas Place</td>
<td>3</td>
<td>Fort Worth</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

I acknowledge that [Megan D. Lasch] is authorized to terminate the Application in the event of a conflict with §11.4(a) of the Qualified Allocation Plan.

I hereby certify that the foregoing is a complete list of Developments with respect to which I am seeking a current allocation of tax credit authority from the Department. I certify that, if the Department makes a recommendation to the Board or issues a commitment which may cause Applications for which I am the Applicant, the Developer, Affiliate or Guarantor, to receive credits in excess of $3 million, I will notify the Department in writing within three business days of the recommendation or issuance of the Commitment.

I acknowledge that if the Department determines that an Applicant, Developer, Affiliate or Guarantor, has received (in the aggregate) allocations in the current Application Round from the Department exceeding $3 million, the Department must refuse to issue one or more Commitments or Carryover Allocations, or must terminate one or more Commitments or Carryover Allocations.

Under penalty of perjury, I certify that this information and these statements are true, complete, and accurate:

By: [Megan D. Lasch]  
Signature of Applicant, Developer, Affiliate or Guarantor (as appropriate)  
O-SDA Industries, LLC  
Printed Name  
Date: 2-12-19  

2/11/2019
Part II. Credit Limit Certification

Instructions:
Each Person and/or Entity that answered "Yes" to Part 1 (b) must complete this form.

Name and role of Person or Entity completing this form: Megan D. Latch

Which is:  
☐ the Applicant (Entity that generally manages or controls the "Applicant," i.e. General Partner, Managing Partner, etc.)
☒ a Developer for the Applicant for this specific Application
☐ an Affiliate to the Applicant
☐ a Guaranator on the Application

Pursuant to §11.4(a) of the Qualified Allocation Plan, the Department shall not allocate more than $3 million of tax credits from the current Application Round to any Applicant, Developer, Affiliate or Guarantor. The undersigned represents to the Department that the following is a list of all developments for which the Applicant, the Developer, Affiliate, or Guarantor, has applied for an allocation of tax credit authority from the Department in the current Application Round.

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<th>% Ownership:</th>
<th>% of Dev. Fee:</th>
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<tbody>
<tr>
<td>Vi Collina</td>
<td>7</td>
<td>Austin</td>
<td>100.00%</td>
<td>100.00%</td>
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<tr>
<td>The Abali</td>
<td>7</td>
<td>Austin</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
<tr>
<td>Sunset at Fash Place</td>
<td>3</td>
<td>Fort Worth</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
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</table>

I acknowledge that: Megan D. Latch is authorized to terminate the Application in the event of a conflict with §11.4(a) of the Qualified Allocation Plan.

I hereby certify that the foregoing is a complete list of Developments with respect to which I am seeking a current allocation of tax credit authority from the Department. I certify that, if the Department makes a recommendation to the Board or issues a commitment which may cause Applications for which I am the Applicant, the Developer, Affiliate or Guarantor, to receive credits in excess of $3 million, I will notify the Department in writing within three business days of the recommendation or issuance of the Commitment.

I acknowledge that if the Department determines that an Applicant, Developer, Affiliate or Guarantor, has received (in the aggregate) allocations in the current Application Round from the Department exceeding $3 million, the Department must refuse to issue one or more Commitments or Carryover Allocations, or must terminate one or more Commitments or Carryover Allocations.

Under penalty of perjury, I certify that this information and these statements are true, complete, and accurate:

By: Megan D. Latch
Signature of Applicant, Developer, Affiliate or Guarantor (as appropriate)

Megan D. Latch
Printed Name

Date: 3-12-19

2/11/2019
Community Input Scoring Items
## Community Input Scoring Items

### 1. Local Government Support - §11.9(d)(1)

- **Resolution(s) of either "no objection" or "support" is included behind this tab.**
  - **City of Austin**
  - **Name of Local Government Body**
  - **Name of Local Government Body (if applicable)**

**Note that resolutions are due March 1, 2019**

### 2. Quantifiable Community Participation - §11.9(d)(4)

- **Application expects to receive QCP points.**

  **Note that QCP Packets are due March 1, 2019 and MAY NOT be submitted by the Applicant. Packets MUST be received from Neighborhood Organization!**

### 3. Community Support from State Representative - §11.9(d)(5)

- **Application expects to receive points for a letter from a Representative.**

  **Letter of either "support" or "opposition" is included behind this tab.**

  **Note that letters are due March 1, 2019**

### 4. Input from Community Organizations - §11.9(d)(6)

- **Applicant has included one or more letters of support or opposition behind this tab.**

  List information for each of the letters below:

  **A. Capital IDEA**
  - **Name of Community Organization**
  - **Steve Jacobs**
  - **Contact Name**
  - **Support**
  - **Opposition**

  **B. Sustainable Food Center**
  - **Name of Community Organization**
  - **Ronda Rutledge**
  - **Contact Name**
  - **Support**
  - **Opposition**

  **C. Austin Habitat for Humanity**
  - **Name of Community Organization**
  - **Phyllis Snodgrass**
  - **Contact Name**
  - **Support**
  - **Opposition**

  **D. Any Baby Can**
  - **Name of Community Organization**
  - **Veronda L. Durden**
  - **Contact Name**
  - **Support**
  - **Opposition**

  **E. The SAFE Alliance**
  - **Name of Community Organization**
  - **Kelly White**
  - **Contact Name**
  - **Support**
  - **Opposition**

  **F.**
  - **Name of Community Organization**
  - **Contact Name**
  - **Support**
  - **Opposition**

---

2/26/2019
2019 HTC
Full Application

Part 6 Tab 46

Local Government Support Resolution
RESOLUTION NO. 20190207-012

WHEREAS, Vi Collina, LLC ("Applicant"), its successors, assigns or affiliates, proposes to construct an affordable multi-family housing development of approximately 84 units to be located at or near 2401 East Oltorf Street ("Development") within the City of Austin; and

WHEREAS, Applicant, its successors, assigns or affiliates, intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 9% Low Income Housing Tax Credits for the Development to be known as Tierra Skyline; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Pursuant to Section 11.3 of Texas' Qualified Allocation Plan, the City Council expressly acknowledges and confirms that the City has more than twice the state average of units per capita supported by Housing Tax Credits or Private Activity Bonds.

BE IT FURTHER RESOLVED:

Pursuant to Sections 11.3 and 11.4 of Texas' Qualified Allocation Plan, the City Council acknowledges that the proposed Development is located one linear mile or less from a development that serves the same type of household as the Development and
has received an allocation of Housing Tax Credits (or private activity bonds) within the three year period preceding the date the Certificate of Reservation is issued.

BE IT FURTHER RESOLVED:

Pursuant to Section 2306.6703(a)(4) of the Texas Government Code and Sections 11.3 and 11.4 of Texas' Qualified Allocation Plan, the City Council supports the Development; approves the construction of the Development; and authorizes allocation of Housing Tax Credits for the Development.

BE IT FURTHER RESOLVED:

The City Council authorizes, empowers, and directs Jannette S. Goodall, City Clerk, to certify this resolution to the Texas Department of Housing and Community Affairs.

ADOPTED: February 7, 2019

ATTEST: Jannette S. Goodall
City Clerk
February 25, 2019

Megan Lasch
Saigebrook Development
421 West 3rd Street, suite 1504
Austin, TX 78701

Re: Resolution of Support for Vi Collina

Dear Ms. Lasch,

At the Austin City Council meeting on February 7, 2019, staff presented the requests from multiple entities for resolutions of support for applications to the Texas Department of Housing and Community Affairs Competitive Low Income Housing Tax Credit Program. Generally, staff presents these resolutions en masse, having reviewed and vetted each request, and Council approves the resolutions on consent. This year, the City of Austin received eighteen requests for resolutions of support, with ten proposals ultimately going before Council. As staff worked to prepare all of the documentation and resolutions for Council to approve, we unfortunately made a minor error in the drafting of the resolution of support for Vi Collina. This resolution was advertised and listed in the agenda as being in support of the Vi Collina application. The language in the agenda clearly stated that this resolution was to be in support of Vi Collina. The supporting documentation for this agenda item included the original request from you, the applicant, for a resolution of support for Vi Collina, as well as multiple documents showing staff’s analysis of the location proposed in your application. Further, the resolution lists Vi Collina, LLC as the “applicant” and identifies the proposed development to be located at 2401 East Oltorf Street. Unfortunately, the resolution then states that the applicant intends to apply for the tax credits for “the Development to be known as Tierra Skyline.” This was an error. The resolution is in support of the application submitted by Vi Collina, LLC for the development to be located at 2401 East Oltorf Street, to be known as Vi Collina, or whatever name the developer ultimately chooses. Please accept this as an explanation of events and an apology for the confusion.

Sincerely,

James B. May, AICP
Community Development Manager
Neighborhood Housing and Community Development
2019 HTC
Full Application

Part 6 Tab 46

Support from State Representative
February 15, 2019

TDHCA
David Cervantes, Acting Director
221 East 11th Street
Austin, TX 78701

RE: TDHCA Application #19288 Vi Collina

Dear Mr. Cervantes:

I am writing this letter to voice my support for TDHCA Tax Credit Application 
#19288 Vi Collina to be located in Austin, TX. There is a need for housing that is 
affordable to citizens of modest means and this development will help fulfill that 
need for residents in my district.

Sincerely,

Representative Eddie Rodriguez
House District 51
2019 HTC
Full Application

Part 6 Tab 46

Input from Community Organizations
February 4, 2019

TDHCA
Marnie Holloway
221 East 11th Street
Austin, TX 78701

RE: Vi Collina, TDHCA App#19288
The Abali, TDHCA App#19295

Dear Ms. Holloway,

I am writing this letter to voice my support for TDHCA Tax Credit Applications for the proposed affordable housing developments:

- Vi Collina, TDHCA App#19288 to be located at 2431 E Oltorf, Austin 78741
- The Abali, TDHCA App#19295 to be located at 4503 N IH 35, Austin 78722

Capital IDEA is a taxexempt civic organization that serves the community, including the neighborhoods in which these development sites are located. In fact, we have enabled residents of other affordable housing developments in Austin earn their two-year degrees at Austin Community College and become new professionals in technology and healthcare. Our bread and butter is helping single mothers become Registered Nurses. When that occurs, we all benefit. The previous resident of affordable housing becomes a homeowner and taxpayer. Their children experience a model of success in education and go on themselves to higher education at a roughly 70 percent direct-to-college rate – 25 points above the expected rate. There is a need for housing that is affordable to citizens of modest means as they work their way up a ladder of education and opportunity. These developments will help meet that need.

Please feel free to call on me for further information.

Sincerely,

Steve Jackobs
Executive Director
Exemption Verification Letter

Texas Comptroller of Public Accounts
Austin, TX 78774

February 04, 2019

CAPITAL INVESTING IN DEVELOPMENT AND EMPLOYMENT OF
PO BOX 1784
AUSTIN, TX 78767-1784

According to the records of the Comptroller of Public Accounts, the following exemption(s) from Texas taxes apply to the above organization(s):

- Franchise tax, as of 07-02-1998
- Sales and use tax, as of 07-02-1998
  (provide Texas sales and use tax exemption certificate Form 01-339 (Back) to vendor)

The entity is not exempt from hotel occupancy tax.

Texas taxpayer identification number: 17428930410

This exemption verification is not a substitute for the completed exemption certificates that are required when claiming exemption from Texas taxes. Vendors should be familiar with the requirements for accepting the certificates in good faith from their customers.

This exemption verification does not mean that the organization holds a permit for collecting or remitting any Texas taxes.

Exempt organizations must collect tax on most sales. For more information, please see our publication Exempt Organizations: Sales and Purchases (96-122). Online registration is available.

For information concerning sales taxpayer permit status, please use the vendor search we provide online.

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<td><strong>Texas Taxpayer Number</strong></td>
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<td><strong>Mailing Address</strong></td>
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<tr>
<td><strong>State of Formation</strong></td>
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<tr>
<td><strong>Effective SOS Registration Date</strong></td>
</tr>
<tr>
<td><strong>Texas SOS File Number</strong></td>
</tr>
<tr>
<td><strong>Registered Agent Name</strong></td>
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<tr>
<td><strong>Registered Office Street Address</strong></td>
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For maintenance of a current registered agent and registration with the Texas Secretary of State's office, please visit the Secretary of States Corporate Entities page or the Secretary of States Corporation Registration Forms page. If you need more information, write...
Our Mission & Vision for Our Communities

Capital IDEA’s mission is to lift working adults out of poverty and into living wage careers through education and career advancement.

We envision a thriving Central Texas where non-traditional students have the opportunity to get an education and reach their full potential. We also aim to help leading employers access a diverse pool of skilled workers that are trained for the best careers of today and the future. Achieving this means increasing our number of graduates and reducing the time it takes for our students to complete their education and get into the workplace.
History of Capital IDEA

Capital IDEA is a nonprofit, community-based organization that launched in 1998. Capital IDEA emerged from the shared goals of the local business community and Austin Interfaith (AI). AI is a multi-issue, multi-ethnic, nonpartisan social justice organization made up of congregations, schools, unions, associations, and nonprofits that work together to develop the leadership to address issues that affect the well-being of families in the community.

One such issue was the rising cost of living in Central Texas — pushing low-income families further away from the urban core, and further into debt and other desperate situations. At the same time, regional employers were having a hard time filling their workforce needs. Capital IDEA was formed to bridge this gap by using postsecondary education for non-traditional students as a pathway to career advancement and success.

In our almost two decades of service, Capital IDEA has grown with funding from the City of Austin and Travis County, as well as a growing number of corporate and philanthropic partners. The US Department of Labor, the US Department of Health
and Human Services, and the Texas Legislature have funded programming. A 2015 Workforce Excellence Award from the Texas Economic Development Council acknowledged the success of the workforce initiatives partnership between Capital IDEA and the City of Austin Economic Development Department.

For a more detailed history

DOWNLOAD (HTTPS://WWW.CAPITALIDEA.ORG/WP-CONTENT/UPDATES/2016/08/HISTORY-OF-CAPITAL-IDEA.PDF)

★ Our Outstanding Leadership ★

Steve Jacobs
EXECUTIVE DIRECTOR

Capital IDEA’s Executive Director has been with the organization since it’s founding in 1998. His 35 years of commitment to building and directing nonprofit initiatives in public policy include nearly 20 years in workforce development programs. Steve has a Bachelor of Arts in Social Studies from Harvard University.
CAPTCHA

SUBMIT

Hours & Locations:
Office Hours: Monday – Friday: 8:30am to 5:00pm

Main Office
835 N. Pleasant Valley Rd
Third Floor
Austin, TX 78702
📞 512.457.8610

Map data ©2019 Google
Board of Directors
Laura Estes, Chair
Colin Wallis, Past Chair
Nancy Spencer, Chair Elect
James Osborn, Treasurer
Erika Levack, Secretary
Wendy Wheless Cluley
Carrie Dyer
Felipe Fernandes
Valerie Romero Poole
Jerry Galvan
Alan F. Hendrickson
Kristi Katz
Cory Leahy
Jody Madden
Ian McAbere
Martha Pincoffs
Shelly Sethi

Advisory Council
Will Allen
Growing Power, Inc.
Lucia Athens
Austin Chief Sustainability Officer
Wendell Berry
Author
Honorable Lloyd Doggett
U.S. Congress
Jim Hightower
Author/Commentator
Richard Linklater
Filmmaker
Tom Philpott
Writer for Mother Jones
Michael Pollan
Author/Professor
Robin Rather
Collective Strength
Anne Robertson
Healthy Child, Healthy World
Dr. Eduardo Sanchez, M.D.
American Heart Association
Eric Schlosser
Author
Eugene Sepulveda
Entrepreneurs Foundation
Jennifer Vickers
Community Investment Corp.
Alice Waters
Chez Panisse
Rob Wilder
Entrepreneur/Restaurateur

February 8, 2019

TDHCA
Marnie Holloway
221 East 11th Street
Austin, TX 78701

RE: Vi Collina Application #19288
The Abali Application #19295

Dear Ms. Holloway,

I am writing this letter to voice my support for the following TDHCA Tax Credit Application for a proposed family housing in Tarrant County:

“Vi Collina,” to be located at 2431 E Oltorf, Austin 78741
“The Abali,” to be located at 4503 N IH 35, Austin 78722

Sustainable Food Center is a tax exempt 501(c)3 not-for-profit organization with roots dating back to the 1970s in Austin, Texas. We aim to cultivate a healthy community by strengthening the local food system and improving access to nutritious, affordable food. We serve the community in which the development sites are located and believe that there is a need for housing that is affordable to citizens of modest means. We believe that these developments will help meet that need.

Sincerely,

Ronda Rutledge
Executive Director, Sustainable Food Center
Exemption Verification Letter

Texas Comptroller of Public Accounts
Austin, TX 78774

February 10, 2019

SUSTAINABLE FOOD CENTER, INC.
2921 E 17TH ST # C
AUSTIN, TX 78702-1509

According to the records of the Comptroller of Public Accounts, the following exemption(s) from Texas taxes apply to the above organization(s):

  Franchise tax, as of 04-18-1986
  Sales and use tax, as of 06-10-1987
    (provide Texas sales and use tax exemption certificate Form 01-339 (Back) to vendor)
  The entity is not exempt from hotel occupancy tax.

Texas taxpayer identification number: 17424414682

This exemption verification is not a substitute for the completed exemption certificates that are required when claiming exemption from Texas taxes. Vendors should be familiar with the requirements for accepting the certificates in good faith from their customers.

This exemption verification does not mean that the organization holds a permit for collecting or remitting any Texas taxes.

Exempt organizations must collect tax on most sales. For more information, please see our publication Exempt Organizations: Sales and Purchases (96-122). Online registration is available.

For information concerning sales taxpayer permit status, please use the vendor search we provide online.

Corporations that are registered in Texas with the Secretary of State must maintain a current registered agent and registered office address. Information is available from Business and Nonprofit Forms page of the Secretary of State's website. Additionally, out-of-state corporations, limited liability companies, or limited partnerships transacting business in Texas may need to file a Certificate of Authority or Registration with the Texas Secretary of State. More information is available from the Foreign or Out-of-State Entities page on the Secretary of State's website. If you need more information, write to: Secretary of State, P.O. Box 12698, Austin, TX 78711-2698.
SUSTAINABLE FOOD CENTER INC
% DEBI VANWEY
1106 CLAYTON LN STE 480W
AUSTIN TX 78723-2491

Employer Identification Number: 74-2441468
Person to Contact: MRS. BLACK
Toll Free Telephone Number: 1-877-829-5500

Dear TAXPAYER:

This is in response to your Apr. 29, 2010, request for information regarding your tax-exempt status.

Our records indicate that your organization was recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in FEBRUARY 1987.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Beginning with the organization's sixth taxable year and all succeeding years, it must meet one of the public support tests under section 170(b)(1)(A)(vi) or section 509(a)(2) as reported on Schedule A of the Form 990. If your organization does not meet the public support test for two consecutive years, it is required to file Form 990-PF, Return of Private Foundation, for the second tax year that the organization failed to meet the support test and will be reclassified as a private foundation.

If you have any questions, please call us at the telephone number shown in the heading of this letter.
ABOUT SFC

MISSION

Located in Austin, Texas and founded in 1993, with roots dating back to 1975 as Austin Community Gardens, Sustainable Food Center is involved in every step of our local, Central Texas, food system. SFC’s mission is to cultivate a healthy community by strengthening the local food system and improving access to nutritious, affordable food. SFC envisions a food-secure community where all children and adults grow, share, and prepare healthy, local food.

From seed to table, SFC creates opportunities for individuals to make healthy food choices and to participate in a vibrant local food system. Through organic food gardening, relationships with area farmers, interactive cooking classes, and nutrition education, children and adults have increased access to locally grown food and are empowered to improve the long-term health of Central Texans and our environment.

Want to learn more?

Read the history of SFC » (/about/history)

Read our latest Annual Report to see how SFC makes an impact in the community » (/about/reports)

PROGRAMS AND DEPARTMENTS

GROW LOCAL (/PROGRAMS/GROW-LOCAL)

Provides food gardening resources, education, and support.

Grow Local
(http://sustainablefoodcenter.org/programs/grow-local) empowers children and adults to grow their own food by offering the education and resources they need.
Through Spread the Harvest (/programs/grow-local/spread-the-harvest) we offer year-round free gardening resources to qualifying participants.

In our Teaching Garden (/programs/grow-local/teaching-garden-tours-and-field-trips), we offer field trips as well as host our food gardening classes (http://food.convio.net/site/Ecommerce?store_id=1501) available to the general public. Our community food gardening classes (/programs/grow-local/community-food-gardening-classes) are offered for free at partner host sites. We also offer free trainings for teachers through our Garden Leadership Training held twice a year.

FARM DIRECT (/PROGRAMS/FARM-DIRECT)

FARM DIRECT

Supports local farmers and connects them to you.

Farm Direct (/http://sustainablefoodcenter.org/programs/farm-direct) connects local growers with schools, individuals and work sites in demand of fresh produce through weekly SFC Farmers' Markets (/programs/sfc-farmers-market) and direct marketing projects, such as Farm to Work (/programs/farm-direct/farm-to-work).

Currently, we host two of the largest weekly farmers’ markets in the state of Texas, and hosts more local farmers than anywhere else in Austin!

Both SFC Farmers’ Markets are producer-only, which means that farmers may only sell what they grow, and other vendors can only sell products that they themselves produce. This is our assurance to our customers that they are supporting local farmers and are purchasing the best food for themselves and their families.

THE HAPPY KITCHEN (/PROGRAMS/THE-HAPPY-KITCHEN)

THE HAPPY KITCHEN

Provides healthy cooking and nutrition classes to all Central Texas residents.

The Happy Kitchen/La Cocina Alegre (/http://sustainablefoodcenter.org/programs/the-happy-kitchen) is a nationally recognized cooking and nutrition education program that nurtures skills in food selection and preparation. We offer free 6-week community cooking and nutrition education classes (/programs/the-happy-kitchen/community-cooking-class-series) taught by peer facilitators in communities facing health disparities.
We also offer affordable cooking classes (http://food.convio.net/site/Ecommerce?store_id=1501) available to the general public that teach fundamental skills as well as specialty cuisine, and private classes and team building (/get-involved/private-classes-rentals) experiences for groups.

**FOOD ACCESS AND DOUBLE DOLLARS (/PROGRAMS/DUOLES-DOLLARS)**

*Strives to make healthy, local food affordable for all.*

Our [Feed Access department](/programs/food-access) supports all three SFC programs by coordinating community engagement efforts across all teams and advancing projects that make healthy food more equitable and accessible to all Austin-area residents.

SFC Double Dollars (/programs/double-dollars) doubles the dollar amount of Lone Star (SNAP), WIC and FMNP Vouchers. This way, families can get more fruits and vegetables at SFC Farmers' Markets and partner sites.

Through our School and Community Farm Stands (/programs/farm-direct/school-and-community-farm-stands), hosted in partnership with the City of Austin, Farmshare Austin, and Go Austin!/Vamos Austin! (GAVA), through the Fresh for Less program, we offer fresh, affordable, convenient, and nutritious food from local Austin farms at reduced prices, making it more affordable than a traditional farmers' market.

**VIDEOS**

[External Video Player](Sustainable Food Center)
CONTACT

[SUSTAINABLE FOOD CENTER]

We cultivate a healthy community by strengthening the local food system and improving access to nutritious, affordable food. SFC envisions a food secure community where all children and adults grow, share, and prepare healthy, local food.

512-236-0074

2921 E. 17th Street, Building C, Austin, TX 78702

Hours: M-F 9am - 5pm

MORE INFORMATION

ASK A QUESTION (/FORMS/GENERAL-QUESTIONS)
Use this form to submit a general inquiry to Sustainable Food Center.

PRIVATE CLASSES & RENTAL SPACE (/GET-INVOLVED/PRIVATE-CLASSES-RENTALS)
Learn more about our private class offerings and rental space, and submit a request online.

BECOME AN SFC FARMER (/PROGRAMS/FARMERS-MA)
Learn more about how to become a sustainable community farmer.

REQUEST COMMUNITY INPUT (http://foodcity.org/community-input)
Submit feedback and suggestions to the Sustainable Food Center.
February 16, 2019

TDHCA
Marnie Holloway
221 East 11th Street
Austin, TX 78701

RE: Vi Collina Application #19288
The Abali Application #19295

Dear Ms. Holloway,

I am writing this letter to voice my support for the following TDHCA Tax Credit Application for a proposed family housing in Tarrant County:

"Vi Collina," to be located at 2431 E Oltorf, Austin 78741

"The Abali," to be located at 4503 N IH 35, Austin 78722

Austin Habitat for Humanity is a tax exempt 501(c)3 not-for-profit organization that serves the community in which the development site is located. Our mission aligns with these proposed housing developments because they help to end the cycle of poverty housing for the overall betterment of the community. We believe that there is a need for housing that is affordable to citizens of modest means and this development will help meet that need.

Thank you for consideration of this application. If you have any questions, please contact me at psnodgrass@ahfh.org.

Sincerely,

Phyllis Snodgrass
Chief Executive Officer
Exemption Verification Letter

Texas Comptroller of Public Accounts
Austin, TX 78774

February 19, 2019

AUSTIN HABITAT FOR HUMANITY, INC.
500 W BEN WHITE BLVD
AUSTIN, TX 78704-7030

According to the records of the Comptroller of Public Accounts, the following exemption(s) from Texas taxes apply to the above organization(s):

   Franchise tax, as of 01-23-1985
   Sales and use tax, as of 01-23-1986
   (provide Texas sales and use tax exemption certificate Form 01-339 (Back) to vendor)
   The entity is not exempt from hotel occupancy tax.

   Texas taxpayer identification number: 17423732175

This exemption verification is not a substitute for the completed exemption certificates that are required when claiming exemption from Texas taxes. Vendors should be familiar with the requirements for accepting the certificates in good faith from their customers.

This exemption verification does not mean that the organization holds a permit for collecting or remitting any Texas taxes.

Exempt organizations must collect tax on most sales. For more information, please see our publication Exempt Organizations: Sales and Purchases (96-122). Online registration is available.

For information concerning sales taxpayer permit status, please use the vendor search we provide online.

Corporations that are registered in Texas with the Secretary of State must maintain a current registered agent and registered office address. Information is available from Business and Nonprofit Forms page of the Secretary of State's website. Additionally, out-of-state corporations, limited liability companies, or limited partnerships transacting business in Texas may need to file a Certificate of Authority or Registration with the Texas Secretary of State. More information is available from the Foreign or Out-of-State Entities page on the Secretary of State's website.

Our publications and other helpful information are available on our website. If you need more information, write to us at exempt.orgs@cpa.texas.gov, or call us at 800-252-5555.
Get Help

Whether you want to own a home, need repairs on your current home, or could use expert housing counseling or homebuyer education, we are here to help.

OWN A HOME

Why rent when you can own? Austin Habitat builds homes in partnership with qualifying families and the community. The homes are sold at no profit with zero percent interest mortgages.

learn more

REPAIR YOUR HOME
Want to stay in your home but can't afford critical repairs? Austin Habitat helps low-income homeowners make their homes safer and more efficient as a part of neighborhood revitalization and preservation.

learn more

HOMEBUYER EDUCATION

We offer homebuyer education to anyone interested in buying a home, not just Habitat partner families. Need help understanding credit? Not sure if you're ready to buy a home? We can help.

learn more

HOUSING COUNSELING

Our Housing Counselors help families assess their financial situations, discuss options and develop plans designed to fit their unique needs, including foreclosure intervention.

learn more

SHARE TWEET

MAKE A GIFT VOLUNTEER

https://www.austinhabitat.org/programs-and-services
Contact Us

Austin Habitat for Humanity has a dynamic and outstanding staff committed to providing the best possible experience for our clients, homeowners, volunteers and donors. We look forward to hearing from you.

**GENERAL INFORMATION**

- CONTACT: 512-472-8788 x 100
- FAX: 512-476-1304
- CONSTRUCTION & VOLUNTEER HOTLINE: 512-448-5287
- RESTORE: 512-478-2165
- SPONSORSHIP OPPORTUNITIES: 512-472-8788 X124

**MAILING ADDRESS & LOCATION**

500 W Ben White Boulevard
Austin, Texas 78704

https://www.austinhabitat.org/contact-us
February 15, 2019

Marnie Holloway
Director of Multi-Family Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Vi Collina
Application #19288
The Abali
Application #19295

Dear Ms. Holloway,

I am writing this letter to provide Any Baby Can's support for the following (TDHCA) Tax Credit Application for proposed family housing in Travis County:

"Vi Collina," to be located at 2431 E Oltorf, Austin 78741
"The Abali," to be located at 4503 N IH 35, Austin 78722

Any Baby Can is a tax exempt 501(c)3 not-for-profit organization that serves the community in which the development site is located. Our primary purpose is strengthening families so children can succeed. As a participant in Austin’s Best Single Source Collaborative to reduce homelessness in our community, we know that accessible and affordable housing is a major challenge for many of the families we serve. We believe that there is a critical need for housing that is affordable to citizens of modest means and this development will help meet that need.

We appreciate the opportunity to voice our support.

Sincerely,

Veronda L. Durden
President and Chief Executive Officer

6207 SHERIDAN AVENUE ● AUSTIN, TEXAS 78723 ● 512.454.3743 ● ANYBABYCAN.ORG
Exemption Verification Letter

Texas Comptroller of Public Accounts
Austin, TX 78774

February 20, 2019

ANY BABY CAN OF AUSTIN, INC.
6207 SHERIDAN AVE STE 200
AUSTIN, TX 78723-1120

According to the records of the Comptroller of Public Accounts, the following exemption(s) from Texas taxes apply to the above organization(s):

- Franchise tax, as of 04-27-1993
- Sales and use tax, as of 04-27-1993
  (provide Texas sales and use tax exemption certificate Form 01-339 (Back) to vendor)
- The entity is not exempt from hotel occupancy tax.

Texas taxpayer identification number: 17426843359

This exemption verification is not a substitute for the completed exemption certificates that are required when claiming exemption from Texas taxes. Vendors should be familiar with the requirements for accepting the certificates in good faith from their customers.

This exemption verification does not mean that the organization holds a permit for collecting or remitting any Texas taxes.

Exempt organizations must collect tax on most sales. For more information, please see our publication Exempt Organizations: Sales and Purchases (96-122). Online registration is available.

For information concerning sales taxpayer permit status, please use the vendor search we provide online.

Corporations that are registered in Texas with the Secretary of State must maintain a current registered agent and registered office address. Information is available from Business and Nonprofit Forms page of the Secretary of State's website. Additionally, out-of-state corporations, limited liability companies, or limited partnerships transacting business in Texas may need to file a Certificate of Authority or Registration with the Texas Secretary of State. More information is available from the Foreign or Out-of-State Entities page on the Secretary of State’s website.

Our publications and other helpful information are available on our website. If you need more information, write to us at exempt.orgs@cpa.texas.gov, or call us at 800-252-5555.
IN REPLY REFER TO: 0248323016
NOV. 30, 2010 LTR 4168C E0
74-2684335 000000 00
00015997
BODC: TE

ANY BABY CAN INC
AUSTIN
1121 E 7TH ST
AUSTIN TX 78702

Employer Identification Number: 74-2684335
Person to Contact: Ms. Davis
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your Nov. 18, 2010, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in August 2008.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website www.irs.gov/eo for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.
If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

Michele M. Sullivan
Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations I
Comprehensive Advocacy and Resources for Empowerment (CARE)

Nearly 35,000 Austin-area children live with a special healthcare need. Any Baby Can’s Comprehensive Advocacy and Resources for Empowerment (CARE) program serves these children.

Who Does Any Baby Can’s CARE Program Serve?
CARE serves families of children zero through age 20 who have physical, developmental, emotional or behavioral special healthcare needs. A priority of CARE is to find and establish a medical home for the family. Parents and children receive emotional support, learn coping skills, and are connected to community resources. The program also offers events that provide a place for families to meet, have fun and support each other.

How We Help
Any Baby Can helps children ages 0 - 20-years-old who have a special healthcare need by providing their families with:

- Home-based medical case management and resource navigation including insurance options, medical systems, school and community resources to create an effective advocacy team
- Emotional support and family events
- Crisis Assistance
- Peer support groups
- Community resource information and referrals

What It Takes
$349,879 = Annual budget

- 65% - Government Contracts
- 35% - Unmet Need

Filled by individual donations as well as contributions from foundations and grants

Major Funders
- Austin Health and Human Services Department
- Texas Department of State Health Services

Where Your Investment Goes
$1,666 = Average cost to serve one CARE program family annually

Our program costs cover a four-person service team and associated administrative costs. This year, we aim to serve 210 children and their families.

Charitable donations help us close the gap between funding sources and families’ needs.

How You Can Help

- Make a one-time donation
- Become an Angel Society Member by making a three-year pledge
- Become a foundation partner to help fund us through grants
- Donate to the Any Baby Can Wish List
- Volunteer

Children's Hearing
Aid Texas
Children's Hearing Aid Texas (CHAT)

Each year, more than 12,000 children in the United States are born with hearing needs; many more experience hearing loss after birth.

Who Does Any Baby Can's CHAT Program Serve?
Any Baby Can's Children's Hearing Aid Texas (CHAT) program provides auditory services and hearing aids for children in Central Texas with audiological needs who have no financial alternatives.

How We Help
Any Baby Can provides assistance for children with audiological needs. We supply financial assistance toward the cost of hearing devices and provide case management services, from arranging doctor's appointments to working with schools to manage each child's special needs. We provide assistance toward the following services:

- Audiological diagnostics (including any special testing required)
- Ear molds
- Hearing aids
- Hearing aid repairs
- Services required to have the hearing aids fit on the child and maintained
- Cochlear implant replacement parts (batteries, cords, headpieces)
- Cochlear implant insurance

What It Takes
$135,817 = Annual budget

100% - Unmet Need
CHAT is fully funded by individual donations as well as contributions from foundations and grants

Major Funders
- St. David's Foundation
- Proceeds from Run to Hear 5K

Where Your Investment Goes
$1,764 = Average cost to serve one CHAT program family annually

This year, we aim to serve 77 children and their families.

Charitable donations help us close the gap between funding sources and families' needs.

How You Can Help
- Make a one-time donation
- Become an Angel Society Member by making a three-year pledge
- Become a foundation partner to help fund us through grants
- Donate to the Any Baby Can Wish List
- Volunteer

Early Childhood Intervention
Early Childhood Intervention (ECI)

More than 35,000 children in Austin are living with a special healthcare need. Any Baby Can’s Early Childhood Intervention (ECI) program helps children with developmental delays reach their full potential and increase parents’ skills to support their child.

Who does Any Baby Can’s ECI Program Serve?
We serve families with children from birth to 36 months with a developmental delay, medically diagnosed condition or auditory or visual impairment. The ECI model was built on the understanding that the most effective time to improve a child’s ability to grow and learn is before the age of three. ECI helps children reach their full potential and increases parents’ knowledge, skills, and ability to support their child’s physical, mental, and emotional development.

How We Help
Any Baby Can helps children with developmental delays reach their full potential and increases their parents’ knowledge, skills, and ability to support their child through in-home services such as:
- Occupational, physical and speech therapy
- Specialized skills training, involving parents working together with their child to improve outcomes
- Home-based medical case management and resource navigation including insurance options, medical systems, school and community resources to create an effective advocacy team.

What It Takes
$2,590,816 = Annual budget
- 52% - Medical Billing
- 38% - Government Contracts
- 10% - Unmet Need (Filled by individual donations as well as contributions from foundations and grants)

Where Your Investment Goes
$4,982 = Average cost to serve one Early Childhood Intervention family annually.

Our costs cover a 29-person service team and associated administrative costs. This year, we aim to serve 520 children and their families.

Charitable donations help us close the gap between funding sources and families’ needs.

How You Can Help
- Make a one-time donation
- Become an Angel Society Member by making a three-year pledge
- Become a foundation partner to help fund us through grants

Healthy Fair
Start
Monday – Friday:
8:00 a.m. – 5:00 p.m.

Classes and support group meetings vary

**Address:**
6207 Sheridan Avenue
Austin, TX 78723

**Phone:** 512.454.3743

**Fax:** 512.477.9205

**HIPAA Fax:** 512.334.4465

**Email:** Info@AnyBabyCan.org

**Our Location:**

Any Baby Can
6207 Sheridan Avenue
Austin, Texas 78723
February 19, 2019

TDHCA
Marnie Holloway
221 East 11th Street
Austin, TX 78701

RE: Vi Collina Application #19288
    The Abali Application #19295

Dear Ms. Holloway,

I am writing this letter to voice my support for the following TDHCA Tax Credit Application for a proposed family housing in Tarrant County:

"Vi Collina," to be located at 2431 E Oltorf, Austin 78741
"The Abali," to be located at 4503 N IH 35, Austin 78722

The SAFE Alliance is a tax exempt 501(c)3 not-for-profit organization that serves the community in which the development site is located with a primary purpose of ending violence through prevention, advocacy and comprehensive services for people and the community that have been affected by abuse. We believe that there is a critical need for housing that is affordable to citizens of modest means and this development will help meet that need.

Sincerely,

Kelly White
Co-CEO
Exemption Verification Letter

Texas Comptroller of Public Accounts
Austin, TX 78774

February 22, 2019

THE SAFE ALLIANCE
4800 MANOR RD
AUSTIN, TX 78723-5522

According to the records of the Comptroller of Public Accounts, the following exemption(s) from Texas taxes apply to the above organization(s):

- Franchise tax, as of 05-16-1984
- Sales and use tax, as of 09-04-1985
  (provide Texas sales and use tax exemption certificate Form 01-339 (Back) to vendor)
- The entity is not exempt from hotel occupancy tax.

Texas taxpayer identification number: 17423206576

This exemption verification is not a substitute for the completed exemption certificates that are required when claiming exemption from Texas taxes. Vendors should be familiar with the requirements for accepting the certificates in good faith from their customers.

This exemption verification does not mean that the organization holds a permit for collecting or remitting any Texas taxes.

Exempt organizations must collect tax on most sales. For more information, please see our publication Exempt Organizations: Sales and Purchases (96-122). Online registration is available.

For information concerning sales taxpayer permit status, please use the vendor search we provide online.

Corporations that are registered in Texas with the Secretary of State must maintain a current registered agent and registered office address. Information is available from Business and Nonprofit Forms page of the Secretary of State's website. Additionally, out-of-state corporations, limited liability companies, or limited partnerships transacting business in Texas may need to file a Certificate of Authority or Registration with the Texas Secretary of State. More information is available from the Foreign or Out-of-State Entities page on the Secretary of State's website.

Our publications and other helpful information are available on our website. If you need more information, write to us at exempt.orgs@cpa.texas.gov, or call us at 800-252-5555.
Our Services

Violence and abuse can affect anyone. Our services are free and available to all people, of all identities, regardless of race, gender, age, sex, status, or any other factor.

Shelter/Housing
- Foster and Adopt in Austin
- Housing for Children and Young Adults
- Housing for Families and Individuals

Face-to-Face Support
- Sexual Assault Victim Advocacy
- Counseling
- CARES: Support for People Who Have Been Trafficked
- Forensic Nursing Exams
- Legal Services
- Supervised Visitations & Exchange
- DeafSHARE

Prevention and Education
- Life Skills
- SAFE School, K-12
- Trauma-Informed Early Childhood Programs, Ages 0-5
- Strong Start Parenting Support
- Disability Services
- Power and Control Wheel - Full Text
- Community Education
- Fatherhood
- Expect Respect
- Expect Respect Evaluation & Publications
- Program Manual and One-Day Training
- School-Based Support Groups and Counseling
- Youth Leadership Development

Advocacy
- Community Resource Advocacy
- Advocacy for Families in CPS
OFFICE ADMINISTRATION

Phone: 512.267.7233
Text: 737.888.7233
Fax: 512.385.0662
Chat: www.safeaustin.org/chat

SAFE mailing address
P.O. Box 19454
Austin, TX 78760

SAFE Children's Shelter address
4800 Manor Rd., Building A
Austin, Texas 78723
512.499.0090

SAFE Grove Campus & Eloise House
1515 Grove Blvd.
Austin, Texas 78741
512.267.7233

PlanetSafe
1101 Nueces St.
Austin, Texas 78701
512.356.1680

Contact Form

Email Address *
First Name
Last Name
Message

Submit

Sign up to stay informed

Sign up to get interesting news and updates. (You can unsubscribe via the link found at the bottom of every email. See our Privacy Policy for details.) Emails are serviced by Constant Contact.
Third Party Reports
**Required Third Party Reports**

Complete the information below as applicable [§11.205].

1. **Environmental Site Assessment (ESA) (All Multifamily Applications)**
   - **Prepared by:** ECS Southwest, LLP
   - **Date of Report:** 2/25/2019
   - **Report recommends further studies or establishes environmental hazards that currently exist on the Property or off-site with the potential to affect the Property.**
   - If the above box is checked, a statement is provided behind this tab signed by the Development Owner, that certifies the Development Owner will comply with any and all recommendations made by the ESA preparer.
   - Development is funded by USDA and is not required to supply an ESA.

2. **Environmental Clearance (Section 811 PRA and Direct Loan applications only)**
   - All Applications selecting Points for Section 811 PRA Program participation under the Competitive HTC program or Direct Loans must review the Environmental Requirements and Environmental Assurance section of the Section 811 PRA Program Guidelines (§PRA.215) and provide adequate material to meet the tenets. A Phase I Environmental Site Assessment (ESA) will not satisfy the environmental clearance required for use of the Section 811 PRA Program.
   - All Applications for Direct Loans by the Department must complete an environmental clearance process in accordance with 24 CFR Parts 50 and 58 prior to engaging in choice limiting activities such as closing on land, loans, beginning demolition or construction activities, or entering into construction contracts. A Phase I Environmental Site Assessment (ESA) will not satisfy the environmental clearance required for use of Multifamily Direct Loan funds.
   - **Application selected points for the Section 811 PRA Program and includes documentation for the project participating in the Section 811 PRA Program that the project meets the tenets of HUD environmental policy and the requirements of applicable statutes and authorities.**
   - **Application has submitted an environmental packet to TDHCA and determination is pending.**
   - **Applicant has reviewed the Environmental Requirements and Environmental Assurance section of the Section 811 PRA Program Guidelines (§PRA.215) and understands that a determination must be received prior to signing the Rental Assistance Contract.**
   - **MFDL Development has already received Environmental Clearance from HUD under 24 CFR Parts 50 or 58.**
   - **Documentation of HUD Environmental Clearance is included behind this tab.**
   - **Applicant has submitted an environmental packet to TDHCA and clearance is pending.**
   - **Applicant has reviewed the environmental clearance materials available on the Department’s website and understands that clearance must be received prior to closing on the loan.**
     - [http://www.tdhca.state.tx.us/program-services/environmental/index.htm](http://www.tdhca.state.tx.us/program-services/environmental/index.htm)
   - **A Third Party will aid in the completion of the environmental clearance process. If checked, complete the following:**
     - **Name of Firm:**
     - **Contact Person:**
     - **Contact Telephone:**
     - **Email:**

3. **Primary Market Area Map**
   - **Primary Market Area (PMA) map with definition of PMA is included behind this tab.**
   - **Prepared by:** Apartment Market Data, LLC
   - **Date of Report:** TBD
   - **Development Site Location:**
     - Longitude: -97.730829
     - Latitude: 30.229156

4. **Property Condition Assessment (PCA)**
   - **Prepared by:** N/A
   - **Date of Report:**

5. **Appraisal**
   - **Prepared by:** N/A
   - **Date of Report:**

6. **Site Design and Development Feasibility Report**
   - **Prepared by:** Kirkman Engineering
   - **Date of Report:** 2/25/2019
2019 HTC
Full Application

Part 7 Tab 47

ESA Statement
Vi Collina
Additional ESA Certification

Per the ESA prepared for Vi Collina, Vi Collina, LLC certifies that it will comply with any and all recommendations made by the ESA provider.

Megan D. Lasch
Megan D. Lasch

2-28-2019
Date
2019 HTC
Full Application

Part 7 Tab 47

Market Study Map and Definition
February 26, 2019

Mr. Brent Stewart
Texas Dept. of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Public Information Request - Release

Greetings:

As part of the market studies produced for the 2019 9% LIHTC application round, Apartment MarketData, LLC (AMD) certifies that it has read and understands Department Rules specific to the report found in Section 11.303 of the Underwriting Rules and Guidelines. AMD acknowledges that the Texas Department of Housing and Community Affairs (the "Department") may publish any of the reports on the Department's website, release it in response to a request for public information, and make other use of the information as authorized by law.”

Sincerely,

[Signature]

Darrell G. Jack
Market Analyst
President
MARKET ANALYSIS SUMMARY

Provider: Apartment MarketData, LLC

Contact: Darrell G Jack

Development: Vi Collina

Site Location: 2401 E Oltorf (aka 2431 E Oltorf) City: Austin County: Travis

Site Coordinates: Latitude 30.229156 Longitude -97.730829 (decimal degree format)

Target Population: General

Definition of Elderly Age:

Primary Market Area (PMA) page

Square Miles 9.98

CENSUS TRACTS

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</table>
### Tie-Breaker Information

**Tie-Breaker #1 (10 TAC §11.7(1))**

Applications proposed to be located in a census tract with a poverty rate below the average poverty rate for all awarded Competitive HTC Applications from the past three years (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (“AMFI”), as determined by the U.S. Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy (“CHAS”) dataset and as reflected in the Department’s current Site Demographic Characteristics Report.

**Is Site in Region 11 or 13?**

<table>
<thead>
<tr>
<th>Region 11 or 13?</th>
<th>Poverty Rate</th>
<th>Applicable Poverty Rate</th>
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</thead>
<tbody>
<tr>
<td>No</td>
<td>26.3</td>
<td>NA</td>
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Poverty Rate is less than 15.629.

**Is Site in Region 11?**

<table>
<thead>
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<th>Region 11?</th>
<th>Poverty Rate</th>
<th>Applicable Poverty Rate</th>
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</thead>
<tbody>
<tr>
<td>No</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

Applicable Poverty Rate is less than 15.629.

**Is Site in Region 13?**

<table>
<thead>
<tr>
<th>Region 13?</th>
<th>Poverty Rate</th>
<th>Applicable Poverty Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

Applicable Poverty Rate is less than 15.629.

**Rent Burden Rank**

<table>
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<th>Rank</th>
<th>(lower number wins tie)</th>
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</thead>
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<tr>
<td>133</td>
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### Tie-Breaker #2 (10 TAC §11.7(2))

Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the Department’s property inventory tab of the Site Demographic Characteristics Report.

**Development Longitude:** -97.730829

**Development Latitude:** 30.229156

**Target Population:** General

**Closest Development serving same Population:** Aria Grand

**Application Number:** 17275

**Address:** SWC Woodland Ave and IH 35, Austin, TX

**Year of Award:** 2017

2/26/2019
Concerted Revitalization Plan ("CRP") Application Packet

The purpose of the packet is to formalize the process by which Concerted Revitalization Plans ("CRP") are described and submitted pursuant to 10 TAC §11.9(d)(7) of the Qualified Allocation Plan ("QAP"). The CRP and all supporting documentation must be uploaded to the Department’s ServU system along with this packet, as a separate document from the Application. Refer to the Multifamily Programs Procedures Manual posted at http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm for an explanation of the process to set-up a Serv-U Account if needed.

Application #19288 Development Name Vi Collina
Development City Austin Development County Travis
☑ The Application claims no points under 10 TAC §11.9(c)(4) related to Opportunity Index.

☑ My Development Site is located in an area that is:
   ☑ Urban
   ☐ Rural (skip to page 4 of the packet)

☑ My Development Site is located in a distinct area known locally as (or named by the CRP as) East Riverside/Oltorf Combined Neighborhood Planning Area that is larger than the assisted housing footprint.

☑ This packet includes a description of the area targeted for revitalization, including common attributes and problems, which can be found at (document name, page number(s), etc) EROCNP pp.1, 14-26

☑ This packet includes a description of how this area was once vital and how it has lapsed into a condition requiring concerted revitalization, which can be found at (document name, page number(s), etc) EROCNP pp 26, 14-25.

☑ A CRP covering the area mentioned above has been developed and executed. The CRP consists of the following local planning document(s):

   East Riverside/Oltorf Combined Neighborhood Plan (EROCNP)

☑ The document(s) is included in its entirety.
☐ The document(s) can be found online at _______.

NOTE: Per the requirements of 10 TAC §11.9(d)(7)(A)(ii), a plan may consist of one or multiple, but complementary, local planning documents that together create a cohesive agenda for the plan's specific area. No more than two (2) local plans may be submitted for each proposed Development. A Consolidated Plan, One-year Action Plan or any other plan prepared to meet HUD requirements will not meet the requirements, unless evidence is presented that additional efforts have been undertaken to meet the requirements in the QAP. The concerted revitalization plan may be a Tax Increment Reinvestment Zone ("TIRZ") or Tax Increment Finance ("TIF) or similar plan. A city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.
The URBAN CRP meets the following criteria as required by 10 TAC §11.9(d)(7)(A)(iii)(I-IV):

1. The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been adopted by the municipality or county in which the Development Site is located.
   - This packet includes the resolution(s) adopting the plan or local planning documents that compose the plan; or
   - This packet includes the resolution(s) of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan(s) and budget(s).

2. The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. A description of eligible problems for a CRP are found at 10 TAC §11.9(d)(7)(A)(iii)(II)(a) through (c).
   - A description of the process for public input on the problems in the plan can be found at (document name, page number(s), etc) EROCPN pp. 2-9.
   - A description of the problems identified by the process can be found at (document name, page number(s), etc) EROCPN pp. 27-45.
   - A description of how the process determined how the problems should be addressed and prioritized can be found at (document name, page number(s), etc) EROCPN pp. 27-45.

3. The goals of the adopted plan must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.
   - A description of the goals of the plan can be found at (document name, page number(s), etc) EROCPN pp. 27-45.
   - A description of the plan’s timetable can be found at (document name, page number(s), etc) Letter from the City with implementation chart.
   - A description of sufficient, documented and committed funding for the plan can be found at (document name, page number(s), etc) Letter from the City with implementation chart, which documents at least $8M in funding for the plan.
   - Evidence that the funding has been flowing to address the problems identified in the plan, or that the problems have been sufficiently addressed, can be found at (document name, page number(s), etc) Letter from the City with implementation chart.

4. The plan must either be current at the time of Application and must officially continue for a minimum of three years thereafter OR the work to address the items in need of mitigation or rehabilitation has begun and, additionally, the Applicant must include confirmation from a public official who oversees the plan that accomplishment of those objectives is on schedule and there are no budgetary or other obstacles to accomplishing the purposes of the plan.
   - The plan is current at the time of Application, and the effective period for the plan is and can be found at (document name, page number(s), etc) ; or
   - Evidence that the work to address problems in the plan has begun can be found at (document name, page number(s), etc) Letter from the City with implementation chart; AND.
   - Confirmation from a public official that accomplishment of those objectives is on schedule and there are no budgetary or other obstacles can be found at (document name, page number(s), etc) Letter from the City.

Provide any comments or additional information in the box below, if applicable.

The East Riverside/Oltorf Combined Neighborhood Plan was Adopted November 16, 2006 as an amendment to the City of Austin’s Comprehensive Plan. The Plan is considered current and in progress, as confirmed in a letter by the City of Austin Community Development Manager. The letter also provided a report on past, present, and future funding for projects within the Plan’s boundaries.
**URBAN CRP Requested Scoring.** Points may be selected under 1, 2, and 3 below for no more than a total of 7 points.

1. Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the targeted efforts outlined in the plan and in reference to the requirements of 10 TAC §11.9(d)(7)(A)(iii)(I-IV). The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing.
   - A letter from a public official is included in this packet (an adopted resolution may be submitted in place of a letter).

2. Applications may receive (2) points in addition to those above if the Development is explicitly identified in a resolution by the municipality or county as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable).
   - An adopted resolution from the city of __________ is included in this packet (a letter MAY NOT be submitted in place of a resolution).
   - An adopted resolution from ______ county is included in this packet (a letter MAY NOT be submitted in place of a resolution).

   **NOTE:** A municipality or county may only identify one Development per CRP area during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body for the same CRP area, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan.

3. Applications will receive (1) point in addition to those under 1. and 2. above if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).
   - Development Site is within the required radius of the eligible amenities and/or services listed below, pursuant to §11.9(c)(4)(B)(i) of the QAP.
   - A map showing the Development Site, location of and distance to the amenities, and evidence that the amenity meets all requirements of the rule, as applicable, is included.

<table>
<thead>
<tr>
<th>HEB Plus Supermarket</th>
<th>The University of Texas at Austin</th>
</tr>
</thead>
<tbody>
<tr>
<td>HEB Plus Pharmacy</td>
<td>Planet Fitness</td>
</tr>
<tr>
<td>FastMed Urgent Care</td>
<td>Mabel Davis District Park</td>
</tr>
<tr>
<td>Children’s Choice Learning Center</td>
<td>Faith Food Pantry</td>
</tr>
</tbody>
</table>

**Provide any comments or additional information in the box below, if applicable.**
1. Introduction

Neighborhood Plan Geography

The East Riverside/Oltorf Combined Neighborhood Plan is comprised of three planning areas: Riverside, Parker Lane and Pleasant Valley. These three areas were selected by the Austin City Council to undergo neighborhood planning during the 2003-04 fiscal year; the neighborhood plan created for these three areas is an update of the Austin Tomorrow Comprehensive Plan adopted in 1980. Neighborhood planning staff held the first stakeholder meeting in October 2003 for this planning effort, which was later named the East Riverside/Oltorf Combined Neighborhood Plan. The boundaries of the combined planning area are: IH-35 to the west, the Colorado River to the north, Grove Blvd. and Montopolis Drive to the east, and Ben White Blvd./Hwy 71 to the south. The Riverside Planning Area is bounded by IH-35 to the west, the Colorado River to the north, Pleasant Valley Road to the east and Oltorf Street to the south. The Parker Lane Planning Area is bounded IH-35 to the west, Oltorf Street to the north, Montopolis Road to the east and Ben White Blvd./Highway 71 to the south. The Pleasant Valley Planning Area is bounded by Pleasant Valley Road to the west, the Colorado River to the north, Grove Blvd. to the east and Oltorf Street to the south.
February 22, 2019

Sharon Gamble  
TDHCA  
221 E. 11th  
Austin, TX 78701

Dear Ms. Gamble:

I am writing this letter per the requirements of the 2019 QAP with respect to a concerted revitalization plan within the City of Austin. The Vi Collina development, located in the East Riverside/Oltorf Neighborhood Planning area is within a revitalization area that was identified, studied, discussed, and addressed in the East Riverside/Oltorf Combined Neighborhood Plan.

Attached is a report that gives an overview of the measurable improvements achieved by the City in the revitalization area based on the target efforts outlined in these plans. The report outlines items that have been completed, are ongoing/currently in progress, or anticipated to be undertaken in the future. The accomplishments of the objectives outlined in the plan are on schedule and there are no budgetary or other obstacles to accomplishing the purposes of the plan.

We believe that these improvements have increased the livability of the area by 1) Improving neighborhood stability by creating a neighborhood comprised of high-quality, well maintained, mixed income housing that accommodates families and individuals; 2) Preserving the Neighborhood character and enhance livability; and 3) Improving the infrastructure. We believe that all of these projects have led to a safer, more attractive, amenity filled area appropriate for housing.

The Plan and the efforts towards the Plan are still current and will continue at a minimum for the next three years.

We are excited at the prospect of affordable housing being available in this part of town and believe that it fits in well with the revitalization efforts we have already undertaken.

Sincerely,

[Signature]

James B. May, AICP  
Community Development Manager  
Neighborhood Housing and Community Development  
James.May@austintexas.gov  
(512) 974-3192
<table>
<thead>
<tr>
<th>Action Item/Rec #</th>
<th>Plan page #</th>
<th>Action Item/Recommendation</th>
<th>Priority Ranking and Fiscal Year</th>
<th>Status</th>
<th>Staff Comments</th>
<th>Contact Team Comments</th>
<th>Primary Resource</th>
<th>Secondary Resource</th>
</tr>
</thead>
<tbody>
<tr>
<td>54</td>
<td>36</td>
<td>Extend the bike lane on Pleasant Valley Rd. from Lakeshore Dr. to Cesar Chavez.</td>
<td># 2 Parker Lane, FY 2015-16</td>
<td>Not Yet Initiated</td>
<td>10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane in this corridor. 2006 (Public Works): This improvement would require additional road width and construction of curb and gutter up to the Longhorn Dam, then to Cesar Chavez. Widening of the bridge is not included in this estimate.</td>
<td></td>
<td>Austin Transportation Department</td>
<td></td>
</tr>
<tr>
<td>55c</td>
<td>36</td>
<td>Conduct a study to investigate the feasibility of putting bike lanes along Grove Boulevard (Hogan Avenue to Oltorf Street).</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>4/2014 (PDRD): Bike lanes were installed on Grove Blvd. from Hogan Ave to E Riverside Dr. in 2013 (6,226 linear feet). 10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane in this corridor.</td>
<td></td>
<td>Austin Transportation Department</td>
<td></td>
</tr>
<tr>
<td>56a</td>
<td>36</td>
<td>Build sidewalks within the Riverside Planning Area in this order of priority: #1. Woodland between Summit &amp; Parker (either side).</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>2/2011 (Public Works): No funding available. 5/2009 (Public Works): 1,300 linear feet @ $24/SF or $120 linear foot for the average 5’ sidewalk. Sidewalk matrix score: Medium. All estimates are at today’s construction costs and subject to change in the future.</td>
<td>10/2008: Riverside’s #6 priority for FY 2009-10.</td>
<td>Public Works</td>
<td></td>
</tr>
<tr>
<td>56b</td>
<td>36</td>
<td>Build sidewalks within the Riverside Planning Area in this order of priority: #2. Summit between Woodland &amp; Riverside (either side).</td>
<td># 5 Riverside, FY 2015-16</td>
<td>Not Yet Initiated</td>
<td>2/2011 (Public Works): No funding available. 5/2009 (Public Works): 2,500 linear feet @ $24/SF or $120 linear foot for the average 5’ sidewalk. Sidewalk matrix score: Low/Medium. All estimates are at today’s construction costs and subject to change in the future.</td>
<td>9/2011 (NPCT): Construction cost estimate for this project was $76,100 in 2008. Not sure how the &quot;matrix scoring works. Summit is well-walked with extremely low visibility in the north stretch from Sunnyvale to E Riverside. Priority #9 for Riverside for FY 2012-13. 5/2011 (NPCT): 2100 Parker Ln with its 3 SF-6 lots and 1 MF-3 lot with old growth live oaks &amp; pond would be an ideal pocket park. We encourage PARD/city negotiations to continue for the acquisition of this property. 10/2008: Riverside’s #7 priority for FY 2009-10.</td>
<td>Public Works</td>
<td></td>
</tr>
<tr>
<td>Action Item/Rec #</td>
<td>Plan page #</td>
<td>Action Item/Recommendation</td>
<td>Priority Ranking and Fiscal Year</td>
<td>Status</td>
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<td>Contact Team Comments</td>
<td>Primary Resource</td>
<td>Secondary Resource</td>
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</tr>
<tr>
<td>56c</td>
<td>36</td>
<td>Build sidewalks within the Riverside Planning Area in this order of priority: #3. Parker Lane between E. Riverside Dr. &amp; Woodland Avenue (either side).</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>10/2013 (PDRD): About 610' of sidewalk was installed on the west side of Parker Lane going south from E. Riverside Drive in 2009-2011. The remaining gap measures 1,290’. 9/2011 (NPCT): Construction cost estimate for this project was $76,100 in 2008. Summit is well-walked with extremely low visibility in the north stretch from Sunnyvale to E Riverside. 5/2009 (Public Works): 2,200 linear feet @ $24/SF or $120 lineal foot for the average 5’ sidewalk. Sidewalk matrix score: Medium/High. All estimates are at today’s construction costs and subject to change in the future.</td>
<td>9/2011 (NPCT): Safe pedestrian walkways are critical in urban areas. This section of Parker is used by residents of the apartments and single family homes to access bus lines and retail and the lake. Riverside’s #4 priority for FY 2012-13. 10/2008: Riverside’s #8 priority for FY 2009-10.</td>
<td>Public Works</td>
<td></td>
</tr>
<tr>
<td>57f</td>
<td>37</td>
<td>Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #6. Benjamin, north side between Douglas and Princeton.</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>2006: Priority # 6 - Construction Estimate: $8,700. Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000. Please note that all estimates are at today’s construction costs and subject to change in the future.</td>
<td></td>
<td>Public Works</td>
<td></td>
</tr>
<tr>
<td>58a</td>
<td>37</td>
<td>Build sidewalks within the Pleasant Valley Planning Area in this order of priority: #1 East side of Pleasant Valley Rd. (north of Lakeshore to the Colorado River Park).</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>9/2011 (Public Works): No funding available. 5/2009 (Public Works): 2,000 linear feet @ $24/SF or $120 lineal foot for the average 5’ sidewalk. Sidewalk matrix score: High. All estimates are at today’s construction costs and subject to change in the future.</td>
<td>9/2011: Pleasant Valley’s #7 Priority for FY 2012-13. 10/2008: Pleasant Valleys #3 priority for FY 2009-10.</td>
<td>Public Works</td>
<td></td>
</tr>
<tr>
<td>Action Item/ Recommendation</td>
<td>Priority Ranking and Fiscal Year</td>
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<td>Staff Comments</td>
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<td>Primary Resource</td>
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<tr>
<td>Identify and provide safe pedestrian and bicyclist crossings all along Riverside Dr. from IH-35 to Grove Blvd., with special attention paid to intersections at or near a bus stop.</td>
<td>8/2015 (TXDOT): Bicycle and pedestrian facilities within this project limits (IH-35 and Riverside intersection) are currently in the preliminary design phase. We have received numerous comments from the public and are addressing these during the design. 8/2014 (PDRD): Funding for additional multimodal improvements to East Riverside Drive has been allocated out of the 2012 bonds. 4/2014 (PDRD): Sidewalk and ramp improvements were completed at the intersection of S. Pleasant Valley Rd. and Riverside Dr. on 10/18/2013. A total of 592 linear feet of sidewalks and ramps were installed. Further improvements in the Riverside corridor are being planned under 2012 bond project 5386.004. 6/2013 (PDRD): The Country Club Creek Trail underpass at Riverside Drive has been completed. The Wickersham crossing will likely be at grade due to low clearance and a critical environmental feature. 3/2013 (ATD): Pedestrian Hybrid Beacon (PHB) installed at 2400 E. Riverside Dr. near the HEB on 8/31/2012. 12/2011 (ATD): A corridor study is currently underway that is considering all modes of transportation including pedestrian facilities. 9/2011 (Public Works): East Riverside was restriped to improve the visibility of the striping. 3/2009 (Public Works): All intersections controlled by a traffic signal currently have pedestrian ramps, crosswalks, and pedestrian signal indications. We did note that many crosswalks are faded and need to be remarked, and have scheduled this work to be completed as a high priority.</td>
<td>Partially Complete</td>
<td>8/2015 (TXDOT): Bicycle and pedestrian facilities within this project limits (IH-35 and Riverside intersection) are currently in the preliminary design phase. We have received numerous comments from the public and are addressing these during the design. 8/2014 (PDRD): Funding for additional multimodal improvements to East Riverside Drive has been allocated out of the 2012 bonds. 4/2014 (PDRD): Sidewalk and ramp improvements were completed at the intersection of S. Pleasant Valley Rd. and Riverside Dr. on 10/18/2013. A total of 592 linear feet of sidewalks and ramps were installed. Further improvements in the Riverside corridor are being planned under 2012 bond project 5386.004. 6/2013 (PDRD): The Country Club Creek Trail underpass at Riverside Drive has been completed. The Wickersham crossing will likely be at grade due to low clearance and a critical environmental feature. 3/2013 (ATD): Pedestrian Hybrid Beacon (PHB) installed at 2400 E. Riverside Dr. near the HEB on 8/31/2012. 12/2011 (ATD): A corridor study is currently underway that is considering all modes of transportation including pedestrian facilities. 9/2011 (Public Works): East Riverside was restriped to improve the visibility of the striping. 3/2009 (Public Works): All intersections controlled by a traffic signal currently have pedestrian ramps, crosswalks, and pedestrian signal indications. We did note that many crosswalks are faded and need to be remarked, and have scheduled this work to be completed as a high priority.</td>
<td>9/2011: Riverside's #8 priority FY 2012-13. 5/2011 (Contact Team): Safe crosswalks for our dense area are still a high priority. Re-striping alone does not address that crosswalks are too far apart and traffic across 6 lanes is travelling too fast. Our NPA is not walkable. 10/2008 (POR): Riverside's #1 priority for FY 2009-10. 8/2008 (Contact Team): Safe crosswalks for our dense area is our highest priority. Need re-striping, safe protection within the median, better signage and signals, and crosswalks at bus stops. Pedestrians cross anywhere so documentation at any one location is difficult. Issue has surfaced repeatedly in corridor study meetings. Providing a safe way for citizens to cross Riverside at multiple locations as well as Pleasant Valley at Lakeshore is positively a priority. Locations along Riverside include: at Summit, at Lakeshore, at Parker, at Royal Crest, at Tinnin Ford, at Willow Creek, at Pleasant Valley, some point between Pleasant Valley and Willow Creek and Lakeshore at Pleasant Valley. The Country Club Creek Trailhead needs sage crossings across Pleasant Valley to both the south side of Lakeshore Blvd. and the north side.</td>
<td>#2 Riverside; Pleasant Valley, FY 2015-16</td>
<td># 2 Riverside; #8 Priority FY 2012-13</td>
<td>Austin Transportation Department</td>
<td></td>
</tr>
<tr>
<td>Action Item/ Recommendation</td>
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<tr>
<td>Improve storm water drainage along Pleasant Valley Road between Riverside Drive and Lakeshore Blvd., especially at Elmont and Lakeshore.</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>4/2018 (WPD): The PER is complete but the project has been shelved by the WPD executive team. 8/2014 (WPD): The draft preliminary engineering report is due August 8, 2014. The improvements referenced in the text below reduced flooding frequency but buildings are still being flooded. 1/2014 (PDRD): A project to improve Stormwater Conveyance along Pleasant Valley Road in and near the intersection of Elmont Drive is in the preliminary phase. 2/2011 (WPD): This area is planned for re-evaluation of drainage system capacity within the next 5 years. Additional projects may be identified as a result of that study. 2/2010 (WPD): Drainage Improvements for Pleasant Valley Road downstream of the intersection of Elmont and S. Pleasant Valley to just south of Lake Shore Drive were completed as part of a settlement agreement. The total amount of the project is $200,000. Additionally, the reconstruction of Pleasant Valley Road by PW included culvert upgrades to improve drainage. WPD cost participated in this project and contributed funding for the culvert upgrade. Stormwater runoff along S. Pleasant Valley Rd. between E. Riverside Dr. and Lakeshore Blvd. is conveyed by roadside ditches. A large amount of runoff has caused drainage concerns at the intersection of S. Pleasant Valley Rd. and Elmont Dr. No projects have been identified for this area at this time, however this area will be re-evaluated for storm drain upgrades in the near future.</td>
<td>9/2011: Pleasant Valley's #6 priority for FY 2012-13. 10/2008: Pleasant Valleys #4 priority for FY 2009-10.</td>
<td>Watershed Protection Department</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Action Item/Rec #</td>
<td>Plan/Recommendation</td>
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<td>92</td>
<td>Encourage the Parks Department to acquire the Riverside Golf Course property and maintain it as a golf course.</td>
<td>#1 Pleasant Valley, FY</td>
<td>Underway</td>
<td>12/2015 (PARD): Status remains the same. 12/2014 (PARD): There is no plan to acquire the golf course at this time. 2/2011 (PARD): Currently not included in the 5-Year CIP Plan. 2/25/10 (PARD): If PARD was successful in an acquisition, PARD is not supportive in continuing the use as a golf course. PARD would be supportive of increasing the parkland adjacent to Colorado River Park.</td>
<td>9/2011 (NPCT): Support maintaining this property as a golf course as it is uniquely suited for this purpose in addition to having historical legacy as such. See multiple pages in the EROC plan regarding the preservation of the golf course. Priority #1 Pleasant Valley, #4 Parker Lane and #10 Riverside for FY 2012-13. 5/2011(NPCT): Request that the City proactively keep an open dialogue with ACC Board of Trustees and President with regards to the acquisition of the 18-hole Riverside Golf Course and insure that it will remain a public 18-hole golf course. Further encourage the City to proactively find ways to acquire the Riverside Golf Course by providing ACC other properties for the growth of the ACC Riverside Campus while keeping the golf course intact and to provide ACC additional incentives in other ACC areas that would encourage the ownership of the golf course by the City. 10/2008: Pleasant Valley's #1 priority and Parker Lane's #4 priority for FY 2009-10.</td>
<td>PARD</td>
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<tr>
<td>94.1</td>
<td>Provide the following public amenities at Mabel Davis Park in this order of priority: Priority #1 - Connection to proposed Country Club Creek trail.</td>
<td># Not Ranked</td>
<td>Underway</td>
<td>5/2017: Awaiting approval of a recreational easement. Construction estimated to begin summer 2017. 11/2015 (PAZ): ATD estimates that Phase 1 of the Country Club Creek Trail (Burleson Road to Mabel Davis Park) will be completed in Summer 2016 at a cost of $415,000. The design is almost complete (nearing 90%). 9/2014 (PARD): The Austin Bicycle Plan recommends a multi-use path along Country Club Creek, Pleasant Valley Pocket Park, a City easement, Ventura Drive, Cataline Drive, and Madera Drive.</td>
<td>1/2014 (PDRO): A portion of the Mabel Davis loop trail is paved. (Date?): PARD: This item can be implemented without additional funding or change in policy. The Department recommends that this item be implemented; will be done as part of earthwork project.</td>
<td>Public Works</td>
<td>PARD</td>
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<td>94.3</td>
<td>Provide the following public amenities at Mabel Davis Park in this order of priority: Priority #3 - Paved hike/bike/skate loop with neighborhood connections.</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>1/2014 (PDRO): A portion of the Mabel Davis loop trail is paved. (Date?): PARD: This item can be implemented without additional funding or change in policy. The Department recommends that this item be implemented; will be done as part of earthwork project.</td>
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<td>PARD</td>
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<td>103</td>
<td>Construct a trail system along Country Club Creek that is sustainable and not subject to erosion due to flooding.</td>
<td># 1 Parker Lane; 3 Pleasant Valley, FY 2015-16</td>
<td>Underway</td>
<td>11/2016: Phase II &amp; III in design phase. 8/2016: Construction of Phase I of trail from Mabel Davis to Burleson planned to begin fall 2016. 12/2015 (PAZ): In partnership with the South East Austin Trails and Greenways Alliance, a Neighborhood Partnering Program project will resurface a portion of the Country Club Creek Trail between Elmont Drive and Guerrero Park with high quality crushed decomposed granite road base. 9/2015 (PAZ): Construction for Segment 1 scheduled for summer 2016. 2/2015 (PDRD): Design and construction are funded for Segment 1 from Burleson Road to Ventura Drive. 12/2014 (PDRD): The Preliminary Engineering Report for the segments from Elmont to Oltorf and Burleson to Ventura Drive is complete with a cost estimate for construction of $4.5 million. 1/2014 (PARD): Negotiation with land owners regarding easements is ongoing. (PDRD): Apartment adjacent to creek are excited about project and willing to give us land. Church on Burleson has agreed to modify AE easement to include recreational use. 6/2013 (PDRD): Discussions with land owners regarding easements continue. The Riverside Drive underpass has been completed. The Wickersham crossing will likely be at grade due to low clearance and a critical environmental feature.</td>
<td>9/2011 (NPCT): See Malcolm Yeatts’ support and explanation for this ranking as well as multiple pages in the EROC plan. Priority #1 Parker Lane, #2 Pleasant Valley, and #3 Riverside FY 2012-13. 10/2008: Parker Lane’s #1 priority, Pleasant Valley’s #2 priority and Riverside’s #5 priority for FY 2009-10.</td>
<td>Public Works</td>
<td>PARD</td>
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<tr>
<td>105</td>
<td>Provide a safe pedestrian crossing across Burleson Road near Country Club Creek.</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>Public Works: If the neighborhood informs us of a specific location, time period, and day of the week, we could observe the most pedestrians in this area; we can investigate whether pedestrian warning signs would be appropriate and whether the number of pedestrians crossing is at least 100 per hour for four hours of a typical day or 190 in one hour of a typical day, which can warrant a crosswalk with protection.</td>
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<td>Public Works</td>
<td>Austin Transportation Department</td>
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<td>37</td>
<td>Petition CAMPO and the City of Austin to reclassify Lakeshore Blvd. to a neighborhood collector to prohibit through traffic by large commercial trucks between East Riverside Drive and Pleasant Valley Road.</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>11/2015 (PA2): The CAMPO 2040 plan still shows Lakeshore as a minor arterial. 10/2013 (PDRD): ATD has begun the process to update the AMATP, and CAMPO has initiated development of the CAMPO 2040 plan. PDRD will forward this recommendation to the staff for consideration. Neighborhood stakeholders are encouraged to participate in the public process of developing the updates to these two plans.</td>
<td>Austin Transportation Department</td>
<td>Contact Team</td>
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<tr>
<td>38</td>
<td>Petition CAMPO and the City of Austin to remove the extension of Pleasant Valley Road to Burleson Road (which would ultimately connect to Ben White Blvd.)</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>10/2013 (PDRD): The extension of Pleasant Valley Road is not shown in the CAMPO 2035 plan. ATD has initiated the process to update the AMATP. PDRD will forward this recommendation to the staff for consideration. Neighborhood stakeholders are encouraged to participate in the public process of developing the update. 9/2011: Parker Lane’s #10 priority for FY 2012-13. 10/2008: Parker Lane’s #10 priority for FY 2009-10.</td>
<td>Austin Transportation Department</td>
<td>Contact Team</td>
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<td>41</td>
<td>Conduct a traffic study at the intersection of Grove Blvd and Riverside Dr. to facilitate traffic flow and reduce hazards.</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>2006 (Public Works): This intersection has appropriate geometry, signs, pavement marking, and a traffic signal with phasing and timing appropriate to the existing traffic demands. Only four collisions have been reported at this intersection since October 2001 - two northbound left turn failing to yield to southbound, one southbound left turn failing to yield to northbound, and a northbound striking westbound. Given high traffic volumes at this intersection, this indicates a relatively low accident rate and a lack of a safety problem. If the neighborhood would advise us of what, specifically, is the problem and when it occurs, we will investigate further.</td>
<td>Austin Transportation Department</td>
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<tr>
<td>42</td>
<td>Conduct a traffic study at the intersection of Riverside Drive and Pleasant Valley Road to examine the turn-a-rounds to improve vehicular and pedestrian safety.</td>
<td># Not Ranked</td>
<td>Planned Project</td>
<td>7/2018: Multi modal improvements are planned for E Riverside through the 2016 mobility bond 2006 (Public Works): The turn-a-rounds do not conflict with sidewalks or crosswalks and have appropriate geometry. If the neighborhood can provide details regarding what the perceived problem is and when it can be observed, we will investigate further.</td>
<td>Austin Transportation Department</td>
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## East Riverside/Oltorf Combined Neighborhood Plan Implementation Tracking Chart

<table>
<thead>
<tr>
<th>Action Item/ Recommendation</th>
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<tr>
<td>Investigate the possibility of making the section of IH-35 frontage road at Woodland level with the interstate while maintaining the east-west underpass connection to Travis Heights to facilitate and make safer inter-neighborhood travel.</td>
<td>Riverside, FY 2015-16</td>
<td>Underway</td>
<td>8/2015 (TXDOT): The overpass of Woodland Avenue is being replaced and will be designed to better accommodate ped and bike users. 5/2015 (PZD): The Mobility35 project is exploring improvements for the IH-35 corridor. The current proposal would preserve east-west connectivity for pedestrians, cyclists, and motorists but would not raise the frontage roads to the highway level. Design is underway, but construction is not funded. For more information, visit <a href="http://www.mobility35.org/proposedconcepts/implementation.aspx">http://www.mobility35.org/proposedconcepts/implementation.aspx</a>. (2006): In the original I-35 study, we received numerous comments from residents along Woodland - the outcome was to remove the grade separated interchange (IE. Woodland would &quot;T&quot; into the frontage road on both sides of the interstate). The ramp configuration was also modified to eliminate the Woodland southbound exit ramp.</td>
<td></td>
<td>TxDOT</td>
<td>Austin Transportation Department</td>
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<tr>
<td>Support a Bus Rapid Transit (BRT) line along East Riverside Drive.</td>
<td>Pleasant Valley; 5 Parker Lane, FY</td>
<td>Ongoing</td>
<td>10/2013 (PDRD): The East Riverside Corridor Plan calls for a streetcar or light rail service along E. Riverside with BRT as an alternative. 12/2011 (CapMetro): Capital Metro currently has two BRT lines planned, and does not include E. Riverside at this time; however both the City of Austin and Capital Metro are exploring the option of a fixed guideway service in the future. 2006 (Capital Metro): We do have plans to introduce a Bus Rapid Transit on this corridor. It is currently budgeted for 2014. I know that it is 9 years away but time moves fast and who knows if we find that we may be able to do it sooner depending on various factors.</td>
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<td>Capital Metro</td>
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<td>61.b</td>
<td>37</td>
<td>Along Lakeshore Blvd from East Riverside Drive to Pleasant Valley Road, identify ways to provide safe pedestrian and bicyclist crossings, with special attention paid to the intersection of Lakeshore Blvd with Tinnin Ford.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>7/2017: Protected bikeway was completed. Painted crosswalks at intersections. 11/2015 (PAZ): A protected bikeway is proposed for this location. A public meeting will be held on 11/16/2015 to gather feedback about the proposal. Safety improvements for crossings may also be considered as part of this project. 11/2014 (PDRD): Upon observation, the intersection had a low level of delays (vehicular and pedestrian) and a low number of crashes. A traffic signal study is not recommended at this time.</td>
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<td>53</td>
<td>36</td>
<td>Put a striped bike lane along Lakeshore Blvd.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>6/2016: Protected bike lane with two travel lanes complete. 11/2015 (PAZ): A protected bikeway is proposed for this location. A public meeting will be held on 11/16/2015 to gather feedback about the proposal. 10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane in this corridor. 2006 (Public Works): This will require sealcoating Lakeshore Blvd. and changing the striping pattern to accommodate parking on the north curb, two 6’ bike lanes, and two travel lanes.</td>
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<tr>
<td>55a</td>
<td>36</td>
<td>Conduct a study to investigate the feasibility of putting bike lanes along E. Riverside Dr. (Grove to I-35).</td>
<td># 5 Pleasant Valley, FY</td>
<td>Complete</td>
<td>8/2014 (PDRD): The East Riverside Corridor Master Plan constitutes such a study. The plan recommends on-street bike lanes on East Riverside. Funding for multi-modal improvements to East Riverside Drive has been allocated out of the 2012 bonds. 11/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane in this corridor. (PWD): The Bicycle Program will update the Bike Plan in 2007 and 2009. A needs assessment, which includes identifying recommended facilities in these areas, is included.</td>
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<td>55b</td>
<td>36</td>
<td>Conduct a study to investigate the feasibility of putting bike lanes along Oltorf Street (Willow Creek Drive to IH-35).</td>
<td># 3 Parker Lane, FY 2015-16</td>
<td>Complete</td>
<td>2/2015 (PDRD): Bike lanes were installed on East Oltorf from Big Number 45 to 300' east of Willow Creek Drive in November 2014. 10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane from IH-35 to Burleson Rd.</td>
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<td>57a</td>
<td>Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #1. Burleson, west side, from Catalina area southward, as needed, to Ben White Blvd. (improvements).</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>10/2013 (PDRD): City GIS data show continuous sidewalks on both sides, and the condition of the sidewalk appears good in the 2012 aerial imagery. If specific locations are in need of repair, please provide more information to PWD or report to 311. 2006 Construction Estimate: $2400 (sidewalk in generally good condition with minor repairs). Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000. Please note that all estimates are at today's construction costs and subject to change in the future.</td>
<td>Public Works</td>
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<tr>
<td>57b</td>
<td>Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #2. Oltorf St., south side, between Wickersham Lane and Sunridge Street, where gap exists.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>2006 Construction Estimate: $12,100 (includes Recommendation 57e). Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000 (2006). Please note that all estimates are at today's construction costs and subject to change in the future. 8/2005 (PDR): Sidewalks have been completed on the south side of Oltorf Street from Huntwick Drive to Montopolis Drive.</td>
<td>Public Works</td>
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<tr>
<td>57c</td>
<td>Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #3. Metcalfe, south side from Burleson to Linder Elementary.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>4/2013 (PDRD): Improvements were made to Metcalfe, south side from Burleson to Linder Elementary in 2008. 2006: Priority #3: Construction Estimate $29,000. Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000. Please note that all estimates are at today's construction costs and subject to change in the future.</td>
<td>Public Works</td>
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<tr>
<td>57d</td>
<td>Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #4. Near the intersection of Oltorf St. and Pleasant Valley, south side of Oltorf and NW side of Pleasant Valley Rd. (where gaps exist).</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>10/2013 (PDRD): As observed in 2012 aerial imagery, sidewalks and curb ramps are present at all corners of this intersection and are in good condition. 2006: Priority # 4: Construction Estimate: $14,400 (Oltorf from Pleasant Valley to Collins Creek). Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000. Please note that all estimates are at today's construction costs and subject to change in the future.</td>
<td>Public Works</td>
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### East Riverside/Oltorf Combined Neighborhood Plan Implementation Tracking Chart

#### 11/27/2018

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<tr>
<td>57e</td>
<td>Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #5. The south side of Oltorf Street between Sunridge Drive and Alvin Devane, where gaps exist.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>Priority #5 - Construction estimate included with Priority #2 (Recommendation 57b). Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000 (2006). Please note that all estimates are at today’s construction costs and subject to change in the future. M. Laursen, PDR: As of 8/2005–Sidewalks have been completed on the south side of Oltorf Street from Huntwick Drive to Montopolis Drive.</td>
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<td>Public Works</td>
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<tr>
<td>58b</td>
<td>Build sidewalks within the Pleasant Valley Planning Area in this order of priority: #2 South side of Oltorf St. (from AMD to Sunridge).</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>1/2014 (PDRD): This sidewalk has been completed as seen in City GIS data and Google Streetview. 2006: Priority #2: Construction Estimate: $3,600. Engineering design and management fees for Recommendations 58 a - c: $26,200. Please note that all estimates are at today’s construction costs and subject to change in the future. Same as action item 57e</td>
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<td>Public Works</td>
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<tr>
<td>58c</td>
<td>Build sidewalks within the Pleasant Valley Planning Area in this order of priority: #3 West side of Pleasant Valley Rd. (north of Elmont to Lakeshore).</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>11/2016: Sidewalk completed 10/15/2016. 2006: Priority #3: Construction Estimate: $29,600. Engineering design and management fees for Recommendations 58 a - c: $26,200. Please note that all estimates are at today’s construction costs and subject to change in the future.</td>
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<td>Public Works</td>
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<tr>
<td>61.a</td>
<td>Along Lakeshore Blvd from East Riverside Drive to Pleasant Valley Road, identify ways to provide safe pedestrian and bicyclist crossings, with special attention paid to the intersection of Lakeshore Blvd with Town Creek.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>2/2017: Improvements were made in conjunction with protected bikeway. 11/2015 (PAZ): A protected bikeway is proposed for this location. A public meeting will be held on 11/16/2015 to gather feedback about the proposal. Safety improvements for crossings may also be considered as part of this project. 1/2015 (PDRD): Two-lane roadways are not eligible for pedestrian hybrid beacons.</td>
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<td>Austin Transportation Department</td>
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<tr>
<td>62</td>
<td>At the intersection of Pleasant Valley Rd. and Riverside Dr. and make improvements to ease crossing Pleasant Valley Rd. and minimize safety hazards for pedestrians and cyclists.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>4/2014 (PDRD): Sidewalk and ramp improvements were completed at the intersection of S. Pleasant Valley Rd. and Riverside Dr. on 3/18/2011. A total of 922 linear feet of sidewalks and ramps were installed.</td>
<td>6/2/2009 (Contact Team): There is an active CIP project to repair the abutments of the Riverside Bridge (e-capris 5873.009). The neighborhood would like the scope of this project extended to include a pedestrian underpass under the Riverside Bridge over Country Club Creek. 10/2008: Parker Lane’s #4 priority for FY 2009-10.</td>
<td>Public Works</td>
<td>Austin Transportation Department</td>
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**City of Austin Planning and Development Review Department**

**Page 32**

**Plan Adopted 11/16/2006**
<table>
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<tr>
<td>70</td>
<td>39</td>
<td>Lobby PARD or the Watershed Protection Dept. to acquire properties containing the headwaters of Country Club Creek and preserve them in a natural state as the Country Club Creek Preserve. The headwaters are located just north of Ben White Blvd and are indicated by seeps and springs and marked on the &quot;Environmental Features and Watershed Boundaries&quot; map.</td>
<td># 2 Pleasant Valley; 3 Riverside; 5 Parker Lane, FY</td>
<td>Complete</td>
<td>12/2015 (PARD): PARD is seeking to acquire property or an easement to provide public access to the newly acquired headwaters land from the neighborhood to the east. 8/2015 (PAZ): Last month, PARD purchased the largest property in the area, a 33-acre parcel owned by the Catholic Diocese of Austin. 1/2014 (PARD): PARD received funding for land acquisition under the 2012 Bond program for properties containing the headwaters of Country Club Creek.</td>
<td>9/2011 (NPCT): See Malcolm Yeatts' support and explanation for this ranking as well as multiple pages in the EROC plan. Priority #1 Riverside, #2 Parker Lane, and #3 Pleasant Valley for FY 2012-13. 10/2008: Parker Lane’s #2 priority, Riverside’s #3 priority and Pleasant Valley’s #6 priority for FY 2009-10.</td>
<td>Watershed Protection Department</td>
<td>PARD</td>
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<td>94.8</td>
<td>43</td>
<td>Provide the following public amenities at Mabel Davis Park in this order of priority: Priority #8 - Skate park with stadium-style seating.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>12/2015 (PAZ): The skate park includes a skate bowl, streetscape elements and a grass seating area for interested onlookers. It opened in late-2005 and is a 12,000-square-feet concrete skate park. It does not include stadium seating.</td>
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<td>PARD</td>
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<tr>
<td>97</td>
<td>44</td>
<td>Work with PARD to develop user agreements for small neighborhood-maintained neighborhood greens in the planning area.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>6/2015 (PAZ): Austin Parks Foundation provided a grant of $22, 491 to install an ADA-compliant ramp, trail and picnic tables. 4/2015 (PARD): City purchased a 0.53 acres on the corner of Parkes and Windoak Drive and turned this into a pocket park: Article on the purchase can be found at: <a href="http://burlesonheights.com/2012/01/22/pocket-park-could-come-to-parker-lane/">http://burlesonheights.com/2012/01/22/pocket-park-could-come-to-parker-lane/</a>. 10/2008 (PARD): The Neighborhood Plan Contact Team determines best candidate(s) for Neighborhood Greens, then approaches PARD for evaluation and planning &amp; processing assistance.</td>
<td>4/2013 (NPCT): There is a new park: The Parker Lane Park. I have forwarded this information to the volunteers that are working on that park. The residents around the area of Oltorf and Wickersham have asked PARD to consider buying a property in the area, so there may be another small park soon. 9/2011 (NPCT): 2100 Parker Ln with its 3 SF-6 lots and 1 MF-3 lot with old growth live oaks &amp; pond would be an ideal pocket park. We encourage PARD/city negotiations to continue for the acquisition of this property. Riverside’s #2 priority for FY 2012-13. 10/2008: Riverside’s #4 priority for FY 2009-10.</td>
<td>PARD</td>
<td>Contact Team</td>
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<td>101</td>
<td>44</td>
<td>Encourage PARD to design and construct an over-the-water connection for the Lakeshore portion of the Town Lake Hike and Bike Trail.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>6/2014 (PDRD): The boardwalk trail is complete. 4/2013 (Public Works): Boardwalk trail connection being built on Ladybird Lake. For more details, see: <a href="http://austin">http://austin</a> texas.gov/department/boardwalk-trail-lady-bird- lake. PARD: * This is an estimate to construct an above-water trail that would close the gap between the Statesman property and the Lakeshore Blvd. parkland, providing periodic connections from the shore.</td>
<td></td>
<td>Public Works</td>
<td>PARD</td>
</tr>
</tbody>
</table>
### East Riverside/Oltorf Combined Neighborhood Plan Implementation Tracking Chart

<table>
<thead>
<tr>
<th>Action Item/ Recommendation</th>
<th>Priority Ranking and Fiscal Year</th>
<th>Status</th>
<th>Staff Comments</th>
<th>Contact Team Comments</th>
<th>Primary Resource</th>
<th>Secondary Resource</th>
</tr>
</thead>
</table>

| Provide a safe pedestrian crossing across Pleasant Valley Road at Lakeshore Boulevard to connect the existing Town Lake Hike and Bike Trail to the proposed Country Club Creek hike and bike trail. | # Not Ranked | Complete | 2/2011 (Public Works): Signalized crosswalk on the south side are being added Fiscal Year 2011. 5/2009 (Public Works): Signalized crosswalks are provided on the west and south sides. 10/2008 (PDR): Riverside's #2 priority for FY 2009-10. 8/2008 (NPCT): Safe crosswalks for our dense area are our highest priority. Not only does re-striping need to happen, but need safe protection within the median, better signage and signals. Because of a lack of safe, clearly marked, signalized crosswalks, pedestrians cross anywhere and everywhere, so documentation at any one location is difficult. Issue has surfaced repeatedly in corridor study meetings. Providing a safe way for citizens to cross Riverside at multiple locations as well as Pleasant Valley at Lakeshore is positively a priority. Locations along Riverside include: at Summit, at Lakeshore, at Parker, at Royal Crest, at Tinnin Ford, at Willow Creek, at Pleasant Valley, some point between Pleasant Valley and Willow Creek and Lakeshore at Pleasant Valley. The Country Club Creek Trailhead, plainly visible now on the east side of this intersection, needs sage crossings across Pleasant Valley to both the south side of Lakeshore Blvd. and the north side. Additional crosswalks are also needed at bus stops. | | Public Works | Austin Transportation Department |

### Non-Capital Improvement Project

<table>
<thead>
<tr>
<th>Action Item/ Recommendation</th>
<th>Priority Ranking and Fiscal Year</th>
<th>Status</th>
<th>Staff Comments</th>
<th>Contact Team Comments</th>
<th>Primary Resource</th>
<th>Secondary Resource</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retain single family uses in established single family neighborhoods.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td></td>
<td></td>
<td>Planning &amp; Zoning Department</td>
<td></td>
</tr>
</tbody>
</table>
### Action Item/Recommendation

<table>
<thead>
<tr>
<th>#</th>
<th>Priority Ranking and Fiscal Year</th>
<th>Status</th>
<th>Staff Comments</th>
<th>Contact Team Comments</th>
<th>Primary Resource</th>
<th>Secondary Resource</th>
</tr>
</thead>
<tbody>
<tr>
<td>88</td>
<td>Not Ranked</td>
<td>Complete</td>
<td>6/2014 (PDRD): The boardwalk trail is complete. 10/2013 (PDRD): The boardwalk trail is under construction. PARD (2006): This DRF would lead to the completion of the Town Lake hike and bike trail within the neighborhood plan area as this area develops/redevelops (this will require amending the Waterfront Overlay District East Riverside Subdistrict Requirements). For 1818 S. Lakeshore specifically, PARD requested that a trail easement be retained if the City sells the property to the developer. It is preferable that trail alignment be negotiated through the north side of the property along the lake.</td>
<td></td>
<td>Property Owners</td>
<td>PARD</td>
</tr>
<tr>
<td>89</td>
<td>Not Ranked</td>
<td>Complete</td>
<td>5/2013 (PARD): In 2010, 30 trees were planted in the ROW North of Lakeshore Blvd. Species included: Mexican White Oak, American Smoketree, Mexican Buckeye, Texas Redbud, Rusty Blackhaw Viburnum, Mexican Plum, Texas Mountain Laurel, Cedar Elm, Yaupon Holly, Chinquapin Oak. 26 trees were also planted between the ROW and Lady Bird Lake. Species included: Lacy Oak, Chinquapin Oak, Texas Redbud, Mexican Buckeye, Cedar Elm, Yaupon Holly, Texas Mountain Laurel. 9/2011 (PARD): Site plan reviewers and City Arborist are reviewing plans which ensure compliance with the PUD and the intent of the tree preservation ordinance. This includes both trees located on private property and trees located within the public Right of Way. 9/2011 (NPCT): The developer agreed to protect these trees. City officials in the appropriate departments should carefully monitor this protection throughout development stages. This is a recommendation in the EROC plan. Riverside’s #6 priority for FY 2012-13. 10/2008: Riverside’s #10 priority for FY 2009-10. 8/2008 (NPCT): Some of these trees are on property purchased for redevelopment and should be protected at any cost.</td>
<td></td>
<td>PARD</td>
<td>Development Services Department</td>
</tr>
<tr>
<td>Action Item/ Recommendation</td>
<td>Priority Ranking and Fiscal Year</td>
<td>Status</td>
<td>Staff Comments</td>
<td>Contact Team Comments</td>
<td>Primary Resource</td>
<td>Secondary Resource</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>--------</td>
<td>----------------</td>
<td>-----------------------</td>
<td>-----------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Preserve and maintain all City-owned and acquired park space and conservation easements as such.</td>
<td># 2 Parker Lane; 2 Riverside, FY 2015-16</td>
<td>Complete</td>
<td>1/2014 (PARD): Prior comments still applicable. 9/2011 (PARD): PARD land is dedicated parkland and is protected by both State parks code and the City’s charter. Specific procedures - including a public vote in many cases - must occur in order to change parkland to a different use than public parkland. However, resources are limited - maintenance will occur as budget allows. There may be an opportunity for a partnership with adopt-a-park. 9/2011 (PW Real Estate): Once an easement is conveyed to the City, the requesting Dept. Would build or construct their infrastructure. The Easement surface is still enjoyed by the land owner and is still considered part of their property.</td>
<td>9/2011: Parker Lane’s #8 priority for FY 2012-13. 10/2008: Parker Lane’s #8 priority for FY 2009-10. 8/2008 (NPCT): The section of Guerrero Park through which the Country Club Creek Trail runs (south of Krieg Fields and across from the PARD maintenance center) is not currently being maintained, except by SEATAG volunteers.</td>
<td>PARD</td>
<td></td>
</tr>
<tr>
<td>Provide the following public amenities at Mabel Davis Park in this order of priority: Priority #6 - Open field for unstructured use like ultimate Frisbee, softball, or kickball.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>12/2010 (PARD): Open plan does exist.</td>
<td></td>
<td>PARD</td>
<td></td>
</tr>
<tr>
<td>Work with any and all organizations to complete the Town Lake Hike-and-Bike Trail and provide and encourage pedestrian use.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>6/2014 (PDRD): The boardwalk trail is complete. 1/2014 (PDRD): Construction of the boardwalk trail is 85% complete. The Trail Foundation contributed $3 million to the project, and the remaining costs are funded by 2010 and 2012 bonds. 10/2013 (PDRD): The boardwalk trail is under construction.</td>
<td></td>
<td>PARD</td>
<td>Public Works</td>
</tr>
</tbody>
</table>
Regional Mobility - Project Risks
The two biggest risks identified at this time are:
1) R2 – Spicewood Springs Road: Community input has not been collected to date. This risk will be mitigated by up-front early public engagement as part of the PER process.
2) Partnership Project Delivery for R1, R4, R5 & R6 is contingent upon environmental review/approval process and partner delivery schedule. This risk will be mitigated with constant communication with partners and timely execution of Advanced Funding Agreements.

2016 Mobility Bond
Corridor Improvement Projects ($482 million)

Introduction
The 2016 Mobility Bond dedicates $482 million to Corridor Improvement Projects. Per Council Resolution 20160818-074 (Council’s “Contract with Voters”), the funding is to be invested in implementation of Corridor Plans for:

- North Lamar Boulevard
- Burnet Road
- Airport Boulevard
- East Martin Luther King Jr Boulevard/FM 969
- South Lamar Boulevard
- East Riverside Drive
- Guadalupe Street
- William Cannon Drive and/or Slaughter Lane

New Corridor Preliminary Engineering Reports (PERs) and Additional Critical Arterials/Corridors
The 2016 Mobility Bond includes funding for preliminary engineering and design of improvements for additional critical arterials and corridors. Aside from William Cannon Drive and/or Slaughter Lane, the projects in this category are not eligible for construction through the 2016 Mobility Bond Program. The critical arterials and corridors for preliminary engineering and design are:

- William Cannon Drive
- Slaughter Lane
- North Lamar/Guadalupe Street (additional segment)
- Rundberg West
- Rundberg East
- Colony Loop Road
- East Martin Luther King Jr. Boulevard/FM 969 (additional segment)
- South Congress Avenue
- Manchaca
- South Pleasant Valley
Early-Out Projects

Per Resolution 20160818-074, William Cannon Drive and Slaughter Lane are the two corridors that could receive project implementation funding in the 2016 Mobility Bond but do not already have a completed preliminary engineering study. As such, Staff has expedited preliminary engineering for these two corridors using an existing, Council-authorized engineering rotation list for individual corridor consultant
assignments. The City provided a Notice to Proceed to the engineering firms in February 2017 and we anticipate launching the first round of public input in April 2017.

Project Delivery
On Feb. 9, 2016, City Council approved a contract award for HDR Engineering to serve as the Corridor Improvements Consultant. The Consultant will provide the following services:

- Assist in the development of the Corridor Construction Program as directed by Council’s contract with the voters, Resolution 20160818-074.
- Capture best practices and lessons learned for enhancing, improving and accelerating capital project delivery processes to assist Staff in meeting the goal of an eight-year delivery timeframe.
- Develop a Communications and Community Outreach Plan for the Corridor Program and assist in its implementation.
- Develop and assist in the implementation of a MBE/WBE Outreach Plan for the Corridor Program.
- Provide other services as needed for the Corridor Program such as Staff augmentation, inter-agency coordination and program management assistance during implementation.

In December 2016, Interim City Manager Elaine Hart established the Corridor Program Implementation Office. The mission of the Corridor Program Implementation Office is to design and construct corridors that support mobility, livability, and other outcomes as outlined by City Council for the 2016 Mobility Bond Program. The Corridor Program Implementation Office will work with the Corridor Consultant to develop the Corridor Construction Program for Council’s consideration.

Following Council consideration and approval of the Corridor Consultant contract award, staff has been working with the selected team to negotiate and finalize a contract so that the consultant can begin work as soon as possible. We anticipate that a final contract will be in place by March 2017. Staff will be returning to Council to provide an update on the prioritization criteria that will be used for Corridor Construction Program project selection. In early 2018, Staff and the consultant will again return to Council to provide recommendations for the Corridor Construction Program as outlined in the Contract with the Voters.

Once Council approves the Corridor Construction Program, we will advance the recommended projects into design and construction phases and seek opportunities for accelerated delivery in order to meet the goal of an eight-year implementation timeframe.
Corridor Improvements Implementation Plan

### Phasing and Expenditure Plan

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
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<tbody>
<tr>
<td><strong>Construction Program</strong></td>
<td>$2M</td>
<td>$27.5M</td>
<td>$42.5M</td>
<td>$80M</td>
<td>$110M</td>
<td>$110M</td>
<td>$80M</td>
<td>$25M</td>
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<tr>
<td><strong>New PERs/Design</strong></td>
<td>$2M</td>
<td>$2.5M</td>
<td>$0.5M</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Expenditure Total = $482M</strong></td>
<td>$4M</td>
<td>$30M</td>
<td>$43M</td>
<td>$80M</td>
<td>$110M</td>
<td>$110M</td>
<td>$80M</td>
<td>$25M</td>
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</tbody>
</table>

### Project Selection

Council’s Contract with Voters is the guiding document for implementation of the Corridor Improvement Projects. The contract articulates a desired eight-year implementation timeframe and describes criteria to be used for project selection. The contract directs the City Manager, upon voter approval, to “begin coordination, design, and engineering activities as soon as possible” for North Lamar Boulevard, Burnet Road, Airport Boulevard, East Martin Luther King Jr Boulevard/FM 969, South Lamar Boulevard, East Riverside Drive, Guadalupe Street, William Cannon Drive, and/or Slaughter Lane. The Resolution directs that “these activities are to “develop recommendations for a construction program for City Council consideration.”

When we have gathered sufficient data to develop potential construction elements for the Corridor Improvement Projects, and before any construction funding is appropriated or construction initiated for these projects, the City Manager is directed to bring forth recommendations supported by identifiable metrics for implementation of a ‘Corridor Construction Program’ in ways that prioritize: a) reduction in congestion; b) improved level of service and reduced delay at intersections for all modes of travel; c) connectivity, and improved effectiveness of transit operations within these corridors and throughout the system; and subject to the foregoing, also makes allowances for: i) preservation of existing affordable housing and local businesses on the corridors, and opportunities for development of new affordable housing along the corridors, including, but not limited to, the use of community land trusts, tax increment finance zones along corridors, homestead preservation zone tools, revisions to the S.M.A.R.T. Housing Program, and targeted investments on the corridors utilizing affordable housing bonds and the Housing Trust Fund; ii) geographic dispersion of funding; and iii) opportunities to facilitate increased supply of mixed-income housing.
Subject to the above, the contract says that Corridor Construction Program “shall recommend implementation timelines in accordance with need, as established by the Imagine Austin Comprehensive Plan, the Critical Arterials List, Top Crash Location Intersection Priorities List, and other policy plans” identified in the Contract with Voters.

Also subject to the above, “in implementing the ‘Corridor Construction Program,’ the City Manager shall further emphasize making corridors livable, walkable, safe, and transit-supportive, and aligned with the principles and metrics in the Imagine Austin Comprehensive Plan, with the goals of reducing vehicle miles travels, increasing transit ridership and non-vehicular trips, and promoting healthy, equitable, and complete communities as growth occurs on these corridors.”

The Contract with Voters directs the City Manager to “revisit and update existing corridor plans as needed to ensure final design and implementation conforms to the region’s most recently adopted transportation plans and recently adopted policies and standards for transportation infrastructure design, including, but not limited to”:

- Capital Metro Connections 2025
- Capital Metro Service Guidelines and Standards
- Project Connect Regional High Capacity Transit Plan
- City of Austin Strategic Housing Plan
- City of Austin Transit Priority Policy
- City of Austin Strategic Mobility Plan
- City of Austin Sidewalk Master Plan
- City of Austin Urban Trails Master Plan
- Vision Zero Plan
- Applicable National Association of City Transportation Officials standards
- Imagine Austin Comprehensive Plan

**Corridor Improvement Project Risks**

The delivery of wide-scale transportation projects, such as improvements that will be undertaken as part of the Corridor Construction Program, require a high-level of planning, analysis, coordination, and public input. Project risks can be divided into four primary categories and are described below:

- **Accelerated delivery:** The scale of the program and accelerated delivery schedule outlined in the Contract with Voters will require additional resources. City Staff is conducting an analysis on existing available resources as well as resource needs, and will be returning to City Council in April with this information. In addition, we are looking at strategies to mitigate risks associated with project delivery components that can take longer to resolve, such as utilities coordination/relocation and real estate acquisition that might be associated with project implementation.

- **Multiple phases of work required:** Moving from project planning to construction is a process, and projects that comprise the Corridor Construction Program require preliminary and design phases of work as well as feasibility and constructability assessments. These activities must take place before construction may begin.

- **Coordination is key:** Planning and delivery of corridor improvements requires internal and external coordination. Coordination will be needed with the public and private utilities as well as
RESOLUTION NO. 20190207-014

WHEREAS, Vi Collina, LLC ("Applicant"), its successors, assigns, or affiliates, proposes to construct an affordable housing multi-family housing development of approximately 84 units to be located at or near 2401 E. Oltorf Street ("Development") within the City of Austin using 9% Low Income Housing Tax Credits; and

WHEREAS, the Development will be located within the East Riverside/Oltorf Combined Neighborhood Plan Area, which was approved on November 16, 2006, in Ordinance No. 20061116-055; and

WHEREAS, the Texas Department of Housing and Community Affairs awards two points to an applicant if the governing body confirms that the particular tax credit project will contribute most significantly to concerted revitalization efforts in a specific area of the municipality; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council confirms and designates the Applicant’s proposed Development as the development that will contribute most significantly to the concerted revitalization efforts within the East Riverside/Oltorf Combined Neighborhood Plan Area.
BE IT FURTHER RESOLVED:

The City Council authorizes, empowers, and directs Jannette S. Goodall, City Clerk, to certify this resolution to the Texas Department of Housing and Community Affairs.

ADOPTED: February 7, 2019

ATTEST: [Signature]

Jannette S. Goodall
City Clerk
February 25, 2019

Megan Lasch
Saigebrook Development
421 West 3rd Street, suite 1504
Austin, TX 78701

Re: Resolution of Support for Vi Collina

Dear Ms. Lasch,

At the Austin City Council meeting on February 7, 2019, staff presented the requests from multiple entities for resolutions of support for applications to the Texas Department of Housing and Community Affairs Competitive Low Income Housing Tax Credit Program. Generally, staff presents these resolutions en masse, having reviewed and vetted each request, and Council approves the resolutions on consent. This year, the City of Austin received eighteen requests for resolutions of support, with ten proposals ultimately going before Council. As staff worked to prepare all of the documentation and resolutions for Council to approve, we unfortunately made a minor error in the drafting of the resolution of support for Vi Collina. This resolution was advertised and listed in the agenda as being in support of the Vi Collina application. The language in the agenda clearly stated that this resolution was to be in support of Vi Collina. The supporting documentation for this agenda item included the original request from you, the applicant, for a resolution of support for Vi Collina, as well as multiple documents showing staff’s analysis of the location proposed in your application. Further, the resolution lists Vi Collina, LLC as the “applicant” and identifies the proposed development to be located at 2401 East Oltorf Street. Unfortunately, the resolution then states that the applicant intends to apply for the tax credits for “the Development to be known as Tierra Skyline.” This was an error. The resolution is in support of the application submitted by Vi Collina, LLC for the development to be located at 2401 East Oltorf Street, to be known as Vi Collina, or whatever name the developer ultimately chooses. Please accept this as an explanation of events and an apology for the confusion.

Sincerely,

[Signature]

James B. May, AICP
Community Development Manager
Neighborhood Housing and Community Development
## Vi Collina
### Opportunity Index Amenities

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Address</th>
<th>City</th>
<th>Zip</th>
<th>Distance (mi)</th>
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</thead>
<tbody>
<tr>
<td>III</td>
<td>H-E-B Plus Supermarket</td>
<td>2508 E. Riverside Dr.</td>
<td>Austin</td>
<td>78741</td>
<td>.63</td>
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<td>IV</td>
<td>H-E-B Plus Pharmacy</td>
<td>2508 E. Riverside Dr.</td>
<td>Austin</td>
<td>78741</td>
<td>.63</td>
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<td>V</td>
<td>FastMed Urgent Care</td>
<td>1920 E. Riverside Dr.</td>
<td>Austin</td>
<td>78741</td>
<td>.92</td>
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<td>VI</td>
<td>Children's Choice Learning Center</td>
<td>3819 S IH 35</td>
<td>Austin</td>
<td>78741</td>
<td>1.21</td>
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<tr>
<td>IX</td>
<td>The University of Texas at Austin</td>
<td>1823 Red River St.</td>
<td>Austin</td>
<td>78712</td>
<td>3.77</td>
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<td>XI</td>
<td>Planet Fitness</td>
<td>1819 S. Pleasant Valley Rd.</td>
<td>Austin</td>
<td>78741</td>
<td>.67</td>
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<td>XII</td>
<td>Mabel Davis District Park</td>
<td>3427 Parker Ln.</td>
<td>Austin</td>
<td>78741</td>
<td>.57</td>
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<td>XIII</td>
<td>Faith Food Pantry</td>
<td>1314 E. Oltorf St.</td>
<td>Austin</td>
<td>78704</td>
<td>.77</td>
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<tr>
<td>XIV</td>
<td>Meals on Wheels</td>
<td></td>
<td></td>
<td></td>
<td>Svc Area</td>
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<thead>
<tr>
<th>#</th>
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<th>Data</th>
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<tbody>
<tr>
<td>X</td>
<td>Associates Degree</td>
<td>30.06%</td>
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</tbody>
</table>
Riverside H-E-B plus!

2508 EAST RIVERSIDE DRIVE
AUSTIN, TX 78741 33537
Corporate #:1

Get directions.

Nearby Stores

South Congress H-E-B
2400 S. CONGRESS
AUSTIN, TX 78704 5512
Store Phone: (512) 442 - 2354
Store Hours: Mon-Sun 06:00 AM - 12:00 AM
Pharmacy Phone: (512) 442 - 1976
Pharmacy Hours: Mon-Fri 09:00 AM - 09:00 PM
Sat 09:00 AM - 06:00 PM
Sun 10:00 AM - 05:00 PM

Curbside Pickup

Store Details  Make My H-E-B Store

Avon

Available Store Services

Bakery
- Scratch Bakery
- Tortillas

Drug and General Merchandise
- Beauty
- Entertainment

Flower Shop
- Delivery
- Floral
- Winery Service

Meat Market
- Custom Meat Cutting
- Grass Fed Beef
- Organic Meat
- Prime Beef

Online Services
- Curbside
- Delivery

Produce
- Fruits
- Fresh Guacamole

Seafood
- Fresh Market
- Sushi

Store Services
- Brisket Grid Cleaner
- Business Clinton
- Car Wash
- Coin Star
- Dietitian/Nutritionist
- Gas Station
- Plant Store

Compounding
- Delivery
- Drive Thru
- Immunizations
- Pharmacy
- ScriptTalk
Texas Pharmacy License # 21106

HEB PHARMACY #091

License Information

License Status  Active
License #  21106
Expiration Date  08/31/2019
Date License Issued  08/13/2001

Address

2508 E RIVERSIDE DR
AUSTIN, TX  78741-3037
County  TRAVIS
Phone  (512) 448-3353

Pharmacy Details

Prior Disciplinary Orders*  No

* Information relating to disciplinary orders is current as of 30 days prior to this date. Please note that disciplinary orders entered more than 10 years ago are not available online. A written request for information regarding prior disciplinary orders may be submitted to the office of the Texas State Board of Pharmacy. Any disciplinary orders entered pursuant to Chapter 564 of the Texas Pharmacy Act are confidential and not subject to public disclosure.

Class of Pharmacy  Community Pharmacy
Type of Ownership  Partnership
Type of Pharmacy  Community Multi
# of Hospital beds  0

Employment Information

Pharmacist in Charge
GUERRA, ELOY

Pharmacy Profile

Accessible to disabled persons?  Yes
Participates in the Texas Medicaid program?  Yes
Translating services (Listed Below If Available)

Spanish
Other

¥ Please note: The data regarding accessibility, translating services, and insurance participation is self-reported by the license holder and no warranty regarding the information is created. Therefore, neither the State of Texas nor the licensing agency accept any legal liability or responsibility or may be held liable or responsible for the accuracy, completeness, timeliness, or usefulness of this information. Should you have any concern as to the accuracy of the data in this system, please contact the license holder or facility for clarification.

Remedial Plans

Remedial plans (if any) are shown above and subject to removal at the end of the 5th fiscal year after the Board enters the plan.

Services Provided

No Nuclear
Yes Out-Patient Prescriptions
No Ship Prescription Out of State
No Class D (Expanded Formulary)
No Class D (Alternative Visit Schedule)
No Compounding Sterile-Risk Level Low
No Compounding Sterile-Risk Level Med
No Compounding Sterile-Risk Level High
No Compounding Non-Sterile
No 24 Hour Service
No Closed Door
No Compounding, Office Use
Yes Home Delivery
No Infusion
Yes Pharmacist Administered Immunizations
Yes Veterinary Prescriptions
The Texas State Board of Pharmacy certifies that it maintains the information for the license verification function of this website, performs daily updates to the website, and considers the website to be a secure, primary source for license verification.

### Texas Pharmacist Employment information

<table>
<thead>
<tr>
<th>Pharmacist Name</th>
<th>License #</th>
<th>Registr. Date</th>
<th>Expir. Date</th>
<th>Emp. Status</th>
<th>License Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>CROFFORD, JENE MENDEZ</td>
<td>29079</td>
<td>03/05/1986</td>
<td>02/29/2020</td>
<td>Staff</td>
<td>Acti</td>
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<tr>
<td>GUERRA, ELOY</td>
<td>30844</td>
<td>03/01/1989</td>
<td>07/31/2020</td>
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<td>Acti</td>
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<tr>
<td>HAMMETT, AMY LYNN</td>
<td>48609</td>
<td>07/02/2010</td>
<td>03/31/2020</td>
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### Texas Registered Technicians/Trainees Employment information

<table>
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<tr>
<th>Technician/Trainee Name</th>
<th>License #</th>
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<th>Expir. Date</th>
<th>Emp. Status</th>
<th>Reg. Status</th>
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<tr>
<td>HOFF, HEATHER A</td>
<td>100937</td>
<td>05/18/2004</td>
<td>09/30/2020</td>
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<td>Acti</td>
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<tr>
<td>JAMES, ROBYN</td>
<td>258599</td>
<td>08/08/2016</td>
<td>08/31/2020</td>
<td>Staff</td>
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</tr>
<tr>
<td>MARTINEZ, LILIANA MICHAELLA</td>
<td>185223</td>
<td>06/25/2010</td>
<td>06/30/2020</td>
<td>Staff</td>
<td>Acti</td>
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### Texas Remote Pharmacy information

No records to view

### Texas Pharmacy Owner information

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LOCATIONS IN TEXAS

Austin, TX E Riverside Dr

1920 E Riverside Dr, Suite A110
Austin, TX 78741
Patients Currently In Line: 2

P: 512-326-1600
F: 512-326-1606
Avg. Rating: ★★★★★

Request a Ride:

$25 FLU SHOTS AVAILABLE NOW*

Located off East Riverside Drive and Shore District Drive in the same shopping center as Walgreens and Starbucks. The clinic is between the AT&T store and UPS Store.

WE'RE OPEN TODAY UNTIL 9 PM

Hours

Monday – Friday: 9:00 AM - 9:00 PM
Saturday – Sunday: 9:00 AM - 6:00 PM

Holiday Hours:
We are open from 09:00 AM to 04:00 PM on Thanksgiving, Christmas Eve, Christmas Day, New Year's Day, New Year's Eve, Easter Sunday, Memorial Day, July 4th, and Labor Day.

TREATMENTS

Sprains, Strains, and Broken Bones
Dislocations
Cuts, Scrapes, Wounds, Abrasions, and Burns
Wound Care
Urinary Tract Infections
Bee Stings, Insect Bites, and Allergic Reactions
Sore Throat / Strep Throat Treatment
Dehydration
Sinus Infections
Respiratory Infections
SERVICES

Digital X-rays
EKG
Sutures and Stitches
Labs & X-rays
Physicals
Vaccinations & Immunizations

MORE

Patient Reviews

⭐⭐⭐⭐⭐
"Quick, Easy, and Professional"

⭐⭐⭐⭐⭐
"The staff are friendly and helpful love that they helped my son quickly."

⭐⭐⭐⭐⭐
"Called within 45 minutes of closing, staff was very receptive and courteous. Clean and professional facilities. Would use again if... MORE

⭐⭐⭐⭐⭐
"I liked it they help me they workers were nice every look clean and they helped me a lot thank... MORE
Illnesses And Injuries Treated

Accidents, illnesses, and injuries can happen at any time. Fortunately, when they do, you can turn to FastMed to receive immediate, high-quality medical care. Let us help you get appropriate medical care without the wait for an appointment with your physician or the long wait times typical of most hospital emergency rooms. FastMed Urgent Care clinics treat a wide range of non-life-threatening injuries and illnesses that require immediate attention. These include:

- Acute Pain and Injuries
- Asthma and Trouble Breathing
- Bee Stings, Insect Bites, and Allergic Reactions
- Colds, Flu, Fevers, and Viruses
- Dehydration
- Diabetic Issues
- Dislocations
- Earaches
- Headaches
- High Blood Pressure (Hypertension)
- Minor Dermatology and Skin Care
- Nausea, Vomiting, and Diarrhea
- Respiratory Infections
- Sinus Infections
- Sore Throat / Strep Throat Treatment
- Sports Injuries
- Sprains, Strains, and Broken Bones
- Urinary Tract Infections
- Basic Pulmonary Function Test (Spirometry)
- Cuts, Scrapes, Wounds, Abrasions, and Burns
- Ear Lavage
- EKG
- Incision and Drainage (I&D)
- Medication Administration
- Medical Evaluations
- Minor Surgical Procedures
- Nebulizer Treatments
- Partial Casting/Splinting
- Sutures and Stitches
- Wart and Skin Tag Removal
- Wound Care
FastMed also provides dedicated women's health services for a wide range of women's health needs.

View women's health

FastMed offers urgent care services for a variety of illness and injury needs. These include:

* The content presented on this page is not intended to diagnose health problems or take the place of professional medical care.

Find A Location

Use Current Location

Enter City/State or ZIP

JOINT COMMISSION ACCREDITATION

FastMed is the largest urgent care operator to be awarded the Joint Commission Gold Seal of Approval.

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Treatments And Services

URGENT CARE SERVICES

FLU PREVENTION & TREATMENT

LABS & X-RAYS

PHYSICALS

VACCINATIONS & IMMUNIZATIONS

FAMILY MEDICINE

SPORTS MEDICINE

WOMEN'S HEALTH

EMPLOYERS
Operation Details

You may click on the question mark image () to view the Frequently Asked Questions (FAQ) page.

Operation Number: 1521541
Operation Type: Licensed Center
Program Provided: Child Care Program
Operation/Caregiver Name: Children's Choice Learning Center
Location Address: 3819 S IH 35
                      AUSTIN, TX 78741
Mailing Address: 3819 S IH 35
                  AUSTIN, TX 78741
Phone Number: 737-800-4700
County: TRAVIS
Website Address: www.brighthorizons.com/irs
Email Address: futurestars@brighthorizons.com
Administrator/Director Name: LaVonda Lyles
Type of Issuance: Full Permit
Issuance Date: 8/7/2013
Permit Renewal Due By Date: 8/7/2019
Accepts Child-Care Subsidies: Yes
Hours of Operation: 06:00 AM-06:00 PM
Days of Operation: Monday - Friday
Total Capacity: 134
Licensed to Serve Ages: Infant, Toddler, Pre-Kindergarten, School
Number Of Admin Penalties: 0
Corrective Action: No
Adverse Action: No
Temporarily Closed: No

Three Year Inspection Summary

- Inspectors routinely monitor compliance with Licensing standards, rules and law. At a minimum, licensed and certified operations are inspected at least once a year; Registered Child Care Homes are inspected at least once every two years, Listed Family Homes are inspected only if there is a report of abuse/neglect or if we receive a report that the home is caring for too many children.

- When operations have serious deficiencies or a significant number of deficiencies, repeat deficiencies, or fail to make corrections timely, they are inspected more frequently by licensing staff, to ensure the health and safety of children in care.

- In the last three years, Licensing conducted the following:

  16 - Inspections
  0 - Assessments
  8 - Self Reported Incidents
  1 - Reports

Click on the inspection type to see additional details related to each inspection.

- There are many standards that an operation must comply with; the total number varies for each type of operation. An operation or home is generally given an opportunity to correct deficiencies and has the right to request a review of a deficiency. Deficiencies pending review are not included in the two year history.

Three Year Compliance Summary

- During the last three years, 2072 standards were evaluated for compliance at this operation.

  - Of the standards evaluated 9 deficiencies were cited.

Click on the number of deficiencies to see additional details.

- Each standard is assigned a weight. The weight ensures all inspectors consider standard violations in the same way, and represents the potential impact a deficiency might have on children. Review the inspection reports to learn more about each citation. It's important to remember; weights are not assigned to an individual operation, inspection, or circumstance and are not intended to result in a ranking of operations or score.

- The weights of the standard deficiencies cited in the past three years are as follows:

  4 were weighted as High
  5 were weighted as Medium - High
  0 were weighted as Medium
  0 were weighted as Medium - Low
  0 were weighted as Low

Click on the weight to see additional details about each deficiency.

Disclaimer: The online compliance history includes only information after January 1, 2002. In addition, the online compliance history does not include minimum standard violations or corrective or adverse actions until after the child-care operation has had due process or waived its rights. For compliance history prior to January 1, 2002 or history with pending due process, please contact your local licensing office. Child-Care Licensing disclaims liability for any errors or omissions from the compliance history information.

Website and Email addresses are based on information given to DFPS by the Operation/Caregiver. If you experience problems with these addresses please contact the Operation/Caregiver.
What starts here changes the world.

The University of Texas at Austin provides public access to a first-class education and the tools of discovery. This has resulted in a culture of ambition and leadership, where physical scale is matched by bold goals and achievements.

Serving the State
From the Panhandle to the Gulf Coast, UT is improving the lives of Texans across the state.
LEARN MORE

Transforming Healthcare
At UT Health Austin, Dell Medical School faculty are providing direct patient care to the people of Austin and Travis County.
LEARN MORE

Diversity and Inclusion Plan
A blueprint for creating a more inclusive campus culture that involves all schools, colleges and administrative units on campus.
LEARN MORE
Ann Huff Stevens Appointed Dean of UT Austin's College of Liberal Arts

UT Austin has named Ann Huff Stevens the next dean of the College of Liberal Arts. Her appointment will begin July 15, 2019. READ MORE

Latest News and Stories

Evolution Used Same Genetic Formula to Turn Animals Monogamous

Females Prefer City Frogs' Tunes

Newly Identified Gravitational Waves Help Pinpoint Black Hole

Liberal Arts Student Awarded British Marshall Scholarship

Scientists Coax Proteins to Form Synthetic Structures with Method that Mimics Nature

MORE STORIES

From script to screen, Prof. McConaughey takes students behind the scenes of his latest projects https://t.co/B43rWUowSf

1 day ago

FOLLOW @UTAUSTIN

1 day ago
Missed the gym this morning, but I can vouch for the conclusions of this research! [https://t.co/KnpyslFmfI](https://t.co/KnpyslFmfI)

1 day ago

---

**Upcoming Events**  
Explore the latest events on the Forty Acres

**“Grid Cybersecurity” -UT Energy Week 2019 -Day 1, Panel 1**  
Monday Feb. 4

**Panel: “Environmental History and the Legacy of Alfred W. Crosby” (Reclaiming the Pre-Modern Past)**  
Monday Feb. 4

**Yoram Bauman - The World’s First and Only Stand-Up Economist**  
Monday Feb. 4

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## Public Universities

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<th>Institution</th>
<th>Administrative Officer</th>
<th>Main Telephone</th>
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<tbody>
<tr>
<td>Angelo State University</td>
<td>Brian J. May, President</td>
<td>(325) 942-2073</td>
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<tr>
<td>Lamar University</td>
<td>Kenneth Evans, President</td>
<td>(409) 880-7011</td>
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<tr>
<td>Midwestern State University</td>
<td>Suzanne Shiple, President</td>
<td>(940) 397-4000</td>
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<tr>
<td>Prairie View A&amp;M University</td>
<td>Ruth J. Simmons, Interim President</td>
<td>(936) 857-3311</td>
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<tr>
<td>Sam Houston State University</td>
<td>Dana G. Hoyt, President</td>
<td>(866) 294-1111</td>
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<tr>
<td>Stephen F. Austin State University</td>
<td>Steve Westbrook, Interim President</td>
<td>(936) 468-2011</td>
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<tr>
<td>Sul Ross State University</td>
<td>William (Bill) Kibler, President</td>
<td>(432) 837-8011</td>
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<tr>
<td>Sul Ross State University Rio Grande College</td>
<td>William (Bill) Kibler, President</td>
<td>(830) 278-3339</td>
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<td>Tarleton State University</td>
<td>F. Dominic Dotavio, President</td>
<td>(254) 968-9000</td>
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<tr>
<td>Texas A&amp;M International University</td>
<td>Pablo Arenaz, President</td>
<td>(956) 326-2001</td>
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<td>Texas A&amp;M University</td>
<td>Michael K. Young, President</td>
<td>(979) 845-3211</td>
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<tr>
<td>Texas A&amp;M University at Galveston</td>
<td>Col. Michael E. Fossum, Chief Operating Officer</td>
<td>(877) 322-4443</td>
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<td>Texas A&amp;M University System</td>
<td>John Sharp, Chancellor</td>
<td>(979) 458-6000</td>
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<td>Texas A&amp;M University-Central Texas</td>
<td>Marc Niglazzio, President</td>
<td>(254) 519-5400</td>
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<tr>
<td>Texas A&amp;M University-Corpus Christi</td>
<td>Kelly M. Quintanilla, President/CEO</td>
<td>(361) 825-5700</td>
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<td>Texas A&amp;M University-Kingsville</td>
<td>Steven H. Tallant, President</td>
<td>(361) 593-3207</td>
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<td>Cynthia Teniente-Matson, President</td>
<td>(210) 932-6299</td>
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<td>Texas A&amp;M University-Texarkana</td>
<td>Emily F. Cutrer, President</td>
<td>(903) 223-3000</td>
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<td>Austin A. Lane, President</td>
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<td>Denise Truth, President</td>
<td>(512) 245-2111</td>
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### Latest News

- **01/31/2019** Data Resources for 2019
  - LBB Measures
- **01/25/2019** Dual Credit Enrollment
  - Data Updated for 2019
- **01/24/2019** Enrollment Forecast 2019-2030 for Texas Institutions of Higher Education
- **12/12/2018** 2016 Annual Texas Success Initiative Assessment (TSIA) Summary Score Report
- **10/30/2018** 2016-2017 Annual TSI High School Summary Report

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### e-UPDATES

- Subscribe to updates: [subscribe](#)
ABOUT

We strive to create a workout environment where everyone feels accepted and respected. That's why at Planet Fitness Austin (E. Riverside), TX we take care to make sure our club is clean and welcoming, our staff is friendly, and our certified trainers are ready to help. Whether you're a first-time gym user or a fitness veteran, you'll always have a home in our Judgement Free Zone™.

MEMBERSHIPS

Select the right membership for you.

Have a Promo Code?

Enter Promo Code Here  Apply

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Benefits

- Unlimited Access to Home Club
- Free Fitness Training
- Free WiFi
- Reciprocal use of all Planet Fitness® Franchise Locations
- Unlimited Guest Passes at All Planet Fitness Locations
- Unlimited Use of Hydromassage
- Use of Tanning
- Unlimited Total Body Enhancement
- Unlimited Use of Massage Chairs
- 1/2 Price Cooler Drinks (Restrictions may apply)
- PF Black Card Key Tag
- 25% off Reebok products
Mabel Davis District Park

Accessing the Park
ADDRESS
6071 Peggy Ln, Austin, TX 78730

Quick Facts
THIS PARK IS ADOPTED!
Want to be connected to the Adopt-A-Park group? Contact us at AdoptAPark@austinparks.org.

Popular For:
- Swimming
- Skateboarding
- Playground
- Picnics
- Basketball

For more park information or reservations visit: Austin Parks & Recreation.

APF Projects in the Park:

Adopt-A-Park Featured Park: Mabel Davis

More Photos

Donate to the Parks

Contact Information

Name *
First Name: [Field]
Last Name: [Field]

Email *
email@example.com

Address *
Address Line 1: [Field]
Address Line 2: [Field]
City: [Field]
State/Province: [Field]
ZIP/Postal Code: [Field]
Country: [Field]

Phone: [Field]

Is this gift anonymous?
- No
- Yes

Is this a tribute gift?
- No
- Yes, in honor of
- Yes, in memory of

Make an Evergreen (recurring) or One-time Gift?
One Time

Donation Amount *
- $10
- $25
- $50
- $100
- $500

- $1

* Required fields
SKATE PARKS

The Austin Parks and Recreation Department currently operates two skate parks - one in Mabel Davis District Park and the Heath Eiland and Morgan Moss BMX Skate Park at 1213 Shoal Creek Boulevard next to Austin Recreation Center.

Mabel Davis District Park - Skate Park

Austin's first skate park is located in Mabel Davis District Park at 3427 Parker Lane. The skate park includes a skate bowl, streetscape elements and a grass seating area for interested onlookers. It opened in late-2005 and is a 12,000-square-feet concrete skate park.

Heath Eiland and Morgan Moss BMX Skate Park

Heath Eiland and Morgan Moss BMX Skate Park opened at 1213 Shoal Creek Boulevard on June 16, 2011. This 30,000-square-feet facility features a skate bowl, large plaza with streetscape elements, shade structures, unisex restroom and skateable public art piece. This project was funded by the 2006 bond election and designed by New Line Skateparks out of British Columbia, Canada.
The Faith Food Pantry helps over 200 persons in 70 families per month, with an all-volunteer staff filling requests for food that we receive from other churches and social service agencies, who call the pantry's unlisted telephone number to request groceries for their members or clients. The history of our church's food pantry includes starting four other Austin pantries, and in founding the Central Texas Food Bank.
MEALS ON WHEELS
Greater Austin Prepared Meal Delivery Service for Seniors and Adults with Disabilities
The Meal Delivery Program is a holistic nutrition program that provides home delivered prepared meals for seniors and other homebound clients throughout the Greater Austin area. This program provides case management services to individuals enrolled in the Meals on Wheels program. Each recipient receives one hot meal per day during the week and may have an option of receiving supplemental frozen meals for the weekend. To see if you or someone you know may qualify for home delivered meals, check our eligibility list below.

**ELIGIBILITY**

Individuals must be:

- Primarily homebound
- Unable to easily prepare nutritious meals
- Without consistent daytime assistance from another person
- Able to accept meals during the delivery time frame
- **Must live in the Greater Austin Area**

Each applicant will be assessed by a MOWCTX supportive case manager to ensure that eligibility requirements are met. Short-term service is available to those with temporary meal needs.

Interested in our services? Fill out our inquiry form by [clicking here](https://www.mealsonwheelscentraltexas.org/get-involved/interested-in-receiving-services).

**QUICK LINKS**

- Apply for Our Services ([/get-involved/interested-in-receiving-services](#))
- Cancel My Meal ([mailto:mealcancel@mealsonwheelsandmore.org?subject=Cancel My Meal](mailto:mealcancel@mealsonwheelsandmore.org?subject=Cancel My Meal))
- Find Meal Programs Outside Our Service Area ([https://www.mealsonwheelsamerica.org/sign-up/find-programs](https://www.mealsonwheelsamerica.org/sign-up/find-programs))

**NUTRITIONAL FACTS**

Menus are planned and prepared under the supervision of a RDN. Our meals are whole-food based and provide an array of nutrients and phytochemicals to promote optimum health.

- ([nutritional-facts](#))
- Nutritional Information

**CASE MANAGEMENT**

- ([about-us/case-management](#))
- Learn more about Case Management

**CALL TO VOLUNTEER**

We have many open meal delivery routes all over the Austin area.
ORDINANCE NO. 20061116-055

AN ORDINANCE AMENDING THE AUSTIN TOMORROW COMPREHENSIVE PLAN BY ADOPTING THE EAST RIVERSIDE/OLTORF COMBINED NEIGHBORHOOD PLAN.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS.

(A) In 1979, the City Council adopted the “Austin Tomorrow Comprehensive Plan”

(B) Article X, Section 5 of the City Charter authorizes the City Council to adopt by ordinance additional elements of a comprehensive plan that are necessary or desirable to establish and implement policies for growth, development, and beautification, including neighborhood, community, or area-wide plans

(C) In October, 2003, an initial survey was distributed to residents in the neighborhood planning area, and subsequent meetings were held with the City of Austin Neighborhood planning staff and homeowners, renters, business owners, non-profit organizations and non-resident property owners to prepare a neighborhood plan. The East Riverside/Oltorf Combined Neighborhood Plan followed a process first outlined by the Citizens’ Planning Committee in 1995, and refined by the Ad Hoc Neighborhood Planning Committee in 1996. The City Council endorsed this approach for neighborhood planning in a 1997 resolution. This process mandated representation of all of the stakeholders in the neighborhood and required active public outreach. The City Council directed the Planning Commission to consider the plan in a 2003 resolution. During the planning process, the East Riverside/Oltorf Combined Neighborhood Plan planning team gathered information and solicited public input through the following means:

1. neighborhood planning team meetings,
2. collection of existing data,
3. neighborhood inventory,
4. neighborhood survey,
5. neighborhood workshops, and
(6) community-wide meetings

(D) The East Riverside/Oltorf Combined Neighborhood Plan recommends action by the neighborhood planning team, the City, and by other agencies to preserve and improve the neighborhood. The East Riverside/Oltorf Combined Neighborhood Plan has thirteen major goals:

(1) Preserve and enhance the character of existing residential neighborhoods

(2) Increase home ownership opportunities that are compatible with surrounding properties

(3) Improve the appearance, vitality and safety of existing commercial corridors and community amenities and encourage quality urban design and form that ensures adequate transition between commercial properties and adjacent residential neighborhoods

(4) Encourage a balanced mix of residential, civic, commercial, office and other land uses without adversely affecting adjacent residential neighborhoods

(5) Enhance the transportation network to allow residents and visitors to get around safely and efficiently by foot, bicycle, automobile, and public transit

(6) Protect and enhance the Town Lake Waterfront as well as creek areas and other natural amenities

(7) Preserve and enhance existing parks, the 18-hole Riverside Golf Course and other open spaces and create opportunities for additional public open space

(8) Provide affordable housing opportunities through redevelopment of existing multifamily developments

(9) Create interesting, lively, inviting, attractive, safe and comfortable non-residential environments that will encourage walking, biking and transit use and be appealing to passing motorists

(10) Create convenient and accessible parking areas that do not dominate the environment and provide safe interaction between vehicles and pedestrians

(11) Encourage urban design strategies for single-family neighborhoods that preserve, complement and enhance existing character
(12) Promote multifamily structures that relate well to the surrounding environment, utilize a variety of building forms, have a thoughtful parking scheme, provide public open space and include a variety of appropriate landscape options.

(13) Minimize the visual impact of industrial properties from other districts and public spaces in the neighborhood planning area.

(E) The East Riverside/Oltorf Combined Neighborhood Plan goals are further described in the Land Use, Urban Design, Transportation, and Parks, Trails, Open Space and the Natural Environment sections of the Plan.

(F) On June 13, 2006, the Planning Commission held a public hearing on the East Riverside/Oltorf Combined Neighborhood Plan, and recommended adoption of the plan by the City Council.

(G) The East Riverside/Oltorf Combined Neighborhood Plan is appropriate for adoption as an element of the Austin Tomorrow Comprehensive Plan. The East Riverside/Oltorf Combined Neighborhood Plan furthers the City Council’s goal of achieving appropriate, compatible development within the area. The East Riverside/Oltorf Combined Neighborhood Plan is necessary and desirable to establish and implement policies for growth, development, and beautification in the area.

PART 2. ADOPTION AND DIRECTION.

(A) Chapter 5 of the Austin Tomorrow Comprehensive Plan is amended to add the East Riverside/Oltorf Combined Neighborhood Plan as Section 5-21 of the Comprehensive Plan as set forth in Exhibit A, and the Future Land Use Map as set forth in Exhibit B, and which are incorporated as part of this ordinance, save and except the following properties:

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<tr>
<th>Tract</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>203</td>
<td>2600, 2600 ½ South Pleasant Valley Road</td>
</tr>
<tr>
<td>222</td>
<td>4600, 4604 East Ben White Boulevard,</td>
</tr>
<tr>
<td>37</td>
<td>2109 – 2237 East Riverside Drive, 1700-1702 Willow Creek Drive,</td>
</tr>
<tr>
<td>39</td>
<td>1701, 1703, 1705, 1707, 1709, 1711, 1713 Burton Drive,</td>
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<tr>
<td>41</td>
<td>2017 East Riverside Drive,</td>
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<td>44</td>
<td>2003 East Riverside Drive,</td>
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<td>45</td>
<td>1801 – 1919 East Riverside Drive,</td>
</tr>
</tbody>
</table>
Tract 45A 1805 – 1909 East Riverside Drive,
Tract 45B 1905 East Riverside Drive,
Tract 46 1605 East Riverside Drive,
Tract 47 1005, 1007 Summit Street,
Tract 49 1301 South IH-35 Service Road Northbound (Lot 3-A and Lot 12, Bellvue Park), and
Tract 50 1301 South IH-35 Service Road Northbound (0.2 acre out of Lot 3-A and Lot 12, Bellvue Park)

(2) Tracts listed in Attachment A-1, Tract 9 (1708, 1712, and 1720 South Lakeshore Boulevard), and 1818 South Lakeshore Boulevard

(B) The city manager shall prepare zoning cases consistent with the land use recommendations in the Plan

(C) The city manager shall provide periodic updates to the City Council on the status of the implementation of the East Riverside/Oltorf Combined Neighborhood Plan

(D) The specific provisions of the East Riverside/Oltorf Combined Neighborhood Plan take precedence over any conflicting general provision in the Austin Tomorrow Comprehensive Plan

PART 3. EFFECTIVE DATE.

This ordinance takes effect on November 27, 2006

PASSED AND APPROVED

November 16, 2006

Will Wynn
Mayor

David Allan Smith
City Attorney

Shirley A. Gentry
City Clerk

ATTEST:
East Riverside/Oltorf Combined Neighborhood Plan

PLAN ADOPTED: November 16, 2006

This Neighborhood Plan has been amended by City Council. These amendments may include text changes or Future Land Use Map (FLUM) changes. Please refer to the Ordinance Chart on the planning area webpage for more information on amendments. Planning and Development Review staff updates the Ordinance Chart on a regular basis; however, newly adopted amendments may not be reflected on the chart.
The East Riverside/Oltorf Combined Neighborhood Plan

Parker Lane
~
Pleasant Valley
~
Riverside

November 16, 2006
The East Riverside/Oltorf Combined Neighborhood Plan

An Amendment to the City of Austin’s Comprehensive Plan

The Austin Tomorrow Comprehensive Plan

Chapter 5
Section 5-21
Exhibit A

November 16, 2006
By adopting the plan, the City Council demonstrates the City’s commitment to the implementation of the plan. However, every recommendation listed in this plan will require separate and specific implementation. Adoption of the plan does not begin the implementation of any item. Approval of the plan does not legally obligate the City to implement any particular recommendation. The implementation will require specific actions by the neighborhood, the City and by other agencies. The Neighborhood Plan will be supported and implemented by

- City Boards, Commissions and Staff
- City Departmental Budgets
- Capital Improvement Projects
- Other Agencies and Organizations
- Direct Neighborhood Action
Acknowledgements

The following groups, organizations and businesses made significant contributions to the creation of the East Riverside/Oltorf Neighborhood Plan:

Advanced Micro Devices

Austin Community College – Riverside Campus

Austin Public Library—Ruiz Branch

Holy Trinity Episcopal Church

Linder Elementary School

Prince of Peace Lutheran Church

The members of the Advisory Committee who met regularly with staff on details related to the process and development of the Plan.

All of the residents, business owners and non-resident property owners that attended Neighborhood Planning meetings and/or provided input throughout this process. Please see Appendix I for a list of over 350 participants.
City Staff Acknowledgements

Neighborhood Planning and Zoning Staff for this plan were:

Jackie Chuter, Neighborhood Planner
Lee Heckman, Senior Neighborhood Planner
Lisa Kocich, Neighborhood Planner
Sonya Lopez, Senior Neighborhood Planner
Laura Patlove, Senior Neighborhood Planner
Steven Rossiter, Principal Planner
Melissa Schardt, Senior Neighborhood Planner
Robert Heil, Zoning Planner
Alice Glasco, Director, Neighborhood Planning and Zoning
Ricardo Soliz, Neighborhood Planning Manager

Other NPZD staff who contributed to this plan include:

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Teri McManus    Ryan Robinson
Steve Sadowsky  Adam Smith
Kristen Strobel  Mark Walters
Kathleen Welder  Scott Whiteman

Other jurisdictional staff who contributed to this plan include:

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Gayla Dembkowski, Travis Co.  Todd Pankey, WPDR
Jean Drew, WPDR        Michelle Meaux, PW
Joe Guerrero, WPDR     Butch Smith, PARD
Stuart Hersh, NHCD     George Zapalac, WPDR
Ric Johnson, CTM
List of Abbreviations

City Departments and Programs:

APD – Austin Police Department
AMATP – Austin Metropolitan Area Transportation Plan
CAMPO – Capital Area Metropolitan Planning Organization
CIP – Capital Improvement Program
COA – City of Austin
KAB – Keep Austin Beautiful
NPZD – Neighborhood Planning and Zoning Department
PARD – Parks and Recreation Department
PW – Public Works Department
SWS – Solid Waste Services Department
TSHA – Texas Student Housing Authority
WPDR – Watershed Protection and Development Review

Other Abbreviations:

ACC – Austin Community College
CEF – Critical Environmental Feature
CIP – Capital Improvement Project
CCC – Country Club Creek
AMD – Advanced Micro Devices
FLUM – Future Land Use Map
G/CRP – Guerrero Colorado River Park
MF - Multifamily
MU – Mixed Use (Combining District)
MUB – Mixed Use Building Special Use
NPCT – Neighborhood Planning Contact Team
NPA – Neighborhood Planning Area
NPSC – Neighborhood Plan Combining District
NUC – Neighborhood Urban Center Special Use
Obj. – Objective
R - Recommendation
ROW – Right-of-Way
SF – Single Family
TX Dot – Texas Department of Transportation
# Table of Contents

<table>
<thead>
<tr>
<th>SECTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Introduction</td>
<td></td>
</tr>
<tr>
<td>Neighborhood Plan Geography</td>
<td>1</td>
</tr>
<tr>
<td>The Neighborhood Planning Process</td>
<td>2</td>
</tr>
<tr>
<td>Neighborhood Plan Contact Team</td>
<td>9</td>
</tr>
<tr>
<td>Vision and Goals</td>
<td>10</td>
</tr>
<tr>
<td>Priority Issues</td>
<td>12</td>
</tr>
<tr>
<td>Timeline of Significant Events</td>
<td>13</td>
</tr>
<tr>
<td>2. Statistical Profile</td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>15</td>
</tr>
<tr>
<td>Age and Ethnicity</td>
<td>16</td>
</tr>
<tr>
<td>Housing</td>
<td>17</td>
</tr>
<tr>
<td>Density</td>
<td>21</td>
</tr>
<tr>
<td>Existing Land Use</td>
<td>23</td>
</tr>
<tr>
<td>Commuter and Employment Data</td>
<td>25</td>
</tr>
<tr>
<td>3. Goals, Objectives and Recommendations</td>
<td></td>
</tr>
<tr>
<td>Planning Principles</td>
<td>26</td>
</tr>
<tr>
<td>Land Use</td>
<td>28</td>
</tr>
<tr>
<td>Transportation</td>
<td>33</td>
</tr>
<tr>
<td>Parks, Trails, Open Space and the Natural Environment</td>
<td>38</td>
</tr>
<tr>
<td>Affordable Housing</td>
<td>45</td>
</tr>
<tr>
<td>4. Land Use</td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>47</td>
</tr>
<tr>
<td>History/Background/Significant Land Uses</td>
<td>52</td>
</tr>
<tr>
<td>Future Land Use</td>
<td>67</td>
</tr>
<tr>
<td>Riverside Drive</td>
<td>77</td>
</tr>
<tr>
<td>5. Transportation</td>
<td></td>
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<tr>
<td>Introduction</td>
<td>81</td>
</tr>
<tr>
<td>History/Background</td>
<td>83</td>
</tr>
<tr>
<td>CAMPO and AMATP Transportation Plans</td>
<td>86</td>
</tr>
</tbody>
</table>
East Riverside/Oltorf Combined Neighborhood Plan

SECTION PAGE

6. Parks, Trails, Open Space and the Natural Environment

   Introduction ........................................................................................................ 90
   History/Background .......................................................................................... 92
   The Southeast Austin Trails and Greenways Alliance ............................... 114
   The Country Club Creek (CCC) Trail Project .............................................. 115

7. Urban Design

   Introduction........................................................................................................ 124
   Non-Residential Guidelines ........................................................................... 127
   Single Family Guidelines ................................................................................ 130
   Multifamily Guidelines .................................................................................. 131

Appendices

   Appendix A - Recommendations Not Supported by City Departments. 142
   Appendix B – Initial Survey Results ............................................................... 150
   Appendix C – Environmental Features Documentation .............................. 156
   Appendix D – Additional Information about the Neighborhood
   Plan Contact Team ........................................................................................... 159
   Appendix E – Results of Strengths, Opportunities and
   Challenges Exercise ....................................................................................... 162
   Appendix F – Final Survey Results ............................................................... 164
   Appendix G – Affordability Impact Statement ............................................. 167
   Appendix H – Current Zoning Maps .............................................................. 170
   Appendix I – East Riverside Interest List ....................................................... 173
   Appendix J – Glossary of Terms ................................................................... 176
   Appendix K – Plan Adoption Ordinance ...................................................... 182
List of Figures, Tables and Maps

Figures

Figure 1: Percentage of Total NPA Acreage.................................................. 14
Figure 2: Population Change 1990-2000 for Individual Planning Areas ... 15
Figure 3: Vacancy Rates 1990-2000 ................................................................. 17
Figure 4: Owner Occupancy Rates 1990-2000 ............................................... 18
Figure 5: Housing Units by Structure Type (2000)....................................... 19
Figure 6: Persons per Household 1990-2000 ................................................. 21
Figure 7: Gross Density—Persons per Acre 1990-2000.............................. 22
Figure 8: Existing Land Use Comparison (2004) ........................................... 24

Maps

Map 1: Urban Core.............................................................................................. xi
Map 2: Multifamily Units Constructed in Combined NPA (1990-2005).... 20
Map 3: Current Land Use, Parker Lane NPA ................................................ 49
Map 4: Current Land Use, Pleasant Valley NPA ........................................... 50
Map 5: Current Land Use, Riverside NPA..................................................... 51
Map 6: Existing and Proposed Sidewalks ...................................................... 88
Map 7: Existing and Proposed Bike Lanes ..................................................... 89
Map 8: Existing Parks and Trails ................................................................. 99
Map 9: Existing Environmental Features .................................................... 113
Map 10: Proposed Country Club Creek Trail ............................................. 122
Map 11: Desired Greenspace Map................................................................. 123

Tables

Table 1: Population Change by Planning Area............................................... 15
Table 2: Age Breakdown 1990-2000................................................................. 16
Table 3: Ethnicity Shares of Total Population, Change 1990-2000 .......... 16
Table 4: Housing Units 1990-2000 ................................................................. 17
Table 5: Existing Land Use (2004)................................................................. 23
Table 6: Means of Transportation to Work for Workers 16 Years and Older (2000) ........................................................................................................... 25
Table 7: Occupation for the Employed Civilian Population 16 Years and Older (2000) ........................................................................................................... 25
Table 8: Existing Land Use Comparison........................................................ 68
Table 9: CAMPO 2025 & 2030 and AMATP 2025 Transportation Plans... 86
Map 1: Urban Core Map

City of Austin City Limits and Urban Core Neighborhood Planning Areas

Legend
- APPROVED WITH ZONING
- FUTURE PLANNING AREA
- PLAN IN PROGRESS
- CITY OF AUSTIN FULL PURPOSE JURISDICTION

City of Austin Neighborhood Planning & Zoning Department
Updated 8/1/06
1. Introduction

Neighborhood Plan Geography

The East Riverside/Oltorf Combined Neighborhood Plan is comprised of three planning areas: Riverside, Parker Lane and Pleasant Valley. These three areas were selected by the Austin City Council to undergo neighborhood planning during the 2003-04 fiscal year; the neighborhood plan created for these three areas is an update of the Austin Tomorrow Comprehensive Plan adopted in 1980. Neighborhood planning staff held the first stakeholder meeting in October 2003 for this planning effort, which was later named the East Riverside/Oltorf Combined Neighborhood Plan. The boundaries of the combined planning area are: IH-35 to the west, the Colorado River to the north, Grove Blvd. and Montopolis Drive to the east, and Ben White Blvd./Hwy 71 to the south. The Riverside Planning Area is bounded by IH-35 to the west, the Colorado River to the north, Pleasant Valley Road to the east and Oltorf Street to the south. The Parker Lane Planning Area is bounded IH-35 to the west, Oltorf Street to the north, Montopolis Road to the east and Ben White Blvd./Highway 71 to the south. The Pleasant Valley Planning Area is bounded by Pleasant Valley Road to the west, the Colorado River to the north, Grove Blvd. to the east and Oltorf Street to the south.
The purpose of the neighborhood plan is to create a long-range vision for the entire area that will guide future development and improve the quality of life by making recommendations that treat themes such as land use, zoning, transportation and urban design. Zoning discussions were also a major component of the neighborhood planning process as zoning is the tool used to implement the vision established in the future land use map. Adopted rezonings are reflected in the zoning ordinances that accompany this neighborhood plan. The voluntary urban design guidelines have been included to encourage quality development projects that reflect the desires of the people in this community. Throughout the three year planning process there were many steps and numerous meetings were held. The following provides a description of the process to which many stakeholders within these planning areas dedicated their time and energy.

The Neighborhood Planning Process

Initial Stakeholders Meeting
The first public meeting of the planning process, which took place in October, 2003, was targeted to neighborhood association leaders and other key stakeholders in the area. City staff made a presentation about the neighborhood planning process and asked for suggestions from attendees about how to enhance participation in the process.

Initial Survey
In October, 2003, all residents, property owners, and business owners in the combined Neighborhood Planning Area (NPA) were invited by mail to participate in the online Initial Survey. Surveys were also made available at several neighborhood pick-up locations and through neighborhood association presidents.

The Initial Survey asked respondents to identify the assets and challenges in the area, specify where they think new businesses or residential uses should be located, and indicate their preferences regarding Special Use Options and the placement of new sidewalks. The results of the survey are included in Appendix B. The Vision Survey asked respondents to choose the statements that most reflect their vision for the future of the community. Priority responses were incorporated into the vision and goal statements of this Plan on pages 10-11.
A total of 18,276 survey letters were mailed. Approximately 10% of these letters were returned or were duplicates. The response rate for the remaining survey letters was about 2%.

Community Workshop
In December 2003, a Community Workshop was held at Advanced Micro Devices. All residents, property owners, and business owners were invited, and 41 people attended. The purpose of this workshop was to identify the assets and strengths of the neighborhood and those aspects of the neighborhood that need improvement. Participants took part in a map-based exercise called Strengths, Opportunities, and Challenges. The results of this exercise are included in Appendix E.

Services Forum
There are many concerns that come up during the neighborhood planning process that are considered to be daily operational issues, which city departments respond to on a regular basis. As a result, a forum was held at the beginning of the process so that stakeholders could voice their concerns related to such problems as overgrown weeds on vacant lots, potholes, street light malfunctions, etc. Representatives from several city departments attended the forum and received commentary regarding such issues. The services forum was also an opportunity for stakeholders in the planning process to select their preferred name for the combined planning area, which was the East Riverside/Oltorf Combined Neighborhood Plan.

Student Outreach – UT Focus Group
With the assistance of University of Texas at Austin student Sarah Price, city staff conducted a focus group with UT students in March, 2004, to identify issues of particular interest to students living in the planning area. The meeting attendees participated in an activity similar to the Strengths, Opportunities, and Challenges exercise.

Land Use Meetings
From February through April of 2004, planning area stakeholders attended three land use focus groups and a land use wrap-up meeting. At these meetings, participants brainstormed alternative land uses.
for the tracts identified as opportunities or challenges at the Community Workshop. Staff then presented three scenarios based on the brainstorming activity; the scenarios varied in the amount of change proposed. After further discussion by participants, staff developed a single draft future land use map to use as the basis for zoning discussions. This future land use map was modified somewhat during the zoning meetings as communications continued and/or new information was discovered.

**Riverside Drive Property Owner Meeting**
In response to the tremendous interest in the future redevelopment of Riverside Drive, staff invited property owners along Riverside Drive between IH-35 and Pleasant Valley Road to a targeted meeting in June 2004. Meeting attendees were asked to describe their vision for the future of Riverside Drive and ways that the City could encourage quality redevelopment along the corridor. Many spoke about their desire to expand their own businesses or encourage redevelopment in the area that is safer, more attractive, and more accessible to various modes of transportation. Increased code enforcement, financial incentives, and improved transportation facilities were cited as ways to encourage quality redevelopment.

**Initial Zoning Meetings**
Planning area stakeholders began discussing possible rezoning recommendations beginning in August through September 2004. One meeting was held for each of the three planning areas within the combined planning area. At each meeting, staff presented a set of proposed zoning changes based on the draft future land use map and NPZD zoning principles. Meeting attendees separated into smaller groups to discuss the recommendations in a round-robin format. Staff recorded input on the proposed zoning changes and made note of new recommendations made by the small groups.

**Zoning Survey**
During the month of October, in order to get feedback on the zoning proposals that came out of the initial zoning meetings for each of the three planning areas and to ensure that owners of properties proposed for rezoning were aware of the planning process, city staff distributed a survey about the zoning recommendations. All owners of properties proposed for rezoning and all of the participants in the planning process to date were mailed a survey asking for their preferred zoning for the identified tracts.
Mixed Use Meeting
Land use discussions resulted in the designation of certain properties as possibly appropriate for a mixture of uses on the future land use map. As such, at the beginning of October a meeting was held to discuss how mixed-use could be incorporated into the zoning element of the neighborhood plan for this area. An explanation of the mixed-use combining district and the different mixed-use special options was provided and discussion centered on how mixed-use could be tailored so that it was appropriate for this particular area of the city.

Special Use Infill Options Meeting
Prior to the next round of zoning discussions, a meeting was held in mid-November 2004 to present and get feedback on special development tools that are available for selection through the neighborhood planning process. An education session was first held so that participants were aware of the background and purpose of the Infill Options as well as the use and design details that are specific to each Option. The appropriateness of the area-wide Options (Secondary Apartment, Small Lot Amnesty and Corner Store) was discussed in detail for the three planning areas at this meeting. The desirability of site-specific Options (Urban Home, Cottage Lot, Neighborhood Urban Center, Residential Infill and Mixed Use Building) was addressed at subsequent meetings when specific properties were under discussion.

Post-Survey Zoning Meetings
After the zoning survey responses were tabulated, area stakeholders met to discuss the survey results in six meetings, two for each planning area. Staff presented its rezoning recommendations and the results from the zoning survey and assisted the meeting stakeholders in identifying tracts where a majority of stakeholders supported an alternative recommendation to the staff recommendation.
Parks, Trails, Open Space and Environment Meeting
In late March a meeting was held at the Daniel Ruiz Library to discuss parks and open space issues within the planning area. Sarah Campbell from the Parks and Recreation Department attended the meeting along with neighborhood planning staff to assist with the presentation and answer questions. The main topics covered included:

- Sharing the recent site plan for the Colorado River Park.
- Discussing the ongoing remediation efforts at Mabel Davis Park, brainstorming possible infrastructure improvements and prioritizing future park improvements/enhancements.
- Discussing the possibility of putting small neighborhood greens within the planning area.
- Presenting the work that has been done by the Southeast Austin Trails and Greenways Alliance, a group formed out of this neighborhood planning process, to plan a trail network along Country Club Creek that would connect with the Town Lake Hike and Bike Trail.
- Reviewing the goals, objectives and recommendations that had been generated at that point from survey information and comments at previous meetings; feedback was solicited and recorded.

Transportation Meeting
A meeting to talk about transportation concerns was held in early April 2005 at the AMD Campus. The purpose of this meeting was to identify transportation issues within the three neighborhood planning areas so that specific recommendations could be drafted for the Plan. Discussion and brainstorming among the groups focused on the topics of roads, public transit, bicycle and pedestrian issues. Representatives from each small group shared their group’s discussion with the larger audience to maintain a comprehensive view of transportation needs in the entire area. At the conclusion of the meeting, each participant had the opportunity to specify their sidewalk priorities, determined by planning area, utilizing a dot voting procedure so that the Public Works Department will have clear information regarding neighborhood stakeholder sidewalk preferences.

Voluntary Urban Design Guidelines and Design Tools Meeting
In mid-April 2005 neighborhood planning stakeholders attended a meeting to discuss the design tools that are available for selection through the neighborhood planning process in addition to the elements that should be included in the urban design section of the plan. First the details of the three design tools were presented. Afterwards, participants discussed the pros and cons of each Tool and
then dot voted to determine which of them should apply to each NPA. Staff then presented a draft of voluntary guidelines for residential and industrial development based on issues and ideas from the initial survey and previous meetings. Meeting time focused on selecting elements to include in the guidelines that pertain to commercial, office and mixed-use corridors, since the redevelopment of such streets as Riverside Drive is highly desired by both residents and business owners.

**Departmental Review Process**

After all of the focus group meetings were conducted, draft recommendations were created in response to stakeholder feedback. These recommendations were forwarded to and reviewed by implementing departments. Those items that are supported by the relevant department are included in the body of the plan since those are most likely to be implemented in the future and have the support, but perhaps not immediate funding, of responsible departments. Those that are not supported by the implementing department are documented in Appendix A along with the departmental comments.

**Neighborhood Plan Contact Team Meetings**

Prior to the presentation of this Neighborhood Plan to the Planning Commission and City Council, an interim Neighborhood Planning Contact Team was created in June 2005 comprised of individuals who will uphold the vision and goals of the plan. This group will be the steward of the plan’s recommendations and tasked with monitoring their implementation. An initial meeting was held by planning staff in mid-May to introduce the role and responsibilities of a neighborhood plan contact team and explain the criteria involved in its formation. A second meeting was held at the end of June to define more clearly the structure of the Team and its organization.

**Open House and Final Survey**

The purpose of the open house was to present the draft East Riverside/Oltorf Neighborhood Plan and receive feedback on the elements of the Plan prior to its presentation to the Planning Commission. For stakeholders unable to attend the open house, a survey was made available online and at the local library, or mailed out upon request, asking for their input on the key issues in the Plan. The survey also asked questions about the level of satisfaction with the neighborhood planning process and ways to improve it. The same survey was distributed at the open house for those individuals who were able to attend. Final Survey results can be found in Appendix F.
STANDING COMMITTEES

Advisory Committee
Throughout the planning process, a self-selected Advisory Committee met regularly with city staff to reflect on the successes and challenges of previous neighborhood planning meetings and to plan for upcoming meetings. The Advisory Committee provided important feedback to city staff on how and when to organize meetings in order to maximize interest and participation. At the end of the planning process the members of the Advisory Committee, who are also members of the interim Neighborhood Planning Contact Team, were called upon to decide upon new development proposals that were presented prior to the ratification of the plan by City Council.

Southeast Austin Trails & Greenways Alliance
Approximately six months into the planning process, a group of stakeholders concerned about creeks in the area and interested in developing trails formed a working group. The group’s primary mission was to create a trail along Country Club Creek that would connect to the Town Lake Hike and Bike Trail. The group met periodically to strategize, conduct site assessments, organize clean-up events and promote the trail concept among neighborhood property owners and residents.
Neighborhood Plan Contact Team (NPCT)

Purpose, Roles and Responsibilities of the Contact Team

A Neighborhood Planning Contact Team (NPCT) is a group of individuals that upholds the vision and goals of their neighborhood plan and is the steward of the plan; this group will work towards the implementation of the plan’s recommendations. The NPCT is a group that will officially respond to plan amendment requests by stating its position on the proposals. The Team may initiate amendments to their neighborhood plan at any time and also has some authority to determine when plan amendment applications by others may be filed. Refer to Appendix D on for more information about the Neighborhood Plan Contact Team.

The NPCT shall include at least one representative from each of the following groups:

- Property owners
- Non-property owner residents (i.e. renters)
- Business owners
- Neighborhood associations

East Riverside/Oltorf Neighborhood Plan Interim Contact Team Members (June 2005)

Carl Braun                      Tim Mahoney
Dawn Cizmar                     Jean Mather
Barb Fox                        Michael May
Gayle Goff                      Judy Price
Alison Hart                     John Rath
Toni House                      Bryan Smith
Fred Krebs                      Jim Temple
Linda Land                      Linda Watkins
Jan Long                        Malcolm Yeatts
Vision and Goals

Vision

We who live, work and own property in the East Riverside/Oltorf Area wish to preserve and improve the quality of life in our residential neighborhoods, honor the cultural diversity of our residents, be good stewards of the natural environment, support the success of our locally owned businesses and major employers, and build and maintain a strong sense of community.

Goals

1. Preserve and enhance the character of existing residential neighborhoods.

2. Increase home ownership opportunities that are compatible with surrounding properties.

3. Improve the appearance, vitality and safety of existing commercial corridors and community amenities and encourage quality urban design and form that ensures adequate transition between commercial properties and adjacent residential neighborhoods.

4. Encourage a balanced mix of residential, civic, commercial, office and other land uses without adversely affecting adjacent residential neighborhoods.

5. Enhance the transportation network to allow residents and visitors to get around safely and efficiently by foot, bicycle, automobile and public transit.

6. Protect and enhance the Town Lake Waterfront as well as creek areas and other natural amenities.

7. Preserve and enhance existing parks, the 18-hole Riverside Golf Course and other open spaces and create opportunities for additional public open space.

8. Provide affordable housing opportunities through redevelopment of existing multifamily developments.
9. Create interesting, lively, inviting, attractive, safe and comfortable non-residential environments that will encourage walking, biking and transit use and be appealing to passing motorists.

10. Create convenient and accessible parking areas that do not dominate the environment and provide safe interaction between vehicles and pedestrians.

11. Encourage urban design strategies for single-family neighborhoods that preserve, complement and enhance existing character.

12. Promote multifamily structures that relate well to the surrounding environment, utilize a variety of building forms, have a thoughtful parking scheme, provide public open space and include a variety of appropriate landscape options.

13. Minimize the visual impact of industrial properties from other districts and public spaces in the neighborhood planning area.
The top priority issues for the East Riverside/Oltorf Combined Neighborhood Plan were determined by the results of the Final Survey.

1. Preserve the natural character of and access to the Town Lake Waterfront.
2. Encourage pedestrian and bike friendly neighborhoods.
3. Improve the appearance of retail corridors and preserve downtown views.
4. Preserve and enhance the character of existing residential neighborhoods.
5. Identify and protect all critical environmental features.
6. Eliminate the gaps in the Town Hike & Bike Trail system.
7. Protect creek areas from development.
8. Create lively, inviting, attractive and safe commercial and office street environments.
9. Preserve, maintain and enhance existing parks.
10. Create opportunities for small neighborhood parks.

10. Maintain and improve the appearance of creek areas and the water quality of creeks.
Timeline of Significant Events

2005 → Mabel Davis Park reopens
      → Daniel Ruiz Library opened (the largest branch library in the City)
      → Remediation of Mabel Davis Park
      → Colorado River Park Improvements (Phase I)
      → Relocation of Baty Elementary to the Pleasant Valley NPA

1995 → Tokyo Electron America located in the Pleasant Valley NPA
      → SEMATECH opened facility in the Parker Lane NPA
      → Colorado River Park chosen as site for Montopolis Sports Complex

1985 → Austin Country Club sells golf course to ACC (Riverside Golf Course)
      → Advanced Micro Devices opened facility in the Parker Lane NPA
      → Krieg Softball Complex constructed
      → Mabel Davis Park opened

1975 → Classes began at Austin Community College—Riverside Campus
      → Dorothy Linder Elementary School commenced instruction
      → Development of Town Lake Metropolitan Park and Hike and Bike Trail

1965 → Completion of the Longhorn Dam

1955 → Austin Country Club moves from Hancock location to Grove Blvd. in the Pleasant Valley NPA

→ IH-35 constructed
2. Statistical Profile

The East Riverside/Oltorf Combined Planning Area consists of three individual Neighborhood Planning Areas: Parker Lane, Pleasant Valley and Riverside. The following statistical profile includes population, housing, density, land use, and employment data. These data were analyzed to show significant trends among the individual planning areas and illustrate comparisons between the Combined Neighborhood Planning Area and the Urban Core (refer to Map 1 on page xi). As the following tables and figures illustrate, the East Riverside/Oltorf NPA is an ethnically diverse part of the City that is comprised of a wide variety of land uses.

Please note, although Austin Community College (ACC) is exempt from municipal zoning regulations and will be excluded from a neighborhood planning rezoning and future land use designation, the following statistical profile does include all of the property owned by the college. ACC currently owns approximately 183 acres within the Pleasant Valley Neighborhood Planning Area including the Riverside Campus, and the land occupied by the Riverside Golf Course.

![Figure 1: Percentage of Total NPA Acreage](image)

The combined NPA encompasses 3,356.54 acres, with the Pleasant Valley NPA making up the largest area.
Population

Table 1: Population Change by Planning Area 1990-2000

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<tr>
<td>Pleasant Valley</td>
<td>4,218</td>
<td>8,858</td>
<td>4,640</td>
<td>110.0</td>
</tr>
<tr>
<td>Riverside</td>
<td>9,840</td>
<td>16,259</td>
<td>6,419</td>
<td>65.2</td>
</tr>
<tr>
<td>Combined Neighborhood Planning Area</td>
<td>19,584</td>
<td>33,396</td>
<td>13,812</td>
<td>70.5</td>
</tr>
<tr>
<td>Urban Core</td>
<td>291,423</td>
<td>356,013</td>
<td>64,590</td>
<td>22.2</td>
</tr>
<tr>
<td>Austin</td>
<td>465,622</td>
<td>656,562</td>
<td>190,940</td>
<td>41.0</td>
</tr>
<tr>
<td>Austin/Round Rock MSA*</td>
<td>846,227</td>
<td>1,249,763</td>
<td>403,536</td>
<td>47.7</td>
</tr>
</tbody>
</table>

Source: 1990 and 2000 US Census

*MSA (metropolitan statistical area) includes Bastrop, Caldwell, Hays, Travis, and Williamson counties.

Figure 2: Population Change 1990-2000 for Individual Planning Areas

The combined neighborhood planning area (NPA) experienced a positive growth rate from 1990 to 2000 (70.5%), notably higher than that of the urban core (22.2%). In particular, Pleasant Valley had a 110% increase in population from 4,218 in 1990 to 8,858 in 2000. Within the NPA, Riverside comprised the highest population of 16,259, gaining almost 6,500 people within the 10-year time span.
Additionally, in 2000 the East Riverside/Oltorf NPA had a total population of 33,396, making up 9.4% of the Urban Core.

Demographics for the combined NPA point towards three main drivers for the increase in population:
1) Increase in total housing units constructed (Table 4)
2) Absorption of vacant housing units (Table 4 and Figure 3)
3) Increase in household size (Figure 6)

**Age**

**Table 2: Age breakdown 1990-2000**

<table>
<thead>
<tr>
<th></th>
<th>% aged 17 years and under</th>
<th>% aged 18-24 years</th>
<th>% aged 25-44 years</th>
<th>% aged 45-60 years</th>
<th>% aged 65 years and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parker Lane</td>
<td>16.0</td>
<td>15.1</td>
<td>37.7</td>
<td>31.3</td>
<td>35.4</td>
</tr>
<tr>
<td>Pleasant Valley</td>
<td>6.0</td>
<td>12.7</td>
<td>54.0</td>
<td>54.8</td>
<td>35.5</td>
</tr>
<tr>
<td>Riverside</td>
<td>17.3</td>
<td>15.1</td>
<td>40.2</td>
<td>38.5</td>
<td>33.4</td>
</tr>
<tr>
<td>Combined NPA</td>
<td>13.1</td>
<td>14.3</td>
<td>44.0</td>
<td>41.5</td>
<td>34.8</td>
</tr>
<tr>
<td>Urban Core</td>
<td>21.2</td>
<td>20.9</td>
<td>21.9</td>
<td>22.0</td>
<td>36.0</td>
</tr>
</tbody>
</table>

Source: 1990 and 2000 US Census

Pleasant Valley doubled in children age seventeen and under while Parker Lane, Riverside, and the Urban Core decreased in the same age category in terms of share of total population. Furthermore, over half of the population in Pleasant Valley was of college age (18-24), which is consistent with the abundance of multi-family units located within the area, particularly units geared toward students.

**Ethnicity**

**Table 3: Ethnicity Shares of Total Population, Change 1990-2000**

<table>
<thead>
<tr>
<th></th>
<th>White (%)</th>
<th>Black (%)</th>
<th>Hispanic (%)</th>
<th>Asian (%)</th>
<th>Other (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parker Lane</td>
<td>54.9</td>
<td>41.3</td>
<td>9.1</td>
<td>7.4</td>
<td>31.6</td>
</tr>
<tr>
<td>Pleasant Valley</td>
<td>64.5</td>
<td>44.1</td>
<td>7.5</td>
<td>11.7</td>
<td>20.6</td>
</tr>
<tr>
<td>Riverside</td>
<td>38.2</td>
<td>31.5</td>
<td>10.8</td>
<td>6.5</td>
<td>43.7</td>
</tr>
<tr>
<td>Combined NPA</td>
<td>52.5</td>
<td>39.0</td>
<td>9.2</td>
<td>8.5</td>
<td>31.9</td>
</tr>
<tr>
<td>Urban Core</td>
<td>53.8</td>
<td>42.4</td>
<td>15.1</td>
<td>12.4</td>
<td>27.7</td>
</tr>
</tbody>
</table>

Source: 1990 and 2000 US Census
As indicated in Table 3, the combined NPA experienced an increase in ethnic diversity from 1990 to 2000. Most significantly, the largest ethnicity share of total population for the combined NPA shifted from the white population in 1990 to the Hispanic population by 2000. In particular, the Hispanic population within Pleasant Valley more than tripled resulting in almost an 11-point share jump. Furthermore, the black and Asian populations fluctuated from area to area, although Pleasant Valley had a markedly strong Asian share of total population.

### Housing

**Table 4: Housing Units 1990-2000**

<table>
<thead>
<tr>
<th></th>
<th>Total Housing Units</th>
<th>Occupied Housing Units</th>
<th>Vacant Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parker Lane</td>
<td>3,400</td>
<td>4,285</td>
<td>2,884</td>
</tr>
<tr>
<td>Pleasant Valley</td>
<td>2,987</td>
<td>4,002</td>
<td>2,519</td>
</tr>
<tr>
<td>Riverside</td>
<td>6,952</td>
<td>7,431</td>
<td>4,680</td>
</tr>
<tr>
<td>Combined NPA</td>
<td>13,339</td>
<td>15,718</td>
<td>10,083</td>
</tr>
<tr>
<td>Urban Core</td>
<td>142,582</td>
<td>150,469</td>
<td>123,729</td>
</tr>
</tbody>
</table>

Source: 1990 and 2000 US Census

**Figure 3: Vacancy Rates 1990-2000**

Source: 1990 and 2000 US Census
Together, the increase in total housing units and the absorption of vacant housing significantly contributed to the population growth for the combined NPA and urban core (Table 4). By 2000, the combined NPA experienced a positive shift in occupied housing units with an 18 point drop in the vacancy rate which can be attributed to the increase of in-migration into the urban core in the early to mid-90s. Particularly, Pleasant Valley had an increase in housing units by one-third and a dramatic drop of 28 points in the vacancy rate resulting in a 110% increase in population.

**Figure 4: Owner Occupancy Rates 1990-2000**

As depicted in Figure 4, two of the three individual neighborhood planning areas experienced decreases in owner occupancy over the decade, the opposite trend that occurred within the entire Urban Core (which saw a 1.1 percentage point increase in owner occupancy). The Pleasant Valley and Riverside NPAs both saw an average decline in owner occupancy of 2 percentage points; the Pleasant Valley NPA experienced the largest decrease by 2.4 points. The Parker Lane NPA, however, experienced a 2.9 percentage point increase in owner-occupied housing units. This NPA has the largest percentage of single family development.
and the lowest percentage of multifamily development when compared to the other two NPAs.

Figure 5 illustrates that the predominant type of housing in all three planning areas is multifamily. The Riverside NPA has the largest percentage of multifamily and the smallest percentage of single family housing. In contrast, the Parker Lane NPA has the highest percentage of single family development and the smallest percentage of multifamily. In addition, the Parker Lane NPA has a significant percentage of duplex development relative to both the Pleasant Valley and Riverside NPAs.

**Figure 5: Housing Units by Structure Type (2000)**

<table>
<thead>
<tr>
<th>Structure Type</th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
<th>NPA Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family</td>
<td>17.6%</td>
<td>9.8%</td>
<td>7.3%</td>
<td>10.7%</td>
</tr>
<tr>
<td>Duplex</td>
<td>9.4%</td>
<td>1.5%</td>
<td>2.2%</td>
<td>4.0%</td>
</tr>
<tr>
<td>Tri-Fourplex</td>
<td>7.9%</td>
<td>7.8%</td>
<td>5.2%</td>
<td>6.6%</td>
</tr>
<tr>
<td>Multi-family</td>
<td>64.8%</td>
<td>80.9%</td>
<td>85.3%</td>
<td>78.6%</td>
</tr>
<tr>
<td>Other</td>
<td>0.3%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.1%</td>
</tr>
</tbody>
</table>

Source: 2000 US Census
Map 2: Multifamily Units Constructed in Combined NPA (1990-2005)

East Riverside/Oltorf Combined NPA
Multi-Family Developments
Built: 01-01-90 to 04-01-2005
Number of Units Shown Inside Dot.

Unit Totals by Sub-Area
Parker Lane: 807
Pleasant Valley: 3,254
Riverside: 762
Total: 4,823

Source: Ryan Robinson, City Demographer, Department of Planning, City of Austin, May 2006.
Density

Figure 6: Persons per Household 1990-2000

<table>
<thead>
<tr>
<th>Area</th>
<th>1990</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parker Lane</td>
<td>1.9</td>
<td>2</td>
</tr>
<tr>
<td>Pleasant Valley</td>
<td>1.7</td>
<td>2.1</td>
</tr>
<tr>
<td>Riverside</td>
<td>2.3</td>
<td>2.3</td>
</tr>
<tr>
<td>Combined NPA</td>
<td>1.9</td>
<td>2.2</td>
</tr>
<tr>
<td>Urban Core</td>
<td>2.2</td>
<td>2.4</td>
</tr>
</tbody>
</table>

Source: 1990 and 2000 US Census
Note: A household includes all people who occupy a housing unit as their usual place of residence. Households may be family or non family households. (US Census Bureau)

Both the combined NPA and the Urban Core showed an increase in the number of persons per household over the 1990 to 2000 period (Figure 6), which correlates with the increase in total population experienced in both of these areas. In particular, Pleasant Valley had a significant boost in the number of persons per household from 1.7 persons in 1990 to 2.3 persons in 2000.

All three NPAs experienced increases in gross density from 1990 to 2000 as did the Urban Core (refer to figure on following page). The Riverside NPA (745 acres) had three times as many people per acre as the Parker Lane NPA, the Pleasant Valley NPA or the Urban Core. This high number (21.82) is due in part to the fact that over one-third of the land use in the Riverside NPA is comprised of multifamily residential. In contrast, Pleasant Valley (which has double the acreage of the Riverside NPA), had the lowest gross density per acre (6.0) in 2000. Contributing factors to this low gross density include the presence of the
Colorado River, the 18-hole Riverside Golf Course, the ACC Riverside Campus, and a sizable industrial park district.

**Figure 7: Gross Density - Persons per Acre 1990-2000**

Source: 1990 and 2000 US Census and Travis Central Appraisal District
Land Use

Table 5: Existing Land Use (2004)

<table>
<thead>
<tr>
<th>Existing Land Use (in acres)</th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
<th>Combined NPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civic</td>
<td>80</td>
<td>48</td>
<td>26</td>
<td>155</td>
</tr>
<tr>
<td>Commercial</td>
<td>47</td>
<td>18</td>
<td>110</td>
<td>175</td>
</tr>
<tr>
<td>Industrial</td>
<td>147</td>
<td>152</td>
<td>0</td>
<td>299</td>
</tr>
<tr>
<td>Multifamily</td>
<td>175</td>
<td>356</td>
<td>284</td>
<td>815</td>
</tr>
<tr>
<td>Office</td>
<td>47</td>
<td>14</td>
<td>19</td>
<td>81</td>
</tr>
<tr>
<td>Open Space</td>
<td>58</td>
<td>545</td>
<td>25</td>
<td>628</td>
</tr>
<tr>
<td>Single-Family</td>
<td>228</td>
<td>61</td>
<td>105</td>
<td>393</td>
</tr>
<tr>
<td>ROW and/or Utilities</td>
<td>198</td>
<td>101</td>
<td>154</td>
<td>453</td>
</tr>
<tr>
<td>Undeveloped</td>
<td>156</td>
<td>180</td>
<td>21</td>
<td>357</td>
</tr>
<tr>
<td><strong>Land Use Total (acres)</strong></td>
<td><strong>1136</strong></td>
<td><strong>1476</strong></td>
<td><strong>745</strong></td>
<td><strong>3358</strong></td>
</tr>
</tbody>
</table>

Source: Travis Central Appraisal District and City of Austin

Notes: The total may not match the sum of each row due to rounding. Multifamily includes rental and owner occupied housing units (i.e. condominiums).

Multifamily residential is the predominant land use for the combined area, most notably, the Riverside NPA whose land use is over one-third multifamily. The prevailing land use in the Parker Lane NPA is single-family residential, while the Pleasant Valley NPA has more open space (35%) than multifamily and single family residential combined (refer to graphs on the following page for a visual illustration of the above statistics).
Figure 8: Existing Land Use Comparison (2004)

**Parker Lane NPA**
- Undeveloped: 14%
- Single Family Residential: 21%
- ROW and/or Utilities: 17%
- Civic: 7%
- Multi-Family Residential: 15%
- Commercial: 4%
- Industrial: 13%
- Open Space: 5%
- Office: 3%

**Pleasant Valley NPA**
- Vacant or Undeveloped: 12%
- Single Family Residential: 4%
- ROW and/or Utilities: 7%
- Civic: 5%
- Commercial: 1%
- Industrial: 10%
- Open Space: 35%
- Office: 1%

**Riverside NPA**
- Undeveloped: 3%
- Single Family Residential: 14%
- ROW and/or Utilities: 21%
- Civic: 4%
- Commercial: 15%
- Industrial: 0%
- Multi-Family Residential: 37%
- Open Space: 3%
- Office: 3%

**Combined Area**
- Vacant or Undeveloped: 11%
- Single Family Residential: 12%
- ROW and/or Utilities: 13%
- Civic: 5%
- Commercial: 5%
- Industrial: 9%
- Multi-Family Residential: 25%
- Open Space: 18%
- Office: 2%
Commuter Data

Table 6: Means of Transportation to Work for Workers 16 Years and Older (2000)

<table>
<thead>
<tr>
<th></th>
<th>Drove Alone</th>
<th>Carpoled</th>
<th>Bus</th>
<th>Taxi</th>
<th>Motorcycle</th>
<th>Bicycle</th>
<th>Walked</th>
<th>Other</th>
<th>Worked at Home</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parker Lane</td>
<td>3,792</td>
<td>688</td>
<td>450</td>
<td>15</td>
<td>19</td>
<td>16</td>
<td>63</td>
<td>51</td>
<td>85</td>
</tr>
<tr>
<td>Pleasant Valley</td>
<td>3,544</td>
<td>832</td>
<td>442</td>
<td>0</td>
<td>0</td>
<td>23</td>
<td>76</td>
<td>17</td>
<td>66</td>
</tr>
<tr>
<td>Riverside</td>
<td>5,750</td>
<td>2,297</td>
<td>1,533</td>
<td>21</td>
<td>21</td>
<td>45</td>
<td>187</td>
<td>337</td>
<td>111</td>
</tr>
<tr>
<td>Combined NPA</td>
<td>13,086</td>
<td>3,817</td>
<td>2,425</td>
<td>36</td>
<td>40</td>
<td>84</td>
<td>326</td>
<td>405</td>
<td>262</td>
</tr>
</tbody>
</table>

Source: 2000 US Census

The primary means of transportation for workers was by auto, driving alone. The Pleasant Valley NPA had the largest percentage of workers who drove alone (73.2%), while over a third of workers within the Riverside NPA either carpooled or rode the bus to work.

Employment Data

Table 7: Occupation for the Employed Civilian Population 16 Years and Older (2000)

<table>
<thead>
<tr>
<th></th>
<th>Management &amp; Professional</th>
<th>Service</th>
<th>Sales</th>
<th>Farming, Fishing &amp; Forestry</th>
<th>Construction &amp; Maintenance</th>
<th>Production &amp; Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parker Lane</td>
<td>2,126</td>
<td>880</td>
<td>1,405</td>
<td>0</td>
<td>530</td>
<td>339</td>
</tr>
<tr>
<td>Pleasant Valley</td>
<td>1,673</td>
<td>1,041</td>
<td>1,494</td>
<td>0</td>
<td>434</td>
<td>472</td>
</tr>
<tr>
<td>Riverside</td>
<td>2,717</td>
<td>2,232</td>
<td>2,738</td>
<td>17</td>
<td>1,989</td>
<td>992</td>
</tr>
<tr>
<td>Combined NPA</td>
<td>6,516</td>
<td>4,153</td>
<td>5,637</td>
<td>17</td>
<td>2,953</td>
<td>1,803</td>
</tr>
</tbody>
</table>

Source: 2000 US Census

Management & Professional occupations accounted for almost a third of the employment within the combined NPA. Specifically, over 40% of the workforce within Parker Lane had Management & Professional occupations followed by Sales with 27%. The prevailing occupation within Riverside was relatively evenly spread among the Sales, Management & Professional, and Service employment sectors. The occupational data reflects the overall diversity of the combined NPA demographics.
3. Goals, Objectives and Recommendations

Planning Principles developed by the Advisory Committee

The Advisory Committee has prepared a set of planning principles and guidelines to be used by the Committee when evaluating development proposals. During their decision-making process, these principles and guidelines will be considered first, followed by the other recommendations listed in the plan.

Note: It is the goal of the Advisory Committee that the Neighborhood Planning Contact Team adopt these principles and guidelines once the plan has been adopted.

In this planning area:

1. Of the existing developed property in the combined planning area, 42% is multifamily (2000 US Census).
2. Of the existing housing units by structure type in the combined planning area, 78.6% are multifamily (2000 US Census).
3. Two of the three planning areas (Pleasant Valley and Riverside) experienced a decrease in owner occupancy rates from 1990-2000, a trend opposite that of the Urban Core (US Census).
4. Between 2000 and 2004, 1855 multifamily units were added and only 211 single family units were added (City of Austin Demographer).
5. Crime rate in the 78741 zip code is the highest in the city, with over 14,000 crimes committed in 2005 (combination of indexed and non-indexed, Austin Police Department).

Because of these facts, the Advisory Committee believes that the following planning principles and guidelines be applied to all proposed development and redevelopment within the East Riverside/Oltorf Combined Neighborhood Planning Area.

- “First, do no harm”, i.e. no rezoning for rezoning’s sake. A zoning change affects the property owner, adjacent properties and property owners, and the City. Any change in zoning should be able to demonstrate the benefits of the change to the community.
Preserve single-family homes and the character and assets of our traditional neighborhoods. Protect them from further encroachment from non-compatible and/or higher intensity uses by always providing a buffer equal to or greater than the existing buffer.

Address the problems of current density before creating opportunities for additional growth and increased density.

Encourage redevelopment in the following areas as a means of managing growth and protecting those properties which still have sufficient usefulness:

- South side of E. Riverside Drive from Parker Lane to Burton Drive
- The group of tracts bounded by Burton Drive, E. Riverside Drive, Willow Creek and Woodland Drive
- North side of E. Riverside Drive from Lakeshore Blvd. to Willow Creek
- South side of Elmont between Tinnin Ford and Pleasant Valley Road
- North and south sides of Mission Hill Drive

Devote time, money and resources to professional, comprehensive planning efforts for the E. Riverside Drive, Lakeshore Blvd., and Oltorf Street corridors with attention to traffic congestion, design standard parameters, compatibility with adjacent residential areas, pedestrian and bicycle access and public transit.

Preserve and protect the Town Lake shoreline and prohibit the “walling off” of this resource by limiting height, density and massing of buildings along the shore and requiring easements along the shoreline to complete the Town Lake Hike and Bike Trail.

Preserve and protect our creeks, springs and environmental features by sufficient setbacks, decreased impervious cover and the establishment of the Country Club Creek Preserve.

Preserve and protect the Riverside 18-hole Golf Course.

**Goals, Objectives and Recommendations**

Below are the recommendations for the East Riverside/Oltorf Neighborhood Plan under their overarching goal (Obj. = Objective and R = Recommendation). Refer
to the corresponding chapters in the plan for further information regarding the history and background, existing conditions and future land use scenarios for the combined planning area.

### Land Use

**Goal 1**

**Preserve and enhance the character of existing residential neighborhoods.**

**R1** Retain single family uses in established single family neighborhoods (NPZD; Neighborhood).

**R2** Consider existing residential densities and current housing stock in future land use and zoning decisions to promote compatibility (NPZD; Neighborhood).

**R3** Promote and support compatibility between single family residences by (NPZD; Neighborhood):

- retention of scale between structures regarding height, mass and impervious cover in both remodeling and new home construction.
- encouraging City Council to incorporate the following recommendation developed by neighborhood stakeholders into their proposed Single Family Development Regulations:
  - Retain the existing scale and massing in new single family structures and remodels adjacent to residences and limit height to 35 feet, measured from existing grade of the adjacent residences.

**R4** The significant canopy created by the mature trees is a highlight of our planning area and especially of our traditional single-family neighborhoods. Therefore, whenever possible, mature trees should be preserved (Neighborhood).

**Obj 1.1** Minimize the negative effects between differing intensities of uses by:

- **R5** Requiring strict adherence to Compatibility Standards (NPZD).
- **R6** Encouraging City Council to modify the Land Development Code to require compatibility standards between residential uses (including multifamily) and all office and commercial uses,
and require vegetative buffers of 25 feet within the setback (Neighborhood).

R7 Retaining office uses as a transition between other commercial and residential uses (NPZD).

R8 Increasing limits on density and height when necessary (NPZD; Neighborhood).

R9 Increasing the amount of mature vegetative buffer when necessary to screen lights, noise, and unsightly features such as mechanical equipment, trash disposal, parking lots, loading docks, cluster mailboxes, etc. (NPZD; Neighborhood).

R10 Discouraging waivers and variances to Austin’s Land Development Code unless the owner can demonstrate a true hardship (COA).

R11 Studying the feasibility of requiring additional setbacks and landscaped buffers for new commercial uses adjacent to multifamily uses (NPZD).

Obj. 1.2 Discourage additional through-streets within established residential neighborhoods. If through-streets are not constructed, bicycle and pedestrian connectivity should be encouraged.

R12 Ensure that there is no connection between the 2300 block of Douglas Street (which currently terminates in a cul-de-sac) and the 2400 block of Douglas Street which has not yet been constructed (PW).

R13 Ensure that there is no future extension of Benjamin Street further east of Ware Road (PW).

R14 Ensure that Riverside Farms Road does not connect to Oltorf Street and maintains its rural character (PW).

R15 Ensure that Sunridge Drive does not connect to Highway 71 (PW).

R16 Ensure that there is no future extension of Mariposa west to the northbound IH-35 frontage road or to the property west of its termination (PW).

R17 Ensure that there is no future extension of Windoak Drive west to the northbound IH-35 frontage road or to property west of its termination (PW).

Obj. 1.3 Identify strategies to address code enforcement and maintenance issues for residential and commercial properties.
R18 Form a neighborhood task force that will identify zoning and housing code violations and communicate such issues to the Code Compliance Division of Solid Waste Services (Neighborhood).

R19 Conduct a study to determine the adequacy of the City’s current building code, as it relates to requirements of building foundation engineering and construction, and if necessary, amend relevant sections of the building code to minimize foundation failures in poor soil conditions (WPDR).

R20 Support the augmentation of city staff dealing with code enforcement issues and to provide information that would allow citizens to identify basic code violations in their neighborhoods (SWS).

R21 Research funding opportunities or assistance programs for the improvement and maintenance of residential and commercial properties (Neighborhood).

Obj. 1.4 Improve legal notification procedures and access to restrictive covenant information in order to assist residents with development proposals occurring in and around their neighborhoods.

R22 Work with the City to establish list serves by neighborhood planning area on which would be posted legal notification of variance and zoning cases in addition to building permits (WPDR).

R23 Require that applicants disclose any deed restriction details at the time of zoning application (NPZD; WPDR).

**Goal 2**

*Increase home ownership opportunities that are compatible with surrounding properties.*

Obj 2.1 Apply zoning tools or options in specified areas that promote housing types which are traditionally owner-occupied.

R24 Allow condominium, townhouse, and single-family residential uses and prohibit multifamily residential uses on properties designated as mixed use along Riverside Drive, Pleasant Valley Road north of Riverside Drive and on the west side of Grove Blvd. north of Riverside Dr. (NPZD).

R25 Permit the Urban Home Special Use in the following locations where the current use is duplex residential or four-plex: Mission
Hill Drive, Mission Hill Circle and the east side of Parker Lane between Wickshire Lane and Carlson Drive (NPZD).

**Goal 3**

Improve the appearance, vitality and safety of existing commercial corridors and community amenities and encourage quality urban design and form that ensures adequate transition between commercial properties and adjacent residential neighborhoods.

**Obj. 3.1** Promote the redevelopment of underutilized properties.

**R26** Support the development of buildings with both a commercial and residential component along the south side of Riverside Drive west of Pleasant Valley Road and along the west side of Pleasant Valley Road north of Riverside Drive (NPZD; Neighborhood).

**Obj. 3.2** Improve the streetscape and preserve downtown views.

**R27** Conduct a focused corridor study that would address landscaping, pedestrian and bicycle facilities, creative parking designs (e.g. around the back and sides of a building), design features such as plazas and public art and any others that would make Riverside Drive an attractive destination; examine the possibility of adding a “gateway to downtown” sign at some point along Riverside Drive (NPZD).

**R28** Create a Gateway Overlay that applies to the westbound frontage road of State Highway 71/Ben White Boulevard and the northbound frontage road of IH-35 from State Highway 71/Ben White Boulevard to Town Lake. Specific requirements of this Overlay developed by neighborhood stakeholders include (NPZD; Neighborhood):

- A vegetative buffer equal in width to the existing setback or 15 feet, whichever is less, shall be provided and maintained on Tracts along and adjacent to IH-35 and State Highway 71/Ben White Boulevard. Improvements permitted within the buffer zone are limited to drainage, underground utility improvements, or those improvements that may be otherwise required by the City of Austin or specifically authorized in this ordinance.
R29 Strongly encourage City Council to expeditiously adopt the draft citywide Commercial Design Standards that would apply to special roadways such as East Riverside Drive. These standards should include the following limits and requirements (Neighborhood):

- Work now to create a minimum 20’ buffer along the north and south sides of East Riverside Drive which includes a meandering sidewalk among grass, shrubs, flowering perennials and shade trees using existing city-owned ROW. Any new development should include this same buffer. All city-owned ROW adjacent to the roadway sold to private parties should be landscaped with shade trees and mature vegetation and maintained as such.

- Limit height of buildings along East Riverside Drive to 3 stories or 40’ within 100’ of the roadway to avoid a “canyon effect”.

- Divide required parking lots for commercial and office buildings evenly on all sides of such buildings or place under or on top of the building. All parking areas visible from East Riverside Drive from any roadway crossing East Riverside Drive or adjacent to any residential property must be screened from view with a 4’ wall, berm or mature vegetative buffer.

- Limit curb cuts along East Riverside Drive to improve traffic flow and to minimize the interruption of pedestrian activity.

- Enact a strict sign ordinance which prohibits pole signs, building signs above the roofline and flashing lights and limits the size of signs on buildings and berms, in height, width and overall square footage.

- Encourage pedestrian and bike traffic with better and safer walkways and crosswalks.

Staff note: Neighborhood stakeholders are to advocate for the adoption of this Overlay by the Planning Commission and City Council. The proposed Corridor Study of East Riverside Drive may proceed regardless of whether or not the standards are adopted, and would likely provide for a more comprehensive look at the roadway as both a means of travel and as a destination.
Obj. 3.3 Maintain the current campus-style development on properties zoned LI and IP.

Goal 4
Encourage a balanced mix of residential, civic, commercial, office and other land uses without adversely affecting adjacent residential neighborhoods.

Obj. 4.1 Apply land use and zoning tools or options in specified areas to promote a mixture of uses.

R30 Allow the Mixed Use Building (MUB) and Neighborhood Urban Center (NUC) Special Uses along the south side of Riverside Drive and on the west side of Pleasant Valley Road north of Riverside Drive (NPZD).

R31 Support a mixed use development concept on the north side of Riverside Drive and Lakeshore Blvd. between I-35 and Town Lake parkland which encourages a true mix of uses, allows replacement only of existing multifamily units, prohibits a net increase in multifamily units and addresses affordability in both single family and multifamily residential options. Ensure that at the zoning stage, city staff and neighborhood stakeholders work together on an appropriate mixed use vision for this stretch of land (Neighborhood; NPZD).

Obj. 4.2 Offer diverse commercial and office types to serve the retail and professional service needs in the community.

R32 Maintain opportunities for office uses on major corridors (NPZD; Neighborhood).

R33 Preserve locations with viable commercial uses such as Oltorf Street and the north side of Riverside Drive between Parker Lane and Pleasant Valley Road (NPZD; Neighborhood).

**Transportation**

Goal 5
Enhance the transportation network to allow residents and visitors to travel around safely and efficiently by foot, bicycle, automobile and public transit.

Obj. 5.1 Consider such recommendations as the vacation of roadways, restricting truck traffic, road closures and amending the AMATP and
CAMPO Plans to improve the roadway network by making it “friendlier” to nearby neighborhoods.

R34 Examine the feasibility of vacating Rosalie Place within the Riverside Farms Subdivision, a platted right-of-way that was never constructed (PW).

R35 Remove the extension of Grove Blvd. to Highway 183 as described in the AMATP and CAMPO plans (NPZD).

R36 Remove Burleson Road, depicted as a minor arterial, from the CAMPO and AMATP Plans (NPZD).

R37 Petition CAMPO and the City of Austin to reclassify Lakeshore Blvd. to a neighborhood collector to prohibit through traffic by large commercial trucks between East Riverside Drive and Pleasant Valley Road (Neighborhood).

R38 Petition CAMPO and the City of Austin to remove the extension of Pleasant Valley Road to Burleson Road (which would ultimately connect to Ben White Blvd.) (Neighborhood).

Obj. 5.2 Investigate speeding concerns that create dangerous and obtrusive traffic situations in neighborhoods.

R39 Conduct a traffic calming study at the corner of Summit Drive and Elmhurst Drive and apply an appropriate traffic mitigation strategy to reduce speeding and cut through traffic (Speed cushions are not the preferred method of traffic calming by neighborhood stakeholders) (PW).

R40 Conduct a traffic calming study along the length of Summit Drive from Woodland Avenue to Riverside Drive and apply an appropriate traffic mitigation strategy to reduce speeding vehicles (Speed cushions are not the preferred method of traffic calming by neighborhood stakeholders) (PW).

Obj. 5.3 Investigate the traffic situation at specific locations within the planning area to address safety and efficiency concerns.

R41 Conduct a traffic study at the intersection of Grove Blvd. and Riverside Drive to facilitate traffic flow and reduce hazards (PW).

R42 Conduct a traffic study at the intersection of Riverside Drive and Pleasant Valley Road examining the turn-a-rounds to improve vehicular and pedestrian safety (PW).
R43 Conduct a traffic study to determine a way to alleviate backup traffic heading east on Riverside Drive due to cars turning left onto Crossing Place (PW).

R44 Conduct a traffic study of the IH-35/Riverside Dr. intersection to facilitate traffic flow and reduce hazards. Vehicles heading south on the IH-35 access road, then crossing over IH-35 and heading east on Riverside Drive, have difficulty moving to the right to access Summit Drive (PW).

R45 Conduct a traffic study on the northbound IH-35 access road at Woodland Avenue to investigate the feasibility of reducing the speed limit to 45 mph before the intersection with Riverside Drive to improve safety and accessibility (PW).

R46 Conduct a traffic study at Summit Drive and Riverside Drive and make improvements to the intersection so that dangerously speeding vehicles and cut through traffic are minimized (PW).

R47 Conduct a traffic study at Parker Lane and Woodland Avenue and make improvements to the intersection to make right turns onto Parker Lane for eastbound vehicular traffic more efficient and safe (PW).

R48 Conduct a traffic study along Burleson Road between Oltorf Street and Ben White Blvd. and investigate adding stop signs and/or traffic lights at high-traffic intersections to slow vehicular traffic and make conditions safer for all types of travelers (especially at Ware Road to slow traffic at the school crossing) (PW).

R49 Conduct a traffic study along Oltorf Street between IH-35 and Montopolis Drive to identify ways to relieve traffic congestion (PW).

Obj. 5.4 Investigate traffic signage needs at specific locations.

R50 On the northbound IH-35 access road at Woodland Avenue, place a traffic sign indicating reduced speeds ahead to warn drivers of the impending intersection (PW).

R51 Add signage along Woodland Avenue so that westbound drivers are made aware that vehicles may be turning from Summit Drive onto Woodland Avenue (PW).

R52 Post “Not a Through Street” signs at Princeton Drive and Burleson Road and at Ware Road and Burleson to eliminate vehicular traffic trying to connect to Oltorf Street or Pleasant Valley Road (PW).
Obj. 5.5  Encourage pedestrian and bike friendly neighborhoods by constructing and maintaining sidewalks and bikeways.

R53  Put a striped bike lane along Lakeshore Blvd. (PW).
R54  Extend the bike lane on Pleasant Valley Road from Lakeshore Drive to Cesar Chavez (PW).
R55  Conduct a study to investigate the feasibility of putting bike lanes in the following locations: (PW)
  • Riverside Drive (Grove Blvd. to I-35)
  • Oltorf Street (Willow Creek Drive to I-35)

Note: As of 8/05, bike lanes have been constructed along both sides of Oltorf Street from approximately ½ block east of Willow Creek to Montopolis Drive
  • Grove Blvd. (Hogan Avenue to Oltorf Street)

R56  Build sidewalks within the Riverside Planning Area in this order of priority: (PW)
  • Woodland Avenue between Summit Drive and Parker Lane (either side)
  • Summit Drive between Woodland Avenue and Riverside Drive (either side)
  • Parker Lane between Riverside Drive and Woodland Avenue (either side)

R57  Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: (PW)
  • Burleson Road, west side, from Catalina area southward, as needed, to Ben White Blvd. (improvements)
  • The south side of Oltorf Street between Wickersham Lane and Sunridge Street, where gaps exist

Note: As of 8/05, sidewalks have been completed on the south side of Oltorf Street from Huntwick Drive to Montopolis Drive
  • The south side of Metcalfe Road from Linder Elementary (where it intersects with Wickshire Lane) to Burleson Road
  • Near the intersection of Oltorf Street and Pleasant Valley Road, the south side of Oltorf Street and the west side of Pleasant Valley Road., where gaps exist
  • The south side of Oltorf Street between Sunridge Drive and Alvin Devane, where gaps exist
Note: As of 8/05, sidewalks have been completed on the south side of Oltorf Street from Huntwick Drive to Montopolis Drive
• The north side of Benjamin Street between Douglas Street and Princeton Drive

R58 Build sidewalks within the Pleasant Valley Planning Area in this order of priority: (PW)
• The east side of Pleasant Valley Road (north of Lakeshore Blvd. to the Colorado River Park)
• The west side of Pleasant Valley Road (north of Elmont to Lakeshore)

Obj. 5.6 Improve connectivity across high-traffic roadways to facilitate pedestrian and bicycle transportation.

R59 Identify and provide safe pedestrian and bicyclist crossings all along Riverside Drive from IH-35 to Grove Blvd., with special attention paid to intersections at or near a bus stop (PW).

R60 At the intersection of Riverside Drive and Lakeshore Blvd., identify and provide improvements such as an elevated crosswalk or overhead pedestrian bridge to minimize the danger of crossing for pedestrians and cyclists (PW).

R61 Along Lakeshore Boulevard from East Riverside Drive to Pleasant Valley Road, identify and provide safe pedestrian and bicyclist crossings, with special attention paid to the intersections of Lakeshore Boulevard with Town Creek and Tinnin Ford (PW).

R62 At the intersection of Pleasant Valley Road and Riverside Drive, identify and provide improvements to ease crossing Pleasant Valley Road and minimize safety hazards for pedestrians and cyclists (PW).

R63 At the IH-35/Riverside Drive intersection, identify and provide improvements to minimize the danger of crossing in all directions for pedestrians and cyclists (PW).

R64 Investigate the possibility of making the section of IH-35 frontage road at Woodland Avenue level with the interstate while maintaining the east-west underpass connection to Travis Heights to facilitate and make safer inter-neighborhood travel (PW).
Obj. 5.7 Support and enhance public transportation in the area.

R65 Support a Bus Rapid Transit (BRT) line along Riverside Drive (CapMetro; Neighborhood).
R66 Provide a Dillo circulator route that would enable residents and employees within the Riverside, Parker Lane and Pleasant Valley Planning Areas to move around easily and take advantage of the area’s services without the need of a car (CapMetro).
R67 Provide a Dillo route to connect the EROC planning area with the rest of Austin (Cap Metro).

Obj. 5.8 Identify areas prone to flooding that impede travel.

R68 Improve storm water drainage along Pleasant Valley Road between Riverside Drive and Lakeshore Blvd., especially at Elmont and Lakeshore (may be appropriate when the Holly Power Plant is closed and the gas pipeline along Pleasant Valley Road is disconnected) (WPDR).

Parks, Trails, Open Space and the Natural Environment

Goal 6
Protect and enhance the Town Lake Waterfront as well as creek areas and other natural amenities.

Obj. 6.1 Investigate ways to amend the City of Austin’s Land Development Code and support initiatives that propose to protect waterways and their surrounding environment.

R69 Create and adopt a neighborhood plan design tool or similar mechanism (i.e. Headwaters Protection Initiative) for requiring greater development setbacks along creeks and in the vicinity of
creek headwaters and in other environmentally sensitive areas (WPDR; Neighborhood).

R70 Advocate to PARD and/or WPDR the acquisition of properties containing the headwaters of Country Club Creek and preserve them in a natural state as the Country Club Creek Preserve. The headwaters are located just north of Ben White Boulevard and are indicated by seeps and springs and marked on the “Environmental Features and Watershed Boundaries” map. (Neighborhood).

Obj. 6.2 Identify undocumented creeks and Critical Environmental Features (CEFs) in the area and protect them from development.

R71 Work with the Watershed Department to do the following (Neighborhood; WPDR):

• To document the exact location of creeks, seeps, springs and wetlands so that they are added to the City’s inventory of Critical Environmental Features;
• To name any unnamed creeks;
• To determine if additional creeks should be added to the current list of “urban” or “suburban watersheds”.

Obj. 6.3 Identify opportunities for monitoring and maintaining the appearance and water quality of creeks.

R72 Conduct clean-up activities around creek areas (Neighborhood, Keep Austin Beautiful).
R73 Explore volunteer opportunities such as the Texas Watch State Volunteer Water Quality Monitoring program, www.texaswatch.geo.txstate.edu (Neighborhood).

R74 Increase awareness of water quality issues through neighborhood association newsletters, list serves and websites (Neighborhood).

Obj. 6.4 New development along Town Lake and Lakeshore Blvd. should strive to provide maximum visual and physical access to the waterfront, preserve the natural and riparian qualities of the lake and the existing park system, extend the sense of greenery and open space, establish a continuous system of public access and result in a pedestrian-friendly & public-spirited environment.

Staff note: Some of these recommendations developed by neighborhood stakeholders involve revisions to the City’s current code. Neighborhood stakeholders should encourage Planning Commission and City Council to adopt these code amendments.

R75 Prohibit overnight parking on Lakeshore Blvd by large commercial trucks. (APD).

R76 Extend Waterfront Overlay setbacks to provide increased open space and public access (NPZD).

R77 Modify the South Lakeshore Subdistrict regulations of the Waterfront Overlay District to extend the primary setback to 100 feet from its current 65 feet and preserve and support the existing regulation which mandates a primary setback of 50 feet south of Lakeshore Blvd. (Neighborhood; NPZD).

R78 Preserve and protect the provisions of the East Riverside Subdistrict regulations of the Waterfront Overlay District maintaining the primary setback of 100 feet from the Town Lake shoreline and maximum impervious cover of 50 percent for an area not included in a primary or secondary setback, as well as extend to this subdistrict the creek setbacks and other restrictions included in the Travis Heights Subdistrict regulations (Neighborhood; NPZD).

R79 Increase the number of prohibited uses in the Waterfront Overlay subdistricts within this planning area (NPZD).

R80 Include appropriate building scale requirements within the Waterfront Overlay subdistricts so that buildings step up gradually as they move away from the waterfront (NPZD).

R81 Modify both the East Riverside and South Lakeshore Subdistrict Regulations of the Waterfront Overlay District to
limit building heights. Language similar to the following is proposed to be added to the regulations (Neighborhood; NPZD):

- Building heights on properties adjacent to Lakeshore Boulevard are limited to 3 stories or 40 feet.

R82 Property owners along the lakefront should aim to contribute waterfront access and open space necessary to complete the Hike & Bike Trail (Neighborhood).

R83 In pursuance of the goal of protecting the quality of the lakeshore environment, form a neighborhood committee to study the existing Waterfront Overlay regulations and determine where additional protections are needed (Neighborhood).

R84 Modify the East Riverside Subdistrict regulations of the Waterfront Overlay District to include a primary setback of 50 feet south of Lakeshore Blvd. to mirror the provisions of the South Lakeshore Subdistrict regulations. (Neighborhood; NPZD).

R85 Modify the South Lakeshore Subdistrict Regulations of the Waterfront Overlay District to require a vegetative buffer within the existing setback (as determined by base zoning district). Language similar to the following is proposed to be added to the Regulations (Neighborhood; NPZD):

- Require a vegetative buffer equal in width to the existing setback or 15 feet, whichever is less, on Tracts along and adjacent to Lakeshore Boulevard. Improvements permitted within the buffer zone are limited to drainage, underground utility improvements, or those improvements that may be otherwise required by the City of Austin or specifically authorized in the ordinance.

R86 Require the strict application of the parking regulations of the East Riverside and South Lakeshore Subdistrict Regulations of the Waterfront Overlay District to all projects within the Overlays. (Requirements for surface parking currently mandate its placement along roadways, if practical, and that it be screened from views from Town Lake, the Colorado River, parkland, and the creeks. An above-grade parking structure must be on a pedestrian scale and either architecturally integrated with the associated building or screened from views
from Town Lake, the Colorado River, park land, and creeks named in this part; and must incorporate pedestrian oriented uses at ground level if it is adjacent to Town Lake, the Colorado River, park land, or a creek. These do not apply if the parking structure is completely below grade) (WPDR).

R87 Modify the Waterfront Overlay Subdistrict Uses for the South Lakeshore Subdistrict and the East Riverside Subdistrict as follows (Neighborhood; NPZD):

- Structures that front and are adjacent to Town Lake should be used for pedestrian-oriented uses (i.e., any use which serves the public by providing goods or services that are waterfront dependent or waterfront related. Permitted uses include all uses permitted in MF-6 and below and any uses permitted in GO except communications services and communication service facilities, local utility services, hospital service (general & limited), off-site accessory parking (conditional on use of pervious materials.)

R88 Any redevelopment or new development along Town Lake between IH-35 and parkland along S. Lakeshore Blvd. (which includes 1818 S. Lakeshore Blvd.) is strongly encouraged during project approval to dedicate trail land or an easement along the lake and to build the trail (PARD).

R89 Preserve and protect the avenue of mature trees along the north and south sides of Lakeshore Blvd. These trees were given to the City of Austin Parks Department in 1990 by LCRA and now provide total street canopy for Lakeshore Boulevard between Town Creek Drive and the creek adjacent to the western property line of 1701 S. Lakeshore Blvd (WPDR).

**Goal 7**

**Preserve and enhance existing parks, the 18-hole Riverside Golf Course, the Country Club Creek Trail and other open spaces and wetlands to create opportunities for additional public open space and natural areas.**

Obj. 7.1 Identify strategies that work towards the preservation, maintenance and improvement of existing parks in addition to the 18-hole Riverside Golf Course.

R90 Preserve and maintain all City-owned and acquired park space and conservation easements as such (PARD).
R91 Preserve and support the 18-hole Riverside Golf Course and investigate a possible historic designation (Neighborhood).

R92 Encourage the Parks Department to acquire the 18-hole Riverside Golf Course property and maintain it as a golf course (Neighborhood; PARD).

R93 Conduct clean-up activities at parks (Neighborhood; Keep Austin Beautiful).

R94 Provide the following public amenities at Mabel Davis Park in this order of priority (PARD):
   - R94.1 Connection to proposed Country Club Creek trail
   - R94.2 Enhancement of the remaining natural wooded areas and removal of invasive plants and replacement with native species
   - R94.3 Paved hike/bike/skate loop with neighborhood connections
   - R94.4 Picnic, pavilion and restroom facilities
   - R94.5 Benches and seating areas
   - R94.6 Open field for unstructured use like ultimate Frisbee, softball or kickball
   - R94.7 Access to the privately owned pond north of the park
   - R94.8 Skate park with stadium style seating
   - R94.9 Disc golf course
   - R94.10 Fenced dog park
   - R94.11 Spray park in addition to the swimming pool
   - R94.12 Documentation of the history of the property and remediation in the form of public artwork on the park site.

Obj 7.2 Create opportunities for Neighborhood Greens in the area.

R95 Identify under-utilized City-owned parcels that could potentially be developed as a neighborhood green such as (Neighborhood):
   - Two undeveloped City-owned parcels on Mission Hill that have overhead utility easements
   - The undeveloped piece of City-owned land at the end of Pleasant Valley Road next to the Pleasant Valley Bikeway.

R96 Research opportunities to utilize utility easements on private property as public green space (Neighborhood).
R97 Work with PARD to develop user agreements for small neighborhood-maintained neighborhood greens in the planning area (Neighborhood; PARD).
R98 Request that the city acquire the single-family lots in the floodplain at the end of Princeton and Douglas Streets (there are approximately 20 undeveloped lots) so that the area is protected from development and maintained as open space (WPDR).

Obj. 7.3 Improve access to and awareness of existing parks, trails and open space.
R99 Encourage the City of Austin and Austin Community College to create a landmark at the northwest corner of Riverside Drive and Grove Blvd. that would serve as a guide to the Colorado River Park (ACC, the Riverside Golf Course and the Daniel Ruiz Library are other public and private entities on Grove Blvd. that could be incorporated) (Neighborhood; PW).
R100 Work with any and all other organizations to complete the Hike & Bike Trail and provide and encourage pedestrian use (PARD).
R101 Encourage PARD to design and construct an over-the-water connection for the Lakeshore portion of the Town Lake Hike and Bike Trail (Neighborhood; PARD).
R102 Provide an under IH-35 connection of the Town Lake Hike and Bike Trail (This is existing CIP and needs to be funded.) (PARD).

Obj. 7.4 Establish a hike and bike trail along Country Club Creek that connects to trails within the Colorado River Park and the Town Lake Hike and Bike Trail.
R103 Construct a trail system along Country Club Creek that is sustainable and not subject to erosion due to flooding (PARD).
R104 Provide a safe pedestrian crossing across Pleasant Valley Road at Lakeshore Boulevard to connect the existing Town Lake Hike and Bike Trail to the proposed Country Club Creek hike and bike trail (PW).
R105 Provide a safe pedestrian crossing across Burleson Road near Country Club Creek (PW).
R106 Work with private property owners and the Parks and Recreation Department to acquire land or recreational use easements for trail access along the Country Club Creek
corridor. Possible locations include the undeveloped land in the floodplain between Burleson Road and Pleasant Valley Road (Neighborhood).

**Affordable Housing**

**Goal 8**
Provide affordable rental housing opportunities through the redevelopment of existing multifamily developments.

Obj. 8.1 Apply redevelopment tools that encourage provisions for affordable home rental. These redevelopment recommendations apply only to the following specific existing developments:

*The Arbor—1500 Royal Crest; Barcelona I & II—2101 Elmont*; Brookstone Apartments—2315 Town Lake Circle*; Garden Oaks—2425 Elmont*; Las Palmas—2409 Town Lake Circle*; London Square—2400 Town Lake Circle*; and Vista Lago—2215 Town Lake Circle*

*Note: *Indicates properties located within the Community Preservation & Revitalization Zone

R107 Allow existing multi-family developments listed above not located in the 100 year flood plain to be rebuilt at the same height in stories, number of units, and building footprint provided that they meet S.M.A.R.T. Housing technical standards for accessibility, Green Building and Transit-oriented design; and meet the sprinkler requirements of the 2003 International Building Code if at least 10% of the units are “reasonably priced” (i.e. rent to households at or below 80% Median Family Income who spend no more than 30% of their gross income on rent and utilities). In addition, the following development standards are recommended:

- Height may be no greater than existing height on June 1, 2006.
- Balconies, entrances, patios, open walkways and open stairways are not permitted within 20’ of any single-family use.
• All trash receptacles must have a permanent location in the rear of the property or if no alley is available they must be on the property in an enclosure.
• Fencing is required between any parking facility and any single-family residence.
• Lighting may be no higher than 15 feet and should be screened from adjacent residences.

Note: Applicants who meet these conditions in the redevelopment of the properties listed above would not be required to meet compatibility standards or increase parking or site detention.
4. LandUse

Introduction

As Section Two illustrates, the East Riverside/Oltorf Neighborhood Planning Areas are comprised of apartment complexes, established single-family neighborhoods, parks, natural areas, and accessible open spaces (including an eighteen-hole golf course once patronized regularly by golfer Harvey Penick). Defined single-family neighborhoods around Summit Street, Parker Lane, Burleson Road, Riverside Farms Road, Penick Place, Sunridge Drive and Faro Boulevard house a significant number of the residents in this area. An abundance of non-single-family housing, both in the form of apartments and condominiums, is found throughout each of the three individual neighborhood planning areas; they house student, immigrant and young professional populations (refer to the Statistical Profile Section for current land use details). In addition to this established residential base, there has been a significant amount of development in the form of large industrial park complexes and expansive commercial districts.

Although the East Riverside/Oltorf Area has not traditionally been thought of as "inner city," in part because it was developed much later than other south Austin (meaning south of the Colorado River) neighborhoods like Travis Heights, it is within very close proximity to downtown and the Capitol Building. Land values in the area are relatively inexpensive and properties are located either adjacent or in relative close proximity to Town Lake and the hike-and-bike trail. In addition to a large number of undeveloped parcels, many buildings are reaching their natural lifespan and are ripe for redevelopment. As such, there has been much recent interest in this area from a (re)development perspective and the potential for change in the near future is eminent. For this reason it is extremely important that this neighborhood plan capture the desired vision of its stakeholders in order to provide guidance and to improve the quality of future (re)development.

Neighborhood plan goals that relate to this section of the plan include:

- Preserve and enhance the character of existing residential neighborhoods.
- Increase home ownership opportunities that are compatible with surrounding properties.
➢ Improve the appearance, vitality and safety of existing commercial corridors and community amenities and encourage quality urban design and form while being sensitive and respectful to adjacent residential neighborhoods.

➢ Encourage a balanced mix of residential, civic, commercial, office and other land uses without adversely affecting adjacent residential neighborhoods.

The first part of this section provides a general historical timeline of development and documents information related to significant land uses within the combined NPA. The next part delineates the key elements reflected on the future land use maps for the Riverside, Parker Lane and Pleasant Valley Neighborhood Planning Areas with explanatory text. Following that is a section devoted to Riverside Drive since the current and desired state of this corridor was the topic of much discussion at neighborhood planning meetings.

Lastly, specific recommendations made towards realizing each of the land use goals can be found in Section 3. Any land use recommendation not supported by the City can be found in Appendix A.
This map has been produced by the City of Austin Neighborhood Planning & Zoning Department for the sole purpose of facilitating neighborhood planning. It should not be referred to as an official source of land use or zoning and is not warranted for any other use. No warranty is made regarding its accuracy or completeness.

Parker Lane Neighborhood Plan Area
Current Land Use (2004)

Legend

Land Use
Vacant/Undeveloped
Utilities & Transportation
Civic
Industrial
Commercial
Multi-Family Residential
Single-Family Residential

0 500 1,000 2,000 3,000 Feet

Created August 2005
Map 4: Current Land Use, 2004
Pleasant Valley NPA

Pleasant Valley Neighborhood Plan Area
Current Land Use (2004)

Legend
Land Use
- Single-Family Residential
- Multifamily Residential
- Commercial
- Office
- Industrial
- Civic
- Open Space
- Utilities & Transportation
- Vacant/Undeveloped
Map 5: Current Land Use, 2004
Riverside NPA

Legend
Current Land Use
- Single-Family Residential
- Multi-Family Residential
- Commercial
- Civic
- Industrial
- Vacant/Undeveloped
- Utilities & Transportation
- Office

Riverside Neighborhood Plan Area
Current Land Use (2004)

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Created August 2005
History/Background/Significant Land Uses

LAND DEVELOPMENT HISTORY & ANNEXATION BACKGROUND

The combined neighborhood planning area has been called East Riverside/Oltorf because these are two of the major streets within the area. Even though these are well known and traveled roadways, it has not always been the case. In fact, although Riverside Drive is one of the oldest roadways in Austin, Oltorf Street is relatively new and did not even extend past its intersection with Parker Lane and Burleson Road until the 1980s. Furthermore, it wasn’t until 1976 that the entire planning area was contained within the full-purpose, or corporate limits of the City.

In the early 1940s, this area was almost entirely undeveloped. Riverside Drive, Parker Lane, Burleson Road, and Metcalf Road existed, but Oltorf Street did not extend past Burleson Road, and neither IH-35 nor the current Ben White/Highway 71 were yet built. Save for the mobile home park along the river west of US 183 at the northeast corner of the NPA, there was no significant development along US 183. Most of the land was comprised of large tracts of what appeared to be crop land, as seen in aerial photographs from this period.

By the early 1950s Wickshire Lane had been built and extended west of Metcalf Road; Ben White Blvd. had been improved eastward from Burleson Road and Woodland Avenue extended west of Parker Lane, although there was no development along the roadway. There was some development along southern Burleson Road, and a handful of homes on Summit Street and Upland Drive. Although the majority of the area was still composed of large-acreage tracts with minimal urban development, Riverside Farms Road was in place, and there was
also additional development along the northwest corner of the Riverside /Montopolis intersection and along Montopolis Drive towards US 183.

By 1958 IH 35 had been constructed. East of this new roadway and north of Woodward Street was largely built out. Although there was still minimal development along Riverside Drive, Penick Place subdivision had been platted and the road Penick Place was in place. Additional development was concentrated along southern Burleson Road and both the northwest and southeast corners of the Riverside /Montopolis intersection. The mobile home park had expanded along the Colorado River, and there is evidence of Pleasant Valley Road, but only on the north side of Riverside Drive.

The Sixties and Seventies saw additional development, filling in the areas between the built out northwest and east side. Still, large tracts of property, especially along eastern Ben White Blvd., were intact and owned either by individuals or corporate owners. Some plans or projects of the day came to fruition, such as the extension of Oltorf Street to Pleasant
Valley Road, while others did not, such as the extension of Pleasant Valley Road to Ben White Boulevard or the connection of Grove to Country Club Drive. Public institutions, such as school and parks were limited to the Linder elementary tract and Mabel Davis Park; the future homes of Baty Elementary and the Colorado River Park were both contained within large privately held tracts.

The Seventies were the most active period of annexation by the City of Austin in the planning area. Not only did the 1970’s mark the transition of the planning area from mostly outside to mostly inside the city limits, but two large annexations, including 623 acres north of Riverside Drive and east of Pleasant Valley Road, and 1,547 acres for an industrial park in the southeast quadrant of the area were major contributors to the amount of property now within the City.

By the early Eighties, Krieg softball complex had been completed. Significant development had occurred west of Pleasant Valley Road north of Riverside Drive, but nothing significant existed between Pleasant Valley Road and the golf course. Oltorf Street was in the process of being extended to Montopolis Drive, and there was evidence of the future Montopolis/Grove split. There was also additional development along IH 35, and along Ben White Blvd., which was now a four-lane roadway. While Burleson Road, Catalina Drive, Parker Lane, and other western areas were now completely built out, there appeared to have been only a single residence between the few homes in the Riverside Farms area and the Ben White/Montopolis intersection. Furthermore, development in the late 80s and 90s was predominately industrial and multifamily.
SIGNIFICANT LAND USES

**Daniel E. Ruiz Library**

Groundbreaking for a new library occurred on March 2, 2002. In honor of one of Austin’s most influential community leaders, the library was dedicated to the memory of Daniel E. Ruiz.¹ When the Library opened in 2004, at 16,000 square feet, it was the largest branch in the City of Austin’s library system.

![Daniel E. Ruiz Library](image)

Daniel E. Ruiz Library

In addition to the books and periodicals typically found in a public library, this library is one of Austin’s ten “Wired for Youth” libraries. Equipped with Internet-wired multimedia computer workstations, each center is staffed with "wired" librarians who can teach multimedia, web design, and other computer skills. Children aged 8-18 have the opportunity to use computers for schoolwork research, or for personal interests such as email and chatting on-line. Centers are also equipped with digital cameras, video cameras, scanners, and other equipment, along with software for web design, graphics and media, word processing, and other tasks. These centers were established by The Michael and

¹ Daniel E. (Danny) Ruiz was a good friend of the Austin Community – a native Austinite. Danny proved to be a dedicated public servant, community advocate, and organizer who fought to address inequities and civil rights issues. He forged a 20-year career in state government, working in key positions under some of the state’s most prominent officials. What impressed people the most about Danny was his gentleness, generosity, and outstanding commitment to his family, friends, and community. (Excerpt from then-Mayor Gus Garcia). At the time of his death in 2000, Mr. Ruiz was executive director of the Greater Austin Hispanic Chamber of Commerce. (Source: Program from Groundbreaking Ceremony, March 2002; Austin History Center)
Susan Dell Foundation, the City of Austin and the Austin Public Library Foundation in 2000.

**Dorothy Linder Elementary School**
This Austin Independent School District facility, located at 2800 Metcalfe Road, was dedicated in 1972. Named for Dorothy A. Linder, a teacher and administrator with a 38-year career in education, the school consists of sixteen classrooms serving 300 students in grades one through six.\(^2\) The building was progressive for its time; it was designed to fit into the hillside and appear to have grown out of the sloping terrain. In addition to the topography of the site, the proposed activities and teaching functions were influential in the design and shape of the building. Retractable walls were incorporated to permit traditional style classrooms to be converted into a team teaching environment to supplement the versatility of those teaching areas. There were also smaller instructional areas for accelerated students and students with special or individual needs.

\(^2\) Dorothy A. Linder taught at Pease, University Junior High, and Fulmore Junior High. She earned her Master's degree while teaching and was appointed assistant principal at Fulmore. In 1965 she was appointed principal, being the only female secondary school principal in the Austin school system. She also co-authored a history textbook that was published in 1955 that was used in many schools throughout Texas. (Source: Program from Open House Dedication, November 12, 1972; Austin History Center)
Baty Elementary
The East Riverside/Oltorf Combined Neighborhood Planning Area lies within both the Austin and the Del Valle Independent School Districts. Baty Elementary is a Del Valle school and currently offers instruction to seven hundred students. As with Linder Elementary, this primary school is named after an educator, in this case Ms. Willie Baty, a retired Del Valle teacher. In addition to elementary grade level education, early childhood, pre-kindergarten and kindergarten education is offered in both English and bilingual formats. The original Baty Elementary was constructed and dedicated in the mid 1980s and operated across from the former Bergstrom Air Force Base. Home to the Baty Bobcats, the elementary school was relocated in 1999 to its current location as part of the efforts to convert Bergstrom from a military installation into an international airport.

ACC - Austin Community College – Riverside Campus
The Austin Community College (ACC) is a two-year institution of higher education that was established in Austin in 1972 as part of the Austin Independent School District. The first classes were offered in September 1973 with 2,200 students and by the fall of 1974, student enrollment had more than tripled to 7,061. Enrollment, the number of campuses, the service area, and the number of off-campus learning centers has continued to grow. At present day, the College’s service area includes all of Bastrop, Caldwell, Blanco, Gillespie, Hays, and Travis Counties, along with portions of Gonzales and Williamson. Through its six campuses and more than forty off-campus centers, more than 65,000 for-credit and continuing education students are enrolled in ACC programs annually.

3 Information in this section provided by Austin Community College and the Handbook of Texas Online.
Currently, the U.S. Department of Education ranks ACC as the eighth largest community college in the nation. Moreover, a recent educational magazine ranked ACC at Number 11 on its annual list of the Top 50 Community Colleges by Hispanic Enrollment (based on US Department of Education statistics). The magazine also included ACC at Number 42 on their list of Top 50 Colleges awarding the most associate degrees to Hispanics.

The Riverside Campus is located at 1020 Grove Boulevard in the Pleasant Valley Neighborhood Planning Area. This campus was developed in the late 1980’s and consists of nine buildings and associated parking on an approximately forty-two (41.698) acre site.

Today ACC has six campuses (Cypress Creek, Eastview, Northridge, Pinnacle, Rio Grande, and Riverside), the Highland Business Center and the Downtown Center. There are thirty-five Academic Departments offering more than seventy-five majors and two-hundred different degree plans. ACC offers freshman and sophomore courses, occupational programs, and adult education, and confers associate degrees (Associate of Arts, Associate of Science, and Associate of Applied Science) and certificates of completion. More local high school graduates begin their college education at ACC than at any other higher education institution in Austin. ACC is also the primary trainer and re-trainer of the Austin area workforce through their continuing education, weekend college, and workforce programs.

In addition to the main campuses, ACC offers evening for-credit courses to the public at seven local high schools sites, known as ACC Centers within their service area; additionally, they offer college credit classes during the day at several Centers for more than 1,000 high school students taking college classes early. Nontraditional instruction is offered through various telecommunications outlets; over one-hundred and fifty web-based courses are offered.
In Texas, more than fifty percent of all entering college students begin their higher education at a community college. As population increases within their service area, additional student numbers will increase demand. Furthermore, in 2000 the Texas Higher Education Coordinating Board adopted Closing the Gaps: The Texas Higher Education Plan. Among the Plan’s goals are increased participation rates statewide in higher education. Specifically, the plan calls for an increase in the participation rate from 5.0% to 5.7% by 2015. Texas will have to enroll approximately 500,000 additional students by 2015 in order to raise its participation rate to meet the goal. An estimated sixty (60) percent of those new students are expected to begin their higher education at community and technical colleges in the state. ACC, one of only fifty community colleges in the state, has determined they will need to grow by 10,000 students over the next decade to meet its goals under the initiative.

Expansion of campus facilities, at Riverside or elsewhere, is certainly possible. All six campuses are at or exceed national standards for room utilization. ACC has recently undertaken a district-wide analysis and master-planning effort.

Based on the results of that analysis and their recently enlarged service area, plans will be made with regard to expansion and/or relocation. In the interim, there are two planned capital improvement projects for the Riverside campus: replacement of Building D (with later renovation in Buildings A, B, and C), and the construction of a 400-space parking structure.

Similar to AMD, SEMATECH, and Tokyo Electron, ACC has extensive community outreach and development programs. ACC’s Center for
Community-Based & Nonprofit Organizations helps these types of organizations to be more effective by helping them strengthen their organizational capacity. The Center provides professional and volunteer leadership training through workshops, publications, resource libraries, partnerships and other services. The ACC Office of Student Life also publishes a guide to promote awareness and encourage volunteer opportunities for ACC students.

Industrial Technology Sector

**AMD**

In November 1979, semiconductor company Advanced Micro Devices (AMD), of Sunnyvale, California, officially opened its first plant outside of California; that facility was located just off East Ben White Boulevard and west of Montopolis Drive in the Parker Lane Neighborhood Planning Area. This new facility in Austin was the first expansion for ten-year old AMD outside of its Sunnyvale campus. Austin was selected, according to then-president W. J. Sanders, III, because of the “quality of its labor supply, its excellent lifestyle, and the technological resources of its education institutions.” (Chamber News Release; July 25, 1978).

Today’s campus which is comprised of 1.5 million square feet of space on 138 acres is the largest global facility for the company. Primarily dedicated to the Computational Product Group of the corporation, design and process engineers work to develop the next generation of microprocessors that serve as the power behind millions of desktop and mobile PCs, servers and workstations. At nearly 1 million square feet, the facility – along with 123,000 square feet of Class 1 clean room space – produces Spansion™ advanced Flash memory devices for Spansion LLC, a company formed by the integration of AMD’s and Fujitsu’s Flash memory operations. In addition, employees of the Personal Connectivity Solutions Group (a division within AMD) work on products for the non-PC Internet appliance market.

The number of AMD employees at this campus is currently listed at 3,200 (although it may fluctuate in response to market conditions). The number of AMD employees is impressive, ranking as the 9th (2000) and 14th (2002) largest employer in Austin according to the Chamber of Commerce. Furthermore, it remains one of the largest private employers for the City of Austin, ranking as high as 6th (2003) according to AMD.

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*Information in this section provided by Advanced Micro Devices, the Austin History Center, MarketWatch, Spansion, and Reuters.*
Owing to its size, AMD obviously has had a significant impact on the economy and quality of life for the immediate area and the larger Austin area. In addition to the thousands of people employed over the past twenty-six years, AMD’s presence has positively impacted local retail sales and the tax base. What is perhaps not as well known, but equally significant, is the company’s commitment to being a leading corporate citizen and a good neighbor.

In addition to local monetary and in-kind contributions, volunteer hours and donations, AMD has actively championed such local causes as affordable housing, safer work practices, developing family- and mother-friendly worksites, the use of green energy, decreased energy and water consumption, and decreased production of hazardous waste. AMD also has a long-standing and ongoing tradition of giving back to the community, both as an individual corporation and in partnership with social service providers, non-profit organizations, or other corporate entities. AMD’s commitment to community is expressed in four major categories of charitable contributions and participation; they are: basic needs, community development, education, and workforce development.

Earlier this year, AMD announced plans for a big, new office campus to house
the 2,000 employees who work for its core microprocessor business, workers who are now spread out among twelve buildings. The result would be Spansion as the remaining enterprise at the Oltorf location. In April, AMD announced plans to consolidate its Austin operations on a sixty-acre parcel in the Oak Hill area. About the same time, Spansion (the 1993 joint venture of AMD and Fujitsu in which AMD currently has a sixty percent stake and control over product planning and worldwide marketing) announced that it will launch its own initial public offering of stock. As an independent corporation, which currently employs about 1,000 people in the Parker Lane area, Spansion will likely continue its operations at Fab 25, at least for some time.5

SEMATECH6

SEMATECH, which is short for SEMiconductor MANufacturing TECHnology, is a consortium formed in the late Eighties by US-based semiconductor manufacturers, with support from the United States government and academia. During the early 1980’s, US-based manufacturers lost market share to European and Japanese firms. To help reverse this trend and return US-based firms to a position of world leadership in semiconductor manufacturing, the Semiconductor Industry Association, or SIA (a San Jose, California-based trade association representing the US microchip manufacturing industry and the Semiconductor Research Corporation), issued a call in 1986 for cooperation among the industry’s manufacturers and the federal government. Seen also as an appropriate if not necessary US response to the Japanese Ministry of International Trade and the Industry and the Joint European Submicron Silicon Initiative (both of which assisted their local manufacturers), the consortium was to solve common manufacturing problems by leveraging resources and sharing risks in a noncompetitive environment. At the time, the semiconductor industry was the nation’s largest, with approximately 2.7 million American employees.

5 Fab 25 is a ten-year old facility. The lifespan of such a facility is approximately twenty years, dependent on upgrades, new standards, and chip industry developments. AMD considered modernizing the factory last year, including the installation of advanced equipment to process larger silicon wafers; those plans stalled when the flash memory market weakened. In addition, construction for Fab 36, a new facility for the production of larger (300nm) wafers, has been announced in Germany. (Source: Austin Business Journal)

6 Information in this section provided by SEMATECH, Handbook of Texas Online, the Austin Business Journal and The Business Review (Albany, NY).
The following year, the SIA approved the formation of SEMATECH and established operations in Santa Clara, California with thirteen charter members. SEMI/SEMATCH was formed as a corporation to help SEMATECH communicate with equipment and material suppliers. At the end of 1987, the US Congress approved the first funds for the consortium and site proposals were invited.

SEMATECH located in Austin (Pleasant Valley NPA) because of a multi-million dollar incentive package prepared by The University of Texas at Austin, the City of Austin, and the State of Texas. The University of Texas System Board of Regents purchased the ninety-four acre former Data General Corporation site and subsequently leased it to SEMATECH at the cost of one dollar a year. SEMATECH became a common testing ground for silicon integrated circuits, advanced tools, processes, and equipment. The program was and remains one of "precompetitive" generic research and development.

Initially, SEMATECH was scheduled to become privately-funded after six years. It began, however, with government startup funds amounting to up to $100 million a year, mostly through the Department of Defense.

SEMATECH is also a founding partner of the Advanced Materials Research Center, an industry-driven virtual R&D center focused on the commercialization of advanced technologies. The center is a collaboration between the State of Texas, SEMATECH, and the state’s research universities, combining the scientific strengths of state universities with the high-tech capabilities of major manufacturers, in order to produce future oriented technology for the people of Texas.
The State of Texas and International SEMATECH announced in 2004 that they had formed the Advanced Materials Research Center (AMRC) with the University of Texas System and other state universities to investigate promising new semiconductor technologies and help ensure the state’s high-tech future. Additionally, International SEMATECH launched its latest subsidiary, the Advanced Technology Development Facility (ATDF) as a for-profit research facility. In September, the parent company, International SEMATECH, once again became SEMATECH.

Like AMD, SEMATECH has been committed to being a good neighbor and active participant in the community. SEMATECH’s community involvement efforts focus on educational and community development programs, which take the form of corporate grants, corporate and individual contributions, donations of volunteer hours, and sometimes computers, printers and semiconductor equipment. As a non-profit organization, SEMATECH’s cash contributions are limited; nonetheless generous amounts of volunteer hours have benefited educational and community development programs.
Tokyo Electron

Tokyo Electron Limited (TEL) is a global supplier of semiconductor and flat panel display production equipment, as well as computer networks and electronic components. Established in 1963 as an affiliate of the Tokyo Broadcasting System and known as Tokyo Electron Laboratories, it was the first company to introduce American semiconductor production equipment and integrated circuit testers to Japan; it has played an important role in the development of the Japanese semiconductor industry ever since.

Though World Headquarters are located in Tokyo, Japan, the US Group Headquarters are located at 2400 Grove Boulevard, within the Pleasant Valley Neighborhood Planning Area. In addition to the headquarters for the U.S. Holdings group, the facility on Grove Boulevard is also the Tokyo Electron America, Inc (TEA) sales and service headquarters, which in turn oversees twelve branch offices located throughout the United States.

TEL U.S. Holdings Headquarters

The entity that would become TEL U.S. Holdings, Inc. was established in 1972, but a presence in Austin did not occur until 1994. When TEL first located Tokyo Electron America in Austin in 1994, the company employed ninety people, and it was exclusively a sales and service operation. Nonetheless, TEL’s investment in the US headquarters complex had reached $50 million on the sixty-acre site.

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7 Information in this section provided by Tokyo Electron America, Austin Business Journal, and The Business Review (Albany, NY)
Shortly after arriving, they announced that it had chosen Austin over Portland, Oregon, for a new $20 to $30 million, 100,000-plus square foot assembly facility. In addition to the fact that they already had a site here, other factors favoring Austin included the site's proximity to key customers like Motorola, AMD and Samsung. The new facility, which would house the Tokyo Electron Texas subsidiary, would be used to manufacture chip-making devices responsible for pattern definition on a semiconductor wafer, and would add 150-200 people to the existing payroll of 200.

Like AMD and SEMATECH, the Austin presence of TEL has grown, and fluctuated, over time. Between 1994 and 2004, the local employment roll grew to 400 employees, becoming the second largest equipment supplier (based on sales dollars) to the semiconductor industry (Applied Materials, based in California but employing approximately 2,600 people in Austin, is the largest). Similar to the industry as a whole, TEL was affected by tough years in 2001 and especially 2002. At one point in 2001, the company had more than 10,000 employees worldwide and well over 500 in Austin. In April of 2003, it announced plans to cut 1,000 employees worldwide within the next twelve months, citing the recession in the semiconductor industry as the reason for the cuts. Even after layoffs, they still had about 520 employees at the Grove Boulevard campus.

Similar to its colleagues and neighbors AMD and SEMATECH, Tokyo Electron’s corporate citizenship attempts to address the mutual interests and needs of the community and the company. At the global level, TEL efforts are found in education, workforce development and civic initiatives. TEL’s support of community programs at the Austin Chamber of Commerce, Texas Asian Chamber of Commerce and Keep Austin Beautiful are a few examples of local civic and community outreach.
FUTURE LAND USE

The intention of the adopted Future Land Use Map (FLUM) is to incorporate the plan’s main land use goals and principles and display them in a graphic format. It is designed to serve as a guide when making future decisions regarding land use and zoning changes.

The FLUM sets the stage for appropriate development by looking at the needs of the community in and around the Planning Area; it is a general illustration of the type of development that is desired and appropriate for this part of Austin. Future rezoning proposals need to correspond with what has been adopted on the FLUM for each Neighborhood Planning Area (NPA). If a requested zoning change does not correspond with the adopted land use for a particular property, an amendment to the Neighborhood Plan will be required, which will involve interaction and communication with the Neighborhood Plan Contact Team (NPCT).

When thinking about future (re)development, Neighborhood Planning participants strongly recommend the preservation and/or protection of the natural environment. Development plans must respect and protect the creeks, the lakeshore environment and critical and sensitive environmental features like springs, woodlands, and wetlands. Look at the section of this Plan entitled “Parks, Trails, Open Space and the Natural Environment” for more information on some of the environmental features and amenities within this area.
Table 8: Existing (2004) Land Use Comparison for Each NPA

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
<th>Combined NPA</th>
<th>Combined NPA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Acres</td>
<td>Acres</td>
<td>Acres</td>
<td>Acres</td>
<td>Percent</td>
</tr>
<tr>
<td>Civic</td>
<td>80</td>
<td>48</td>
<td>26</td>
<td>155</td>
<td>4.62%</td>
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<tr>
<td>Commercial</td>
<td>47</td>
<td>18</td>
<td>110</td>
<td>175</td>
<td>5.21%</td>
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<tr>
<td>High Density Single-Family</td>
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<td>0%</td>
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<tr>
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<td>147</td>
<td>152</td>
<td>0</td>
<td>299</td>
<td>8.91%</td>
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<tr>
<td>Mixed Use**</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>0%</td>
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<tr>
<td>Multifamily</td>
<td>175</td>
<td>356</td>
<td>284</td>
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<td>47</td>
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<td>19</td>
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<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Open Space</td>
<td>58</td>
<td>545</td>
<td>25</td>
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<td>0%</td>
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<tr>
<td>Single-Family</td>
<td>227</td>
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<td>393</td>
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<td>101</td>
<td>154</td>
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<tr>
<td>Undeveloped</td>
<td>156</td>
<td>180</td>
<td>21</td>
<td>357</td>
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<tr>
<td><strong>Land Use Total</strong></td>
<td>1136</td>
<td>1476</td>
<td>745</td>
<td>3358</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Travis Central Appraisal District and City of Austin

Note 1: Multi-Family includes rental and owner occupied housing units (i.e. condominiums)

Note 2: This data includes approximately 183 acres of land owned by Austin Community College (ACC is excluded from the neighborhood planning process.)

The Riverside NPA is the most developed of the three NPAs and has the least amount of open space. The Riverside NPA has the largest proportion of multifamily residential of the three NPAs. Opportunities for future mixed-use redevelopment are available as MUB and NUC options, reflected on the FLUM by asterisks, and on the properties regulated by the Waterfront Overlay, reflected on the FLUM by diagonal lines. The FLUM also indicates that industrial development is not desired and/or appropriate within this particular NPA. It is critical to the Riverside NPA that commercial and office uses are maintained with future redevelopment; the application of true mixed use can achieve this goal.

The Parker Lane NPA continues to have the greatest share of single-family residential land use of the three NPAs. The future land use scenario offers abundant opportunities for commercial and office development, mainly due to the presence of Oltorf Street, IH-35 and Ben White Blvd., which are primarily retail/commercial corridors. The Parker Lane NPA continues to have the least amount of multifamily housing of the three NPAs and has the most opportunity for industrial development.
The Pleasant Valley NPA continues to have the least amount of land available for single-family housing and commercial development, but by far contains the most open space, largely due to the Roy C. Guerrero Colorado River Park, ACC and the campus-style development of most of the industrial properties. According to the FLUM, multifamily housing still comprises a significant share of its total land use and more is not desired.

The following provides some explanatory detail with respect to how the land use goals and stakeholder priorities have contributed to the formation of the future land use maps in this plan. The primary future land use categories within the Riverside, Parker Lane and Pleasant Valley NPAs include: Single-Family, Multifamily, Mixed Use, Commercial and Office, and Industrial.

**Single-Family**

The preservation of single-family neighborhoods is an important priority in this neighborhood plan. The combined FLUM demonstrates the neighborhoods’ desires that established single-family neighborhoods within the three planning areas be protected from encroachment and cushioned from higher intensity uses.

Key elements reflected on the FLUM include:

- Single-family uses and undeveloped lots with single-family zoning are predominantly designated as single-family on the FLUM.
- Intrusion by uses higher than SF-3 is prevented by a “hard edge” surrounding the single-family properties shown in yellow.
- Opportunities for single-family development and home ownership are encouraged by creating Urban Home Subdistricts, which permit

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Source: Staff
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detached single-family homes on lots with a minimum of 3,500 square feet. Urban Home Subdistricts have been created at the following locations:
  o Mission Hill Circle and Mission Hill Drive
  o East side of Parker Lane between Wickshire Lane and Carlson Drive

**Multifamily**
The combined planning area is unique in comparison to many parts of the city in that it has a dominance of multifamily development, primarily in the form of apartments. An overabundance of multifamily housing has resulted in problems related to traffic congestion, a high crime rate and inadequate infrastructure, and does not promote home ownership. Neighborhood Planning participants want to increase home ownership opportunities; more home-owning residents will enhance a sense of permanence and investment in the area. Neighborhood Planning participants desire to maintain a diverse range of housing opportunities for all stages of life and income levels as well as encourage a better housing balance.

A key element reflected on the FLUM is:
  - Existing multifamily (MF) uses have been maintained as MF for most properties except in cases where alternative options might be appropriate for redevelopment. (The intent is to allow existing MF uses to remain conforming uses according to City Code, and to make some commercial and office options available with redevelopment, specifically, Barcelona – 2101 Elmont Drive; Canyon Oaks – 1708 Burton Drive; Lafayette Landing – 1845 Burton Drive; and the palm reader location – 4825 E. Riverside Drive)

**Mixed Use**
The application of mixed use reflects the desire to see certain parts of the area develop or redevelop with projects that are pedestrian friendly, offer convenient neighborhood services, promote human-scale activity on the street, provide community open space and improve the appearance of particular retail corridors.
It is very important to note two major concerns regarding mixed use that have been voiced continually throughout the planning process:

1. Because of the overwhelming proportion of multifamily in this NPA, uses such as office and retail and condominiums and townhouses are all preferred to any multifamily uses; and,
2. Mixed use is supported only when it is a true mix of uses.

These concerns must be kept in the forefront when reading the following explanations and implementations concerning mixed use.

A concern related to possible future (re)development raised by participants during Neighborhood Planning meetings addressed the trend of new residential construction in the inner-city that is unaffordable to many Austinites. The desire to see new and higher quality development was overwhelmingly supported in order to improve the appearance of the area and offer a wider variety of uses to local residents; however, residential development should be sensitive to the diversity of income levels found within the Planning Area. Any concessions in height, setbacks, and/or FAR should be tied to a percentage of significant community open space and low-income units (60% of the median income).

Existing commercial development along Riverside Drive designated as mixed-use on the FLUM

Key elements reflected on the FLUM include:
- Properties with MUB and NUC options – indicated by large asterisks
- Waterfront Overlay properties – indicated by diagonal

Implementation of Mixed Use on specific properties within this planning area follows the descriptions below.
Types of Mixed Use

1 - The Mixed Use Combining District (MU)
During the neighborhood planning process stakeholders identified properties where mixed use was appropriate and desired. Although represented on the FLUM with a designation of mixed use, the specific type of mixed use is actually implemented or achieved via zoning; one way to do this is with the addition of the Mixed Use (MU) combining district to the commercial or office base zoning district. The addition of MU to a base zoning district means that several residential uses would be permitted in addition to the commercial and office uses allowed under the base zoning. The MU addition to a base zoning district is suitable when a very flexible zoning district is appropriate and desired as it allows for an entirely commercial and/or office development, an entirely residential development (from single-family homes to an apartment complex), or for a combination of these uses on the same site. However, as has already been illustrated, the three planning areas within the East Riverside/Oltorf Neighborhood Plan already contain a large amount of multifamily development. As such, there was much discussion during land use and zoning meetings regarding if and how the mixed-use concept could be appropriately applied to this specific part of town using the MU combining district.

2 - Special Use Infill Options
Another way that mixed use can be implemented through the neighborhood planning process is through the adoption of special development tools called the Special Use Infill Options. The term infill refers to “filling in” vacant or underutilized parcels of land in existing developed areas. A goal of the Special Options is to allow for development that will provide benefits such as accessibility to services and amenities by means other than the auto and a diversity of housing for different ages, incomes and lifestyles. The primary mixed-use Infill Options include the Mixed Use Building (MUB) and the Neighborhood Urban Center (NUC).

The Neighborhood Mixed Use Building Special Use permits a mix of uses, including residential, within a single building on a site. This special use should not be confused with the Mixed Use (MU) combining district described above. A major distinction between them is that the Neighborhood Mixed Use Building (MUB) prescribes a mix of commercial and residential in one building structure that has pedestrian-oriented design standards. The MUB must comply with special site development regulations that pertain to things such as setbacks,
parking, lighting and the building façade.

The Mixed Use combining district, on the other hand, allows the construction of commercial or residential or a mix of both on a particular site without any special design or development regulations (the site development standards of the base zoning district apply). The Neighborhood Urban Center special use permits the redevelopment of an existing commercial center, or development of a large vacant site, into a mixed-use, pedestrian and transit-oriented center. There are specific site development and design standards that apply to each use within an NUC development.

Implementation of Mixed Use

The following paragraphs describe the details of how the mixed-use concept is to be implemented through this neighborhood plan:

For specific properties on:
- The north side of Lakeshore Blvd., just off Riverside Drive
- The south side of Lakeshore Blvd.
- The north side of Riverside Drive from IH-35 to Lakeshore Blvd.

Neighborhood Planning participants support a true mixed-use future land use designation on these properties. These properties are very important to nearby residents as they are located along the lakeshore in the Riverside Planning Area. Residents are especially sensitive to building heights, allowable uses and traffic generation at these locations and as such, prefer not to implement the mixed-use idea with zoning at the time of plan adoption. At the time that a property owner or developer expresses serious interest in redeveloping these properties, then discussions can occur between him/her and the NPCT regarding an appropriate
mixed-use zoning strategy. Neighborhood Planning participants understand the Waterfront Overlay adds some mixed-use elements to these properties.

For specific properties on:
- The south side of Riverside Drive from Parker Lane to Pleasant Valley Road (The north side of Riverside Drive from Lakeshore Blvd. to Pleasant Valley Road was intentionally not selected by planning participants as appropriate for mixed-use development; there were concerns that creating mixed use opportunities on both sides of Riverside Drive would allow for the construction of new buildings that would have higher heights than existing buildings on both sides of the street and create a canyon-like effect.)
- The west side of Pleasant Valley Road from Riverside Drive to Lakeshore Blvd.
- The northwest and southeast corners of Oltorf Street and Parker Lane (MUB option only).

Neighborhood Planning participants support MUB and NUC options on these properties. It is not the desire of planning participants to see these lots develop entirely as residential since these are important locations that service the retail and office needs of the community. As previously described, these options allow for development that will provide benefits such as accessibility to services and amenities by means other than the automobile and a diversity of housing for different ages, incomes and lifestyles. The Neighborhood Mixed Use Building Special Use permits a mix of uses, including residential, within a single building on a site. The Neighborhood Urban Center Special Use permits the redevelopment of an existing commercial center, or development of a large vacant site, into a mixed-use, pedestrian and transit-oriented center.

Although the Mixed Use (MU) combining district is not recommended for these properties at the time of plan adoption, planning participants are willing to look at the possibility of adding mixed use in the future. As a result of this planning process, a code amendment was approved for the mixed use combining district to allow for the prohibition of multifamily residential. This conditional overlay is desired by the neighborhood for mixed use projects in an effort to limit the amount of additional multifamily residential in the already over saturated area. To determine which properties are affected by this conditional overlay, refer to the zoning on specific tracts.
Commercial and Office
There are specific corridors where the majority of properties are reserved on the FLUM for pure office and commercial development. In order to provide needed retail and office services to existing and future residents, certain properties should be maintained for non-residential uses.

Neighborhood Planning participants support the addition of small, locally owned businesses and offices. Given the population density and the need to encourage a walkable environment, any development should consider the area’s need for commercial services and diverse employment opportunities.

Neighborhood Planning participants generally prefer diverse non-residential corridors that provide a mixture of both office and commercial uses. Where these properties abut established residential neighborhoods, residents generally encourage office development instead of more intense commercial uses.
Key plan elements reflected on the FLUM:

- Maintain or create the opportunity for commercial and/or office development for specific properties on:
  - Oltorf Road between IH-35 and Pleasant Valley Road
  - The northwest corner of Pleasant Valley Road north of Riverside Drive
  - The north side of Ben White Blvd.
  - The northbound IH-35 access road
  - The north side of Riverside Drive between S. Lakeshore Blvd. and Pleasant Valley Road

**Industrial**

Industrial areas are represented on the FLUM by properties where there is existing industrial development. All of these sites are located in the southeast corner of the combined planning area and are predominantly occupied by large high-tech companies such as AMD, SEMATECH and Tokyo Electron. Neighborhood Planning participants consider the presence of these industrial companies in the planning area as a strength to the community and the Austin economy. Residents like the aesthetics of their industrial park campuses and the fact that the properties are well-maintained. These companies have developed solid relationships with nearby residents by acknowledging and respecting the presence of adjacent residential neighborhoods. Residents consider these major employers to be “good neighbors” and desire to maintain their existence as they contribute positively to the immediate area and to the entire city. Any future industrial development within these planning areas should incorporate the high quality characteristics of existing industrial development, maintain the existing campus-style structure, and adopt the practice of communicating and working with members of the community in which they have chosen to locate their business.
Riverside Drive

Encouraging desirable redevelopment along Riverside Drive with respect to both land use and urban design is a key component of this neighborhood plan. Riverside Drive is important as a commercial center to the diverse groups of residents living in proximity to the roadway, in addition to serving as a gateway to downtown for visitors since it is a primary route to and from the Austin Bergstrom International Airport. The views of downtown that one experiences while traveling westbound on Riverside Drive are spectacular and it is recommended that the views be protected, not only for vehicular traffic, but for the many pedestrians who already traverse Riverside Drive on a daily basis. However, throughout this process it has become abundantly clear that the services available on Riverside Drive are limited in scope regarding what they offer local residents. In addition, the current appearance of the Riverside Drive streetscape, predominantly west of Pleasant Valley Road, does not represent the city well.

The strip shopping malls along Riverside Drive epitomize the car-dominated environment that is, unfortunately, typical of much of the modern American landscape. As a major gateway to the city of Austin, the first impression that many visitors have is of a sprawl of low rise buildings or under-utilized and/or vacant retail space, and the associated sea of mostly deserted parking lots. The current appearance is dominated by a cacophony of commercial signs, blistering parking lot asphalt, and a distinct lack of both vegetation and quality architecture. Although extremely dangerous, pedestrian activity along Riverside Drive is much heavier than one would expect. Many
residents rely on public transportation and have no option but to walk to and from grocery stores, bus stops, and existing retail establishments. After dark, there is even more pedestrian activity along Riverside Drive. One of the Neighborhood Plan Goals is to make this area safe for pedestrians and to encourage more pedestrian traffic. Many neighborhood stakeholders have expressed their desire throughout this planning process to see more diverse eating and shopping options, a wider range of office services, functional civic spaces, and attractive landscaping.

Corridors like the Riverside Drive commercial strip are increasingly being seen as among the best opportunities for developing more mixed use, transit-oriented neighborhoods. This mixed use form of development can include jobs, retail, public space, mixed income housing, and other activities conducive to a higher quality of life. The Urban Land Institute\(^8\) identifies the following metropolitan trends that are acting to redirect growth into existing communities and thereby supporting the redevelopment of retail strips like Riverside Drive:

1. Increasing popularity of urban lifestyles among empty nesters, singles, and non-traditional households;
2. The popularity with immigrants of urban retail locations as low cost locations for small businesses, stores, and restaurants;
3. Renewed interest in urban retail locations due to the saturation of suburban markets;
4. The preference of consumers for pedestrian-oriented, street front retail environments.

However, the Urban Land Institute also adds that these factors alone are insufficient to encourage redevelopment of commercial strips. They argue that

partnerships between the public and private sector are also important. Neighborhood plans can also assist this process by helping to describe a clear vision for how the local stakeholders would like to see a strip like Riverside Drive change. A clearly defined vision for Riverside Drive developed by a broad cross-section of stakeholders through the neighborhood planning process can be an extremely useful tool in aiding the redevelopment of the corridor. As such, particular attention should be paid to the desired forms of mixed use described above for portions of Riverside Drive in addition to the preferred urban design characteristics, which can be found in the Urban Design Chapter.

It is the desire of the Neighborhood Planning Participants that a focused corridor study as outlined in Goal 3 consider, but not be limited to, the following elements:

**LARGE SITES**
Beyond the small number of government-owned sites like the Mueller Airport and the Triangle at Lamar and Guadalupe, it is difficult to locate sites in the urban core of Austin that are large enough to justify the increased costs and risks involved in infill development. Neighborhood Planning participants support redevelopment of commercial strip sites along Riverside Drive and welcome the opportunity to discuss options with developers.

**TRANSIT ACCESSIBILITY**
The strip malls along Riverside Drive are located on existing bus and shuttle lines that cater to this area and the surrounding apartment complexes. The addition of Dillo circulators as recommended by Neighborhood Planning participants will further support development of new activity centers in the area.

**NEIGHBORHOOD CENTERS**
Sites like the strip malls along Riverside Drive are large enough to accommodate whole new neighborhood centers, providing opportunities for live/work options and community open space.
CIVIC SPACE
Attractive public gathering spaces that promote informal interaction among neighbors is a missing component of much of recent urban development. Austin is fortunate enough to possess great public spaces like Zilker Park and the Town Lake Trail, but like many other cities the list of prime “people watching” and vibrant public gathering spaces is short. Any redevelopment of Riverside Drive should incorporate quality public spaces in the form of parks, plazas, squares, etc. These spaces should form the heart of the neighborhood center.
5. Transportation

Introduction

The goal of this plan with respect to transportation is to:

- **Enhance the transportation network to allow residents and visitors to travel around safely and efficiently by foot, bicycle, automobile and public transit.**

Throughout this Neighborhood Planning process many concerns and issues related to the transportation network were expressed and identified by stakeholders in the area. The principal themes that encapsulate these concerns are:

- **The transportation network should be safer for all users: autos, pedestrians, cyclists, etc.**
  The combined NPA, and each individual NPA, is surrounded by major roadways on which a huge number of automobiles pass through this part of town on a daily basis. These roads serve as principal routes to and from the airport in addition to downtown Austin. Cut-through traffic and speeding have been identified as major concerns of planning participants on many roads within the combined NPA. Several of the recommendations that came from planning participants attempt to address these issues.

- **Roadways should not be barriers and impede pedestrian and bicycle travel.**
  Several of the roads that bound and bisect this area are wide and contain numerous traffic lanes, which makes it very challenging for non-automobile users to safely and efficiently traverse from one part of the area to another. Coupled with insufficient pedestrian and bicycle infrastructure, this creates problems and annoyances for those who would like to access services and local amenities on both sides of a roadway. A good example of such a barrier is Riverside Drive. The residents south of the road would like to have safe and easy access to Town Lake and the hike-and-bike trail and it is probable that many of the residents in the apartments to the north of Riverside Drive would like the same type of access to the businesses on the south side of the street.
Roadways should not disrupt and create dangers for established single family neighborhoods.
As the land use section illustrates, single-family development within the combined NPA is not the predominant type of land use. Single-family neighborhoods have established themselves over the years in pockets and have gradually become surrounded by higher density development (both residential and non-residential) in addition to major roadways. As a result, several of the transportation recommendations aim to preserve these neighborhoods not only with respect to land use, but also in character and quality of life.

There should be more transportation options to move people to different parts of the area.
There are many amenities within the boundaries of the combined NPA that attract locals and non-locals alike. Major destinations include: Town Lake, the Hike and Bike Trail, retail services along Riverside Drive and Oltorf Street, the Colorado River Park, the Daniel Ruiz Library, ACC Riverside Campus, etc. A desire of the participants in this planning process is to see more transportation options so that people can take advantage of these amenities. Residents and workers in the area would benefit greatly from improvements in pedestrian, bicycle and transit infrastructure and services.

Lastly, specific recommendations made towards realizing each of the transportation goals can be found in Section 3. Any land use recommendation not supported by the City can be found in Appendix A. Immediately following this introduction is a documentation of historical or background information with respect to the transportation network in this area and following that is a table of the CAMPO and AMATP Transportation Plan recommendations for the roadways within the combined NPA.
History/Background

As noted in the land use section, the road network developed over time, usually in tandem with adjacent residential or commercial development. While some roadways, such as Parker Lane, are relatively old, others such as Oltorf Street are relatively new.

Riverside Drive is one of the oldest roadways, not just in the combined Neighborhood Planning Area, but in the City of Austin. Land for its right-of-way was deeded to Travis County in 1886. For much of its history, Riverside Drive served as means for transportation, rather than a destination of commerce in itself. In fact, according to maps prepared for the Travis County Commissioners Court in 1902, Riverside Drive extended from Lamar Blvd. eastward all the way to what was then known as Bastrop Road (not to be confused with Bastrop Highway). Bastrop Road was located just east of the present day US Highway 183, which is also known as Bastrop Highway. Later, Riverside Drive was extended to connect with State Highway 71, also known as Ben White Boulevard, and named in honor of "Uncle Ben" White who served from 1951-1967 on the Austin City Council. In addition to Riverside Drive’s early connection with roadways to Bastrop and beyond, it later served as a major route to and from the Bergstrom Air Force Base (the current site for the Austin Bergstrom International Airport).

Used as a base to train pilots fighting in World War II, the base was renamed Bergstrom Army Air Field in 1943. During and especially after the end of the War, many military families moved to the Del Valle area around the base, thus increasing demand for transportation connections between the base area and
downtown Austin. In 1959, after completion of IH-35, additional right-of-way for Riverside Drive was deeded to the County to widen it east of Parker Lane.

Other major roads in the Planning Area, such as Burleson Road, Metcalfe Lane and Parker Lane, also predate most land development. Burleson Road (of which Metcalfe Lane was a part of prior to realignment), dates from 1925 when its right-of-way was deeded to the County. Several of these connected with roads south of State Highway 71 such as Burleson Road, Todd Lane, and Nuckols Crossing, which had existed to some degree in their current alignment since the end of the nineteenth century.

State Highway 71, the southern boundary of the Combined Neighborhood Planning Area, which in 1939 was described as extending from Bastrop via Smithville, La Grange, Columbus, El Campo, and Midfield to a point, was well-traveled and was extended to Austin by 1951. However, the origins of this highway are actually much earlier. Bastrop Highway was a “historical road” on the 1898-1902 roadway map adopted by the Commissioners Court of Travis County. It was improved by the City of Austin while in the City’s jurisdiction and named after a Mayor for the City. In 1960, the City began construction on what would become the Ben White Boulevard and US Highway 183 interchange.

Interregional Highway Number 35, or IH-35 as it is commonly called, serves as the western boundary of the Combined Planning Area. The interstate highway system began in 1956, when the US Congress established the National System of Interstate and Defense Highways. Construction of IH-35 through Austin was among some of the first Interstate projects, and already by 1959 the Interstate extended from the International Boundary at Laredo to the Texas/Oklahoma State Line.

Montopolis Drive and Grove Boulevard, which serve as the eastern boundary of the Combined Planning Area, are relatively old (Montopolis Drive) and relatively new and incomplete (Grove Blvd). Montopolis Drive, deeded as right-of-way to the County in 1949, served as the primary entry point into Montopolis, a separate community established on the outskirts of Austin. Grove Boulevard was constructed in the 1980’s and 1990’s, when the underlying and adjacent property was already in the City’s jurisdiction. Today, Grove Boulevard effectively ends at the Roy G. Guererro Colorado River Park. However, it was planned to eventually connect with Montopolis Drive in order to provide additional north-south connectivity. The extension of Grove Boulevard remains
in the adopted *Austin Metropolitan Area Transportation Plan* (AMATP 2025), the official Long Range Transportation Plan for the Austin Metropolitan Area.

Shortly before the beginning of this neighborhood planning process, Pleasant Valley Road was extended south of Oltorf Street (seen above at the stoplight). Later, a ten-foot wide shared-use path was constructed for pedestrians and bicyclists. The path extends to Burleson Road along a utility right-of-way.
CAMPO and AMATP Transportation Plans

There are two major organizations that plan roadways in Austin. The first is the Capital Area Metropolitan Planning Organization (CAMPO), created by federal mandate and charged with developing an integrated transportation plan for the regional area of Central Texas. Federally mandated metropolitan planning organizations exist all over the country and are expected to conduct exhaustive data analyses in preparation for their roadway and transportation plans. The CAMPO 2025 Plan serves as a guide for long-range planning for federally funded transportation projects and serves as a comprehensive transportation plan for the governmental jurisdictions within the CAMPO area. These include the Texas Department of Transportation, Capital Metropolitan Transportation Authority, nineteen municipalities, and all of Travis, Williamson, and Hays counties.

The Austin Metropolitan Area Transportation Plan (AMATP) is intended to guide arterial roadway network decisions for approximately the next twenty-five years. The AMATP does not mandate a schedule for roadway construction projects, but rather identifies a proposed future major roadway system. It uses the CAMPO 2025 Plan as its foundation and adds alternative recommendations and additional data where the AMATP planning team deems appropriate. City Council has adopted the AMATP and the City of Austin supports its implementation, although on occasion, the Council will amend the plan.

Table 9: CAMPO 2025 & 2030 and AMATP 2025 Transportation Plans

<table>
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<tr>
<th>Roadway/Project</th>
<th>Segment/Location</th>
<th>Existing or Committed by 2005</th>
<th>Adopted AMATP 2025</th>
<th>Adopted CAMPO 2025</th>
<th>Recommended CAMPO 2030 (Feb 2005 Draft)</th>
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<tr>
<td>IH 35</td>
<td>Cesar Chavez - US 290 (W)</td>
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<td>FWY 8/HOV</td>
<td>FWY 8/HOV</td>
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<td>SH 71 (E)</td>
<td>IH 35 (S) Pleasant Valley</td>
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<td>FWY 6</td>
<td>Toll FWY 6</td>
<td>Toll FWY 6</td>
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<td>FWY 6</td>
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<td>Toll FWY 6</td>
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<td>Existing</td>
<td>Existing</td>
<td>MNR 2</td>
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<td>US 183 (S) - Fairway St</td>
<td>MNR 0/4</td>
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<td>MNR 0/4</td>
</tr>
<tr>
<td></td>
<td>Fairway St - Montopolis</td>
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<td>Existing</td>
<td>MAD 4</td>
</tr>
<tr>
<td>S Lakeshore Blvd</td>
<td>Riversides Dr - Pleasant Valley</td>
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<td>MNR 4</td>
<td>MNR 4</td>
<td>MNR 4</td>
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<td>Montopolis Dr</td>
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<td>MAD 4</td>
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<tr>
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### Table 8: CAMPO and AMATP Plans continued

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<th>Segment/Location</th>
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**Key to Roadway Classifications**

- FWY - Freeway
- Toll FWY - Toll Freeway
- MAD - Major Divided Arterial
- MAU - Major Undivided Arterial
- MNR - Minor Arterial
- ML - Managed Lane
- HOV - High Occupancy Vehicle
- ------ - No Road Facility Present

The number after the roadway classification indicates the number of lanes. A "MAD" designates a roadway either divided by a raised median, flush center left turn lane, or a central drainage ditch. The choice of one or the other is to be made in the roadway design and construction process.
Map 6: Existing and Proposed Sidewalks

Proposed New Sidewalks and Major Repairs or Improvements

Legend

- Proposed New Sidewalk
- Repair/Improvements Needed
- Existing Sidewalk
- Street
- Lake or Pond
- Creek

City of Austin Neighborhood Planning & Zoning Department
Revised 9/2005
Map 7: Existing and Proposed Bike Lanes

- **East Riverside/Oltorf Combined Neighborhood Planning Area: Bike Lane Recommendations**
- **Legend**
  - Installing Striped Bike Lane
  - Study Bike Lane Feasibility
  - Existing Striped Bike Lane or Shoulder
  - Lake or Pond
  - Creek

**East Riverside/Oltorf Combined Neighborhood Planning Area**

- **Study bike lane feasibility**
  - Oltorf
  - Riverside Drive
  - Grove

- **Improve striping or install curb dividers between vehicle lane and bike lane**
  - Burleson

- **Install striped bike lane**
  - Lakeshore Blvd
  - Pleasant Valley

- **Study bike lane feasibility**
  - Riverside Drive

**Proposed**

- **Install striped bike lane across Town Lake to Cesar Chavez**

**Existing Striped Bike Lane or Shoulder**

- **Study bike lane feasibility**
  - Riverside Drive

**Legend**

- **Install Striped Bike Lane**
- **Study Bike Lane Feasibility**
- **Existing Striped Bike Lane or Shoulder**
- **Lake or Pond**
- **Creek**

**City of Austin Neighborhood Planning & Zoning Department**

Revised October 2005

89
6. Parks, Trails, Open Space and the Natural Environment

Introduction

The East Riverside/Oltorf Neighborhood Planning process addresses not only the built environment but also the natural environment. Generally speaking, planning participants respect and enjoy the environmental resources and amenities within this part of Austin. There is much enthusiasm and energy to see existing green spaces preserved and a strong desire to augment them. With the understanding that this part of town is within the inner city, close to downtown and subject to high development pressure, planning participants would like a more reasonable balance between the built and natural environment. The natural environment should not be considered separate from urban life; rather, it should be integrated with urban living. The goals in this Plan that address park, trails, open space and the natural environment are:

- Protect and enhance the Town Lake Waterfront as well as creek areas and other natural amenities.
- Preserve and enhance existing parks, the 18-hole Riverside Golf Course and other open spaces and create opportunities for additional public open space.

There were several prevalent themes that arose out of the Neighborhood Planning process related to this subject:

- Creek areas should be protected from development so that their natural state is maintained for the enjoyment of residents and to mitigate flooding hazards and poor water quality.
- Sensitive environmental features such as springs, wetlands and ponds should be identified and documented so that they can be protected from development.
- The natural character of the waterfront environment should be preserved. These areas should also be accessible to the public as a natural amenity for all to enjoy.
- Opportunities to create small parks (i.e. “pocket parks” or “neighborhood greens”) within neighborhoods should be explored. There is much parkland within the boundaries of the combined NPA. However, much of this parkland is not within close distance of existing neighborhoods and is separated by Riverside Drive, a wide and very busy roadway.
Connections between existing park/open spaces should be created or improved, especially the gap in the Town Lake Trail. People should be able to safely access park space utilizing a variety of travel modes.

A trail system should be created along Country Club Creek. The creek system is a major natural asset within this part of Austin and it should be preserved and made accessible to enjoy as a natural resource, similar to the Blunn Creek Trail just west of IH-35. Trails could create connections to different parts of the area where none currently exist and provide a much desired recreational amenity.

Existing parks, primarily Mabel Davis Park and the Colorado River Park, should respond to the diverse recreational needs of the surrounding community.

The Riverside Golf Course should be preserved as a golf course. The general desire of Neighborhood Planning participants is to see this property remain in its current state. Residents enjoy the open nature of the site and its historical significance; the Riverside Golf Course has become a fond neighbor to many. The owner, Austin Community College, is uncertain about its plans for this site since they are about to engage in a campus-wide master planning process to determine which, if any, of their existing campus facilities should be expanded.

The following pages document the history/background of the green/open spaces located within the Riverside, Parker Lane and Pleasant Valley Neighborhood Planning Areas. The next part introduces the Southeast Austin Trails and Greenways Alliance and explores the work that has been done by this group towards creating a system of trails along County Club Creek.

The Plan’s recommendations that aim to achieve the goals listed above can be found in Section 3 of this plan. Any recommendation not supported by the City can be found in Appendix A. Supplemental environmental information related to this NPA can be found in Appendix C.
History/Background

The Longhorn Dam on The Colorado River
Town Lake, stretching from Tom Miller Dam at the west to Longhorn Dam at the east, is the youngest “constructed” lake on the Colorado River in Central Texas. Unlike the six dams constructed and operated by the Lower Colorado River Authority (LCRA), Longhorn Dam was constructed, and is maintained, by the City of Austin. Also unique to Town Lake is that it is in the heart of Austin and nearly inseparable from the identity of Austin as an urban oasis within Texas, however, that was not always the case.

Longhorn Dam

Even though the Longhorn Dam did not become a reality until the 1960’s, planning for the low-water dam, as it was then called, and the resulting lake began at least by 1927, one year after Austin adopted its city manager form of government and about the same time Austin established its parks and playgrounds system. According to a 1932 report to the City Council, the purpose of the proposed dam was to create a lake in the City of Austin as a means of beautification of the river front and a possible resort for visitors to and the citizens of Austin (Helland, 1932). This report analyzed two possible
locations for the dam, one at Comal Street and the other at the East City Limit line (about 1.25 miles to the east of Comal); considerations included the impact to existing storm sewers, elevated water levels in creeks, and the number of acres which would be flooded. The project was determined feasible, with the proviso that it not cause damage to the Barton Springs pool, and recognition that it may benefit the Water and Light Plant. The cost of the dam, excluding landscaping and beautification, was estimated at anywhere from $209,000 to $248,000, depending on specific site location.

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**Chain of Highland Lakes and Dams**

**Buchanan Dam** – Constructed from 1935 – 1937 primarily to store water and supply hydroelectricity – forms Lake Buchanan.

**Inks Dam** – Constructed from 1936 – 1938 primarily in tandem with Buchanan, as it has the smallest hydroelectric power plant and no floodgates – forms Inks Lake.

**Wirtz Dam** – constructed from 1949 to 1950 primarily to provide additional hydroelectric power and provides cooling water for LCRA’s Ferguson Power Plant along Horseshoe Bay. The Dam and Lake were originally called Granite Shoals; the dam was renamed in 1952 for Alvin J. Wirtz who was instrumental in LCRA’s creation and served as its first general counsel. The lake was renamed in 1965 for another advocate of LCRA, President Lyndon B. Johnson.

**Starcke Dam** – Constructed 1949 – 1951 for hydroelectricity – forms Lake Marble Falls. Originally named Marble Falls, the dam was renamed in 1962 for Max Starcke, LCRA’s second general manager.

**Mansfield Dam** - Constructed from 1937 – 1941 – specifically designed to contain floodwaters in the lower Colorado River basin – forms Lake Travis. Originally known as the Marshall Ford Dam, it was renamed in 1941 for U.S. Rep. J.J. Mansfield, who assisted in the project’s development. The Corps of Engineers, however, still refers to the structure as the Marshall Ford Dam.

**Tom Miller Dam** – Constructed from 1938 – 1940 to provide hydroelectricity and store water – forms Lake Austin. Constructed on top of the remains of two earlier structures, both called Austin Dam, built from 1890-1893 and 1909-1912, respectively. Massive floods destroyed both structures. The lake originally was called Lake McDonald. The final dam is named for an Austin Mayor, and is leased to the LCRA by the City of Austin until 2020.

(Source: Lower Colorado River Authority)

A few years later, in preparation of the 1936 Texas Centennial, it was decided that construction of the dam was necessary, not just for Centennial uses but for
the general benefit of the City and the Water & Light Department; a proposal to borrow $250,000 for the purpose of building the low water dam and incidental expenses followed.

Despite that call, the dam was not built by the time of the Texas Centennial. In 1938, Tom Miller, Mayor of Austin from 1933-49; 1955-61 (and for whom the Austin Dam was renamed after reconstruction due to flooding), lobbied for federal funds under a Public Works Administration matching-funds grant. According to a newspaper article that same year, the low-water dam proposal had been the subject of discussion for over two decades; the planning for this dam likely preceded the planning of the Chain of Highland Lakes and Dams (refer to previous page for information on the Highland Lakes and Dams). The proposal was considered ready for action in view of the expected early termination of negotiations for the completion of the Tom Miller Dam (Statesman, 1938). Mayor Miller declared that the proposed structure would give Austin “the most beautiful river front in the country” and would provide a “gateway to the chain of dams along the Colorado.” (ibid).

The ultimate decision to construct the dam was made in 1956, although it was made without a firm timeline or specific location. Bonds totaling $1,250,000 had been previously authorized for the construction of a low-water dam that would create a lake in the heart of the city and boost the city’s power producing capacity. As for location, the proposed site was “half way” between the Interregional Highway and the Montopolis Bridge (Statesman, 1956).

The primary purpose of the dam had changed from one of beautification to one of utility; it was to guarantee a consistent water level for the municipal power plant’s water intake. Designed in conjunction with a new power plant, the collapsible dam (so as not to impede flood waters), was to provide a small “town lake” needed to assure an adequate water supply for both the old and new power plants. The new power plant was scheduled to be online by the summer of 1960 so that Austin could meet its rapidly increasing energy demands and not have to buy electricity elsewhere. In addition to impounding water for the Holly and Seaholm power plants, the 506-foot long dam also provided water for the renamed Thomas C. Green Water Treatment Plant, which originally began operations in 1925.

Today, many anglers, especially fly fishermen, enjoy the stretch of river below Longhorn Dam where long-rodders catch largemouth bass, bluegills and Guadalupe bass. In addition, the water released at the dam has been rated as
Class I - II by American Whitewater and is popular among members of the Austin Paddling Club.

**Why is it named the “Longhorn Dam”?**

The name Longhorn Dam is reminiscent of the cattle drives that used to navigate the low-water crossing at this site. This crossing was once an essential link in the Chisholm Trail, a route that took longhorn cattle to market from some ranches at least twenty-five miles south of Austin to Kansas, and then brought market goods back. In *The Longhorn Crossing*, author Walter E. Long describes why this crossing was preferred over others:

> The East Austin crossing…was the favorite one since the water was spread over a rather even rock floor. There were no dangerous holes and no quicksand. The letters of old trail drivers indicate that they had less trouble crossing the Colorado than any other major river on their route. Even floods lasted only a short time since this semi-mountainous river had a quick run-off.

Interestingly enough, the first longhorn crossing at the site, in 1867, resulted in a stampede. Apparently, when the first large herds of cattle came in sight of the white outcropping of limestone with the sun shining on the water, the cattle stampeded. Although it took several hours to gather the cattle, this stampede and the drive (which continued) helped establish Austin’s importance as it specified a crossing which came to be known as the Longhorn Crossing.

**Town Lake Metropolitan Park**

This collection of connected parks along both the north and south banks of Town Lake, including Auditorium Shores, Butler Shores, Festival Beach, Holly Shores, Lakeshore, Lamar Beach, Longhorn Shores, Norwood Tract, Shoal Beach, and Waller Beach, totals over five-hundred (508.89) acres. Lakeshore and Longhorn Shores, at 14.03 and 10.93 acres respectively, flank the south side of Town Lake and are within the Combined Neighborhood Planning Area. Perhaps best known for its 10.1 miles of gravelled hike-and-bike trails, which are popular with joggers, walkers, bicyclists, and dog-walkers, the Park also includes picnic tables and pavilions, baseball, softball, and soccer fields, playgrounds, fishing piers and boat ramps, and, of course, restroom and parking facilities throughout.
A segment of the Town Lake Hike and Bike Trail

The system of trails and the flowering trees along Town Lake can be thought of as a lasting legacy from Ladybird Johnson. Development of the Park and establishment of its trails began in the late 1960s. In the mid 1970s, the former First Lady spearheaded a campaign known as the Town Lake Beautification Project; other people involved in the project include Roberta Crenshaw, who served as chair of the Parks Board.9 Austin voters approved $2.5 million in bond money for the 1975-1977 capital improvement project.

Additional picnic areas, fishing points, trail development, a playscape, landscaping, restrooms and rest areas, and parking facilities, resulted from this Project. Also included were many trees planted along Town Lake, which included the following varieties: Bald Cypress, Chinese Tallow, Crepe Myrtle, Golden Rain, Live Oak, Pecan, Redbud, Spanish Oak, Weeping Willow, and Yaupon Holly. Already by the end of 1975, the Project had received state and national awards, including an outdoor recreation award from the National Trail Systems and Best Example of Texas Public Architecture by the Texas Society of Landscape Architects for the gazebo at Lou Neff Point.

9 Roberta Crenshaw was said to be the one - or one of the ones – who was primarily responsible for the Town Lake area being redone as green space and a park area per a 1997 interview with Mary Arnold conducted by David Todd as part of the Texas Legacy Project (Interview transcript available at http://www.texaslegacy.org/m/transcripts/arnoldmarytxt.htm).
To recognize the contribution from Ladybird Johnson, the City Council, in the late 1970s designated the network of trails along Town Lake and its main tributaries as the "Ladybird Johnson Trail System." A Trail and Waterway Development Fund was created by the Parks and Recreation Advisory Board to provide for the continuation of efforts started by the Town Lake Beautification Committee. As summarized by one writer over twenty years ago:

The creation of parkland along Town Lake has provided Austin with a central point of beauty and recreational facilities unsurpassed by other cities. Under the leadership of Lady Bird Johnson, Town Lake, a once unattractive disruption of urban geography, has been turned into an escape from urban monotony for the people of Austin.

From what had been an underdeveloped section of town referenced to as “the lower part,” there has arisen, with the rebirth of central Austin, a desire among developers to utilize the asset provided by the lakes to create a new town from the land originally surveyed by Mr. Sandusky and Mr. Waller in 1839. (Harris, 1984)

Indeed, it could have turned out differently. As explained by the same author, when the Lake was formed it was an unpolished gem that provided opportunity for careful refinement and development. It was ignored, however, because of a
general lack of interest in the “lower end of town” among Austinites. Despite the new auditorium built on the south shore in 1959, little changed and the City neglected the water. The situation continually deteriorated to the point where citizens would refer to the area as Austin’s “backyard basin for refuse”, and some even suggested that it be filled in.

In 1968, a comprehensive master plan for Town Lake Development was approved by the City Council. Today, the result is an area that has changed from a “geographic barrier and overlooked industrial quagmire to an inner city unifier tying together north and south” (ibid).

In addition to the hike and bike trail’s popularity among Austinites noted above, the Lakeshore and Longhorn Shore Parks, along with the Colorado River Park, are popular spots among amateur ornithologists. According to data compiled by Texas Parks and Wildlife, the trees and vegetation along the lakefront provide habitat for migrant and wintering birds such as the yellow warbler (common during migration) and the ringed kingfisher (an occasional rarity). Wood ducks also nest in the vicinity, bringing their broods in late spring and early summer.
Map 8: Existing Parks and Trails

Legend
- Parkland
- Creek
- Existing Trail
- Lake or Pond
- Planning Area

East Riverside/Oltorf Combined Neighborhood Planning Area: Existing Parks and Trails

City of Austin Neighborhood Planning & Zoning Department
In addition, Town Lake also hosts thousands of over-wintering water birds, mostly American coots, lesser scaup, and double-crested cormorants. Occasionally, ospreys and common loons are reported. Western kingbirds and monk parakeets nest in and around ball fields at the Krieg Field complex. The Colorado River just below Longhorn Dam is also worth investigating if water is low – rarities found here have included the American dipper. The fields and thickets of the Colorado River Greenbelt are popular during migration, when one may see clay-colored sparrows, crested caracara and painted bunting.

Roy G. Guerrero Colorado River Park
Formerly known as the Colorado River Park, the Park was renamed in August 2001 in honor of Mr. Roy G. Guerrero. The first portion of Roy G. Guerrero Colorado River Park was acquired in 1958. Adjacent properties were acquired by donation or purchase, with the final portion being acquired in 1994. In 1996 a plan was produced that identified a wish list of $50 million in features; regrettably, that plan did not take into account flood plains and other natural features that would challenge the development of wish list items. Later, the Austin Parks Foundation conducted an analysis of the property and spent more than $100,000 in private donations for master-planning the Park, which was completed in June 2000.

Today the Roy G. Guerrero Metropolitan Park is approximately 374 acres, slightly larger in size than Zilker Park. Of those acres, approximately 364 (97.3%) are within the East Riverside/Oltorf Neighborhood Planning Area. The park lies adjacent to the Montopolis Youth Sports Complex and together, the parks contain five lighted baseball fields and eleven lighted softball fields. Improvements for the park include a multiple-purpose field and two miles of trails. In addition, there are also plans for other recreational opportunities such as picnic areas, nature trails, a celebration area, an outdoor special events area

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10 According to information provided by the City of Austin Parks and Recreation Department (PARD) prior to the dedication ceremony, Roy G. Guerrero, also known as "Mr. G" – as in Giant - and "Mr. Recreation," spent thirty-four years with PARD. He started as an activity leader in east Austin, and worked his way up to deputy director. During his tenure, he remained active in many community organizations - always finding new ways to inspire youth to become better adults, encouraging them to give back to their community. He is one of the founders of the Texas Amateur Athletic Federation, is past president of the Texas Recreation and Park Society, has served on several boards, and has received numerous community awards.
and a pavilion. All improvements are part of a larger capital improvement project funded by the 1998 bond election.

### Roy G. Guerrero Colorado River Park Chronology

1958 – Acquired 63 acres along Pleasant Valley Road near Longhorn dam, which were later developed into the Krieg Field Sports Complex.

1977 – Roberta Crenshaw, local parks advocate, donates 20 acres along the Colorado River.

1980 – Colorado River land acquisition bond passed for $300,000.

1980 – Acquired 31 acres along the Colorado River near the Montopolis Bridge.

1985 – Colorado River Park bond passed for $3,180,000.

1986 – Acquired 26 acres in order to expand parkland along the Colorado River.

Late – Adjacent College Park subdivision development fails. The property passes through a Savings and Loan failure to the federal Resolution Trust Corporation (RTC).

1992 – Montopolis Sports Complex bond passes for $2,950,000. The neighborhood chooses the Colorado River Park as the preferred location for the complex.

1993 – The Trust for Public Land buys the College Park subdivision from the RTC. The Trust agrees to sell the land to Austin on a lease/purchase plan.

1996 – The Colorado River Park planning committee produces a vision statement for the Park, a conceptual plan, and preliminary cost estimates for park development.

1997 – The City completes the acquisition of the Park and takes final ownership from the Trust for Public Land. The acquisition adds another 223 acres of land to the park.

1998 - Colorado River Park bond passes for $10,000,000 to complete Phase I of the park.


2000 – Master Plan approved.

Krieg Softball Fields located at the Roy G. Guerrero Colorado River Park

Cyclist on Hike and Bike Trail
**Mabel Davis Park**

Mabel Davis Park, a municipal park of just over fifty (50) acres, was acquired by the City over three decades ago, in 1974. Named for Mrs. Alden (Mabel) Davis, who helped organize the Austin Area Garden Center and served as the Center’s first President, it was developed in the late 1970’s and opened in 1979. Features of the park include a swimming pool, picnic pavilion, two basketball courts, one softball field, one multiple-purpose field and a one-quarter mile nature trail.

Unfortunately, natural areas in the park are currently closed. Part of the park is located over a portion of an old landfill that was operated from 1944 to 1955. In March 2000, while preparing to do maintenance work on the landfill, the City discovered elevated levels of lead contained in old battery casings and nearby soils in relatively inaccessible areas of the park. Additional fieldwork uncovered elevated levels of a number of pesticides in several areas. Although no contaminants were found in surface water or groundwater and no pesticides or lead were found in the playscape area, the park was closed in May 2000 for remediation, except for the pool.

Components of the mediation project include:

- Remove lead-contaminated soil, cap or remove pesticide-contaminated soils, remove contaminated sediment from Newell Pond.
- Rebuild and restore headwaters of Country Club Creek over landfill.
- Stop groundwater filtering through landfill and into creek.
- Cover exposed waste and stabilize landfill erosion.
- Rebuild pond dam and install 2 bridges over creek.
- Replace and upgrade an existing wastewater line.

A clay slurry being placed into a trench approximately two feet wide, thirty feet deep and three hundred feet long through the pond dam. This “cutoff wall” will prevent water from the pond from migrating into the landfill and then coming back out into the creek as leachate.

*Remediation project at Mabel Davis Park*
The mediation project is managed by the City’s Public Works, Solid Waste Services, and Watershed Protection and Development Review Departments, while the actual contract work is being done by private party. Funding for the
$8-$9 million project is provided primarily from City issued bonds, although approximately $500 thousand was provided by the City’s Brownfields program.

The City has been working closely with the Texas Commission on Environmental Quality (TCEQ) on the cleanup. As noted, the remediation involves removing contaminated soil in some areas and “capping” contaminated soil in other areas. The City will inspect the cap and landfill on a yearly basis. In addition to the work being done to address soil contamination, the project includes fixing problems associated with the landfill, such as rebuilding the creek (which has caused erosion into the landfill exposing landfill waste), regrading and capping the top of the landfill, rebuilding the pond dam, and installing a leachate collection system. In addition, the City Council recently approved $390,000 for the design and construction of a skateboard facility. All work is scheduled for completion by the end of summer, with the park reopening in October 2005. Once remediation is complete, approximately 20 acres of the park that were previously inaccessible due to trees and underbrush will be available for use by park visitors. New open areas will be planted with native grasses, wildflowers, and Bermuda grass.

*Artist’s Rendering of Mabel Davis Park after Remediation and Improvements*
Certain areas of the park (such as that above the landfill and under the pesticide cap) will have restrictions on excavation and foundations for structures, so as not to disturb the clay cap. Most areas, however, will have no other restrictions on use.

The Riverside Golf Course
The Riverside Golf course is an 18-hole par-71 golf course nestled into the southern portion of the Roy G. Guerrero Colorado River Park, west of Grove Boulevard. Currently owned by Austin Community College who leases out the golf course management, the course was originally developed and used by the Austin Country Club.

Riverside Golf Course

History of the Austin Country Club and Harvey Penick
The Austin Country Club was established in 1899 by Lewis Hancock, mayor of the City of Austin. The Club built, owned and used what is now known as the Riverside Golf Course from 1950 to 1984, before they relocated to Davenport Ranch (Trimble, 1999). Prior to their tenure at Riverside, the Austin Country Club could be found at 811 E. 41st Street, now known as the Hancock Golf

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11 Originally chartered as Austin Golf Club, the name changed to Austin Country Club in 1905; it later changed to Country Club of Austin and then back to Austin Country Club.
Course. Harvey Penick started his golf career at the Hancock location at the age of eight, when he became a caddy for the Austin County Club; by age thirteen he was assistant pro and was elevated to head professional in 1923 upon graduation from high school.12 He retained that title for the next forty-eight years.

In 1949, the Austin Country Club determined that they needed more space, and decided to move to the Grove Boulevard location, selling the Hancock Golf Course to the City of Austin. Harvey Penick and the Board of Directors of the Austin Country Club selected Perry Maxwell, the preeminent golf architect of the classical period of golf architecture (1890 – 1941), to design and build the Grove Boulevard golf course. Perry Maxwell, working with his son, J. Press Maxwell, and Harvey Penick completed the course construction in two years (1948-1949).

Perry Maxwell golf courses are revered by golfers and have been repeatedly used by the PGA for major golf tournaments. In 2002, Perry Maxwell’s Southern Hills Country Club (Tulsa, Oklahoma – completed 1935) hosted the US Open. In July 2006, another Perry Maxwell masterpiece, Prairie Dunes Country Club (Hutchinson, Kansas – completed 1937) was the site of the Seniors Open. Maxwell’s Southern Hills and Prairie Dunes golf courses have hosted more major

tournaments (US Opens and PGA Championships) than any other golf course with one notable exception. The Masters is played annually at Augusta National Golf Club, a course Maxwell also co-designed, built (completed 1934), and then prepared for every successive Masters until his death in 1952. During that 18-year period, Maxwell became known as the “Open Doctor,” because he was also the first golf architect given the honor and responsibility of preparing the course selected for the US Open each year.

Perry Maxwell was a “minimalist,” known for his ability to work with the land. He and Harney Penick spent most of 1946 and 1947 looking for the best possible site for the new Austin Country Club. They had two criteria: soil and water. The Grove Boulevard site provided the very best of both, well-draining sandy loam soil and a highly productive water well.

When the Austin Country Club relocated to the Grove Blvd. site, so did Harvey Penick. He and his wife Helen subdivided a 10.8-acre parcel just south of the golf course into fourteen lots known as Penick Place. Throughout his 70-year career at the Austin County Club, and his thirty-two years of coaching the University of Texas Golf Team, Penick compiled a notebook of things he had seen and learned about some of the great golfers he taught. His observations were ultimately published in 1992 as Harvey Penick’s Little Red Book: Lessons and Teachings from a Lifetime in Golf; the book remained on the New York Times “Bestseller List” for over fifty-two weeks.

In its glory days as home to the Austin Country Club, the Grove Blvd. course saw “scores of champions—both amateur and professional as they made their way around the storied links, many to hone their craft at the hand of the late great teaching professional, Harvey Penick.
Two time Masters champion Ben Crenshaw whetted his putting touch on the original Maxwell greens, 16 of which—plus the original putting green—are still being enjoyed by golfers today.

Austin’s Tom Kite, the 1992 US Open champion, developed his world class swing mechanics as a junior player, by hitting tens of thousands of shots at the ACC practice range—now a parking lot adjacent to the No. 3 tee. Even LPGA Hall of Famer Sandra Haynie—an Austin girl—had her breakout tournament as a professional at Riverside in the 1962 Austin Civitan Open. Haynie triumphed victorious—in playoff against Mickey Wright—the LPGA legend some consider the greatest female player in history.

Before his death in the service of his country, Air Force Lt. Morris Williams Jr., played many rounds at the old country club. Williams was a golfing phenom before the world ever heard of names like Arnold Palmer and Jack Nicklaus. Penick himself always included Williams in the same swath of greatness as Crenshaw and Kite. And today, the US Air Force Golf Championship trophy is named in Williams’ honor, as is Austin’s own Morris Williams Golf Course.

Major champions Byron Nelson, Jimmy Demaret and Don January toured the Riverside course on occasion; as did legendary hustlers Titanic Thompson and George Low. Many of the past and current Texan members on the Champions Tour have played the ACC/Riverside course at one time or another—such as Frank Conner of San Antonio. Austinites Randy Petri and Terry Dill, Rik Massengale, Billy Maxwell and the University of Texas players of the 50’s, 60’s, 70’s and early 80’s, all familiar faces on the fairways of old Riverside.

Even the amateurs who played the Maxwell design had games that resonated far and wide. Crenshaw often told folks he only wanted a putting stroke as fluid as amateur Jimmy Connolly—an Austin city and Texas state champion, whom Crenshaw watched on the Riverside putting green as a little boy. Other amateur champions—too many to mention all—saw their games blossom at the ACC/Riverside tract: Roane Puett, George McCall, Sonny Rhodes, Bill Gainer, Chuck Munson, Richard Buratti, and the late Billy Penn, all polished their games to scratch handicaps at the East Austin layout.

Among LPGA professionals, few pilgrimages were made more often than to the Austin Country Club and no teacher of the game was more sought after than Penick. LPGA Hall of Famers Betsy Rawls, Kathy Whitworth and Sandra Palmer all returned to Austin on a regular basis to the Maxwell course for a dose of swing remedy from Penick. Hall of Famer Judy Rankin, of Midland, an ABC golf analyst and US Solheim Cup captain, would play the course when she came to Austin. Austin’s own Barbara Puett, now an accomplished author and
renowned teaching pro in her own right, learned most all her teaching methods based on what Penick taught her at old Riverside.”

The 18-hole golf course was built primarily with native plant materials but some plant materials such as the initial bent grass greens were introduced. The facilities included maintenance and storage facilities, golf cart storage, driving range and golf professional shop. In addition the Austin Country Club offered swimming, tennis, fine dining and a place for civic activities and good fellowship.

By the late Seventies, the Austin Country Club was once again experiencing growing pains and began to consider relocation. In 1977, the Parks and Recreation Department was contacted by the Austin Country Club to see if the City was interested in acquiring the facilities. Both the continuation of the current use as a golf course or converting the grounds and facilities for metropolitan park usage were determined to be viable options.

However, PARD thought that the next metropolitan park should be located in the far south based on a projected growth pattern along a north-south corridor. Additionally, there was no indication of a significant growth pattern toward the Bergstrom/Del Valle area, which would include a large portion of the area to be served by the site. Existing neighborhood and district parks were thought adequate to meet the needs of the area. Future facilities, such as Yates Park, additional development of the Pleasant Valley Park as a sports area, and the extension of the greenbelt along the Colorado River, were seen to be more than adequate to meet the projected needs of the area.

As for additional golf courses, the next golf course should be located north of Highway 183, in accordance with a previous 1974 PARD initiated “Golf Study.”

13 Information provided by Del Lemon, taken from Perry Maxwell and Harvey Penick and the Riverside Golf Course: A Brief History (2005)
14 Information on the City’s feasibility study is drawn from Austin County Club Acquisition Study, authored by the Parks and Recreation Department, 1977
The Hancock, Morris Williams and the Lion’s Municipal Golf Courses (all maintained by PARD) offered publicly accessible 9-hole and 18-hole courses in close proximity to the central city.

Given that acquisition of the property for conversion to a metropolitan park or public golf course was considered “supplemental,” the cost to taxpayers was carefully scrutinized. The total projected costs for the conversion to a metropolitan park were calculated to be approximately $6.2 million. In contrast, projected costs for the conversion to a public golf course and special use facility were estimated at $4.4 million. With limited opportunities for revenue generation, both would operate at a loss, in addition to bond debt repayment. After reviewing current and proposed bond fund appropriations, the Parks and Recreation Department could not identify funds that would be available for this project.

**ACC and the Riverside Golf Course**

In the spring of 1984, Austin Community College, which by now was twelve years old and growing rapidly, acquired the 195-acre holdings of the Austin Country Club. Within a couple of years, they had rezoned the property, subdivided a portion of it, and initiated construction of their new Riverside Campus. The golf course was leased to a private third party for repairs, maintenance, and operation as a public golf course.
Fifteen years after the City was first approached to acquire the property, the City decided to approach the owner about acquisition. In 2002, after significant acquisition and development of the Colorado River Park, the City made an offer to purchase the Riverside Golf Course from Austin Community College. After a cost/benefit analysis was completed, the ACC Board voted to retain the golf course but continue annual cost/benefit analyses, incorporating any changes in economic conditions, contract provisions, or significant changes that may affect continued ownership of the golf course into those analyses.15

The course today is open to the public and memberships are available. The Bermuda grass course (greens, tees, and fairway) includes a putting and chipping green, offers lessons, rents clubs and carts, maintains a pro shop for equipment rental and repair, and serves breakfast and lunch at the Tin Cup Grill and Bar. In addition to the many large and mature trees found throughout the Riverside Golf Course and the four water hazards (that are both scenic and challenging to the golfers) are clear views of the downtown skyline.

15 The Texas School Performance Review filed by Austin Community College in November 2002 with the Texas Comptroller of Public Accounts (available at: http://www.window.state.tx.us/tspr/acc/) indicates there remained a 15-year lease and management contract on the golf course property. Given the remaining number and guaranteed amounts of payments generated by that contract, ACC determined a break-even selling point that was nearly triple the amount the COA had offered. That price was based on the presumption that ACC would hold the property for the remainder of the lease, and at the end of that lease, sell the property for its highest and best use (which according to an appraisal conducted for ACC, was as a mixed use development including a corporate campus, multifamily units and high density single family residential.)
East Riverside/Oltorf Combined Neighborhood Plan

Map 9: Existing Environmental Features

East Riverside/Oltorf Combined Neighborhood Planning Area: Environmental Features & Watershed Boundaries

Legend
- Spring
- Woodlands
- 100 Year Floodplain
- Former Landfills
- Lake or Pond
- Road
- Watershed Boundaries

City of Austin Neighborhood Planning & Zoning Department
Updated 8/1/06
The Southeast Austin Trails and Greenways Alliance

The Southeast Austin Trails and Greenways Alliance was created during this planning process and is comprised of individuals who are dedicated to realizing their trail vision for the area. The mission of this group is to:

**Establish a viable hike and bike trail along Country Club Creek and Town Lake with connections to trails in the Colorado River Park.**

Much has been accomplished by this group, which has met many times over the duration of this planning process. Members planned and strategized, conducted fieldwork assessments, created maps, contacted and met with property owners along the creek, talked with the Parks and Recreation Department staff for technical assistance and information, met with Watershed Protection and Development Review staff to identify sensitive environmental features around creek areas, researched possible funding sources and last but not least, contributed towards the development of this section of the Neighborhood Plan. In the future the group may choose to investigate attaining non-profit status as this may open up some funding options. The Southeast Austin Trails and Greenways Alliance was the winner of Keep Austin Beautiful’s 2006 Community Involvement Award.

The proposed trail system along Country Club Creek is still in the beginning stages, but this group is determined and energetic about making the project a reality. The group believes that with the exception of a few difficult areas, this is a very feasible trail project. Members have decided to focus their efforts closest to the Colorado River Park with the hope that once the first section is completed and accessible to the public, it should be easier to get the subsequent sections started.

The group has identified several possible funding options to build the proposed trail. First, the trail proposal is included in this Neighborhood Plan and the PARD is supportive of it, meaning the City could possibly secure some funding for the project in the future. Second, Texas Parks and Wildlife offers numerous recreational facility grants, including trail grants. Third, the apartment communities adjacent to the trail may be willing to provide some funding to benefit their residents. Fourth, area businesses that directly benefit from the trail (AMD in particular, among others) might take a serious interest in the project. Fifth, there is a large population in this area from which to draw volunteer labor.
for the construction and maintenance of this trail. This volunteer time can also be used as a match for grants. Specific details of the proposed project follow.

The Country Club Creek (CCC) Proposed Trail Project
The following information provides specific details of the proposed trail system along Country Club Creek. It was prepared by Jim Temple, a member of the Southeast Austin Trails and Greenways Alliance, after extensive planning and fieldwork. The section descriptions in this narrative follow the trail route outlined in the maps following the narrative. The sections are divided based on length of trail and some contain both easy and difficult portions.

TRAIL HEAD TO ELMONT
The CCC Trail northernmost trailhead connects to existing trails at the parking lot for Krieg Fields in Guerrero/Colorado River Park (G/CRP). From this point the first section of trail goes south along the driveway until the drive curves. At this point, the trail goes up a short rise into the wooded area. This rise is the only challenging portion of the first trail section. A portion of the hillside will need to be graded to provide handicap access, and some trees and vegetation will need to be removed. From that point, the trail meanders around trees and through a fairly open space.

The first intersection of the trail is in the center of a large open area, and the first major branch of the main trail extends west to the intersection of Pleasant Valley Road and Lakeshore Drive. This side trail is situated to avoid a large dumpsite that will eventually need to be cleaned up as this trail gets more use. At the road intersection, pedestrian crossing signals will need to be installed.

The primary trail continues south along the creek. Shortly beyond the intersection, the trail crosses onto private property, owned by the Texas Student Housing Authority (TSHA). The tentative plan calls for two trail access points to the apartment complex, however negotiations with the owner/manager may influence those access points. This section of trail also crosses two drainage channels, the first one at about the midpoint of the TSHA property, and the other at the terminus of Elmont Drive. The original concept was to construct a timber bridge across these drainages; however upon further evaluation it seems that large metal culverts will be more suitable and much less expensive.

Access to the Melrose Apartments of Austin can be provided, however the access to this apartment community will need to cross the creek. There are two options for this access, the first being a concrete low water crossing similar to the one
further downstream in G/CRP, or a timber bridge similar to the one that links both sides of The Landing at College Park apartments further south. A specific location for that crossing has not yet been evaluated.

The first section of the CCC Trail ends at the terminus of Elmont Drive. Even considering the two culverts and handicap access that will need to be provided at Krieg Fields, this is a fairly straightforward and simple section of the trail.

**ELMONT/WICKERSHAM**

At this point, there is a decision to make. The first and easiest option is to route the trail on existing sidewalks along Elmont Drive and Wickersham Lane. Signage will need to be provided to indicate the trail route. The other option is to continue the trail access along the creek. The issue with this particular portion of the creek corridor is that the grade drops to creek level immediately outside the apartment complex’s fence, and this area is perennially soggy. For this area to be feasible, gabions (heavy wire baskets filled with rock) or some other retaining structure will need to be constructed the entire length of the creek between Elmont Drive and Wickersham Lane to create a “bench” or flat area for the trail to sit on out of the flood prone area. This bench would be most appropriate on the western side of the creek. The section along existing sidewalks eliminates or postpones a significant construction cost, however it also denies direct access to two apartment complexes, the east side of The Landing at College Park apartments, and The Village at Riverside.

Where the creek crosses Wickersham Lane, the two trail sections converge again. The trail follows existing sidewalks across the bridge, and utilizes existing pedestrian crossing signals to cross Riverside Drive and Wickersham Lane. The original concept was for the trail to be placed under the Wickersham and Riverside bridges. Unfortunately, there is not enough clearance under Wickersham Lane, and there are significant erosion issues under Riverside Drive. Construction of a trail under these three bridges will be very difficult without massive investment in creek reconstruction and channelization.

The trail does not cross the creek again along Riverside Drive, but instead turns south along the creek through the Country Club Creek Apartments, and stays on the eastern side of the creek. The clearance around some of the buildings is a little tight in this area, but certainly feasible. A bridge connects both sides of the complex in the center of the property. The second section of the trail ends where it meets the cul-de-sac at Sheringham Drive.
**SHERINGHAM DRIVE**

The third section of the trail begins at Sheringham Drive, and the route becomes slightly difficult. The detention area for the Austin Student Housing apartment complex is directly adjacent to the cul-de-sac. Three potential options exist to traverse the area: 1) a boardwalk over the boggy areas below the water control structures; 2) a bridge constructed over the top of the structure; or 3) route the trail on the dry area between the detention pond and parking lot. The most direct route would be the boardwalk, the most expensive would be the bridge, and the easiest but narrow and most circuitous route would be the 3rd option.

Beyond the detention obstacle, the trail can easily stay on the upper section of the Austin Student Housing apartments, just west of the parking lot. The ornamental fencing will require modifications at the entrance close to Oltorf Street. The trail will pick up on the existing sidewalk and turn west to Pleasant Valley Road, cross the creek, and use existing pedestrian signals to cross Oltorf Street. From here, the trail will follow the existing wide sidewalk south along the new Pleasant Valley Road extension to the cul-de-sac.

An alternate trail route has been discussed for section three along the south extension of Pleasant Valley Road. Access can be provided to the Chevy Chase Downs apartment complex through the undeveloped wooded area behind the property. In addition, James Crockett, the owner of property between the Pleasant Valley Villas and the Sunridge neighborhood, has agreed to provide a sizeable trail easement along the creek in association with the development he would like to create on his property. This alternate trail would also require the cooperation of the Most Reverend John McCarthy for a continuation of the trail easement along the creek. Access for the Sunridge neighborhoods can be provided to this particular trail at the ends of several cul-de-sacs. A trail section may be considered in the future that extends south to Ben White Blvd. and may
connect to other trails being developed south of Ben White Blvd. at some point in the future.

**EXTENSION TO AMD**

The fourth section of the primary trail picks up along a gas pipeline Right-Of-Way (ROW) and turns east. This ROW extends all the way to AMD (Advanced Micro Devices), and can access their existing trail loop. Two access points exist to this pipeline, one from the end of the short disconnected section of Pleasant Valley Road (independent of the recently completed south extension), and the other that will connect to the St Peter the Apostle Catholic Center.

**PLEASANT VALLEY TO BURLESON**

Section five of the trail also begins at the end of Pleasant Valley Road. This branch continues along the power line ROW to Burleson Road, crosses Burleson, and turns south again and continues to Mission Hill Drive. Pedestrian signage and a blinking yellow light (similar to a school zone sign) will need to be installed on Burleson Rd to warn drivers of pedestrian/bicycle presence.

**MABEL DAVIS PARK AND PARKER LANE**

Section six is the western extension of the trail to Mabel Davis Park and Parker Lane (as mentioned earlier), and becomes increasingly difficult in some parts. The trail turns from the main path at Pleasant Valley Road and heads west along a branch of CCC. The proposed alignment would stay south (inside) the ornamental metal fence that comprises the park area for the Pleasant Valley Villas. At the property line of the Villas, it is unclear which direction the trail should take, as the terrain in this area is particularly difficult. Upon first evaluation, the most feasible route would involve a steel pedestrian bridge across the creek near the corner of the Bridge Oak Lodge apartments. The trail will follow a utility cut for a short distance, and then access
the back side of the Douglas Street Landings property. There are a series of
detention areas behind the buildings, and the berms for those ponds provide an
ideal trail location. At one point along the detention area, a short span will need
to be built over a water control structure. A short section of trail will access the
Douglas Street cul-de-sac.

From the Douglas St Landings, the proposed trail turns south to the Burleson
Heights neighborhood. This section is also fairly difficult terrain. Douglas St
was at one time proposed to be one continuous street; however it was never built
all the way through. The advantage of this particular situation is that the street
ROW still exists and can be used for the trail location. The downside of this
alignment, however, is that the trail will need to cross 2 to 3 braided sections of
the creek bed in a couple of areas, increasing the construction costs significantly.
Another option may be to keep the trail on one side or the other and only
provide one bridge if at all possible. The Parks and Recreation Department
(PARD) might need to consider the purchase of several floodplain lots in the
Burleson Heights neighborhood that would otherwise be very difficult to
develop. This would also provide the opportunity for a pocket park serving
Burleson Heights, Douglas St Landings, and Bristol Square apartments.
Regardless of the route in this area, the trail will cross the Bristol Square property
along the creek, and provides an opportunity for access for the residents of that
apartment complex.

As the trail continues west, it will need to cross Burleson Road. Pedestrian
signage and perhaps a blinking yellow light (similar to a school zone sign) will
need to be installed on Burleson Road to warn drivers of pedestrian/bicycle
presence. The trail should stay south of the creek in this section. The property
lines of the homes in that area extend all the way to the creek centerline; however
most of their lots are fenced off at their retaining walls. This creates an ideal
bench area for a trail. Unfortunately, erosion on this particular section of the
creek is terribly aggressive. Gabions or other erosion control will need to be
installed along this section to prevent further loss.

The trail crosses Metcalfe Road by the bridge, and turns south again. The
developer of the proposed Shire’s Court has agreed to provide trail access along
his property boundary adjacent to Linder Elementary, and also a ROW west to
the small dead end street, Carlson Drive. The south extension adjacent to Linder
will provide children access to the trail, and also connect the CCC Trail to Mabel
Davis Park, which is currently under landfill remediation. Once Mabel Davis is
open to the public again, this trail access will provide a massive extension of the recreational opportunities to park users.

**TRAIL SURFACE OPTIONS**

The trail surface is certainly up for discussion. At the very minimum, and in the beginning to establish the trail corridor, a natural earth path will need to be established. Several soil stabilization products exist on the market to create a hard surface using the existing soil. Unfortunately, some of these products are largely ineffective, and others are very expensive. It might be reasonable to try small test sections of several products to attempt the installation method and evaluate them for durability after a year of use. Other trail surfaces to consider include granite gravel, asphalt, and concrete. Granite gravel is easiest to place and is preferred by walkers and runners. The downside of granite gravel is that it requires a lot of maintenance, and PARD would like to reduce the amount of maintenance on new and existing trails. While asphalt is fairly fast to install and is also easier on runners’ knees, it will require a significant amount of base material to keep from cracking and shifting over the East Austin clay soils. Also, asphalt cannot be placed in any areas that are at risk of frequent inundation in

![Volunteers hauled a lot of trash out of the undeveloped parkland south of the Krieg Softball Complex in preparation for the Country Club Creek Trail.](Source: Malcolm Yeatts)
the floodplain as hydrostatic pressure will reduce it to rubble. The only other option in flood prone areas is concrete, which requires a lot more work to set up with forms and reinforcing mesh. Concrete can easily become cost prohibitive.

There are many locations where the trail crosses major thoroughfares. Several of these are at existing intersections and have existing pedestrian crossing signals. Other crossings are nowhere close to an intersection and will require independent signage. One potential product is this sign system that detects trail users and turns on a flashing yellow light (similar to a school zone sign):

Map 10: Proposed CCC Trail

Proposed Route for the Country Club Creek Trail
A project of the East Riverside/Oltorf Neighborhood Planning Area
Creeks & Trails Working Group

Legend
- Existing Trail
- Proposed Main Trail
- Proposed Alternate Trail
- Creek
- Lake or Pond
- 100-year floodplain
- Parkland
- Planning Area
- Property line

Scale: 1" = 2,000'

City of Austin
Neighborhood Planning & Zoning Department
March 22, 2005
Map 11: Desired Greenspace Map
(developed by Advisory Committee)
7. Urban Design Guidelines

Introduction

The purpose of the voluntary design guidelines is to reinforce the positive elements, patterns, and characteristics that exist or are desired within the Riverside, Parker Lane and Pleasant Valley Planning Areas; they help each neighborhood planning area to create a unique sense of place within the city. Adherence to the guidelines makes it possible for the existing and desired character of the planning area to be preserved, maintained, complimented and/or enhanced.

The following Neighborhood Design Guidelines for the areas within the East Riverside/Oltorf Neighborhood Plan provide a basis for making consistent decisions about building and streetscape design that affects the character of each area. Adherence to the guidelines is voluntary. They are not intended to limit development within the Riverside, Parker Lane and Pleasant Valley Areas. The intent is to provide ideas for the appearance of new development, redevelopment, or remodeling. These guidelines primarily focus on the streetscape— the publicly viewed area between the fronts of buildings and the street. This area includes the streets and sidewalks (public rights-of-way), front yards, building facades or fronts, porches and driveways (private property).

There were a few themes that consistently emerged throughout the East Riverside/Oltorf Neighborhood Planning process that the voluntary urban design guidelines in this section attempt to address:

First, the character of existing single-family residential neighborhoods should be preserved and new construction should integrate well with existing development. Consideration of existing development should be given with respect to the height and overall size of new structures. Building that encourages “neighborliness” is appreciated as is promoting a natural “green” environment.

A second theme is that existing multifamily structures that intend to redevelop as multifamily should incorporate design qualities that are visually pleasing and function and integrate well within the surrounding neighborhood environment. Since multifamily buildings tend to be very large in size within this planning area, much thought and consideration should go into the characteristics of their redevelopment. This section includes a long list of items to consider that relates
to the redevelopment of such sites, since these developments will have a significant impact on the quality of life, not only for the large number of people living within the building, but also for the individuals and families in the surrounding community.

A third theme suggests that non-residential corridors, in particular the stretch of Riverside Drive from IH-35 to Pleasant Valley Road, should redevelop in such a way that makes local residents and visitors want to stop and enjoy the area and its services instead of simply passing through en route to another destination. The Urban Land Institute (2003:8) writes:

The era when anything developed in an urban neighborhood was considered to be better than nothing is over. Desperation has driven many communities to accept developments that are inappropriate for an urban street and antithetical to an enjoyable pedestrian experience. Suburban-style, pedestrian-deficient retailing with blank walls facing the sidewalk, parking lots that disrupt retail continuity, throw-away architectural quality, inappropriate building design and scale, and lack of pedestrian amenities are some of the most egregious mistakes that made many urban streets mean and decidedly unfriendly to shoppers.

Unfortunately, the latter part of the preceding quote is an appropriate description of the current state of Riverside Drive. As such, the following principles, which form the basis of the guidelines that apply to non-residential corridors, should apply to redevelopment along Riverside Drive:

- Make development more pedestrian-friendly (i.e. reorient activity on the site to face the street);
- Use site planning and architectural elements to make the redeveloped site fully part of the community;
- Emphasize public space for shared activity;
- Provide thoughtful landscaping options for the visual pleasure and comfort of the street’s patrons; and
• Re-establish a street pattern that connects with the streets of the surrounding community.

The desire of the participants in this planning process is that the non-residential corridors within the East Riverside/Oltorf Neighborhood Planning Areas, specifically Riverside Drive, become destination points in and of themselves. Wider, continuous sidewalks along Riverside Drive, that are set back and buffered from the roadway, should be a part of any redevelopment proposal for Riverside Drive. “Greening” Riverside Drive is necessary to make it more comfortable for pedestrians and generally more aesthetically pleasing. Improvements could include coherent planting of street trees that would provide shade when mature and landscaping of the right of way, including turning islands like the one at Barton Springs and South Lamar.

Special consideration should be given to the condition of Riverside Drive with respect to the creation of incentives to encourage quality retail and/or mixed use development that complies with the general design guidelines identified in this section. Specifying the precise nature of those incentives is beyond the scope of this neighborhood plan, but this plan could be used as a guide and a starting point to establish the nature of an incentives program and its intended results.

New development can be very positive from an economic and social standpoint for both the creator of a project and the surrounding community. Developers and property owners, small and large, are strongly encouraged to read these guidelines and work with the residents who live in surrounding neighborhoods to create a superior project that is mutually supported. The following goals and guidelines reflect the desires of the participants within the East Riverside/Oltorf Planning Areas to promote and experience positive change in the design of their community and make it a source of pride for residents and visitors alike.
Non Residential Guidelines (e.g. Commercial, Office, Mixed Use, Industrial)

- **Urban Design Goal:** Create interesting, lively, inviting, attractive, safe and comfortable non-residential environments that will encourage walking, biking and transit use and be appealing to passing motorists.

**Sidewalk Areas**

- Sidewalks should be wide and continuous, with winding or non-linear pedestrian paths preferred.
- Sidewalks should provide a wide green area (along very busy roadways, twenty feet is recommended) with low landscaping to buffer pedestrians from motorists; shade trees should be situated closer to the interior edge of the sidewalk for pedestrians to enjoy as they shop.
- Curb cuts along the sidewalk should be minimized so there is less opportunity for the interruption of pedestrian activity.
- Lighting and signage along the sidewalk and in public areas should be at pedestrian level. Signage should be oriented to the pedestrian and readable from the sidewalk and preferably mounted on buildings or building awnings rather than on separate or detached structures (e.g. pole mounted signage); it should not dominate the landscape.
- Bus shelters should provide shading and protection from inclement weather, seating, and lighting for visibility and safety.

**Buildings**

- Buildings should be pedestrian-oriented with storefronts close to the street, both in the front and on the sides to have direct access from sidewalks, except where there is a desire for outdoor seating areas or markets.
Ground floor windows should promote visibility to store interiors and buildings should include awnings to provide additional relief from sun and rain.

Buildings should be constructed at a human scale; to avoid a "canyoning effect" stepped back building heights are preferable.

A diversity of building heights and dividing and/or recessing building facades can be incorporated into the design to avoid a solid wall effect and reduce the overwhelming size of large buildings.

Public Areas

Public spaces that promote civic activities such as small music events or market squares are encouraged. These areas could include open plazas, seating areas, shading, landscaping and art.

Aesthetics and art

Mechanical equipment, utility boxes, trash disposal units, cluster mail boxes and loading docks should be placed and/or located out of sight from the street and/or screened from public view.

The integration of public art into commercial architecture is encouraged in building design and in public spaces.

Landscaped traffic islands and traffic circles are desired to not only make a more attractive roadway environment, but to also facilitate pedestrian crossings and automobile circulation.

Urban Design Goal: Create convenient and accessible parking areas that do not dominate the environment and provide safe interaction between vehicles and pedestrians.

The creative placement of automobile parking should be explored, with the ideal situation of lots and garages being behind, above or below the main building(s).
There should be a convenient place to park bicycles close to the main entrance of each building.

Shared parking that would connect adjacent businesses is encouraged; this would minimize the number of curb cuts necessary and improve overall traffic circulation and efficiency.

Where right-of-way is wide enough, parallel parking on the street is encouraged to help calm traffic and buffer pedestrians from autos.

Side lot parking should be screened from public view with a low hedge, wall or fence that still allows for security surveillance.

Walkways should provide interior as well as cross-traffic connections and be protected from automobile traffic.

Partnerships among businesses are encouraged so that there is a unified approach toward service delivery issues. The creation of a shared commercial delivery strip, or service area that is out of public view and does not interfere with the activity on the street and sidewalk is preferred.

**Urban Design Goal: Minimize the visual impact of industrial properties from other districts and public spaces in the neighborhood planning area.**

Industrial properties are encouraged to set back from street frontages as much as possible. Berms and landscaped buffers should be used to screen intense industrial operations from the street and adjacent non-industrial districts.

Landscaped buffers along street frontages should include shaded sidewalks or trails.

Where inhabited portions of buildings exist (such as offices and lunch rooms), they are encouraged to face the street and have windows and doors directly accessible to the street.

Parking and shipping/receiving areas should be designed to the same standard as commercial districts.
Single Family Residential Guidelines

- **Urban Design Goal:** Encourage urban design strategies for single-family neighborhoods that preserve, complement and enhance existing character.

**Design Characteristics**

- New single-family construction should mimic existing architecture. Building heights, construction materials and architectural details should enhance the existing character of the neighborhood.
- Front doors and a minimum of two ground floor windows should be oriented towards the street to promote “eyes on the street.”
- Duplex structures should have at least one framed entrance that faces the street and should reflect the scale, height and appearance of homes around them.
- Mechanical equipment (air conditioners, electric and gas meters, etc.) and garbage cans or garbage storage areas are best located to the side or rear of the house, where they cannot be seen from the street. If the location is visible from the street, it should be screened from view.
- Exterior building and site lighting should be unobtrusive and not illuminate neighboring properties.
- Utilize the Green Building Checklist whenever possible. Use local materials, maintain efficient heating and cooling systems and consider consulting a green building professional for structural details and site plans. See the COA’s Green Building Program for more information ([http://www.ci.austin.tx.us/greenbuilder](http://www.ci.austin.tx.us/greenbuilder)).

**Landscaping**

- Provide ample space in side and front yards for trees, landscaping or open space. Existing trees in front yards and along the street should be preserved and protected and additional trees planted to create a continuous canopy of cooling shade over the street and sidewalks. Use native and drought-tolerant plant species to the greatest extent possible to minimize water consumption.
- If a front yard fence is desired, encourage “friendly” fences or hedges along the front property line that are low enough to see over the top (less than four feet) or made of a see-through material to avoid creating a walled-off appearance.
- Front yards are usually a green landscaped area with minimal impervious paving. If larger areas of parking are needed, they should be located behind the house.
Multifamily Residential Guidelines

- Urban Design Goal: Promote multifamily structures that relate well to the surrounding environment, utilize a variety of building forms, have a thoughtful parking scheme, provide public open space and include a variety of appropriate landscaping features.

Building Shape

- Relate the overall height of the new structure to that of adjacent structures and those of the immediate neighborhood. Avoid new construction that varies greatly in height from other buildings in the area, except where the local plan calls for redeveloping the whole area at much greater height and density. To the extent feasible, relate individual floor-to-floor heights to those of neighboring buildings. In particular, consider how the first floor level relates to the street and whether this is consistent with the first floors in neighboring buildings.
- Relate the size and bulk of the new structure to the average scale of other buildings in the immediate vicinity.
- Consider utilizing a variety of building forms and roof shapes rather than box-like forms with large, unvaried roofs. Consider how the building can be efficiently manipulated to create clusters of units, including variations in height, setback and roof shape. Make sure various forms and shapes work together to create a coherent whole.

Porches, overhangs and various dormer styles enliven the facades of these condominiums at the right. (Southside Park Co-housing in Sacramento, CA; www.designadvisor.org)

Building Appearance

- Avoid creating a building that looks strange or out of place in its neighborhood. Consider a building image that fits in with the image of good quality middle-income housing in the community where the project is located.
The housing below interprets the image of the traditional neighborhood home in a row house configuration, increasing density while maintaining the look and feel of a single-family development. (Harriet Square, www.designadvisor.org)

- Consider providing as much visual and architectural complexity as possible to the building's appearance while maintaining a hierarchy of scale and a unified overall form. Consider breaking a large building into smaller units or clusters. Consider variations in height, color, setback, materials, texture, trim, and roof shape. Consider variations in the shape and placement of windows, balconies and other façade elements. Consider using landscape elements to add variety and differentiate units from each other.

- Maximize window number and size (within budget constraints) to enhance views and make spaces feel larger and lighter. Use standard size windows, but consider varying where and how they are used. Consider ways to screen and physically separate ground floor windows from walkways - through screens or plantings - to provide privacy.

- Pay careful attention to the design and detailing of front doors. Consider what the front doors convey about the quality of the project and its residents. To the extent possible, respect the placement and detailing of good quality front doors in neighboring homes.

- Relate the character of the new building façade to the façades of similar, good quality buildings in the surrounding neighborhood or region. Horizontal buildings can be made to relate to more vertical adjacent structures by breaking the façade into smaller components that individually appear more vertical. Avoid strongly horizontal or vertical façade expression unless compatible with the character of the majority of the structures in the immediate area.
The façade treatment of these townhomes gives a single family appearance and helps them to blend in to the existing neighborhood.

Metro Square, Sacramento – Townhomes, www.cnu.org

- Consider relating the roof forms of the new building to those found in similar, good quality buildings in the neighborhood or region. Avoid introducing roof shapes, pitches, materials or colors not found in the neighborhood or region.
- Respect the rhythm, size and proportion of openings - particularly on the street facades - of similar, good quality buildings in the neighborhood or surrounding area. Avoid introducing drastically new window patterns and door openings inconsistent with similar, good quality buildings in the neighborhood or surrounding area.

The size and rhythm of the doors, windows and porches for this co-housing development reflect those found in more traditional neighborhoods. (Southside Park Co-housing in Sacramento, CA; www.designadvisor.org)

- Trim and details can provide warmth and character to a building’s appearance, particularly on street facades. In general, the complexity, depth and proportion of trim should relate to that used in good quality middle-income housing in surrounding neighborhoods. Carefully consider the design of porch and stair railings, fascia boards, corners, and
areas where vertical and horizontal surfaces meet - for example where a wall meets the roof. Generally put trim around windows. Consider adding simple pieces of trim to the top and bottom of porch columns.

- Creative use of materials and color can add variety and visual interest to any façade. In general consider materials and colors - for the façade (including foundation walls) and for the roof - that are compatible with those in similar, good quality buildings in the surrounding neighborhood or region. Avoid introducing drastically different colors and materials than those of the surrounding area. Consider using materials and construction details that do not require repeated or expensive maintenance. Favor materials that residents can easily maintain themselves.

- To the extent possible, provide individual identities and addresses for each dwelling unit. Consider ways to break large, repetitive structures into smaller, individually identifiable clusters. Ensure that all dwelling units have clear, individual addresses. Consider design strategies that allow residents to enhance and individualize the exterior appearance of their own units.

Large complexes can be broken down into smaller clusters. Each cluster, in turn, can be broken down into several separate buildings, which include individual entrances and identities for each unit. (Waterside Green, www.designadvisor.org)

Building Layout

- Provide as many private, ground level entries to individual units as possible. Ensure that all building entries are prominent and visible and create a sense that the user is transitioning from a public to a semi-private area. Avoid side entries and those that are not visually defined. At all entries consider issues of shelter, security, lighting, durability, and identity. For apartment buildings, allow visual access from manager’s office and/or 24 hour desk. Allow visual access to stairs and elevators from the lobby. For buildings with clustered and individual unit entries,
consider providing small "porch" areas that residents can personalize with plants, seasonal decorations, etc. Limit "shared entries" to the smallest number of households possible, eight maximum. Consider providing some form of storage - for strollers, bikes, etc. - at or close to all main entries.

- Consider ease of visual and physical surveillance by the residents of areas such as the street, the main entrances to the site and the building, children's play areas, public open space and parking areas. Consider locating windows from actively used rooms such as kitchens and living rooms so that they look onto key areas. Also consider containing open spaces within the building layout and using the selection and layout of plant materials to enhance, rather than hinder, surveillance and security. Consider specific design strategies to maximize the security of the building, including adequate lighting, lockable gates and doors at all entrances to the site and the buildings, and video cameras with monitors. See also information on Crime Prevention Through Environmental Design (CPTED, http://www.cptedontario.ca/)

- The entry to the site is critical to the public image of the development. Emphasize the main entrance and place central and shared facilities there if possible. Respect the street and locate buildings on the site so that they reinforce street frontages.

![Entrances to apartments are evenly spaced along the building, providing numerous points of entry while maintaining a strong and continuous presence along the street. (Paula Avenue Apartments, www.designadvisor.org)](image)

- To the extent possible, maintain the existing setback patterns within the immediate vicinity of the building. Avoid locating a building far in front of or far behind the average setback lines of the four to five properties located on either side of the proposed development. Respect the side yard and rear yard setback lines prevalent in the area.
The buildings in this development are set back slightly relative to neighboring buildings in order to accommodate grade changes and make room for plants along the sidewalk.
(Matsusaka Townhomes, www.designadvisor.org)

- Consider placing buildings on the site so as to maximize solar access during cooler months and to control it during warmer months. Also consider maximizing natural ventilation and access to views from within the site. Avoid a layout in which adjacent buildings obstruct one another. Design the building so that sun directly enters each dwelling unit during some part of the day year round.

**Landscaping**

- Good landscaping is critical to the quality of any project. Consider how landscaping and planting will be handled from the very beginning of the design process. Avoid considering landscaping as an "extra" that can be added in at the end of the project or, worse, eliminated in the name of cost control.
- Provide as rich a variety of plantings - trees, shrubs, groundcover, and grass areas - as possible. Anticipate mature sizes and avoid crowding trees, shrubs and buildings. Use hardy, native species of trees and plants that are well suited to the project location and are easy to water and maintain.

The courtyard and the landscaping for this multifamily development create a small private garden for residents.
(www.designadvisor.org)
Consider how the landscape will be used by residents and specify appropriate plantings. In general, assume heavy use in all landscaped areas. Avoid delicate plants and shrubs in heavily trafficked areas, especially in locations where they can be trampled by children.

Recognize that some paved area will be necessary in family housing to facilitate children's play. However, large, empty paved areas should be avoided. Consider using alternative landscape approaches - plantings, play equipment, outdoor furniture, trees and grass - to break these areas up into smaller functional units.

Outdoor seating should be an integral part of any landscape plan and should be thoughtfully designed and located. Avoid simply scattering seats at random through the site. Consider what the seating looks at and what looks at it. Consider how the seating is oriented with respect to the sun and breezes and whether it needs protection from rain or wind. Avoid "one type fits all" solutions, particularly in larger projects. Consider providing different seating for different users. Also consider providing some moveable seating if appropriate.

Pedestrian paths and walkways are critical to the smooth functioning of any affordable housing project, particularly larger, multi-unit developments. Consider the wide range of uses that any path must accommodate - children, adults, bicycles, skate boards, walkers, pets, furniture moving, etc. - and design with this range of uses in mind. Avoid paths that are too narrow to accommodate multiple users at the same time. Consider rounded corners at all intersections and direction changes, especially in projects with children. Ensure that paths are well lighted so that users can see where they are going and be seen by other people.
Consider designing path edges so that they encourage users to stay on the path and not trample on adjacent plantings (e.g. through changes in slope or materials or by providing raised edges). Remember that the shortest route from point A to point B is usually a straight line. Avoid forcing people to follow circuitous routes to their destinations or be prepared for the new, unplanned paths that will inevitably appear to accommodate occupant use patterns.

- Think of public open spaces - shared outdoor areas intended for use by all residents - as "outdoor rooms," and design them as carefully as any other rooms in the project. Avoid undifferentiated, empty spaces. Consider the types of activities that will occur in the "rooms," including cultural or social activities unique to specific user groups, and design the shared open space to accommodate these activities.

- Provide clear boundaries between publicly controlled spaces (streets), community controlled spaces (shared open space) and privately controlled spaces (dwellings and private open space). Consider enclosing
or partially enclosing open space with project building(s) to provide clear boundaries.

Parking

- Avoid letting garages, driveways and parking lots dominate the streetscape. Consider placing them at the rear or side of the site to allow a majority of dwelling units to "front on" the street. Consider planting trees and shrubs to soften the overall impact of parking areas and to provide shade and noise reduction. At buildings with parking garages, avoid large areas of blank wall facing the street. Consider incorporating decorative elements above the garage door to soften its visual impact. Consider improving unavoidable blank walls with decorative artwork, vines, and good quality durable materials to minimize graffiti and deterioration.

- Provide locations for parking that minimize walking distance between dwelling units and cars and that allow for casual surveillance of cars from a number of different units. Avoid remote parking. Avoid large lots. Consider breaking them into multiple, smaller lots to enhance safety and accessibility and minimize the aesthetic impact of large, unbroken rows of cars. Locate handicapped and elderly parking with immediate access to their respective units. Locate visitor drop off and parking near main entrances and clearly mark all visitor parking spaces. Provide pleasant areas to wait for rides or public transportation.

The site plan for this 45 unit project has broken the parking (highlighted at left) into two modest sized lots and placed them behind the buildings. Putting the parking in the back allows a continuous line of front doors - uninterrupted by garages or parking lots - to face the street. (The Farm, [www.designadvisory.org](http://www.designadvisory.org))
Design to minimize conflicts between vehicles and pedestrians. Consider separating bicycle and pedestrian paths from vehicular traffic. Consider linking open spaces so that they form an uninterrupted network of vehicle-free areas. Avoid parking layouts that erode a project's open space until only "leftover" areas are available for pedestrian use. Consider traffic calming strategies to slow down cars within the project.
Appendices
Appendix A

RECOMMENDATIONS NOT SUPPORTED
BY RESPONSIBLE CITY OF AUSTIN DEPARTMENTS

After the department review process, the following recommendations were not recommended to be implemented by the responsible department (department comments follow each recommendation).

LAND USE ITEMS

Recommendation:
Make legal notices for variance, zoning and building permit applications available on the City website by neighborhood planning area.

Departmental Comments (WPDR):
Changes to notification requirements should not be made until AMANDA (a unified database that most city departments will use interactively to perform various required activities related to case documentation, notification and review) is deployed. Building permit applications do not require a legal notice, however, submittal information is currently accessible through the current City website.

Recommendation:
Create and maintain an inventory of private and public restrictive covenants (WPDR).

It would require a major staff effort including extensive research of County deed records, and would require additional staff to conduct this research and maintain the inventory. Maintenance of the inventory would be difficult because new documents are recorded daily. The City does not enforce private restrictive covenants, and as such, the staff would have limited use of the inventory.

TRANSPORTATION ITEMS

Recommendation:
Conduct a study to determine if a crossing guard can be placed at Burleson Road and Ware Road.
**Departmental Comments (PW):**
We will keep this location for future pedestrian counts. The current pedestrian count is 2 children, which does not warrant a crossing guard.

**Recommendation:**
Amend City Code to state that any new development or redevelopment shall have a landscaped buffer between the sidewalk and the road to provide for safety.

**Departmental Comments (PW):**
There are too many variables to consider when deciding on a sidewalk location. Utilities, terrain, compliance with Federal and State design standards, and other site specific conditions often decide the sidewalk layout. Requiring a specific buffer width would place further restrictions on the design of sidewalks.

**Departmental Comments (WPDR):**
This item is not necessary. The standard location for a sidewalk is 2 feet from the property line, which leaves an unpaved buffer area of 2 to 4 feet between the curb and the sidewalk, depending on the type of road and the width of the sidewalk. Sidewalks are allowed adjacent to the curb only in unusual circumstances such as the need to avoid trees. The buffer area is normally planted with grass, but it can be landscaped. However, landscaping requires the owner to enter into a license agreement with the City to place irrigation facilities within the right-of-way. Landscaping should not be required but is already allowed at the owner’s option.

**Recommendation:**
Conduct a traffic study at Summit Drive and Woodland Avenue and make improvements to the intersection so that turning off of Summit onto Woodland Avenue is less dangerous because of poor visibility due to slope (PW).

**Departmental Comments (PW):**
There have been no reported collisions at this intersection since October 2001. Visibility between westbound traffic on Woodland Avenue and southbound traffic on Summit Drive at Woodland Avenue is at least 320 feet; 200 feet is adequate for stopping sight distance.

Alternative action: An “intersection ahead” symbol warning sign will be installed on Woodland Avenue in advance of Summit Drive.
**Recommendation:**
Conduct a traffic calming study along Burleson Road between Oltorf Street and Ben White Blvd. and apply an appropriate traffic mitigation strategy to reduce speeding vehicles (the form of traffic calming used in the Shoal Creek Project is preferred by neighborhood stakeholders) (PW).

**Departmental Comments (PW):**
Burleson Road is classified as an arterial roadway contained in the AMATP Plan. The traffic calming program was established to reduce speeding on local residential streets with low traffic levels on which the impediment to mobility caused by traffic calming devices would not be an issue.

**Recommendation:**
Investigate the feasibility of closing Burleson Road at Ben White Blvd. to increase safety and reduce disruptions to the single-family neighborhoods along Burleson Road (PW).

**Departmental Comments (PW):**
Burleson Road is classified as an arterial roadway contained in the AMATP Plan. We cannot terminate its connection to a freeway. If in future the roadway is removed from the AMATP, this issue can be reconsidered.

**Recommendation:**
Install appropriate signage going eastbound on Woodland Avenue to warn drivers of the upcoming 4-way stop at Parker Lane and Woodland Avenue (PW).

**Departmental Comments (PW):**
Currently, in addition to stop signs on all approaches, there is an advance warning of the stop ahead for eastbound drivers at Slyvan Drive and overhead flashing red lights are visible to eastbound traffic at least 540 feet in advance of the stop signs. There has been only one reported collision at this intersection since October 2001, in which a southbound vehicle struck a westbound vehicle.

**Recommendation:**
Install a landscaped parkway belt between the east and west bound lanes of Riverside Drive to minimize the visual impact of the roadway (PW).

**Departmental Comments (PW):**
It appears that the neighborhood envisions a wide division between opposing lanes for aesthetic reasons. It would be necessary to purchase right-of-way to accomplish this. This would negatively impact adjacent businesses, and since we must demonstrate a public purpose to acquire right-of-way under threat of condemnation, we might not be able to demonstrate this for a purely aesthetic project. Existing lanes would require reconstruction. Depending on exactly what the neighborhood envisions, the cost would likely be tens to millions of dollars, which would be very hard to justify. Since this is an aesthetic, rather than a capacity or maintenance project, perhaps it should be considered by the Parks and Recreation Department, which would have to assume responsibility for maintenance of any landscaping that it added.

**Recommendation:**
Restrict truck traffic from accessing Lakeshore Blvd. between Riverside Drive and Pleasant Valley Road (PW).

**Departmental Comments (PW):**
Lakeshore Blvd. is classified as an arterial roadway. Roadways classified as arterial are intended to serve as the major transportation network to provide for large volumes of traffic, including trucks. Truck prohibitions are installed only on non-arterial roadways if a specific problem with truck traffic can be identified and observed. If the neighborhood can provide details regarding what the perceived problem is and when it can be observed, we will investigate and might find another solution.

**Recommendation:**
Provide a safe trail crossing across Wickshire Lane from Linder Elementary School to Mabel Davis Park (PW).

**Departmental Comments (PW):**
Mabel Davis Park is surrounded by a tall chain link fence with "Authorized Personnel Only" signs and has no trail or sidewalk opposite the school. There is currently a marked crosswalk across Wickshire Lane at Metcalfe Road that is the safest and most convenient location at which pedestrians can cross from the school to the park.

**Recommendation:**
Reinstall “No Truck” signs along Burleson Road between Oltorf Street and Ben White Blvd. (which were removed during I-35/Ben White construction) (PW).

**Departmental Comments (PW):**
Burleson Road is classified as an arterial roadway. Roadways classified as arterial are intended to serve as the major transportation network to provide for large volumes of traffic, including trucks. Truck prohibitions are installed only on non-arterial roadways if a specific problem with truck traffic can be identified and observed. If the neighborhood can provide details regarding what the perceived problem is and when it can be observed, we will investigate and might find another solution.

**Recommendation:**
Improve the striping of the existing bike lane along Burleson Road between Oltorf Street and Ben White Blvd. and/or investigate installing curbs or other forms of permanent separation between the bike lane and the automobile travel lane to improve safety (PW).

**Departmental Comments (PW):**
The bike lane on Burleson Road between Oltorf Street and Ben White Blvd. has very few impediments. There is no parking 24/7 and the sight lines are long and unobstructed. The only maintenance that will be required in future years is the re-striping. A cost for this regularly scheduled maintenance need not be considered here.

Barriers between bike lanes and traffic lanes are used when contra-flow conditions exist (e.g. southbound bike facing northbound cars). This is not a condition on Burleson Road.

**PARKS, OPEN SPACE AND THE NATURAL ENVIRONMENT ITEMS**

**Recommendation:**
Provide the following public amenities at Mabel Davis Park:
Amphitheater and stage and a fishing dock.

**Departmental Comments (PARD):**
This item (stage and amphitheater) requires funding through a Capital Improvement Project bond; it is not recommended due to restrictions on use of remediation cap. This item (fishing dock) requires funding through a Capital
Improvement Project bond; the Department recommends that this item not be implemented in an effort to maintain local, informal fishing.

**Recommendation:**
Encourage PARD to purchase the undeveloped lot at 1701 Windoak Drive for future neighborhood open space.

**Departmental Comments (PARD):**
PARD understands that the lot is not for sale separate from the rest of the property. The asking price in March ’05 was reported to PARD to be $675,000 for approx. 3.5 acres & 5000 square feet of house. The property is best suited for continued residential use.

**Recommendation:**
Revise the Scenic Roadway Ordinance so that issues such as landscaping, roadway size and design, etc. are addressed.

**Departmental Comments (NPZD):**
- The Scenic Roadway Ordinance currently only regulates signage. Council recently approved a commercial design policy document, now being converted to ordinance language that recommends removing the Scenic Roadway designation, and instead tying sign regulations to the five design roadway types (Transit, Urban, Local, Hill Country and Highway).
- Landscaping should be regulated through the landscaping ordinance applicable to the Riverside Roadway type, which is at this time considered a Transit Roadway.
- The Council-approved Austin Area Metropolitan Plan (AMATP) regulates roadway size and design for Riverside.

**Recommendation:**
Add a gateway sign at some point along Riverside Drive to welcome visitors to Austin.

**Departmental Comments (NPZD):**
Urban Design staff may be available to assist in developing the site and design criteria for a gateway element such as a sign. Funding source for design, construction and maintenance would need to be identified.

**Recommendation:**
Request that the city acquire the single-family lots in the floodplain at approximately 2407-2408 Princeton Drive and 2413 Douglas Street (there are approximately 20 undeveloped lots) so that the area is protected from development and maintained as open space.

**Departmental Comments (WPDR):**
Currently the voluntary floodplain home buy-out program is funded for structures which are subject to high hazard of creek flooding. Due to the limitation of funding, the program is offered on a priority order based on the severity of flooding. There are several hundreds of houses that are on the list targeted for future home buyout. As there are no houses on the subject lots, there is no justification of funding for WPDR to purchase these lots. Please contact PARD to see if there is interest to purchase these lots for a park or greenbelt. (there is currently a recommendation in the plan to work with property owners and PARD to see about acquiring these properties in order to create a trail system along Country Club Creek).

**Recommendation:**
Encourage PARD to purchase the property at 1605 Old Riverside Drive as a neighborhood open space/pocket park (Neighborhood; PARD).

**Departmental Comments (PARD)**
The lot belongs to the adjacent lot with a house, which appears to be for sale as one piece. The lot is sloping, too small and too intimately related to the adjacent house for public use. The lot is best used for residential purposes.

**Recommendation:**
Request formal approval from PARD to allow for the construction of Country Club Creek Trail.

**Departmental Comments (PARD)**
The request is premature and out of sequence; refer to Recommendation 103 in the plan regarding the construction of the CCC trail. PARD questions whether the Alliance could actually apply for and receive public grant funds.

**Recommendation:**
Establish and maintain green islands in public rights-of-way for the beautification of corridors.
**Departmental Comments (PW)**
We have raised medians, which are typically vegetated, specified on new divided arterials. We support raised medians only where they are specified in the roadway plan because of the added vehicular capacity that we might obtain with left turn bays that would be included with the median. We would not reconstruct a roadway simply to add a median, unless it were called for in the roadway plan and the left turn lanes we could provide with the median greatly enhanced capacity on a congested roadway. We have no recommendation in relation to providing green islands for beautification. We oppose use of limited roadway funding to add medians purely for beautification, but would be neutral on medians funded from other sources, provided all applicable roadway design standards are met.
Appendix B

INITIAL SURVEY RESULTS

Total survey replies: 250
16,448 surveys sent out (18,276 – 10% for returns and duplicates)
Survey response rate ~ 2%

Of the surveys returned that responded to each question…

In which neighborhood planning area do you live, own property, work, or operate a business?

<table>
<thead>
<tr>
<th>Neighborhood</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parker Lane</td>
<td>101</td>
<td>41%</td>
</tr>
<tr>
<td>Pleasant Valley</td>
<td>50</td>
<td>20%</td>
</tr>
<tr>
<td>Riverside</td>
<td>97</td>
<td>39%</td>
</tr>
</tbody>
</table>

What things do you like most about your neighborhood? (Top 10 responses)

<table>
<thead>
<tr>
<th>Preference</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Central Location</td>
<td></td>
</tr>
<tr>
<td>2. Easy access to downtown</td>
<td></td>
</tr>
<tr>
<td>3. Affordability</td>
<td></td>
</tr>
<tr>
<td>4. Character</td>
<td></td>
</tr>
<tr>
<td>5. Trees</td>
<td></td>
</tr>
<tr>
<td>6. Single family homes</td>
<td></td>
</tr>
<tr>
<td>7. Quiet</td>
<td></td>
</tr>
<tr>
<td>8. Natural areas, green space</td>
<td></td>
</tr>
<tr>
<td>9. Views</td>
<td></td>
</tr>
<tr>
<td>10. Low traffic</td>
<td></td>
</tr>
</tbody>
</table>

What are the most important issues in the neighborhood? (Top 10 responses)

<table>
<thead>
<tr>
<th>Issue</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Managing new development</td>
<td></td>
</tr>
<tr>
<td>2. Crime – Safety/Security</td>
<td></td>
</tr>
<tr>
<td>3. Maintaining single family dwellings</td>
<td></td>
</tr>
<tr>
<td>5. Need park improvements</td>
<td></td>
</tr>
<tr>
<td>6. Preserving the natural environment</td>
<td></td>
</tr>
<tr>
<td>7. Quality of the neighborhood, cleanliness</td>
<td></td>
</tr>
<tr>
<td>8. Revitalization of Riverside, improving current and bring in new businesses.</td>
<td></td>
</tr>
<tr>
<td>9. Traffic</td>
<td></td>
</tr>
<tr>
<td>10. Code Enforcement</td>
<td></td>
</tr>
</tbody>
</table>

Are there adequate shops and stores to serve your neighborhood? (Paper Survey Only)

Yes: 83%  
No: 17%

Are there adequate professional offices to serve your neighborhood? (Paper Survey Only)

Yes: 69%  
No: 31%
New local/neighborhood stores would be acceptable in the following parts of the neighborhood?

<table>
<thead>
<tr>
<th>Location</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Along major roads</td>
<td>102</td>
</tr>
<tr>
<td>Along major roads, Along some local streets</td>
<td>26</td>
</tr>
<tr>
<td>Along major roads, Anywhere, Along some local streets</td>
<td>2</td>
</tr>
<tr>
<td>Along some local streets</td>
<td>21</td>
</tr>
<tr>
<td>Anywhere</td>
<td>14</td>
</tr>
<tr>
<td>Anywhere, Along some local streets</td>
<td>1</td>
</tr>
</tbody>
</table>

Mixed-use development would be acceptable in the following parts of the neighborhood?

<table>
<thead>
<tr>
<th>Location</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Along major roads</td>
<td>71</td>
</tr>
<tr>
<td>Along major roads, Along some local streets</td>
<td>23</td>
</tr>
<tr>
<td>Along major roads, Anywhere, Along some local streets</td>
<td>1</td>
</tr>
<tr>
<td>Along some local streets</td>
<td>25</td>
</tr>
<tr>
<td>Along some local streets, Nowhere</td>
<td>1</td>
</tr>
<tr>
<td>Anywhere</td>
<td>28</td>
</tr>
<tr>
<td>Nowhere</td>
<td>69</td>
</tr>
</tbody>
</table>

New apartments, townhouses, and/or condominiums would be acceptable in the following parts of the neighborhood?

<table>
<thead>
<tr>
<th>Location</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Along major roads</td>
<td>34</td>
</tr>
<tr>
<td>Along major roads, Along some local streets</td>
<td>14</td>
</tr>
<tr>
<td>Along major roads, Anywhere, Along some local streets</td>
<td>1</td>
</tr>
<tr>
<td>Along major roads, Nowhere</td>
<td>1</td>
</tr>
<tr>
<td>Along some local streets</td>
<td>24</td>
</tr>
<tr>
<td>Along some local streets, Nowhere</td>
<td>1</td>
</tr>
<tr>
<td>Anywhere</td>
<td>36</td>
</tr>
<tr>
<td>Anywhere, Along some local streets</td>
<td>1</td>
</tr>
<tr>
<td>Nowhere</td>
<td>105</td>
</tr>
</tbody>
</table>

New employment centers (e.g. office complexes, industrial parks) would be acceptable in the following parts of the neighborhood?

<table>
<thead>
<tr>
<th>Location</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Along major roads</td>
<td>63</td>
</tr>
<tr>
<td>Along major roads, Along some local streets</td>
<td>13</td>
</tr>
<tr>
<td>Along major roads, Anywhere, Along some local streets</td>
<td>1</td>
</tr>
<tr>
<td>Along some local streets</td>
<td>18</td>
</tr>
<tr>
<td>Anywhere</td>
<td>11</td>
</tr>
<tr>
<td>Nowhere</td>
<td>114</td>
</tr>
</tbody>
</table>
Acceptable locations for businesses in the neighborhood?

<table>
<thead>
<tr>
<th>Location</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Along major roads</td>
<td>113</td>
</tr>
<tr>
<td>Along major roads, Along some local streets</td>
<td>21</td>
</tr>
<tr>
<td>Along major roads, Anywhere</td>
<td>1</td>
</tr>
<tr>
<td>Along major roads, Anywhere, Along some local streets</td>
<td>2</td>
</tr>
<tr>
<td>Along major roads, Nowhere</td>
<td>1</td>
</tr>
<tr>
<td>Along some local streets</td>
<td>12</td>
</tr>
<tr>
<td>Anywhere</td>
<td>13</td>
</tr>
<tr>
<td>Anywhere, Along some local streets</td>
<td>1</td>
</tr>
<tr>
<td>Nowhere</td>
<td>60</td>
</tr>
</tbody>
</table>

Do you support lowering the lot size required for single-family homeowners to build one small apartment (e.g. garage apartment) that is not attached to the main house?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>27</td>
<td>16</td>
<td>31</td>
</tr>
<tr>
<td>Disagree</td>
<td>51</td>
<td>23</td>
<td>38</td>
</tr>
<tr>
<td>Neutral</td>
<td>19</td>
<td>8</td>
<td>21</td>
</tr>
</tbody>
</table>

Do you support lowering the lot size for new single-family homes in your neighborhood?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>29</td>
<td>17</td>
<td>26</td>
</tr>
<tr>
<td>Disagree</td>
<td>51</td>
<td>22</td>
<td>40</td>
</tr>
<tr>
<td>Neutral</td>
<td>16</td>
<td>8</td>
<td>20</td>
</tr>
</tbody>
</table>

Could you support the corner store infill option in your neighborhood?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>34</td>
<td>25</td>
<td>36</td>
</tr>
<tr>
<td>Disagree</td>
<td>20</td>
<td>11</td>
<td>19</td>
</tr>
<tr>
<td>Neutral</td>
<td>13</td>
<td>9</td>
<td>8</td>
</tr>
</tbody>
</table>

Are there any important historic buildings or places that deserve special recognition and preservation?

<table>
<thead>
<tr>
<th>Building/Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mabel Davis Park</td>
</tr>
<tr>
<td>Mansion across the street from Parker Lane</td>
</tr>
<tr>
<td>United Methodist Church</td>
</tr>
<tr>
<td>1603 &amp; 1605 Taylor Gaines Street</td>
</tr>
<tr>
<td>Town Lake hike &amp; bike trail</td>
</tr>
<tr>
<td>Country Club Creek Greenbelt</td>
</tr>
<tr>
<td>Riverside Golf Course</td>
</tr>
<tr>
<td>Old East Riverside Dr.</td>
</tr>
<tr>
<td>Longhorn Dam</td>
</tr>
</tbody>
</table>
Which streets in the neighborhood need sidewalks the most? (Top 8 responses)

1. Oltorf  
2. Parker Lane  
3. Pleasant Valley  
4. Woodland  
5. Sunridge  
6. Riverside Dr.  
7. Summit  
7. Wickersham

Does your neighborhood lack any of the following?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bike Lanes</td>
<td>30</td>
<td>26</td>
<td>20</td>
</tr>
<tr>
<td>Convenient bus routes</td>
<td>5</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Trails</td>
<td>29</td>
<td>17</td>
<td>15</td>
</tr>
<tr>
<td>Sidewalks</td>
<td>21</td>
<td>13</td>
<td>23</td>
</tr>
<tr>
<td>Through streets</td>
<td>5</td>
<td>1</td>
<td>5</td>
</tr>
</tbody>
</table>

Are any of the following in need of major repair or reconfiguration?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bike Lanes</td>
<td>7</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Sidewalks</td>
<td>14</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Bus routes</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Street Network</td>
<td>19</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>Trails</td>
<td>8</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

What Austin Park do you frequent the most?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Town Lake</td>
<td>50</td>
</tr>
<tr>
<td>Zilker</td>
<td>27</td>
</tr>
<tr>
<td>Big/Little Stacy</td>
<td>21</td>
</tr>
<tr>
<td>Mabel Davis Park</td>
<td>19</td>
</tr>
<tr>
<td>Colorado River Park</td>
<td>12</td>
</tr>
<tr>
<td>Barton Springs/Creek</td>
<td>3</td>
</tr>
<tr>
<td>Riverside Dog Park</td>
<td>2</td>
</tr>
<tr>
<td>Moya</td>
<td>1</td>
</tr>
<tr>
<td>Travis Heights</td>
<td>1</td>
</tr>
<tr>
<td>Pease Park</td>
<td>1</td>
</tr>
<tr>
<td>Emma Long</td>
<td>1</td>
</tr>
<tr>
<td>Patterson</td>
<td>1</td>
</tr>
<tr>
<td>Lake Travis</td>
<td>1</td>
</tr>
<tr>
<td>Auditorium Shores</td>
<td>1</td>
</tr>
</tbody>
</table>
If a nearby park, greenbelt, or recreational area was to be developed or improved, what would your priorities be?

1. Safety – patrols, well lit
2. Hike/ bike trails
3. Park Clean up, cleanliness
4. Accessibility, interconnectivity.
5. Balance between developed and natural park space.

Are there parts of the neighborhood that experience flooding during heavy rains?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>73%</td>
<td>76%</td>
<td>68%</td>
</tr>
<tr>
<td>Yes</td>
<td>27%</td>
<td>24%</td>
<td>32%</td>
</tr>
</tbody>
</table>

Do you wish to prohibit front yard parking in your neighborhood?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>26%</td>
<td>43%</td>
<td>34%</td>
</tr>
<tr>
<td>Yes</td>
<td>74%</td>
<td>57%</td>
<td>66%</td>
</tr>
</tbody>
</table>

How long have you lived in the neighborhood?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>11</td>
<td>12%</td>
<td>6</td>
</tr>
<tr>
<td>1-4 years</td>
<td>29</td>
<td>31%</td>
<td>21</td>
</tr>
<tr>
<td>5-9 years</td>
<td>24</td>
<td>26%</td>
<td>8</td>
</tr>
<tr>
<td>10-14 years</td>
<td>9</td>
<td>10%</td>
<td>0</td>
</tr>
<tr>
<td>15-20 years</td>
<td>10</td>
<td>11%</td>
<td>6</td>
</tr>
<tr>
<td>21 or more years</td>
<td>10</td>
<td>11%</td>
<td>2</td>
</tr>
</tbody>
</table>

What type of housing do you live in?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apartment</td>
<td>16</td>
<td>17%</td>
<td>23</td>
</tr>
<tr>
<td>Duplex/ Four-plex</td>
<td>5</td>
<td>5%</td>
<td>1</td>
</tr>
<tr>
<td>House</td>
<td>60</td>
<td>64%</td>
<td>13</td>
</tr>
<tr>
<td>Townhouse/Condo</td>
<td>12</td>
<td>13%</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>1%</td>
<td>1</td>
</tr>
</tbody>
</table>

Are you a homeowner or renter?

<table>
<thead>
<tr>
<th></th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>Own</td>
<td>74</td>
<td>21</td>
<td>29</td>
</tr>
<tr>
<td>Rent</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
What is your ethnic background?

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Parker Lane</th>
<th>Pleasant Valley</th>
<th>Riverside</th>
</tr>
</thead>
<tbody>
<tr>
<td>African-American</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Anglo</td>
<td>58</td>
<td>35</td>
<td>36</td>
</tr>
<tr>
<td>Anglo, Asian</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Anglo, Hispanic</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Asian</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Hispanic</td>
<td>15</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Multi-racial</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>2</td>
<td>4</td>
</tr>
</tbody>
</table>
Appendix C

DOCUMENTATION OF ENVIRONMENTAL FEATURES

A site reconnaissance on September 9, 1993 confirmed the presence of a wetland located east of Riverside Farms Road and Townview Cove. This wetland is characterized by a spring-fed half acre pond and a saturated area below the pond extending several hundred feet.

The pond and saturated area below meet all three criteria for classification as a wetland and critical environmental feature, jurisdictional under City of Austin's Land Development Code:

1) Hydrology is present and apparently perennial at the pond, supplied by a seep discharging on the southeast bank. Although all nearby stream channels were dry on this date (following a drought period), this pond held a ample volume of clear, cool water to support a variety of aquatic vegetation and fish populations.

The majority of an area extending several hundred feet below the pond's earthen dam was saturated to the surface following a period of extended drought. Soils were plastic and wet enough to form ribbons when pressed between the thumb and forefinger. This area meets the hydrology requirement because it remains saturated to within one foot of the surface for more than two weeks during the growing season.

2) Wetland vegetation is dominant around and in the ponded area. Bacopa sp., Eleocharis sp. (spike rush), Ludwigia octovalvis (Water-Primrose), Polygynus hydrophiloides (Smartweed), Salix nigra (Black Willow), and Eleocharis sp. were all found growing around the pond. Submerged aquatic plants included Chara sp., Ludwigia sp., and Utricularia sp. (Bladderwort). The saturated area below the pond was populated by a lush groundcover of Eleocharis sp., and overstory of Ludwigia octovalvis (Water-Primrose). All dominant species mentioned above in both wetland areas are obligate or facultative wetland plants.

3) Wetland Soils criteria is met at both the ponded site and the saturated site. Ponded sites are exempt from the soils test, and the soil samples taken at the saturated site register a hue, shade, and chroma of 10YR 3/1 according to the Munsell Soil Color Charts. A chroma of 1 qualifies this soil as hydric.
City of Austin

Founded by Congress, Republic of Texas, 1839
Watershed Protection and Development Review Department
P.O. Box 1088, Austin, Texas 78767

July 17, 2006

South River City Citizens (SRCC)
Austin, Texas

Subject: Wetland Assessment at 2100 Parker Lane

Dear SRCC:

As requested, I am providing you my environmental assessment of an existing pond, located on a tract of land at the southwest corner of Windoak and Parker Lane, Austin, Texas. I was invited by the landowner (Michael Hamilton) to assess the pond to determine if it meets the criteria as a critical environmental feature (CEF), per City of Austin Land Development Code. As you will read, the pond is a CEF and may be protected or enhanced during as part of the development permit. I am copying the original email below:

From: Lyday, Mike
Sent: Tuesday, October 11, 2005 6:05 PM
To: michael@midcityhomes.com
Cc: Peacock, Ed; Her, Scott
Subject: Parker Lane and Windoak Pond Assessment, Presubmittal

Michael,

Thank you for the opportunity to comment on the City of Austin regulatory status of your pond during the early planning stages of a possible development on the above referenced tract. Scott Her and I investigated the pond today for the presence of critical environmental features (CEFs), including springs and wetlands. Scott concluded that the source of the water feeding the pond may or may not be a spring source, but either way the spring is located more than 150' from your property line. 150' is the standard setback for a CEF; therefore, your property would not be subject to any part of a spring CEF setback, even if one were located further up the watershed.

I identified a small fringe wetland along the shoreline of the pond, near the dam and outfall structure. Although small, this wetland indicates long-term saturation and evidence that the pond is providing a valuable water quality service to the Harper's Branch watershed (similar to a constructed water quality pond). Any area that is permanently ponded automatically meets two of the Army Corps technical criteria for a wetland: wetland hydrology and hydric soils can be assumed in a ponded environment. The only other criteria is the dominance by wetland vegetation. One 2' X 12' fringe area of the pond, near the outfall, is dominated by Obligate and/or Facultative-Wet vegetation including Water Primrose (Ludwigia octovalvis), Marsh Aster (Aster subulatus), and Gratsedge (Cyperus sp.). Constructed, isolated ponds like this one, are not regulated by the Army Corps, but are regulated as wetland CEFs by the City of Austin when meeting the technical wetland criteria.

If this case comes through the City's development review process, I will recommend a continuous setback of 50' from the normal high water mark of the pond (the outfall elevation). This is the standard setback given to isolated ponds unless additional setback can be added to the stream feeding the pond. In your case, the stream feeding the pond is off

---

The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.
City of Austin

Your property. Since the significant wetland area is so small, some setback flexibility could be considered; for example an average 50' setback, never to be less than 35'. In general, the natural character, water quality function, and wildlife value of the pond will be preserved best coupled with the best tree and native ground cover protection around the pond. In addition, since the pond is man-made, City rules allow it to be modified into a water quality wet pond or wet detention pond to fulfill City water quality and/or flood control requirements. If this is requested, enhancement of wetlands by creation of wetland benches may be required and floodplain may be necessary to provide adequate storage for flood detention.

If you have any questions, or require additional information, please feel free to contact me email or call me at 974-2956.

Mike Lyday
Senior Environmental Scientist
Watershed Protection and Development Review Department

SRCC, I hope this letter provides you with the information you needed for your neighborhood planning process. If you have any questions or require additional information, please call me at 974-2956.

Sincerely,

Mike Lyday
Senior Environmental Scientist
Watershed Protection and Development Review Department

C: Ed Peacock
    Melissa Schardt (COA Neighborhood Planning)

The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.
Appendix D

ADDITIONAL INFORMATION ABOUT THE NEIGHBORHOOD PLAN CONTACT TEAM (NPCT)

Background
In May 1997, the City Council adopted the neighborhood planning process, followed by the neighborhood plan amendment process in March of 2003. The neighborhood plan amendment ordinance states that prior to submittal of the neighborhood plan to City Council, a neighborhood plan contact team shall be established.

What is a Neighborhood Plan Contact Team (NPCT)?
A Neighborhood Planning Contact Team is a group of individuals that upholds the vision and goals of their neighborhood plan and is the steward of the plan’s recommendations. The NPCT has been designated as the group that will officially respond to plan amendment requests in addition to having some authority to determine when plan amendment applications may be filed.

How is the Neighborhood Planning Contact Team structured?
Members of the NPCT can choose how to structure their Team. Two ways NPCTs have been organized in the past are:

1) *Area-wide Structure*
NPCT membership shall be open to anyone who lives, owns property or operates a business within the boundaries of the neighborhood planning area or,

2) *District Structure*
The neighborhood planning area can be divided into various districts that cover the entire geographic planning area. Within each district, a contact team member can be selected to sit on the Contact Team.

What are the Roles and Responsibilities of a Neighborhood Plan Contact Team?
The NPCT will act as a steward of their neighborhood plan by:

1) *Working towards the implementation of the plan’s recommendations*
Once the neighborhood plan is adopted by the City Council, the NPCT is responsible for monitoring and prioritizing the plan’s recommendations and communicating with implementing departments.
It will have departmental contact information at its disposal in addition to any details related to specific plan recommendations provided by these contacts during the department review process.

2) **Taking a position on proposed neighborhood plan amendments**
   The NPCT will be asked to attend periodic meetings organized by neighborhood planning staff to hear about proposed neighborhood plan amendments. The Team is then responsible for submitting a letter to staff prior to the Planning Commission public hearing stating whether they support or do not support the proposed plan amendment.

3) **Initiating plan amendments**
   The NPCT has the ability to submit an application to amend a neighborhood plan at any time. The team can also submit an application on behalf of another person who wishes to apply for an amendment out of cycle for a project that would further the goals of the neighborhood plan.

**Neighborhood Planning Contact Team Criteria**
The neighborhood plan amendment ordinance states that the NPCT shall include at least one representative from each of the following four groups:

- Property owners
- Non-property owner residents (i.e. renters)
- Business owners
- Neighborhood associations

Once the NPCT is established, bylaws shall be prepared to address operating procedures for the group, including membership, meetings, notice requirements, decision-making and voting procedures, and conflict of interest issues. Bylaws are self-enforced. Bylaws shall be signed by all NPCT members and submitted to neighborhood planning staff to review for consistency with the ordinance.

**Additional Information**
The NPCT incurs no liability but makes recommendations to the Planning Commission and the City Council; it does not make legally enforceable decisions. As noted above, a NPCT has certain rights to initiate plan amendment cases; however, there are no liability issues with respect to such an action.
In the event that the persons involved in the creation of a neighborhood plan are unable, or do not wish, to form a NPCT, the status quo will be maintained (i.e. individuals and neighborhood associations will represent their interests and positions when plan amendment cases arise). The rights granted to a NPCT will not be granted to individual neighborhood associations.

The NPCT is not intended to replace existing neighborhood associations. How this group fits in with the existing neighborhood association structure is up to the individuals within the area.
Appendix E

STRENGTHS, OPPORTUNITIES AND CHALLENGES – SUMMARY OF RESULTS FROM WORKSHOP ONE

- **Strengths**
  
  Single family neighborhoods  
  PUD north of Riverside – Summer, Alexis, Whitney  
  Proximity, location, access – downtown, schools, airport  
  Proximity but still have a feeling of seclusion in the single family neighborhoods  
  Woodlands – continued preservation  
  Golf course  
  Locally owned businesses  
  High-tech employers  
  Transit  
  Views  
  Trees throughout neighborhoods  
  ACC, library  
  Affordable housing

- **Opportunities**
  
  Preserve Single-Family neighborhoods  
  Parks – enhance existing, link together, connect to Town Lake trail, also add pocket parks  
  Improved standards for multi-family both for design and maintenance  
  Code enforcement  
  Trails – connecting Town Lake trail (near Riverside); better trail connections throughout area – possibility of creating trails near creeks; hike and bike trails throughout Colorado River Park  
  Preserve creeks and springs  
  Riverside Drive as a redevelopment opportunity (gateway to the city) – village style, mixed use, more neighborhood-serving businesses  
  Streetscape improvements particularly on Oltorf, Riverside, Pleasant Valley – Trees, shrubs, medians  
  Provide more owner-occupied housing  
  Vacant properties  
  More neighborhood-serving businesses – pharmacy, small grocery stores, small bank
Ben White – improve appearance – gateway to city
Opportunities for new condos along Lakeshore Blvd
Bike lanes along Parker and/or Burton and any other way to connect to the trail
Old movie theatre site on Pleasant Valley

- Challenges

Riverside – visual blight, sea of parking, poor gateway to the city
Signage on Riverside and Oltorf
Poor quality multi-family
Too much multi-family
Corridors are backed up
Burleson as cut-through
Southern part of Parker Lane – row of poorly maintained duplexes
Mission Hill
To increase owner-occupancy
Improve bike and pedestrian infrastructure
Lack of parks
Public safety, crime
Appendix F

FINAL SURVEY RESULTS

Total Survey Replies: 122

What should the Neighborhood Planning Area be named?

<table>
<thead>
<tr>
<th>Name of Plan</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>The East Riverside/Oltorf Neighborhood Plan</td>
<td>47.5%</td>
</tr>
<tr>
<td>The River Park Neighborhood Plan</td>
<td>20.5%</td>
</tr>
<tr>
<td>The Riverside/Oltorf Neighborhood Plan</td>
<td>19.7%</td>
</tr>
<tr>
<td>The Colorado River Park Neighborhood Plan</td>
<td>6.6%</td>
</tr>
</tbody>
</table>

What do you think are the most important issues in the combined East Riverside/Oltorf Neighborhood Planning Area?

<table>
<thead>
<tr>
<th>Issue</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preserve the natural character of and access to the Town Lake Waterfront.</td>
<td>60.7%</td>
</tr>
<tr>
<td>Encourage pedestrian and bike friendly neighborhoods.</td>
<td>57.4%</td>
</tr>
<tr>
<td>Improve the appearance of retail corridors and preserve downtown views.</td>
<td>56.6%</td>
</tr>
<tr>
<td>Preserve and enhance the character of existing residential neighborhoods.</td>
<td>54.1%</td>
</tr>
<tr>
<td>Identify and protect all critical environmental features.</td>
<td>45.1%</td>
</tr>
<tr>
<td>Eliminate the gaps in the Town Lake hike and bike trail system.</td>
<td>41.0%</td>
</tr>
<tr>
<td>Protect creek areas from development.</td>
<td>39.3%</td>
</tr>
<tr>
<td>Create lively, inviting, attractive and safe commercial and office street environments.</td>
<td>38.5%</td>
</tr>
<tr>
<td>Preserve, maintain and enhance existing parks.</td>
<td>38.5%</td>
</tr>
<tr>
<td>Create opportunities for small neighborhood parks.</td>
<td>36.1%</td>
</tr>
<tr>
<td>Maintain and improve the appearance of creek areas and the water quality of creeks.</td>
<td>35.2%</td>
</tr>
<tr>
<td>Eliminate traffic hazards and improve the efficiency of the transportation network.</td>
<td>32.0%</td>
</tr>
<tr>
<td>Improve access to and awareness of existing parks, trails and open space.</td>
<td>31.1%</td>
</tr>
<tr>
<td>Facilitate and promote better code enforcement.</td>
<td>27.9%</td>
</tr>
<tr>
<td>Support and enhance public transportation.</td>
<td>26.2%</td>
</tr>
<tr>
<td>Preserve the 18-hole Riverside Golf Course as a golf course.</td>
<td>25.4%</td>
</tr>
<tr>
<td>Promote options for owner-occupied housing.</td>
<td>25.4%</td>
</tr>
<tr>
<td>Minimize the negative effects between different land uses and differing intensity of use.</td>
<td>24.6%</td>
</tr>
<tr>
<td>Encourage urban design tools for single-family neighborhoods that preserve, complement and enhance existing characteristics.</td>
<td>23.8%</td>
</tr>
<tr>
<td>Improve connectivity for non-automobile traffic across major roadways.</td>
<td>23.0%</td>
</tr>
<tr>
<td>Make street changes so that vehicular traffic has less impact on local neighborhoods.</td>
<td>23.0%</td>
</tr>
<tr>
<td>Promote multifamily designs that relate well to the surrounding environment, have a variety of building forms, have a thoughtful parking scheme, provide public open</td>
<td>22.1%</td>
</tr>
</tbody>
</table>
The table outlines various proposals for the East Riverside/Oltorf Combined Neighborhood Plan along with their associated support percentages:

<table>
<thead>
<tr>
<th>Proposal</th>
<th>Support Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 Expand public notification for proposed development/zoning changes.</td>
<td>20.5%</td>
</tr>
<tr>
<td>24 Establish a trail system along Country Club Creek.</td>
<td>18.9%</td>
</tr>
<tr>
<td>25 Promote the redevelopment of under-utilized properties.</td>
<td>18.0%</td>
</tr>
<tr>
<td>26 Promote mixed-use development in appropriate locations.</td>
<td>15.6%</td>
</tr>
<tr>
<td>27 Ensure communication between the City and the public when implementing future roadway extensions.</td>
<td>14.8%</td>
</tr>
<tr>
<td>28 Create convenient and accessible parking areas that do not dominate the environment.</td>
<td>12.3%</td>
</tr>
<tr>
<td>28 Offer diverse housing types to serve all community needs.</td>
<td>12.3%</td>
</tr>
<tr>
<td>30 Offer a balance of land use/zoning opportunities for both commercial and office development.</td>
<td>7.4%</td>
</tr>
</tbody>
</table>

Rate your level of support for the plan based on how well the items/issues listed above represent your concerns:

<table>
<thead>
<tr>
<th>Support Level</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally Supportive</td>
<td>46.7%</td>
</tr>
<tr>
<td>Full Support</td>
<td>26.2%</td>
</tr>
<tr>
<td>Generally Unsupportive</td>
<td>10.7%</td>
</tr>
<tr>
<td>No Support</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

How did you participate in the neighborhood planning process?

<table>
<thead>
<tr>
<th>Participation Method</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Survey</td>
<td>61.5%</td>
</tr>
<tr>
<td>I was not involved</td>
<td>27.9%</td>
</tr>
<tr>
<td>Neighborhood planning meeting(s)</td>
<td>24.6%</td>
</tr>
<tr>
<td>Neighborhood Association plan discussions</td>
<td>13.9%</td>
</tr>
<tr>
<td>Workshop(s)</td>
<td>13.9%</td>
</tr>
<tr>
<td>Correspondence with staff</td>
<td>11.5%</td>
</tr>
</tbody>
</table>

How did you hear about the upcoming meetings?

<table>
<thead>
<tr>
<th>Method</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letters</td>
<td>64.8%</td>
</tr>
<tr>
<td>E-mail</td>
<td>23.8%</td>
</tr>
<tr>
<td>Word of mouth</td>
<td>14.8%</td>
</tr>
<tr>
<td>I have never heard about any meetings</td>
<td>11.5%</td>
</tr>
<tr>
<td>City websites</td>
<td>4.9%</td>
</tr>
<tr>
<td>Postcards</td>
<td>4.9%</td>
</tr>
<tr>
<td>Other</td>
<td>4.9%</td>
</tr>
<tr>
<td>Phone calls</td>
<td>4.1%</td>
</tr>
<tr>
<td>Door-to-door</td>
<td>0.0%</td>
</tr>
</tbody>
</table>
In the East Riverside/Oltorf Neighborhood Planning Area, I am a...

<table>
<thead>
<tr>
<th>Role</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homeowner</td>
<td>54.9%</td>
</tr>
<tr>
<td>Renter</td>
<td>29.5%</td>
</tr>
<tr>
<td>Non-resident property owner</td>
<td>9.8%</td>
</tr>
<tr>
<td>Business owner</td>
<td>6.6%</td>
</tr>
<tr>
<td>Other</td>
<td>5.7%</td>
</tr>
</tbody>
</table>
Appendix G

NEIGHBORHOOD HOUSING AND COMMUNITY DEVELOPMENT
HOUSING AFFORDABILITY IMPACT STATEMENT (AIS)

City of Austin
P.O. Box 1088, Austin, TX 78767
www.cityofaustin.org/housing

Neighborhood Housing and Community Development Office
PAUL HILGERS, COMMUNITY DEVELOPMENT OFFICER
(512) 974-3108, Fax: (512) 974-3112, paulhilgers@ci.austin.tx.us

Date: July 28, 2006

To: Greg Guernsey, Director
   Neighborhood Planning and Zoning Department

From: Paul Hilgers, Director
   Neighborhood Housing and Community Development

Subject: Affordability Impact Statement – East Riverside/Oltorf Neighborhood Plan

The Neighborhood Housing and Community Development Office finds that the Planning Commission’s recommendations for adoption of the proposed East Riverside/Oltorf Neighborhood Plan could have a positive impact on housing affordability. The Neighborhood Planning Team’s recommendations could have a positive impact on many sites in the Community preservation Zone, but create impediments on all but one-site located south of East Riverside Drive.

Community Preservation and Revitalization Zone

The Planning Commission recommends that the proposed East Riverside/Oltorf Neighborhood Plan include language supporting the housing affordability goals of the Community Preservation and Revitalization (CP&R) zone. A portion of the East Riverside Planning Area north of East Riverside Drive lies within the CP&R Zone created by the City Council on April 28, 2005 (Resolution 20050428-043). The Council established the CP&R Zone and related housing affordability goals for both housing development and mixed-use development to mitigate gentrification pressures in certain neighborhoods located east of IH 35. Specifically, the City Council directed City staff to identify strategies for creating housing for families at or below 65% Median Family Income (MFI) ($46,200 for a family of four).
Applicants for zoning changes in the CP&R Zone can choose to build exclusively market rate housing or could voluntarily participate in S.M.A.R.T. Housing™ and provide some homeownership or rental opportunities for 80% MFI households. None of the applicants with pending zoning requests in the CP&R portion of the Riverside Plan have agreed to participate in S.M.A.R.T. Housing™. The net result is that only market rate housing would be constructed in this area that faces gentrification pressures identified previously identified by the City Council. The Planning Commission’s recommendation encourages applicants seeking additional entitlements to consider housing affordability goals within the CP&R Zone. The Planning Team’s recommendations identifies specific sites within the CP&R Zone where affordability is encouraged.

**Homeownership**

NHCD supports the neighborhood’s goal for more homeownership opportunities in the planning area. It is important to note that only one S.M.A.R.T. Housing™ zoning application to create additional homeownership opportunities in the East Riverside/Oltorf Planning Area is pending. The applicant reports that some neighborhood stakeholders have told him that they will oppose his zoning change request to create homeownership if he develops under the S.M.A.R.T. Housing™ Policy, but will support the same zoning change request if he withdraws his S.M.A.R.T. Housing™ application. Other neighborhood stakeholders, in a meeting with NHCD, have expressed support for S.M.A.R.T. Housing™ on this property.

**Recommendations:**

1. NHCD supports the Planning Commission recommendations for rezoning of existing multi-family development on commercially zoned lots to the appropriate MF or MU zoning category as recommended by Neighborhood Planning and Zoning Department staff. This is a policy we have consistently supported in other neighborhood plans for the policy reduces the likelihood that affordable rental housing stock could be lost if a building suffered severe damage.

2. NHCD supports the Planning Commission recommendation linking residential development entitlements to the City’s housing affordability goals established by the City Council for the Community Preservation and Revitalization Zone. Adoption of this recommendation in the East Riverside Plan would mitigate the potential impacts of intensifying gentrification pressures in the Community Preservation and Revitalization Zone. NHCD staff hopes to continue dialogue with CP&R Zone applicants and neighborhood stakeholders prior to City Council action on the proposed neighborhood plan.
3. Given the significant number of rental units in this planning units and the age of this housing stock, there are significant redevelopment or remodeling opportunities to create homeownership and rental housing opportunities for housing that is both safe and affordable.

Given the challenges created by the sloping lots and expansive soils in this planning area, NHCD supports the Planning Commission recommendation that the East Riverside/Oltorf Neighborhood Plan contain language similar to the North Hyde Park Neighborhood Plan where existing multi-family could be replaced by new multi-family of the same height and number of units. The proposed affordability goal would be that 10% of the homeownership or rental units serve households at 65% Median Family Income for fifteen (15) years. This could support the planning team’s goal of increasing opportunities for homeownership while not increasing the amount of multi-family housing and the City’s goal to expand S.M.A.R.T. Housing™ opportunities throughout the city.

The Neighborhood Planning Team’s recommendation mirrors the North Hyde Park standards on many sites north of East Riverside Drive, but only one site south of East Riverside Drive.

If the Planning Commission’s proposed language were not adopted, the Neighborhood Planning Team’s proposal and associated zoning changes would create significant impediments to future S.M.A.R.T. Housing™ development since many of the existing multi-family housing could not be replaced except with market-rate housing.

In summary, the Planning Commission has recommended several of the elements of the East Riverside/Oltorf Neighborhood Plan that could have a positive impact on housing affordability. The Neighborhood Planning Team’s recommendations would provide fewer opportunities for S.M.A.R.T. Housing™ redevelopment than the Planning Commission’s recommendations, and these opportunities would generally be limited in the portion of the planning area located south of East Riverside Drive.

Please contact Gina Copic at (512) 974-3180 if you need additional information.

Paul Hilgers, Community Development Officer
Neighborhood Housing and Community Development

cc: Gina Copic, NHCD
    Greg Guernsey, NPZD
    Adam Smith, NPZD

Appendix H
Parker Lane Neighborhood Plan Area
Current Zoning Map

This map has been produced by the City of Austin Neighborhood Planning & Zoning Department for the sole purpose of facilitating neighborhood planning. It should not be relied upon as the sole source of site or location information and is not warranted for any other use. Revisions are made reporting to accuracy or private interest.

Created August 2006
This map has been produced by the City of Austin Neighborhood Planning & Zoning Department for the sole purpose of facilitating neighborhood planning. It should not be referred to as an official source of land use or zoning and is not warranted for any other use. No warranty is made regarding its accuracy or completeness.

Created August 2005
Appendix I

EAST RIVERSIDE/OLTORF INTEREST LIST

| James Adcock                       | Margot Carpenter                    | Paul Eighmey                  |
| Ron Aitken                         | Neish Carroll                       | Jennifer & Jonathan Ellis    |
| Susan Alexander                    | Marge Carson                        | Sam Ellison                  |
| Michele Rogerson Allen             | T. Carvajal                         | Paul Enk                     |
| Susana Almanza                     | Bill Cassis                         | Bill Fagelson                |
| Barbara Alpi                       | Christopher Cavello                 | Bob Falstad                  |
| Nina Alvarez                       | Kevin Chamness                      | Alex Favata                  |
| Delma Alvarez                      | Rick Chapa                          | Ben Ferrell                  |
| Mohsen Anami                       | Benny Chen                          | Tony Flanagan                |
| Cynthia Anderson                   | Danette Chimenti                    | Henry Flores                 |
| Lilian Arrington                   | Tony Ciccone                        | Robert Flores                |
| Lorraine Atherton                  | Dawn Cizmar                         | Marsh Floyd                  |
| Thomas Athey                       | Steve Clark                         | Mike Ford                    |
| June & Henry Ault                  | Teddie Cline                        | William Forest              |
| Kathy Avalos                       | Charlotte Clopton                   | Christine Stephens           |
| Barbara Aybar                      | Christie Cochren                    | Barb Fox                     |
| W. Gaines Bagby                    | Connie Colten                       | Terry Franz                  |
| Brad Baker                         | Woodland II Condos                  | Dan Fredine                 |
| Peter Barlin                       | W.T. Connelly                       | Steve Frost                 |
| Steve Barney                       | Paul Cook                           | Patricia Gabella             |
| Mike Barrero                       | Nancy Costa                         | Margaret Garcia             |
| David Bean                         | Art Coy                             | Alicia Garza                |
| Annick Beaudet                     | James Crockett                      | Maryam Gharbi               |
| Erik Beguin                        | Cecilia Crossley                    | Mike Gharbi                 |
| H.C. Bell                          | Ed Cullen                           | Karen Gibson                 |
| Jim Bennett                        | S. Davidson                         | Henry Gilmore               |
| Rodney Bennett                     | Peggy & Eddie Dean                  | Peter Glass                 |
| Lionel and Venus Bess             | Eunice Diaz                         | Lucia Godoy                 |
| Donilyn Bishop                     | Gricelda Diaz                       | Monty Goff                  |
| Molly Blevins                      | Karin Dicks                         | Gayle Goff                  |
| Carol Bosselman                   | Julia and Charles W. Jr Diggs       | Greta Goldberg              |
| Carl Braun                         | Lorilee Dodson                      | James Gomez                 |
| Vaughn Brock                       | John Donisi                         | Norma Gomez                 |
| Cathy Brown                        | Joyce Donnelly                      | Antonio & Syndie Gonzales   |
| Sheila Brutoco Young               | Tim W. Dore, Esq.                   | Mattie Gonzalez              |
| Josh Bushner                       | Irene Drury                         | Cecil & Margaret Goodwin    |
| David Butschy                      | Joe Duncan                          | John Graham                 |
| Janie Bynum                        | Tyra Duncan-Hall                    | Philip Gramberg             |
| Carlos Caello                      | Mike Dunn                           | Shannon Greenan             |
| Tino Calderon                     | Steve Durham                        | John Greenman               |
| Bradley and Irene Carpenter        | Robert Edwards                      | Bill Greif                  |
| Alison Carpenter                  | Mary Eichner                        | Pat Grigadean               |
East Riverside/Oltorf Combined Neighborhood Plan

EAST RIVERSIDE/OLTORF INTEREST CONTINUED

Chris Grigassy
Wayne Gronquist
Sophie Gronquist
Luis Guevara
Gordon Gunn
Thomas Gunther
Connie Haggar
R. Stephen Harnsberger
Susan Harris
Margaret Harrison
Alison Hart
Roland C. Hayes
Jason Hercules
Tina Hergotz
Curt & Carol Hirsh
Kathleen & Toni House
Jeff Howard
Keith Husbands
Diane Huska
M. Angela Ingram
Keith Jackson
Bill Jackson
William Jackson
Steven Jackson
Garrett Jamison
David Jiles
Allen Johnson
Brad Joiner
Jud Jones
John M. Joseph Sr.
Kimberley Juarez
Jay Kaplan
Kris Kasper
Bryan Kastleman
Kristopher M. Kelley
Jane Kellogg
Randy Kemper
Patricia Paloma Kennedy
Gregg Kestranek
Ragheb Khazem
Haidar Khazen
Mike Killebrew
B.C. Kim
Bryan King
Fred Krebs
Steven Kreytak
John Lacaria
Frank Ladd
Robert Laguna
Linda Land
Lesley Landrt
Amy Langenkamp
Len Layne
Gil Leal
Judith Lehman
James Lindsay
Daniel Llanes
Jan Long
Amelia Lopez-Phelps
Sam Lujan
Bennett M.H.
Paul Mac Namara
Victor Madera
David Mahn
Tim Mahoney
Mark Major
Terri Major
Chris Maldonado
Hope Malkan
Stephanie Mankins
Karen Marks
Elisa Marrone
Floyd Marsh
Eric Marsh
Ken Marshall
Misty Martin
Sergio Martin
Retta Martin
Cruz Martinez
Jon & Rita Mason
Marie Masters
Jean Mather
Patricia Matthews
Fletcher Mattox
Mike May
Percy & Dean Maynord
David McClinton
Ray McDermett
Thad McDonald
J. McFeeley
Shannon McGee
James Ryan
Pamela McGooby
Patrice McGraw
Margaret McInroe
Scott McIntosh
Joe McIntyre
Maynard McMahon
Charles Medlock
Arlene Metcalfe
Pam and John Mitchell
Joshua Mitchell
Rafik Momin
Phil Moncada
Al Montoya
Michael Moran
Luis Moreno
Christine Morgan
Patrick Morgan
Tom Mulaux
Bill Mullane
Peter Murray
Harold B. Myers
Laura Najera
Perry Nite
Paul Nolte
Shirley Norwood
David Oelrich
Shannon Oelrich
Steve Ogle
Artoush Ohanian
Robert Olney
MJ Osgood
Jeff Pace
Tim Packard
Sung Park
Linda Paulson
Jan Perals
Eric Peterson
Mac Pike
Gordon Placette
Leon Poteet
Alex Power
Don Powers
Judy Price
Shawn Price
Richard Pruitt
EAST RIVERSIDE/OLTORF INTEREST LIST CONTINUED

Cherry Rains
Patrick Ramirez
Dick Rathgeber
Lee Reznicek
Sandy Rice
Michael Ritchie
Paul Ritchie
Bruce Rodenborn
Eddie Rodriguez
Randall Roessler
Lisa Rogers
Jim Rose
Gayle Rosenthal
Corinne Borde
Marilil Rychlik
Max Rychlik
William Sanson
Nimmi Sarda
Daniel Sartellana
Diana Saunders
Jim Schaffrath
Eric Schiedler
John Schuler
Mickey Scott
Denise Seal
Jeff Sewell
Stuart Shapiro
Carolyn Sharkey
Sara Sharkey
Margaret Shaw
Patrick Shelton
Alan Sherman
Gay Shrader
Brenda Shunn
Lor Siegel
Jan Six
David Smith
Bryan Smith
Robin Smith
Phillip South
Dwayne Stewart
Don Stewart
Leigh Stillson
Mark Stone
Kenneth Strahan
John Stratton
Jason Stuart
Jesse Sublett
Lyn Sullivan
Gay & Mike Sullivan
Larry Sunderland
Jane Sward
Henry Tang
Abigail Tapia
Jackie Taylor
Jeff Taylor
Jim Temple
Phyllis Tennie
Andy Tewell
Pam Thompson
Michele Thorley
Ron Thrower
Garrett Timmins
Mark Tirpak
Rick Torres
Margaret & Peg Treadwell
Tim Trentham
Mary Trimble
Hali Ummel
Mike Valescu
Barbara Emily Van Niel
Ronald Vasey
J. Luis Vasquez
Charles Vernon
Ed Wade
Tom Wakey
Patricia Wallace
Linda Watkins
Doc Watson
Greg Watson
Azam Waugh
Stan Weber
Traci Wernli
Sage White
Rick Whitley
Kyle Wilkie
Marilyn Willhoite
Phil Williams
Larry Willoughby
Marcella Wilson
Patricia Wilson
Lochen & Steve Wood
Lori & Steven Wood
David & Dena Woolsey
Peter and Pearl Wu
Malcolm Yeatts
Janice Zett
Kyle Zumberge
Appendix J

GLOSSARY OF TERMS

**Base District:** A zoning district that establishes regulations governing land use and site development in a specific geographic area. Regulations may include:

- A minimum lot size
- A minimum lot width
- Maximum impervious coverage
- Maximum height allowances
- Required setbacks

**Buffer or Buffer Strip:** Landscaped areas, open spaces, fences, walls, berms, or any combination of these, used to physically separate or screen one land use or piece of property from another. Buffers are often used to block light or noise.

**Built Environment:** The urban environment consisting of buildings, roads, fixtures, parks, and all other improvements that form the physical character of a city.

**Capital Improvement Program (CIP):** A community’s plan for matching the cost of large-scale improvements—such as fixing roads, water and sewer mains—to anticipated revenues, such as taxes and bonds.

**Character:** The image and perception of a community as defined by its built environment, landscaping, natural features and open space, types and style of housing, and number and size of roads and sidewalks.

**Combining District:** A zoning designation, similar to a zoning overlay, that is used to apply additional regulations and restrictions in combination with existing zoning regulations for a geographic area such as a neighborhood. It is adopted by an ordinance passed by the City Council. Combining and overlay districts are designed to achieve special goals such as downtown design, economic redevelopment, and parkland protection. See Neighborhood Plan Combining District

**Compatibility Standards:** Development regulations established to minimize the effects of commercial, industrial, or intense residential development on nearby residential property. These standards usually include:

- Regulation of building height
- Minimum and maximum building setbacks
- Buffers
• Building design
• Controls to limit the impact of lighting on adjacent properties

Conditional Overlay: A zoning tool that modifies land use and development regulations to address specific circumstances presented by a particular geographic area or site. It usually imposes further requirements in addition to those required by the base district. A conditional overlay is a restrictive tool in that it can prohibit, or make conditional, specific uses, but it cannot add uses.

A conditional overlay may be combined with any base zoning district to:

• Promote compatibility between competing or potentially incompatible uses
• Ease the transition from one base district to another
• Address special concerns with specific land uses
• Guide development in unique circumstances

A conditional overlay may:

• Prohibit permitted, conditional, and accessory uses otherwise allowed in a base district
• Make a permitted use a conditional one
• Decrease the density that may be constructed
• Decrease building heights
• Increase minimum setback requirements
• Decrease the maximum impervious cover
• Restrict access to adjacent roads and require specific design features to minimize the effects of traffic

Density: The number of dwelling units (houses, apartments, townhouses, duplexes, etc.), or buildings per unit of land. In Neighborhood Planning, this is often expressed as dwelling units per acre or du/ac.

Downzone: To change the land use of a tract or parcel of land from a greater to less intense usage. An example would be a change in zoning from Light Industrial (LI) to Commercial Services (CS) or Mixed Use (MU). See Zoning for a more complete description of different zoning districts.

Façade: The exterior walls of a building that can be seen by the public.

Flood Zone—100 year: The land along a creek, dry wash, river, lake, seaside, swamp, bay, estuary, or in a low lying area or depression that has a one in one hundred chance of flooding every year.
**Floor Area Ratio (FAR):** The total floor area of all buildings or structures on a lot divided by the total area of the lot. FAR is a measure often used to determine the intensity of land use for a zoning district.

FAR = \frac{\text{Total Building Floor Area}}{\text{Total Lot Area}}

\text{FAR of 0.2} = \frac{2000 \text{ SF (building size)}}{10,000 \text{ SF lot size}}

**Future Land Use Map (FLUM):** The graphical representation of recommendations for future growth patterns in an area. It depicts where different types of development should occur (e.g. parks, schools, houses, offices) by color.

**Impervious Cover:** Anything that stops rainwater from soaking into the ground, including roads, sidewalks, driveways, parking lots, swimming pools, and buildings.

**Infill Development:** A type of development occurring in established areas of the city. Infill can occur on long-time vacant lots or on pieces of land with dilapidated buildings, or can involve changing the land use of a property from a less to a more intensive one—i.e. from a parking lot to an office building.

**Land Development Code (LDC):** Rules, regulations, and ordinances that govern how and where certain types of development may occur.

**Land Use:** The manner in which a parcel of land is used or occupied.

**Mixed Use (MU):** A type of development that combines residential, commercial, and/or office uses, within a commercial or office zoning district, into one development or building. For example, a mixed-use building could have several floors. On the bottom floor, the space could be dedicated to retail or offices. The remaining two or three floors could be for apartments or condominiums. A Mixed Use Combining District allows residential, commercial, retail, and office uses to be combined in a single development.

Under the Smart Growth Infill Ordinance passed in the Spring of 2000, two types of Mixed Use development are now possible in those neighborhoods with adopted neighborhood plans that include these uses as part of their plans:

- Neighborhood Urban Center allows a variety of residential types (condos, apartments, townhouses) and commercial, office, and retail uses clustered together in a development of less than forty acres.
- A Neighborhood Mixed Use Building allows residential uses above ground floor commercial uses.
**Multifamily:** A building that is designed to house more than one family. Examples would be a four-plex, condominiums, or apartment building.

**Neighborhood Plan Combining District:** This is a combining district that includes the zoning recommendations in an adopted neighborhood plan. See Combining District.

**Neighborhood Design Guidelines:** Guidelines developed during the neighborhood planning process that serve as recommendations as to how future residential, commercial, and industrial development should be constructed to be more compatible and better blend into an existing neighborhood.

**Neighborhood Planning:** A two-phase process by which members of the community develop plans to manage future development in their neighborhoods. The first phase of the process involves establishing goals and objectives and the actions required to address neighborhood issues. The second phase implements the land use and zoning changes recommended in the neighborhood plan in the form of a Neighborhood Plan Combining District.

**Nonconforming Use:** The use of any land, building or structure that does not conform with current zoning regulations, but was lawful or not required to comply with zoning regulations at the time a zoning district was established. They may be permitted to continue or be given time to come into compliance with the existing zoning ordinance. In addition, specific code requirements address the ability to make major substantial changes to structures designated as nonconforming uses. This is also known as a Grandfathered Use.

**Open Space:** An area set aside or reserved for public or private use with very few improvements. Types of open space include:

- Golf Courses
- Agricultural Land
- Parks
- Greenbelts
- Nature Preserves

In many cases, land designated as open space lies within the 100-year flood zone, has sensitive environmental features such as wetlands or aquifer recharge features such as caves and fault lines, or has unstable slopes.

**Overlay:** A set of zoning requirements that is applied to an area that may place further development restrictions on a zoning district. Development in an overlay district must conform to the base district as well as the overlay zoning requirements.
Pedestrian-Scaled: Development designed so a person can comfortably walk from one location to another, encourages strolling, window-shopping, and other pedestrian activities, provides a mix of commercial and civic uses (offices, a mix of different retail types, libraries and other government and social service outlets), and provides visually interesting and useful details such as:

- Public clocks
- Benches
- Public art such as murals and sculptures
- Shade structures such as canopies and covered walkways
- Decorative water fountains
- Drinking fountains
- Textured pavement such as bricks or cobblestones
- Shade trees
- Interesting light poles
- Trash bins
- Transit system maps
- Covered transit stops
- Street-level retail with storefront windows.

Planning: The process of setting development goals and policy, gathering and evaluating information, and developing alternatives for future actions based on the evaluation of the information.

Redevelopment: The conversion of a building or project from an old use to a new one. Examples are the conversions of old warehouses to bars or coffee shops or converting an old industrial complex into a shopping center like the Quarry Market in San Antonio. It is also known as Adaptive Reuse.

Rezone: To change the zoning classification of particular lots or parcels of land.

Setbacks: The minimum distance between the building and any lot line.

Small Lot Amnesty: The ability of a property owner to request a building permit without submitting a subdivision application to construct a single family home that will have sixty-five percent impervious cover on a 2,500 square foot lot. Small lot amnesty is applied when the lot in question is neither a legal nor a grandfathered lot and does not meet the current minimum standards of the base zoning district where it is located. Small lot amnesty is limited to areas with adopted neighborhood plans where it is permitted by the plan.

Streetscape: The space between the buildings on either side of a street that defines its character. The elements of a streetscape include:
• Building Frontage/Facade
• Landscaping (trees, yards, bushes, plantings, etc.)
• Sidewalks
• Street Paving
• Street Furniture (benches, kiosks, trash receptacles, fountains, etc)
• Signs
• Awnings
• Street Lighting

**Urban Home:** A substandard or nonconforming lot of 3,500 sq. ft. or larger. An urban home is required for a substandard corner lot. It is permitted only in areas with adopted neighborhood plans that specifically permit them. To build a house on a lot this size outside of an adopted neighborhood plan area requires a variance.

**Watershed:** A relatively large area of land that drains water into a river, creek or into an aquifer (an underground reservoir or lake). In Central Texas, water draining into an aquifer usually flows into recharge features such as caves or fractures in the ground.

**Zoning:** The method used by cities to promote the compatibility of land uses by dividing tracts of land within the city into different districts or zones. Zoning ensures that a factory is not located in the middle of a residential neighborhood or that a bar is not located next to an elementary school.
Appendix K

PLAN ADOPTION ORDINANCE
ORDINANCE NO. 20061116-055

AN ORDINANCE AMENDING THE AUSTIN TOMORROW COMPREHENSIVE PLAN BY ADOPTING THE EAST RIVERSIDE/OLTORF COMBINED NEIGHBORHOOD PLAN.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS.

(A) In 1979, the City Council adopted the “Austin Tomorrow Comprehensive Plan”

(B) Article X, Section 5 of the City Charter authorizes the City Council to adopt by ordinance additional elements of a comprehensive plan that are necessary or desirable to establish and implement policies for growth, development, and beautification, including neighborhood, community, or area-wide plans

(C) In October, 2003, an initial survey was distributed to residents in the neighborhood planning area, and subsequent meetings were held with the City of Austin Neighborhood planning staff and homeowners, renters, business owners, non-profit organizations and non-resident property owners to prepare a neighborhood plan. The East Riverside/Oltorf Combined Neighborhood Plan followed a process first outlined by the Citizens’ Planning Committee in 1995, and refined by the Ad Hoc Neighborhood Planning Committee in 1996. The City Council endorsed this approach for neighborhood planning in a 1997 resolution. This process mandated representation of all of the stakeholders in the neighborhood and required active public outreach. The City Council directed the Planning Commission to consider the plan in a 2003 resolution. During the planning process, the East Riverside/Oltorf Combined Neighborhood Plan planning team gathered information and solicited public input through the following means:

1. neighborhood planning team meetings,
2. collection of existing data,
3. neighborhood inventory,
4. neighborhood survey,
5. neighborhood workshops, and
The East Riverside/Oltorf Combined Neighborhood Plan recommends action by the neighborhood planning team, the City, and by other agencies to preserve and improve the neighborhood. The East Riverside/Oltorf Combined Neighborhood Plan has thirteen major goals:

1. Preserve and enhance the character of existing residential neighborhoods
2. Increase home ownership opportunities that are compatible with surrounding properties
3. Improve the appearance, vitality, and safety of existing commercial corridors and community amenities and encourage quality urban design and form that ensures adequate transition between commercial properties and adjacent residential neighborhoods
4. Encourage a balanced mix of residential, civic, commercial, office and other land uses without adversely affecting adjacent residential neighborhoods
5. Enhance the transportation network to allow residents and visitors to get around safely and efficiently by foot, bicycle, automobile, and public transit
6. Protect and enhance the Town Lake Waterfront as well as creek areas and other natural amenities
7. Preserve and enhance existing parks, the 18-hole Riverside Golf Course and other open spaces and create opportunities for additional public open space
8. Provide affordable housing opportunities through redevelopment of existing multifamily developments
9. Create interesting, lively, inviting, attractive, safe and comfortable non-residential environments that will encourage walking, biking, and transit use and be appealing to passing motorists
10. Create convenient and accessible parking areas that do not dominate the environment and provide safe interaction between vehicles and pedestrians
11. Encourage urban design strategies for single-family neighborhoods that preserve, complement and enhance existing character
(12) Promote multifamily structures that relate well to the surrounding environment, utilize a variety of building forms, have a thoughtful parking scheme, provide public open space and include a variety of appropriate landscape options.

(13) Minimize the visual impact of industrial properties from other districts and public spaces in the neighborhood planning area.

(E) The East Riverside/Oltorf Combined Neighborhood Plan goals are further described in the Land Use, Urban Design, Transportation, and Parks, Trails, Open Space and the Natural Environment sections of the Plan.

(F) On June 13, 2006, the Planning Commission held a public hearing on the East Riverside/Oltorf Combined Neighborhood Plan, and recommended adoption of the plan by the City Council.

(G) The East Riverside/Oltorf Combined Neighborhood Plan is appropriate for adoption as an element of the Austin Tomorrow Comprehensive Plan. The East Riverside/Oltorf Combined Neighborhood Plan furthers the City Council’s goal of achieving appropriate, compatible development within the area. The East Riverside/Oltorf Combined Neighborhood Plan is necessary and desirable to establish and implement policies for growth, development, and beautification in the area.

PART 2. ADOPTION AND DIRECTION.

(A) Chapter 5 of the Austin Tomorrow Comprehensive Plan is amended to add the East Riverside/Oltorf Combined Neighborhood Plan as Section 5-21 of the Comprehensive Plan as set forth in Exhibit A, and the Future Land Use Map as set forth in Exhibit B, and which are incorporated as part of this ordinance, save and except the following properties:

1. Tract 203 2600, 2600 ½ South Pleasant Valley Road
2. Tract 222 4600, 4604 East Ben White Boulevard,
3. Tract 37 2109 – 2237 East Riverside Drive, 1700-1702 Willow Creek Drive,
4. Tract 39 1701, 1703, 1705, 1707, 1709, 1711, 1713 Burton Drive,
5. Tract 41 2017 East Riverside Drive,
6. Tract 43 2003 – 2023 East Riverside Drive, 1407 ½ Royal Crest Drive,
7. Tract 43A 2001 East Riverside Drive
8. Tract 44 2003 East Riverside Drive,
9. Tract 45 1801 – 1919 East Riverside Drive,
Tract 45A 1805 – 1909 East Riverside Drive,
Tract 45B 1905 East Riverside Drive,
Tract 46 1605 East Riverside Drive,
Tract 47 1005, 1007 Summit Street,
Tract 49 1301 South IH-35 Service Road Northbound (Lot 3-A and Lot 12, Bellvue Park), and
Tract 50 1301 South IH-35 Service Road Northbound (0.2 acre out of Lot 3-A and Lot 12, Bellvue Park)

(2) Tracts listed in Attachment A-1, Tract 9 (1708, 1712, and 1720 South Lakeshore Boulevard), and 1818 South Lakeshore Boulevard

(B) The city manager shall prepare zoning cases consistent with the land use recommendations in the Plan

(C) The city manager shall provide periodic updates to the City Council on the status of the implementation of the East Riverside/Oltorf Combined Neighborhood Plan

(D) The specific provisions of the East Riverside/Oltorf Combined Neighborhood Plan take precedence over any conflicting general provision in the Austin Tomorrow Comprehensive Plan

PART 3. EFFECTIVE DATE.

This ordinance takes effect on November 27, 2006

PASSED AND APPROVED

November 16, 2006

Will Wyn Mayor

APPROVED: David Allan Smith
City Attorney

ATTEST: Shirley A. Gentry
City Clerk
Parcels withdrawn for future consideration

<table>
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                                           | 2514 E OLTORF ST |
| 289156                                   | 2301 S PLEASANT VALLEY RD  
                                           | 2317 S PLEASANT VALLEY RD |
| 290410                                   | 2400 WICKERSHAM LN |
| 290411                                   | 2440 WICKERSHAM LN |
| 445742                                   | 4405 E RIVERSIDE DR |
| 483166                                   | 1225 S PLEASANT VALLEY RD  
                                           | 4600 ELMONT DR |
| 551574                                   | 5003 E RIVERSIDE DR  
                                           | 5021 E RIVERSIDE DR  
                                           | 5001 E RIVERSIDE DR |
| 287926                                   | 0 ELMONT DR (LOT 1 BLK C PARKE GREEN SUBD) |
| 551506                                   | 0 E RIVERSIDE (AUSTIN OAKS CONDOMINIUMS COMMON AREA) |
| 283719                                   | 0 E RIVERSIDE DRIVE (LOT 1 PARKINSON LELA SUBD) |
| 572637                                   | 1317 E RIVERSIDE DRIVE |
| 572638                                   | 1405 E RIVERSIDE DRIVE |
| 283721                                   | 1507 E RIVERSIDE DRIVE  
                                           | 1511 E RIVERSIDE DRIVE |
| 283728                                   | 0 INGLEWOOD STREET (LOT 15 *LESS S PT BLK 12 BELLEVUE PARK) |
| 238729                                   | 0 INGLEWOOD STREET (LOT 16 *LESS S PT BLK 12 BELLEVUE PARK) |
QUALIFIED NEIGHBORHOOD ORGANIZATION EVIDENCE OF QUANTIFIABLE COMMUNITY PARTICIPATION

- Read each item carefully before completing the blanks.
- Certify to each requirement by signing the last page.
- All attachments must be included in the QCP submission package.
- Once a letter is submitted to the Department it may not be changed or withdrawn.

Part 1: Development Information

Development Name: Vi Collina
Development Street Address: 2931 E. 1720P St.
Development City: Austin, Texas
Development County: Travis
TDHCA # (for office use only):

Part 2: Neighborhood Organization Information

Neighborhood Organization Name: Friends of Riverside ATX

This organization also made a submission to TDHCA in prior HTC Application Rounds:
- Check one: ☐ Yes ☑ No
- If YES, provide the years that the organization made submissions prior to 2019:

The Neighborhood Organization is a (select one of the following):
☐ Homeowners Association
☐ Property Owners Association
☐ Resident Council and our members occupy the existing development
☐ Other (explain): Association of Property Owners, Renters Business Owners

As of January 4, 2019, (as applicable) this Neighborhood Organization is on record with (select one of the following):
☐ County
☒ Secretary of State

Part 3: Neighborhood Organization Contact Information

1st Contact Information

Name: Lawrence Sunderland
Title: Chairman
Physical Address: 1507 Summit St.
Mailing Address (if different from above):

City: Austin TX ZIP Code: 78741
2nd Contact Information

Name: Camila Pulecio
Title: Vice Chair
Physical Address: 1507 Summit St.
Mailing Address (if different from above):

City: Austin, TX  ZIP Code: 78741

Phone: ______________________ Email: info@riversidefriends.com

Part 4: Reason for Support or Opposition

The Neighborhood Organization: ✗ Supports ☐ Opposes the Application for Competitive Housing Tax Credits for the above referenced development for the following reasons:

The East Riverside Corridor Master Plan supports the preservation and creation of affordable housing within the planning area. This project will directly facilitate that goal.

Part 5: Written Boundary Description

Provide a written boundary description of the geographical boundaries of the Neighborhood Organization. (Example: North boundary is Main St., East boundary is railroad track, South boundary is First St., West boundary is Jones Ave.) Boundary description MUST match the boundary map.

Northern Boundary - Lady Bird Lake
Southern Boundary - Orchard Street including the rear lot lines of properties on the south side of Orchard
Western Boundary - IH 35
Eastern Boundary - Pleasant Valley including the rear lot line of properties on the east side of Pleasant Valley Dr.

QUALIFIED NEIGHBORHOOD ORGANIZATION EVIDENCE OF QUANTIFIABLE COMMUNITY PARTICIPATION (Continued)

Part 6: Certifications
By signing this form, I (we) certify to the following:

- This organization certifies that the two contacts listed have the authority to sign on behalf of the Neighborhood Organization.
- This organization certifies that the organization was formed on or before December 5, 2018.
- This organization certifies that the boundaries of this organization include the proposed Development Site in its entirety. This organization acknowledges that boundary changes or annexations after January 4, 2019 may not be considered eligible and a site that is only partially within the boundaries may not satisfy the requirement that the boundaries contain the proposed Development Site.
- This organization certifies that it meets the definition of “Neighborhood Organization”, defined as an organization of persons living near one another within the organization’s defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood.
- This organization certifies that none of the following individuals participated in the deliberations or voted on the decision to provide a statement with respect to the proposed development: the development owner, architect, attorney, tax professional, property management company, consultant, market analyst, tenant services provider, syndicator, real estate broker or agent or person receiving fees in connection with these services, current owners of the property, developer, builder, or general contractor associated with the proposed development.
- This organization certifies that at least 80% of the current membership consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization.
- This organization certifies that all certifications contained herein are true and accurate.

(First and Second Contacts must sign below):

1st Contact Signature: [Signature]
1st Contact Printed Name: Lawrence Schottland
Title: Chairman
Date: 2/19/19

2nd Contact Signature: [Signature]
2nd Contact Printed Name: Camila Pulcino
Title: Vice Chair
Date: 2/19/19
QUALIFIED NEIGHBORHOOD ORGANIZATION EVIDENCE OF QUANTIFIABLE COMMUNITY PARTICIPATION (Continued)

REQUIRED ATTACHMENTS
(Only if not previously submitted to register with TDHCA)

In addition to the information requested on the form, please attach the following items and include with your submission to the Texas Department of Housing & Community Affairs:

✓ 1. Documentation to support the selection of being on record with the County or Secretary of State (ex: letter from county clerk or judge acknowledging the Organization, letter from the Secretary of State stating the incorporated entity is in good standing.)

✓ 2. Evidence of the Neighborhood Organization’s existence (ex. bylaws, newsletter, minutes, etc.)

✓ 3. Boundary Map: The boundary map should be legible, clearly marked with the geographical boundaries of the Neighborhood Organization, and indicate the location of the proposed Development.

Example:

The solid line indicates the Neighborhood Organization’s boundary. The X indicates the development site.
Certificate of Formation
Nonprofit Corporation

Article 1 - Corporate Name
The filing entity formed is a nonprofit corporation. The name of the entity is:

Friends of Riverside ATX

Article 2 – Registered Agent and Registered Office

☐ A. The initial registered agent is an organization (cannot be corporation named above) by the name of:


OR

☑ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:
Noelle  Shelly

C. The business address of the registered agent and the registered office address is:
Street Address:
1601 Rio Grande Street, Suite 300  Austin  TX  78701

Consent of Registered Agent

☐ A. A copy of the consent of registered agent is attached.

OR

☐ B. The consent of the registered agent is maintained by the entity.

Article 3 - Management

☐ A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

☑ B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1:  Noelle  Shelly  Title:  Director
Address:  1601 Rio Grande Street, Suite 300  Austin  TX, USA  78701

Director 2:  Lawrence  Sunderland  Title:  Director
Address:  1507 Summit Street  Austin  TX, USA  78741

Director 3:  Camila  Pulecio  Title:  Director
Address:  1601 Rio Grande Street, Suite 300  Austin  TX, USA  78701

Article 4 - Organization Structure

☑ A. The corporation will have members.

or

g B. The corporation will not have members.

Article 5 - Purpose

The corporation is organized for the following purpose or purposes:

any or all lawful purposes

Supplemental Provisions / Information
Effectiveness of Filing

✔️ A. This document becomes effective when the document is filed by the secretary of state.

OR

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Organizer

The name and address of the organizer are set forth below.

Sean Bukowski               1601 Rio Grande Street, Suite 300A, Austin TX 78701

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Sean Bukowski, attorney in fact for Noelle Shelly and Camila Pulecio

Signature of organizer.

FILING OFFICE COPY
Entity Information

1. The name of the entity is:

FRIENDS OF RIVERSIDE ATX

State the name of the entity as currently shown in the records of the secretary of state.

2. The file number issued to the filing entity by the secretary of state is: 0802701008

3. The name of the registered agent as currently shown on the records of the secretary of state is:

NOELLE SHELLY

Registered Agent Name

The address of the registered office as currently shown on the records of the secretary of state is:

1601 RIO GRANDE STREET, SUITE 300 - AUSTIN TX 78701

Change to Registered Agent/Registered Office

4. The certificate of formation or registration is modified to change the registered agent and/or office of the filing entity as follows:

Registered Agent Change

(Complete either A or B, but not both. Also complete C if the address has changed.)

☐ A. The new registered agent is an organization (cannot be entity named above) by the name of:

OR

☑ B. The new registered agent is an individual resident of the state whose name is:

LAWRENCE SUnderLandoN

First Name M.I. Last Name Suffix

Registered Office Change

☐ C. The business address of the registered agent and the registered office address is changed to:

Street Address (No P.O. Box) City State Zip Code

The street address of the registered office as stated in this instrument is the same as the registered agent’s business address.
Statement of Approval

The change specified in this statement has been authorized by the entity in the manner required by the BOC or in the manner required by the law governing the filing entity, as applicable.

Effectiveness of Filing (Select either A, B, or C.)

A. [✓] This document becomes effective when the document is filed by the secretary of state.
B. [   ] This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: ____________________________
C. [   ] This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: ____________________________

The following event or fact will cause the document to take effect in the manner described below:

[Blank Space]

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: 6/20/2018

[Signature]

Signature of authorized person

Camila Pulecio

Printed or typed name of authorized person (see instructions)
Texas Franchise Taxpayers: Your Annual Report Is Due

Your annual franchise tax report is due on the date shown in the box in the upper right corner of this letter. Even if you have no tax due or no activity to report, Texas tax law requires that you file a franchise tax report and information report each year.

Choose a Reporting Option
There are three reporting options: No Tax Due Report, E-Z Computation Report and the Long Form report. You will need to choose the best report for your situation.

Taxable entities that are part of a combined group engaged in a unitary business must file a combined group report. A passive entity or a new veteran-owned business cannot be included in a combined group report.

You can file a No Tax Due Report if your business:
• is an entity or a combined group with annualized total revenue less than or equal to the no tax due threshold;
• has zero Texas receipts; or
• meets the statutory requirements for a passive entity, a real estate investment trust or a new veteran-owned business.

You must file an original No Tax Due Report electronically. You can file free through the Comptroller's Webfile system at www.comptroller.texas.gov/taxes/file-pay/.

You can file an E-Z Computation Report if your business is an entity or a combined group with annualized total revenue of $20 million or less.
If you choose this option, your business cannot:
• take any margin deductions (including cost of goods sold or compensation),
• take any franchise tax credits, or
• carry over that report year's temporary credit for business loss carryforward to a future period.

You must file a Long Form report if you:
• are not eligible to file either the No Tax Due Report or the E-Z Computation Report, or
• will take franchise tax credits.

Request an Extension
A $50 penalty is due on a report filed after the due date, even if no tax is due. If you need more time to file, request an extension by the due date to avoid the penalty. A combined group must include the Texas Franchise Tax Affiliate List with its first extension request.

Save Time and File Online!
With the Comptroller's secure online system, Webfile (www.comptroller.texas.gov/taxes/file-pay/), you can file a franchise tax report, pay tax due or request an extension. First-time users will need the Webfile number in the box in the upper right corner of this letter to get started. (Note: Your tax preparer may need your Webfile number to file your report electronically.)
Contact

Email us:

info@riversidefriends.com

Follow our Facebook page:

https://www.facebook.com/FriendsofRiversideATX

Follow us on Instagram:

https://www.instagram.com/friends.of.riverside.atx/?hl=enfriends.of.riverside.atx

Stay current with Twitter:

Tweets by @FriendsofRATX

Friends of Riverside Retweeted

Austin Statesman
@statesman

The two projects could have 1,000 luxury apartments, retail space and possible commercial uses atxne.ws/2WJqrN6
Zoning change sought for East Riverside apartment projects
Signaling more change for the rapidly transforming East Riverside Drive area, local developers are seeking to rezone two parcels near Oracle’s campus to allow them to build two projects that could...
statesman.com

Feb 5, 2019

Friends of Riverside Retweeted

央TexasFoodBank
@CTXFoodBank
Happy #GalentinesDay! Make it a special by sharing the love with families in need. When you dine at @kerbeylanecafe through Feb. 18 and get a chocolate covered strawberry pancake, proceeds will be donated to the #FoodBank.

Feb 13, 2019

Friends of Riverside
@FriendsofRATX

Leave a Reply
Your email address will not be published. Required fields are marked *

http://www.riversidefriends.com/contact/
Hello Nicole,

Thank you for your email.

1. Lawrence Sunderland - 1507 Summit St. Austin, Texas 78741
   Andrea Clayton - 1500 Royal Crest Dr, Austin, TX 78741

2. Proof that boundaries were in existence no later than 1/4/19: Please see the attached email. When you scroll to the very bottom, you will see a link which will show you a map of our boundaries which were set before the above date. (There is also an attachment.)

Please let me know if you have any questions!

Thank you.

On 2019-03-12 15:27, Nicole Fisher wrote:
> I have reviewed the QCP submission from Friends of Riverside ATX.
> Please provide the following information no later than 5:00 pm, Tuesday, March 19, 2019.
> >
> > 1. Please provide the physical address of 2 members who live within the boundaries of the organization. The members should not share an address.
> >
> > 2. Please provide proof the boundaries were in existence no later than 1/4/19
> > than 1/4/19
> >
> > Thank you,
> >
> > NICOLE FISHER
> >
> > Housing Specialist
> >
> > Texas Department of Housing and Community Affairs
> >
> > 221 E. 11th Street | Austin, TX 78701
> >
> > Office: 512.475.2201
> >
> > Fax: 512.475.1895
> >
> > _Any person receiving guidance from TDHCA staff should be mindful that, as set forth in _10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b))._

Sent from my iPhone

Begin forwarded message:

From: "PIO, Neighborhood" <PIO.Neighborhood@austintexas.gov>
Date: September 15, 2015 at 11:36:53 AM CDT
To: Lawrence Sunderland <lsunderland@me.com>
Cc: "PIO, Neighborhood" <PIO.Neighborhood@austintexas.gov>
Subject: RE: Update Community Registry Merge Form

Hi Larry, Attached is a revised version of your map. Would you mind taking a look and letting me know if this works.

I’m so sorry for the delay. We literally just got the map software working a few minutes ago.

No problem Joan.

Sent from my iPhone

On Aug 28, 2015, at 8:41 AM, PIO, Neighborhood <PIO.Neighborhood@austintexas.gov> wrote:

Hi Larry, I have not forgotten you! We are ironing out some computer issues. You are the first person on the list to get your boundaries changed.
Thanks for your patience,

Joan

No problem Joan.

Sent from my iPhone
On Aug 21, 2015, at 2:30 PM, PIO, Neighborhood <PIO.Neighborhood@austintexas.gov> wrote:

Hi Larry, I am just taking over the mapping duties for the Community Registry and am currently having the mapping software installed on my computer. Will next week be acceptable for me to make these changes?
Thanks for your patience,

Joan

From: Lawrence Sunderland [mailto:lsunderland@me.com]
Sent: Tuesday, August 11, 2015 4:13 PM
To: PIO, Neighborhood
Subject: Re: Update Community Registry Merge Form

Joan,
The east boundary is still wrong. It is shown as Burton Dr. but it is Willow Creek Dr. one street to the east. All the other boundaries are correct.
Thanks for working with me on this. Appreciate it.
Larry

On Aug 11, 2015, at 2:16 PM, PIO, Neighborhood <PIO.Neighborhood@austintexas.gov> wrote:

2019 HTC
Full Application

Part 9

TDHCA Review Tabs
Multifamily Finance Division staff will place scanned copies of deficiency documents behind this tab in the application .pdf
Megan and Alyssa,

Instead of creating a new deficiency template, I think it is easier to just add one additional item to the deficiency I sent earlier today. It is as follows and also regards the CRP scoring item:

4) 10 TAC §11.9(d)(7)(A)(iv)(I) awards points to those Applications that receive “a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area.” Staff generally expects to receive these letters from executive level officials, such as Directors or City Managers. Please provide confirmation that Mr. May is the “appropriate local official” to provide input on the city of Austin’s concerted revitalization plans.

In the course of the Department’s Housing Tax Credit Eligibility/Selection/Threshold and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §11.1(d)(2) and described in §11.201(7), §11.201(7)(A) and §11.201(7)(B) of the 2019 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

The Applicant has selected 7 points under 10 TAC §11.9(d)(7), Concerted Revitalization Plan (CRP). CRP has several requirements listed in 10 TAC §11.9(d)(7)(A)(i)-(iii) that must be present before an Applicant can qualify for the points under 10 TAC §11.9(d)(7)(A)(iv).

The Applicant should clarify how the proposed CRP meets the following requirements:

1. 10 TAC §11.9(d)(7)(A)(i) requires a CRP for “a distinct area that was once vital and has lapsed into a condition requiring concerted revitalization …” Please point staff to examples of language in the East Riverside/Oltorf Combined Neighborhood
Plan that speaks to why it was created for the purpose of revitalizing a distinct area that was once vital and now warrants reinvestment.

2. §11.9(d)(7)(A)(ii) states, in part, that “a city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.” Please explain how the proposed CRP is more than just a comprehensive plan. The City Council resolution adopting the East Riverside/Oltorf Combined Neighborhood Plan identifies it as “an element of the Austin Tomorrow Comprehensive Plan” (page 55). Page 1 of the CRP packet only lists the East Riverside/Oltorf Combined Neighborhood Plan. What are the additional features that make the proposed CRP more than just a comprehensive plan?

3. §11.9(d)(7)(A)(iii)(III) requires that the “goals of the adopted plan must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timeline.” Additionally, “this funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.” Please further explain and help staff to understand the history of “sufficient, documented, committed funding” of the East Riverside/Oltorf Combined Neighborhood Plan. Is the $8 million in funding (summation of individual projects in the Implementation Tracking Chart) the result of a combination of capital improvement projects and city-wide bond financing?

The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.

All deficiencies must be corrected or otherwise resolved by 5 pm Austin local time on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm Austin local time on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §11.201(7)(B) of the 2019 Uniform Multifamily Rules. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day may be terminated.

All deficiencies related to the Direct Loan portion of the Application must be resolved to the satisfaction of the Department by 5pm Austin local time on the fifth business day following the date of this deficiency notice. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day will be suspended from further processing, and the Applicant will be notified to that effect, until the deficiencies are resolved. If, during the period of time when the Application is suspended from review, Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of the 2019 Multifamily Direct Loan Rule. Applicants should be prepared for additional time needed for completion of staff reviews.
Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department’s Serv-U HTTPS System. Once the documents are submitted to the Serv-U HTTPS system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPS submission process, contact Liz Cline at liz.cline@tdhca.state.tx.us or by phone at (512)475-3227. You may also contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986.

All applicants should review §§11.1(b) and 11.1(h) of the 2019 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.

**All deficiencies must be corrected or clarified by 5 pm Austin local time on May 14, 2019. Please respond to this email as confirmation of receipt.**

About TDHCA
The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us.

__________
Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing & Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-0927

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b), there are important limitations and caveats (Also see 10 TAC §10.2(b)).

About TDHCA
The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us.
Dear Mr. Russell:

As the Community Development Administrator, City of Austin, Neighborhood Housing & Community Development Department, this letter confirms that James May is the appropriate city official to sign the letters “providing documentation of measurable improvements within the revitalization area” for all applications submitted within the city limits of the City of Austin. Mr. May leads our department's efforts in assessing all applications that submit housing tax credit applications for sites within the city limits of the City of Austin, and therefore, he is the most appropriate person to provide such a letter.

I appreciate your time and assistance. Please do not hesitate to contact me for further information.

Sincerely,

Mandy De Mayo  |  Community Development Administrator
City of Austin  |  Neighborhood Housing and Community Development
T: 512.974.1091  |  www.austintexas.gov/housing
mandy.demayo@austintexas.gov

Work Schedule  |  M - F 9:00 am – 5:00 pm
Response to CRP Deficiency -- 19288 Vi Collina

1. 10 TAC §11.9(d)(7)(A)(i) requires a CRP for “a distinct area that was once vital and has lapsed into a condition requiring concerted revitalization …” Please point staff to examples of language in the East Riverside/Oltorf Combined Neighborhood Plan that speaks to why it was created for the purpose of revitalizing a distinct area that was once vital and now warrants reinvestment.

The City uses the neighborhood planning process as a way to review the past demographics and trends of an area, how those demographics/trends have impacted an area, and what the city needs to do in the future for the area as a way to create a cohesive agenda for the plan’s specific area – all key to community revitalization efforts.

This specific area had issues of crime, infrastructure concerns, and decrease of owner occupancy rates that were not reflective of Urban Core in-migration patterns in surrounding neighborhoods – all indications of issues that are appropriate for a concerted revitalization plan efforts. The East Riverside/Oltorf Combined Neighborhood Plan is the vehicle by which the city undertook those efforts.

Please see specifically the following information from the plan:

Plan page 26 (PDF pg 96) “Two of the three planning areas (Pleasant Valley and Riverside) experienced a decrease in owner occupancy rates from 1990-2000, a trend opposite that of the Urban Core (US Census).”

“Between 2000 and 2004, 1855 multifamily units were added and only 211 single family units were added (City of Austin Demographer).”

“Crime rate in the 78741 zip code is the highest in the city, with over 14,000 crimes committed in 2005 (combination of indexed and non-indexed, Austin Police Department).”

Plan page 70 (PDF pg 140) “An overabundance of multifamily housing has resulted in problems related to traffic congestion, a high crime rate and inadequate infrastructure, and does not promote home ownership.”

Plan page 71 (PDF pg 141) “A concern related to possible future (re)development raised by participants during Neighborhood Planning meetings addressed the trend of new residential construction in the inner-city that is unaffordable to many Austinites.”

Plan pg 77-78 (PDF pg 147-148) “The current appearance [of Riverside Drive] is dominated by a cacophony of commercial signs, blistering parking lot asphalt, and a distinct lack of both vegetation and quality architecture.”

“Although extremely dangerous, pedestrian activity along Riverside Drive is much heavier than one would expect. Many residents rely on public transportation and have no option but to walk to and from grocery stores, bus stops, and existing retail establishments. After dark, there is even more pedestrian activity along Riverside Drive.”
Plan pg 81 (PDF pg 151) “Several of the roads that bound and bisect this area are wide and contain numerous traffic lanes, which makes it very challenging for non-automobile users to safely and efficiently traverse from one part of the area to another. Coupled with insufficient pedestrian and bicycle infrastructure, this creates problems and annoyances for those who would like to access services and local amenities on both sides of a roadway.”

Plan pg 150 (PDF pg 220) Neighborhood Survey Results – see excerpt below with crime being number 2, infrastructure being number 4 and revitalization being number 8 and code enforcement being number 10.

<table>
<thead>
<tr>
<th>What are the most important issues in the neighborhood? (Top 10 responses)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Managing new development</td>
</tr>
<tr>
<td>2. Crime – Safety/Security</td>
</tr>
<tr>
<td>3. Maintaining single family dwellings</td>
</tr>
<tr>
<td>5. Need park improvements</td>
</tr>
<tr>
<td>6. Preserving the natural environment</td>
</tr>
<tr>
<td>7. Quality of the neighborhood, cleanliness</td>
</tr>
<tr>
<td>8. Revitalization of Riverside, improving current and bring in new businesses.</td>
</tr>
<tr>
<td>9. Traffic</td>
</tr>
<tr>
<td>10. Code Enforcement</td>
</tr>
</tbody>
</table>

These plan area specific concerns are being addressed through the goals and objectives laid out beginning on page 26 of the plan (PDF page 96) and as confirmed in the letter from the City.

2. §11.9(d)(7)(A)(ii) states, in part, that “a city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.” Please explain how the proposed CRP is more than just a comprehensive plan. The City Council resolution adopting the East Riverside/Oltorf Combined Neighborhood Plan identifies it as “an element of the Austin Tomorrow Comprehensive Plan” (page 55). Page 1 of the CRP packet only lists the East Riverside/Oltorf Combined Neighborhood Plan. What are the additional features that make the proposed CRP more than just a comprehensive plan?

The purpose of a City’s Comprehensive Plan is to lay out a long range plan for the growth of the city as a whole. It addresses the needs and priorities of a city, and sets out goals to address those needs/priorities. The East Riverside/Oltorf Combined Neighborhood Plan is a follow on to, but is not in itself a Comprehensive Plan. The Neighborhood Plan is intended to be a review of the problems and needs of a specific targeted, much smaller portion of the City. In other words, one is a macro look at the city, and the other is a micro look at a specific area of the city.

The CRP specifically includes working with individuals who live within the neighborhood, neighborhood specific surveys, workshops, and other public meetings to identify assets/strengths and challenges that are specific to the immediate area. Please see pages 2-7 (PDF pages 72-78) for the summaries of these neighborhood specific planning meetings and informational sessions that were conducted as part of drafting this neighborhood plan. As required by the QAP the CRP represents a “neighborhood or small group of contiguous neighborhoods with common attributes and problems.”
As identified on the map located at page xi of the plan (PDF page 70) the plan area is a very small portion of the overall city. The issues, concerns, goals and objectives outlined in the neighborhood plan are very specific to the plan area and the neighborhood itself and were the result of very specific neighborhood input and planning processes.

These differences/distinctions are confirmed in the attached letter from the city.

3. §11.9(d)(7)(A)(iii)(III) requires that the “goals of the adopted plan must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timeline.” Additionally, “this funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.” Please further explain and help staff to understand the history of “sufficient, documented, committed funding” of the East Riverside/Oltorf Combined Neighborhood Plan. Is the $8 million in funding (summation of individual projects in the Implementation Tracking Chart) the result of a combination of capital improvement projects and city-wide bond financing?

Funding for the projects came from a variety of sources including CIP, City-wide bonds (including various mobility bonds), Austin Parks Foundation, Public Works, Austin Transportation Department, and TxDOT.

Please see attached report which outlines the goals addressed, page of plan the goal is discussed, activity undertaken, amount invested, and where the funds from come.

4. 10 TAC §11.9(d)(7)(A)(iv)(I) awards points to those Applications that receive “a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area.” Staff generally expects to receive these letters from executive level officials, such as Directors or City Managers. Please provide confirmation that Mr. May is the “appropriate local official” to provide input on the city of Austin’s concerted revitalization plans.

The letter was signed by James B. May who is the Community Development Manager for the City of Austin, and is the appropriate local official to provide input into the City of Austin’s concerted revitalization plans.

This items has since been removed by TDHCA staff based on direct confirmation with the City of Austin staff.
May 8, 2019

Sharon Gamble
TDHCA
221 E. 11th
Austin, TX 78701

Dear Ms. Gamble:

The development team for Vi Collina received the following request for clarification:

“Please explain how the proposed CRP is more than just a comprehensive plan. The City Council resolution adopting the East Riverside/Oltorf Combined Neighborhood Plan identifies it as “an element of the Austin Tomorrow Comprehensive Plan” (page 55). Page 1 of the CRP packet only lists the East Riverside/Oltorf Combined Neighborhood Plan. What are the additional features that make the proposed CRP more than just a comprehensive plan?”

Please allow me to address these concerns. The purpose of a City’s Comprehensive Plan is to lay out a long range plan for the growth of the city as a whole. It addresses the needs and priorities of a city, and sets out goals to address those needs/priorities. The Neighborhood Plan is intended to be a review of the problems and needs of a specific, targeted, much smaller portion of the City, providing greater detail and more specificity. The East Riverside/Oltorf Combined Neighborhood Plan is identified as an element of the Comprehensive Plan so that it carries the regulatory weight of the Comprehensive Plan.

The CRP specifically includes working with individuals who live within the neighborhood, neighborhood specific surveys, workshops, and other public meetings to identify assets/strengths and challenges that are specific to the immediate area. As required by the QAP the CRP represents a “neighborhood or small group of contiguous neighborhoods with common attributes and problems.”

The City uses the neighborhood planning process as a way review the past demographics and trends of an area, how those demographics/trends have impacted an area, and what the city needs to do in the future for the area as a way to create a cohesive agenda for the plan’s specific area – all key to our community revitalization efforts. This specific area had issues of crime, infrastructure, and decrease of owner occupancy rates that were not reflective of Urban Core in-migration patterns in surrounding neighborhoods – all indications of issues that are appropriate for a concerted revitalization plan efforts. The East Riverside/Oltorf Combined Neighborhood Plan is the vehicle by which we undertook those efforts.

Sincerely,

James B. May, AICP
Community Development Manager
Neighborhood Housing and Community Development
James.May@austintexas.gov
(512) 974-3192
## East Riverside/Oltorf Combined Neighborhood Plan Implementation Tracking Chart

<table>
<thead>
<tr>
<th>Action Item/Rec #</th>
<th>Plan page</th>
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<th>Contact Team Comments</th>
<th>Primary Resource</th>
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</tr>
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<tbody>
<tr>
<td>54</td>
<td>36</td>
<td>Extend the bike lane on Pleasant Valley Rd. from Lakeshore Dr. to Cesar Chavez.</td>
<td>2 Parker Lane, FY 2015-16</td>
<td>Not Yet Initiated</td>
<td>10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane in this corridor. 2006 (Public Works): This improvement would require additional road width and construction of curb and gutter up to the Longhorn Dam, then to Cesar Chavez. Widening of the bridge is not included in this estimate.</td>
<td></td>
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<tr>
<td>55c</td>
<td>36</td>
<td>Conduct a study to investigate the feasibility of putting bike lanes along Grove Boulevard (Hogan Avenue to Oltorf Street).</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>4/2014 (PDRD): Bike lanes were installed on Grove Blvd. from Hogan Ave. to E. Riverside Dr. in 2013 (4,276 linear feet). 10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane in this corridor.</td>
<td>Austin Transportation Department</td>
<td>Austin Transportation Department</td>
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<tr>
<td>56a</td>
<td>36</td>
<td>Build sidewalks within the Riverside Planning Area in this order of priority: #1. Woodland between Summit &amp; Parker (either side).</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>2/2011 (Public Works): No funding available. 5/2009 (Public Works): 1,300 linear feet @ $24/SF or $120 lineal foot for the average 5’ sidewalk. Sidewalk matrix score: Medium. All estimates are at today's construction costs and subject to change in the future.</td>
<td>10/2008: Riverside's #6 priority for FY 2009-10.</td>
<td>Public Works</td>
<td></td>
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<tr>
<td>56b</td>
<td>36</td>
<td>Build sidewalks within the Riverside Planning Area in this order of priority: #2. Summit between Woodland &amp; Riverside (either side).</td>
<td># 5 Riverside, FY 2015-16</td>
<td>Not Yet Initiated</td>
<td>2/2011 (Public Works): No funding available. 5/2009 (Public Works): 2,500 linear feet @ $24/SF or $120 lineal foot for the average 5’ sidewalk. Sidewalk matrix score: Low/Medium. All estimates are at today's construction costs and subject to change in the future.</td>
<td>9/2011 (NPCT): Construction cost estimate for this project was $76,100 in 2008. Not sure how the “matrix scoring works. Summit is well-walked with extremely low visibility in the north stretch from Sunnyvale to E Riverside. Priority #9 for Riverside for FY 2012-13. 5/2011 (NPCT): 2100 Parker Ln with its 3 SF-6 lots and 1 MF-3 lot with old growth live oaks &amp; pond would be an ideal pocket park. We encourage PARD/city negotiations to continue for the acquisition of this property. 10/2008: Riverside's #7 priority for FY 2009-10.</td>
<td>Public Works</td>
<td></td>
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### East Riverside/Oltorf Combined Neighborhood Plan Implementation Tracking Chart

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<tr>
<td><strong>56c</strong></td>
<td>Build sidewalks within the Riverside Planning Area in this order of priority: #3. Parker Lane between E. Riverside Dr. &amp; Woodland Avenue (either side).</td>
<td># Not Ranked</td>
</tr>
<tr>
<td><strong>57f</strong></td>
<td>Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority; #6. Benjamin, north side between Douglas and Princeton.</td>
<td># Not Ranked</td>
</tr>
<tr>
<td><strong>58a</strong></td>
<td>Build sidewalks within the Pleasant Valley Planning Area in this order of priority: #1 East side of Pleasant Valley Rd. (north of Lakeshore to the Colorado River Park).</td>
<td># Not Ranked</td>
</tr>
</tbody>
</table>

#### Staff Comments

10/2013 (PDRD): About 610’ of sidewalk was installed on the west side of Parker Lane going south from E. Riverside Drive in 2009-2011. The remaining gap measures 1,290’. 9/2011 (NPCT): Construction cost estimate for this project was $76,100 in 2008. Summit is well-walked with extremely low visibility in the north stretch from Sunnyvale to E Riverside. 5/2009 (Public Works): 2,200 linear feet @ $24/SF or $120 lineal foot for the average 5’ sidewalk. Sidewalk matrix score: Medium/High. All estimates are at today’s construction costs and subject to change in the future.

9/2011 (NPCT): Safe pedestrian walkways are critical in urban areas. This section of Parker is used by residents of the apartments and single family homes to access bus lines and retail and the lake. Riverside’s #4 priority for FY 2012-13. 10/2008: Riverside’s #8 priority for FY 2009-10.

#### Contact Team Comments

2006: Priority # 6 - Construction Estimate: $8,700. Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000. Please note that all estimates are at today’s construction costs and subject to change in the future.

## East Riverside/Oltorf Combined Neighborhood Plan Implementation Tracking Chart

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<tr>
<td>Identify and provide safe pedestrian and bicyclist crossings all along Riverside Dr. from IH-35 to Grove Blvd., with special attention paid to intersections at or near a bus stop.</td>
<td>59</td>
<td>37</td>
<td>#2 Riverside; 4 Pleasant Valley, FY 2015-16</td>
<td>Partially Complete</td>
<td>8/2015 (TXDOT): Bicycle and pedestrian facilities within this project limits (IH-35 and Riverside intersection) are currently in the preliminary design phase. We have received numerous comments from the public and are addressing these during the design. 8/2014 (PDD): Funding for sidewalk and ramp improvements in the 2013 bond project #2111. Riverside Drive has been allocated out of the 2013 bonds. 4/2014 (PDRD): Sidewalk and ramp improvements were completed at the intersection of S. Pleasant Valley Rd. and Riverside Dr. on 10/18/2013. A total of 952 linear feet of sidewalks and ramps were installed. Further improvements in the Riverside corridor are being planned under the 2012 bond project #5386.004. 6/2013 (PDRD): The Country Club Creek Trail underpass at Riverside Drive has been completed. The Wickersham crossing will likely be at grade due to low clearance and a critical environmental feature. 3/2013 (ATD): Pedestrian Hybrid Beacon (PHB) installed at 2400 E. Riverside Dr. near the HEB on 8/31/2012. 12/2011 (ATD): A corridor study is currently underway that is considering all modes of transportation including pedestrian facilities. 9/2011 (Public Works): Riverside was resurfaced to improve visibility of the striping. 7/2009 (Public Works): All intersections controlled by a traffic signal currently have pedestrian ramps, crosswalks, and pedestrian signal indications. We did note that many crosswalks are faded and need to be remarked, and have scheduled this work to be completed as a high priority.</td>
<td>9/20111: Riverside’s #8 priority FY 2012-13. 5/2011 (Contact Team): Safe crosswalks for our dense area are still a high priority. Re-stripping alone does not address that crosswalks are too far apart and traffic across 6 lanes is travelling too fast. Our NPA is not walkable. 10/2008 (POR): Riverside’s #1 priority for FY 2009-10. 8/2008 (Contact Team): Safe crosswalks for our dense area is our highest priority. Need re-stripping, safe protection within the median, better signage and signals, and crosswalks at bus stops. Pedestrians cross anywhere so documentation at any one location is difficult. Issue has surfaced repeatedly in corridor study meetings. Providing a safe way for citizens to cross Riverside at multiple locations as well as Pleasant Valley at Lakeshore is positively a priority. Locations along Riverside include: at Summit, at Lakeshore, at Parker, at Royal Crest, at Tinnin Ford, at Willow Creek, at Pleasant Valley, some point between Pleasant Valley and Willow Creek and Lakeshore at Pleasant Valley. The Country Club Creek Trailhead needs sage crossings across Pleasant Valley to both the south side of Lakeshore Blvd. and the north side.</td>
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<td>68 38</td>
<td>Improve storm water drainage along Pleasant Valley Road between Riverside Drive and Lakeshore Blvd., especially at Elmont and Lakeshore.</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>4/2018 (WPD): The PER is complete but the project has been shelved by the WPD executive team. 8/2014 (WPD): The draft preliminary engineering report is due August 8, 2014. The improvements referenced in the text below reduced flooding frequency but buildings are still being flooded. 1/2014 (PDRD): A project to improve Stormwater Conveyance along Pleasant Valley Road in and near the intersection of Elmont Drive is in the preliminary phase. 2/2011 (WPD): This area is planned for re-evaluation of drainage system capacity within the next 5 years. Additional projects may be identified as a result of that study. 2/2010 (WPD): Drainage Improvements for Pleasant Valley Road downstream of the intersection of Elmont and S. Pleasant Valley to just south of Lake Shore Drive were completed as part of a settlement agreement. Additionally, the reconstruction of Pleasant Valley Road by PW included culvert upgrades to improve drainage. WPD cost participated in this project and contributed funding for the culvert upgrade. Stormwater runoff along S. Pleasant Valley Rd. between E. Riverside Dr. and Lakeshore Blvd. is conveyed by roadside ditches. A large amount of runoff has caused drainage concerns at the intersection of S. Pleasant Valley Rd. and Elmont Dr. No projects have been identified for this area at this time, however this area will be re-evaluated for storm drain upgrades in the near future.</td>
<td>9/2011: Pleasant Valley’s #6 priority for FY 2012-13. 10/2008: Pleasant Valleys #4 priority for FY 2009-10.</td>
<td>Watershed Protection Department</td>
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<td>92</td>
<td>43</td>
<td>Encourage the Parks Department to acquire the Riverside Golf Course property and maintain it as a golf course.</td>
<td># 1 Pleasant Valley, FY</td>
<td>Not Currently Feasible or Recommended</td>
<td>12/2015 (PARD): Status remains the same. 12/2014 (PARD): There is no plan to acquire the golf course at this time. 2/2011 (PARD): Currently not included in the 5-Year CIP Plan. 2/25/10 (PARD): If PARD was successful in an acquisition, PARD is not supportive in continuing the use as a golf course. PARD would be supportive of increasing the parkland adjacent to Colorado River Park.</td>
<td>9/2011 (NPCT): Support maintaining this property as a golf course as it is uniquely suited for this purpose in addition to having historical legacy as such. See multiple pages in the EROC plan regarding the preservation of the golf course. Priority #1 Pleasant Valley, #4 Parker Lane and #10 Riverside for FY 2012-13. 5/2011(NPCT): Request that the City proactively keep an open dialogue with ACC Board of Trustees and President with regards to the acquisition of the 18-hole Riverside Golf Course and insure that it will remain a public 18-hole golf course. Further encourage the City to proactively find ways to acquire the Riverside Golf Course by providing ACC other properties for the growth of the ACC Riverside Campus while keeping the golf course intact and to provide ACC additional incentives in other ACC areas that would encourage the ownership of the golf course by the City. 10/2008: Pleasant Valley’s #1 priority and Parker Lane’s #4 priority for FY 2009-10.</td>
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<tr>
<td>94.1</td>
<td>43</td>
<td>Provide the following public amenities at Mabel Davis Park in this order of priority: Priority #1 - Connection to proposed Country Club Creek trail.</td>
<td># Not Ranked</td>
<td>Underway</td>
<td>5/2017: Awaiting approval of a recreational easement. Construction estimated to begin summer 2017. 11/2015 (PAZ): ATD estimates that Phase 1 of the Country Club Creek Trail (Burleson Road to Mabel Davis Park) will be completed in Summer 2016 at a cost of $415,000. The design is almost complete (nearing 90%). 9/2014 (PDRD): The Austin Bicycle Plan recommends a multi-use path along Country Club Creek, Pleasant Valley Pocket Park, a City easement, Ventura Drive, Cataline Drive, and Madera Drive.</td>
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<tr>
<td>94.3</td>
<td>43</td>
<td>Provide the following public amenities at Mabel Davis Park in this order of priority: Priority #3 - Paved hike/bike/skate loop with neighborhood connections.</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>1/2014 (PDRD): A portion of the Mabel Davis loop trail is paved. [Date?]: PARD: This item can be implemented without additional funding or change in policy. The Department recommends that this item be implemented; will be done as part of earthwork project.</td>
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## East Riverside/Oltorf Combined Neighborhood Plan Implementation Tracking Chart

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<td>103</td>
<td>44</td>
<td>Construct a trail system along Country Club Creek that is sustainable and not subject to erosion due to flooding.</td>
<td>11/2016: Phase II &amp; III in design phase. 8/2016: Construction of Phase I of trail from Mabel Davis to Burleson planned to begin fall 2016. 12/2015 (PAZ): In partnership with the South East Austin Trails and Greenways Alliance, a Neighborhood Partnering Program project will resurface a portion of the Country Club Creek Trail between Elmont Drive and Guerrero Park with high quality crushed decomposed granite road base. 9/2015 (PAZ): Construction for Segment 1 scheduled for summer 2016. 2/2015 (PDRD): Design and construction are funded for Segment 1 from Burleson Road to Ventura Drive. 12/2014 (PDRD): The Preliminary Engineering Report for the segments from Elmont to Oltorf and Burleson to Ventura Drive is complete with a cost estimate for construction of $4.5 million. 1/2014 (PARD): Negotiation with land owners regarding easements is ongoing. (PDRD): Basement apartment adjacent to creek are excited about project and willing to give us land. Church on Burleson has agreed to modify AE easement to include recreational use. 6/2013 (PDRD): Discussions with land owners regarding easements continue. The Riverside Drive underpass has been completed. The Wickersham crossing will likely be at grade due to low clearance and a critical environmental feature. 9/2011 (Public Works): The Roy G. Guerrero Colorado River Park Development project includes a channel improvement project for flood control and to prevent further erosion along Country Club Creek. Project also includes a trail system across the park including a portion along the creek and a bridge which crosses the creek. 2/2011 (PARD): Real Estate is currently working with private property owners on obtaining trail easements on the properties just north and south of Riverside Drive to be able to move forward with planning/designing a section of off road trail that would connect Wickersham Drive to Pleasant Valley.</td>
<td>Underway</td>
<td>9/2011 (NPCT): See Malcolm Yeatts’ support and explanation for this ranking as well as multiple pages in the EROC plan. Priority #1 Parker Lane, #2 Pleasant Valley, and #3 Riverside FY 2012-13. 10/2008: Parker Lane’s #1 priority, Pleasant Valley’s #2 priority and Riverside’s #5 priority for FY 2009-10.</td>
<td>Public Works</td>
<td>PARD</td>
<td></td>
</tr>
<tr>
<td>105</td>
<td>44</td>
<td>Provide a safe pedestrian crossing across Burleson Road near Country Club Creek.</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>Public Works: If the neighborhood informs us of a specific location, time period, and day of the week, we could observe the most pedestrians in this area; we can investigate whether pedestrian warning signs would be appropriate and whether the number of pedestrians crossing is at least 100 per hour for four hours of a typical day or 190 in one hour of a typical day, which can warrant a crosswalk with protection.</td>
<td>Public Works</td>
<td>Austin Transportation Department</td>
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City of Austin Planning and Development Review Department

Page 10

Plan Adopted 11/16/2006
<table>
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<tr>
<td>Petition CAMPO and the City of Austin to reclassify Lakeshore Blvd. to a neighborhood collector to prohibit through traffic by large commercial trucks between East Riverside Drive and Pleasant Valley Road.</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>11/2015 (PA2): The CAMPO 2040 plan still shows Lakeshore as a minor arterial. 10/2013 (PDRD): ATD has begun the process to update the AMATP, and CAMPO has initiated development of the CAMPO 2040 plan. PDRD will forward this recommendation to the staff for consideration. Neighborhood stakeholders are encouraged to participate in the public process of developing the updates to these two plans.</td>
<td>Austin Transportation Department</td>
<td>Contact Team</td>
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<tr>
<td>Petition CAMPO and the City of Austin to remove the extension of Pleasant Valley Road to Burleson Road (which would ultimately connect to Ben White Blvd.)</td>
<td># Not Ranked</td>
<td>Partially Complete</td>
<td>10/2013 (PDRD): The extension of Pleasant Valley Road is not shown in the CAMPO 2035 plan. ATD has initiated the process to update the AMATP. PDRD will forward this recommendation to the staff for consideration. Neighborhood stakeholders are encouraged to participate in the public process of developing the update.</td>
<td>Austin Transportation Department</td>
<td>Contact Team</td>
<td></td>
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<td>Conduct a traffic study at the intersection of Grove Blvd and Riverside Dr. to facilitate traffic flow and reduce hazards.</td>
<td># Not Ranked</td>
<td>Not Yet Initiated</td>
<td>2006 (Public Works): This intersection has appropriate geometry, signs, pavement marking, and a traffic signal with phasing and timing appropriate to the existing traffic demands. Only four collisions have been reported at this intersection since October 2001 - two northbound left turn failing to yield to southbound, one southbound left turn failing to yield to northbound, and a northbound striking westbound. Given high traffic volumes at this intersection, this indicates a relatively low accident rate and a lack of a safety problem. If the neighborhood would advise us of what, specifically, is the problem and when it occurs, we will investigate further.</td>
<td>Austin Transportation Department</td>
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<td>Conduct a traffic study at the intersection of Riverside Drive and Pleasant Valley Road to examine the turn-a-rounds to improve vehicular and pedestrian safety.</td>
<td># Not Ranked</td>
<td>Planned Project</td>
<td>7/2018: Multi-modal improvements are planned for E Riverside through the 2016 mobility bond. 2006 (Public Works): The turn-a-rounds do not conflict with sidewalks or crosswalks and have appropriate geometry. If the neighborhood can provide details regarding what the perceived problem is and when it can be observed, we will investigate further.</td>
<td>Austin Transportation Department</td>
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<td>64</td>
<td>Investigate the possibility of making the section of IH-35 frontage road at Woodland level with the interstate while maintaining the east-west underpass connection to Travis Heights to facilitate and make safer inter-neighborhood travel.</td>
<td>Underway</td>
<td>8/2015 (TXDOT): The overpass of Woodland Avenue is being replaced and will be designed to better accommodate pedestrian and bike users. 5/2015 (PZD): The Mobility35 project is exploring improvements for the IH-35 corridor. The current proposal would preserve east-west connectivity for pedestrians, cyclists, and motorists but would not raise the frontage roads to the highway level. Design is underway, but construction is not funded. For more information, visit <a href="http://www.mobility35.org/proposedconcepts/implementation.aspx">http://www.mobility35.org/proposedconcepts/implementation.aspx</a>. (2006): In the original I-35 study, we received numerous comments from residents along Woodland - the outcome was to remove the grade separated interchange (IE. Woodland would &quot;T&quot; into the frontage road on both sides of the interstate). The ramp configuration was also modified to eliminate the Woodland southbound exit ramp.</td>
<td>TxDOT</td>
<td>Austin Transportation Department</td>
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<tr>
<td>65</td>
<td>Support a Bus Rapid Transit (BRT) line along East Riverside Drive.</td>
<td>Ongoing</td>
<td>10/2013 (PDRO): The East Riverside Corridor Plan calls for a streetcar or light rail service along E. Riverside with BRT as an alternative. 12/2011 (CapMetro): Capital Metro currently has two BRT lines planned, and does not include E. Riverside at this time; however both the City of Austin and Capital Metro are exploring the option of a fixed guideway service in the future. 2006 (Capital Metro): We do have plans to introduce a Bus Rapid Transit on this corridor. It is currently budgeted for 2014. I know that it is 9 years away but time moves fast and who knows if we find that we may be able to do it sooner depending on various factors.</td>
<td>Capital Metro</td>
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<td>Along Lakeshore Blvd from East Riverside Drive to Pleasant Valley Road, identify ways to provide safe pedestrian and bicyclist crossings, with special attention paid to the intersection of Lakeshore Blvd with Tinnin Ford.</td>
<td>Complete</td>
<td># Not Ranked</td>
<td>7/2017: Protected bikeway was completed. Painted crosswalk intersections. 11/2015 (PAZ): A protected bikeway is proposed for this location. A public meeting will be held on 11/16/2015 to gather feedback about the proposal. Safety improvements for crossings may also be considered as part of this project. 11/2014 (PDRD): Upon observation, the intersection had a low level of delays (vehicular and pedestrian) and a low number of crashes. A traffic signal study is not recommended at this time.</td>
<td>Austin Transportation Department</td>
<td>Public Works</td>
<td></td>
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<tr>
<td>Put a striped bike lane along Lakeshore Blvd.</td>
<td>Complete</td>
<td># Not Ranked</td>
<td>6/2016: Protected bike lane with two travel lanes complete. 11/2015 (PA2): A protected bikeway is proposed for this location. A public meeting will be held on 11/16/2015 to gather feedback about the proposal. 10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane in this corridor. 2006 (Public Works): This will require sealcoating Lakeshore Blvd. and changing the striping pattern to accommodate parking on the north curb, two 6' bike lanes, and two travel lanes.</td>
<td>Austin Transportation Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conduct a study to investigate the feasibility of putting bike lanes along E. Riverside Dr. (Grove to I-35).</td>
<td>Complete</td>
<td># 5 Pleasant Valley, FY</td>
<td>8/2014 (PDRD): The East Riverside Corridor Master Plan constitutes such a study. The plan recommends on-street bike lanes on East Riverside. Funding for multi-modal improvements to East Riverside Drive has been allocated out of the 2012 bonds. 10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane in this corridor. (PWD): The Bicycle Program will update the Bike Plan in 2007 and 2009. A needs assessment, which includes identifying recommended facilities in these areas, is included.</td>
<td>Austin Transportation Department</td>
<td></td>
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</tr>
<tr>
<td>Conduct a study to investigate the feasibility of putting bike lanes along Oltorf Street (Willow Creek Drive to IH-35).</td>
<td>Complete</td>
<td># 3 Parker Lane, FY 2015-16</td>
<td>2/2015 (PDRD): Bike lanes were installed on East Oltorf from IH to 500' east of Willow Creek Drive in November 2014. 10/2013 (PDRD): The 2009 Austin Bicycle Plan Update recommends a bike lane from IH-35 to Burleson Rd.</td>
<td>Austin Transportation Department</td>
<td></td>
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<td>57a Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #1. Burleson, west side, from Catalina area southward, as needed, to Ben White Blvd. (improvements).</td>
<td>Not Ranked</td>
<td>Complete</td>
<td>10/2013 (PDRD): City GIS data show continuous sidewalks on both sides, and the condition of the sidewalk appears good in the 2012 aerial imagery. If specific locations are in need of repair, please provide more information to PWD or report to 311. 2006 Construction Estimate: $2,400 (sidewalk in generally good condition with minor repairs). Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000. Please note that all estimates are at today’s construction costs and subject to change in the future.</td>
<td></td>
<td>Public Works</td>
<td></td>
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<tr>
<td>57b Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #2. Oltorf St., south side, between Wickersham Lane and Sunridge Street, where gap exists.</td>
<td>Not Ranked</td>
<td>Complete</td>
<td>(2006 Construction Estimate: $12,100 includes Recommendation 57e). Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000 (2006). Please note that all estimates are at today’s construction costs and subject to change in the future. 8/2005 (PDR): Sidewalks have been completed on the south side of Oltorf Street from Huntwick Drive to Montopolis Drive.</td>
<td></td>
<td>Public Works</td>
<td></td>
</tr>
<tr>
<td>57c Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #3. Metcalfe, south side from Burleson to Linder Elementary.</td>
<td>Not Ranked</td>
<td>Complete</td>
<td>4/2013 (PDRD): Improvements were made to Metcalfe, south side from Burleson to Linder Elementary in 2008. 2006: Priority #3: Construction Estimate $29,000. Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000. Please note that all estimates are at today’s construction costs and subject to change in the future.</td>
<td></td>
<td>Public Works</td>
<td></td>
</tr>
<tr>
<td>57d Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #4. Near the intersection of Oltorf St. and Pleasant Valley, south side of Oltorf and NW side of Pleasant Valley Rd. (where gaps exist).</td>
<td>Not Ranked</td>
<td>Complete</td>
<td>10/2013 (PDRD): As observed in 2012 aerial imagery, sidewalks and curb ramps are present at all corners of this intersection and are in good condition. 2006: Priority #4: Construction Estimate: $14,400 (Oltorf from Pleasant Valley to Collins Creek). Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000. Please note that all estimates are at today’s construction costs and subject to change in the future.</td>
<td></td>
<td>Public Works</td>
<td></td>
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<tr>
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<tr>
<td>57e</td>
<td>36</td>
<td>Build and/or make improvements to sidewalks within the Parker Lane Planning Area in this order of priority: #5. The south side of Oltorf Street between Sunridge Drive and Alvin Devane, where gaps exist.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>Priority #5 - Construction estimate included with Priority #2 (Recommendation 57b). Engineering design and management fees for all priorities (Recommendations 57a-f) is $20,000 (2006). Please note that all estimates are at today's construction costs and subject to change in the future. M. Laursen, PDR: As of 8/2005—Sidewalks have been completed on the south side of Oltorf Street from Huntwick Drive to Montopolis Drive.</td>
<td></td>
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<tr>
<td>58b</td>
<td>37</td>
<td>Build sidewalks within the Pleasant Valley Planning Area in this order of priority: #2 South side of Oltorf St. (from AMD to Sunridge).</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>1/2014 (PDRD): This sidewalk has been completed as seen in City GIS data and Google Streetview. 2006: Priority #2: Construction estimate: $39,600. Engineering design and management fees for Recommendations 58 a - c: $26,200. Please note that all estimates are at today's construction costs and subject to change in the future. Same as action item 57e</td>
<td></td>
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<tr>
<td>58c</td>
<td>37</td>
<td>Build sidewalks within the Pleasant Valley Planning Area in this order of priority: #3 West side of Pleasant Valley Rd. (north of Elmont to Lakeshore).</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>11/2016: Sidewalk completed 10/15/2016. 2006: Priority #3: Construction Estimate: $19,800. Engineering design and management fees for Recommendations 58 a - c: $26,200. Please note that all estimates are at today's construction costs and subject to change in the future.</td>
<td></td>
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<tr>
<td>61.a</td>
<td>37</td>
<td>Along Lakeshore Blvd from East Riverside Drive to Pleasant Valley Road, identify ways to provide safe pedestrian and bicyclist crossings, with special attention paid to the intersection of Lakeshore Blvd with Town Creek.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>2/2017: Improvements were made in conjunction with protected bikeway. 11/2015 (PAZ): A protected bikeway is proposed for this location. A public meeting will be held on 11/16/2015 to gather feedback about the proposal. Safety improvements for crossings may also be considered as part of this project. 1/2015 (PDRD): Two-lane roadways are not eligible for pedestrian hybrid beacons.</td>
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<tr>
<td>62</td>
<td>37</td>
<td>At the intersection of Pleasant Valley Rd. and Riverside Dr. and make improvements to ease crossing Pleasant Valley Rd. and minimize safety hazards for pedestrians and cyclists.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>2004 (CIP 57): Sidewalk improvements were installed. 2005: (CIP 57): Sidewalk improvements were installed. 10/15/2013: A total of 22 new feet of sidewalks and ramps were installed.</td>
<td></td>
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</table>

City of Austin Planning and Development Review Department

Plan Adopted 11/16/2006
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<tr>
<td>70</td>
<td>39</td>
<td>Lobby PARD or the Watershed Protection Dept. to acquire properties containing the headwaters of Country Club Creek and preserve them in a natural state as the Country Club Creek Preserve. The headwaters are located just north of Ben White Blvd and are indicated by seeps and springs and marked on the &quot;Environmental Features and Watershed Boundaries&quot; map.</td>
<td>#2 Pleasant Valley; #3 Riverside; #5 Parker Lane, FY</td>
<td>Complete</td>
<td>12/2015 (PARD): PARD is seeking to acquire property or an easement to provide public access to the newly acquired headwaters land from the neighborhood to the east. 8/2015 (PAZ): Last month, PARD purchased the largest property in the area, a 33-acre parcel owned by the Catholic Diocese of Austin. 1/2014 (PARD): PARD received funding for land acquisition under the 2012 Bond program for properties containing the headwaters of Country Club Creek.</td>
<td>9/2011 (NPCT): See Malcolm Yeatts’ support and explanation for this ranking as well as multiple pages in the EROC plan. Priority #1 Riverside, #2 Parker Lane, and #3 Pleasant Valley for FY 2012-13. 10/2008: Parker Lane’s #2 priority, Riverside’s #3 priority and Pleasant Valley’s #6 priority for FY 2009-10.</td>
<td>Watershed Protection Department</td>
<td>PARD</td>
</tr>
<tr>
<td>94.8</td>
<td>43</td>
<td>Provide the following public amenities at Mabel Davis Park in this order of priority: Priority #8 - Skate park with stadium-style seating.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>12/2015 (PAZ): The skate park includes a skate bowl, streetscape elements and a grass seating area for interested onlookers. It opened in late-2005 and is a 12,000-square-feet concrete skate park. It does not include stadium seating.</td>
<td>4/2013 (NPCT): There is a new park: The Parker Lane Park. I have forwarded this information to the volunteers that are working on that park. The residents around the area of Oltorf and Wickersham have asked PARD to consider buying a property in the area, so there may be another small park soon. 9/2011 (NPCT): 2100 Parker Ln with its 3 SF-6 lots and 1 MF-3 lot with old growth live oaks &amp; pond would be an ideal pocket park. We encourage PARD/city negotiations to continue for the acquisition of this property. Riverside’s #3 priority for FY 2012-13. 10/2008: Riverside’s #4 priority for FY 2009-10.</td>
<td>PARD</td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>44</td>
<td>Work with PARD to develop user agreements for small neighborhood-maintained neighborhood greens in the planning area.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>6/2013 (PAZ): Austin Parks Foundation provided a grant of $25,491 to install an ADA-compliant ramp, trail and picnic tables. 4/2013 (PDRD): City purchased 3.53 acres on the corner of Parker and Windoak Drive and turned this into a pocket park. Article on the purchase can be found at: <a href="http://burlesonheights.com/2012/01/22/pocket-park-could-come-to-parker-lane/">http://burlesonheights.com/2012/01/22/pocket-park-could-come-to-parker-lane/</a>. 10/2008 (PARD): The Neighborhood Plan Contact Team determines best candidate(s) for Neighborhood Greens, then approaches PARD for evaluation and planning &amp; processing assistance.</td>
<td>4/2013 (NPCT): There is a new park: The Parker Lane Park. I have forwarded this information to the volunteers that are working on that park. The residents around the area of Oltorf and Wickersham have asked PARD to consider buying a property in the area, so there may be another small park soon. 9/2011 (NPCT): 2100 Parker Ln with its 3 SF-6 lots and 1 MF-3 lot with old growth live oaks &amp; pond would be an ideal pocket park. We encourage PARD/city negotiations to continue for the acquisition of this property. Riverside’s #2 priority for FY 2012-13. 10/2008: Riverside’s #4 priority for FY 2009-10.</td>
<td>PARD</td>
<td>Contact Team</td>
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<tr>
<td>101</td>
<td>44</td>
<td>Encourage PARD to design and construct an over-the-water connection for the Lakeshore portion of the Town Lake Hike and Bike Trail.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>6/2014 (PDRO): The boardwalk trail is complete. 4/2013 (Public Works): Boardwalk trail connection being built on Ladybird Lake. For more details, see: <a href="http://austintexas.gov/department/boardwalk-trail-lady-bird-lake">http://austintexas.gov/department/boardwalk-trail-lady-bird-lake</a>. PARD: * This is an estimate to construct an above-water trail that would close the gap between the Statesman property and the Lakeshore Blvd. parkland, providing periodic connections from the shore.</td>
<td>4/2013 (NPCT): There is a new park: The Parker Lane Park. I have forwarded this information to the volunteers that are working on that park. The residents around the area of Oltorf and Wickersham have asked PARD to consider buying a property in the area, so there may be another small park soon. 9/2011 (NPCT): 2100 Parker Ln with its 3 SF-6 lots and 1 MF-3 lot with old growth live oaks &amp; pond would be an ideal pocket park. We encourage PARD/city negotiations to continue for the acquisition of this property. Riverside’s #2 priority for FY 2012-13. 10/2008: Riverside’s #4 priority for FY 2009-10.</td>
<td>Public Works</td>
<td>PARD</td>
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### East Riverside/Oltorf Combined Neighborhood Plan Implementation Tracking Chart

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<tr>
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<tr>
<td>104</td>
<td>44</td>
<td>Provide a safe pedestrian crossing across Pleasant Valley Road at Lakeshore Boulevard to connect the existing Town Lake Hike and Bike Trail to the proposed Country Club Creek hike and bike trail.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>2/2011 (Public Works): Signalized crosswalk on the south side are being added Fiscal Year 2011. 5/2009 (Public Works); Signalized crosswalks are provided on the west and south sides.</td>
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<td>Public Works</td>
<td>Austin Transportation Department</td>
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### Non-Capital Improvement Project

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<td>1</td>
<td>28</td>
<td>Retain single family uses in established single family neighborhoods.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td></td>
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<td>Planning &amp; Zoning Department</td>
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City of Austin Planning and Development Review Department

Page 34

Plan Adopted 11/16/2006
<table>
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<tr>
<td>Any redevelopment or new development along Town Lake between IH-35 and parkland along S. Lakeshore Blvd. (which includes 1818 S. Lakeshore Blvd.) is strongly encouraged during project approval to dedicate trail land or easement along the lake and to build the trail. PARD suggested the above language for the DRF in order to combine the following issues: 1) if the city-owned portion of 1818 S. Lakeshore is not sold to the owner of the Waterfront Condos. Request that PARD acquire the land to extend Town Lake Park and the hike-and-bike trail; and 2) provide incentives to property owners to contribute waterfront access and open space necessary to complete the hike-and-bike trail.</td>
<td># Not Ranked</td>
<td>Complete</td>
<td>6/2014 (PDRD): The boardwalk trail is complete. 10/2013 (PDRD): The boardwalk trail is under construction. PARD (2006): This DRF would lead to the completion of the Town Lake hike and bike trail within the neighborhood plan area as this area develops/redevelops (this will require amending the Waterfront Overlay District East Riverside Subdistrict Requirements). For 1818 S. Lakeshore specifically, PARD requested that a trail easement be retained if the City sells the property to the developer. It is preferable that trail alignment be negotiated through the north side of the property along the lake.</td>
<td></td>
<td>Property Owners</td>
<td>PARD</td>
</tr>
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<p>| Preserve and protect the avenue of mature trees along the north and south sides of Lakeshore Blvd. These trees were given to the City of Austin Parks Department in 1990 by LCRA and now provide total street canopy for Lakeshore Boulevard between Town Creek Drive and the creek adjacent to the western property line of 1701 S. Lakeshore Blvd. | # Not Ranked | Complete | 5/2013 (PARD): In 2010, 30 trees were planted in the ROW North of Lakeshore Blvd. Species included: Mexican White Oak, American Smoketree, Mexican Buckeye, Texas Redbud, Rusty Blackhaw Viburnum, Mexican Plum, Texas Mountain Laurel, Cedar Elm, Yaupon Holly, Chinquapin Oak. 26 trees were also planted between the ROW and Lady Bird Lake. Species included: Lacy Oak, Chinquapin Oak, Texas Redbud, Mexican Buckeye, Cedar Elm, Yaupon Holly, Texas Mountain Laurel. 9/2011 (PDRD): Site plan reviewers and City Arborist are reviewing plans which ensure compliance with the PUD and the intent of the tree preservation ordinance. This includes both trees located on private property and trees located within the public Right of Way. 9/2011 (NPCT): The developer agreed to protect these trees. City officials in the appropriate departments should carefully monitor this protection throughout development stages. This is a recommendation in the EROC plan. Riverside's #6 priority for FY 2012-13. 10/2008: Riverside's #10 priority for FY 2009-10. 8/2008 (NPCT): Some of these trees are on property purchased for redevelopment and should be protected at any cost. | | PARD | Development Services Department |</p>
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<tr>
<td>Preserve and maintain all City-owned and acquired park space and conservation easements as such.</td>
<td>2 Parker Lane; 2 Riverside, FY 2015-16</td>
<td>Complete</td>
<td>1/2014 (PARD): Prior comments still applicable. 9/2011 (PARD): PARD land is dedicated parkland and is protected by both State parks code and the City's charter. Specific procedures - including a public vote in many cases - must occur in order to change parkland to a different use than public parkland. However, resources are limited - maintenance will occur as budget allows. There may be an opportunity for a partnership with adopt-a-park. 9/2011 (PW Real Estate): Once an easement is conveyed to the City, the requesting Dept. Would build or construct their infrastructure. The Easement surface is still enjoyed by the land owner and is still considered part of their property.</td>
<td>9/2011: Parker Lane's #8 priority for FY 2012-13. 10/2008: Parker Lane's #8 priority for FY 2009-10. 8/2008 (NPCT): The section of Guerrero Park through which the Country Club Creek Trail runs (south of Krieg Fields and across from the PARD maintenance center) is not currently being maintained, except by SEATAG volunteers.</td>
<td>PARD</td>
<td></td>
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| Provide the following public amenities at Mabel Davis Park in this order of priority: Priority #6 - Open field for unstructured use like ultimate Frisbee, softball, or kickball. | # Not Ranked | Complete | 12/2010 (PARD): Open plan does exist.                                                                                                                                                                                                                                                                                                                                 | PARD | |

| Work with any and all organizations to complete the Town Lake Hike-and-Bike Trail and provide and encourage pedestrian use. | # Not Ranked | Complete | 6/2014 (PARD): The boardwalk trail is complete. 1/2014 (PARD): Construction of the boardwalk trail is 85% complete. The Trail Foundation contributed $3 million to the project, and the remaining costs are funded by 2010 and 2012 bonds. 10/2013 (PARD): The boardwalk trail is under construction. | Public Works | PARD | Public Works |
In the course of the Department’s Housing Tax Credit Eligibility/Selection/Threshold and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §11.1(d)(2) and described in §11.201(7), §11.201(7)(A) and §11.201(7)(B) of the 2019 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

1. Site Control: Submit evidence that the additional earnest money due has been received by the title company.

The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.

All deficiencies must be corrected or otherwise resolved by 5 pm Austin local time on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm Austin local time on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §11.201(7)(B) of the 2019 Uniform Multifamily Rules. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day may be terminated.
All deficiencies related to the Direct Loan portion of the Application must be resolved to the satisfaction of the Department by 5pm Austin local time on the fifth business day following the date of this deficiency notice. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day will be suspended from further processing, and the Applicant will be notified to that effect, until the deficiencies are resolved. If, during the period of time when the Application is suspended from review, Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of the 2019 Multifamily Direct Loan Rule. Applicants should be prepared for additional time needed for completion of staff reviews.

Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department’s Serv-U HTTPS System. Once the documents are submitted to the Serv-U HTTPS system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPS submission process, contact Liz Cline at liz.cline@tdhca.state.tx.us or by phone at (512)475-3227. You may also contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986.

All applicants should review §§11.1(b) and 11.1(h) of the 2019 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.

**All deficiencies must be corrected or clarified by 5 pm Austin local time on May 16, 2019. Please respond to this email as confirmation of receipt.**

About TDHCA
The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us.

Liz Cline-Rew
Multifamily Finance Housing Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3227
Fax: 512.475.1895

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).
1. Attached is the receipt for additional earnest money due as well as contract amendments executed after the application due date.
Yes, Sir. The wire just hit our account.

Thank you,

WIRE FRAUD ALERT! Your security is our concern. Please always call your closing team to confirm wiring instructions before initiating a wire.

Mandy Dean-Knotts
Vice President / Branch Manager
Barton Oaks
Stewart Title of Austin, LLC
901 South Mopac, Building III, Suite #100
Austin, TX 78746
O (512) 322-8701 | F (512) 472-3101
stewart.com/austin | mandy.dean@stewart.com | View My Profile

From: P. Taylor Yawney [mailto:TYawney@shutts.com]
Sent: Monday, April 01, 2019 1:53 PM
To: Mandy Dean-Knotts; 'Michael Levy'
Cc: Jimmy Nassour; Steve Portnoy; Megan Lasch; Lisa Stephens; Robert Cheng
Subject: RE: [External] GF#156049: 2431 East Oltorf Street, Austin, TX 78741: Saigebrook Development, LLC and/or assigns

Mandy:

Please confirm that you received the $25,000 additional deposit.

Thanks,

Taylor
From: Mandy Dean-Knotts [mailto:mandy.dean@stewart.com]
Sent: Friday, March 29, 2019 1:33 PM
To: 'Michael Levy'
Cc: Jimmy Nassour; Steve Portnoy; Megan Lasch; Lisa Stephens; Robert Cheng; P. Taylor Yawney
Subject: RE: [External] RE: GF#156049: 2431 East Oltorf Street, Austin, TX 78741: Saigebrook Development, LLC and/or assigns

EXTERNAL: This email originated from outside of the SHUTTS email system. Do not respond, click any links or open any attachments unless you trust the sender and know the content is safe.

Received. Thank you.

WIRE FRAUD ALERT! Your security is our concern. Please always call your closing team to confirm wiring instructions before initiating a wire.

Mandy Dean-Knotts
Vice President / Branch Manager
Barton Oaks
Stewart Title of Austin, LLC
901 South Mopac, Building III, Suite #100
Austin, TX 78746
O (512) 322-8701 | F (512) 472-3101
stewart.com/austin | mandy.dean@stewart.com | View My Profile

From: Michael Levy [mailto:mlevy@mathiaspartners.com]
Sent: Friday, March 29, 2019 12:11 PM
To: Mandy Dean-Knotts
Cc: Jimmy Nassour; Steve Portnoy; Megan Lasch; Lisa Stephens; Robert Cheng; P. Taylor Yawney
Subject: RE: GF#156049: 2431 East Oltorf Street, Austin, TX 78741: Saigebrook Development, LLC and/or assigns

Mandy,

Please find attached a fully executed copy of the Confirmation and Ratification to 5th Amendment which clarifies certain items of the 5th Amendment that was submitted to you below on 3/15/19 erroneously titled as the 4th Amendment (also attached).

Please let us know of any questions.

Thanks,
Michael

Michael Levy
512.637.6957 office
512.417.2919 cell
mlevy@mathiaspartners.com

From: Michael Levy <mlevy@mathiaspartners.com>
Sent: Friday, March 15, 2019 4:23 PM
To: 'Mandy Dean-Knotts' <mandy.dean@stewart.com>
Cc: 'Jimmy Nassour' <jimmy@jimmynassour.com>; 'Steve Portnoy' <steve.portnoy@gmail.com>; 'Megan Lasch' <megan@o-sda.com>; 'Lisa Stephens' <lisa@saigebrook.com>; 'Robert Cheng' <rcheng@shutts.com>; 'P. Taylor Yawney' <TYawney@shutts.com>
Subject: GF#156049: 2431 East Oltorf Street, Austin, TX 78741: Saigebrook Development, LLC and/or assigns

Mandy,

Please find attached a fully executed copy of the 4th Amendment extending the feasibility period to 5pm CT on March 29, 2019.

Please let us know of any questions.

Thanks,
Michael

Please note our new address effective 2/25/19.
JOINDER AND CONSENT OF VI COLLINA, LLC

VI COLLINA, LLC, a Texas limited liability company, as assignee of all of Saigebrook Development, LLC’s (“Saigebrook”) interest in and to that certain Commercial Contract – Unimproved Property dated December 8, 2017, as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith, as amended by that certain Amendment to Commercial Contract – Unimproved Property dated on or about April 9, 2018, as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated on or about April 24, 2018, as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018, pursuant to that certain Assignment and Assumption of Commercial Contract – Unimproved Property dated February 6, 2019, hereby joins and consents to Saigebrook’s execution of that certain Fourth Amendment to Commercial Contract – Unimproved Property dated February 22, 2019 and that certain Confirmation and Ratification to Fifth Amendment to Commercial Contract – Unimproved Property dated March 29, 2019, copies of which are attached hereto as Exhibit “A”.

VI COLLINA, LLC, a Texas limited liability company

By: ________________________________
Name: ________________________________
Title: _________________________________
Date: _____________________

Signature

Name: Megan Lasch
Title: President
Date: 5-15-19
EXHIBIT “A”
FOURTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY

THIS FOURTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY (this “Amendment”) is made this 15th day of March, 2019, by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership (“Seller”), whose address is 3839 Bee Cave Road, Suite 200, Austin, Texas 78746, and VI COLLINA, LLC, a Texas limited liability company (“Buyer”), whose office address is 5501-A Balcones Drive, #302, Austin, Texas 78731.

WHEREAS, Seller and Saigebrook Development, LLC, a Florida limited liability company (“Saigebrook”), are parties to that certain Commercial Contract – Unimproved Property, dated on or about December 8, 2017 (the “Contract”), as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith (the “Addendum”), as amended by that certain First Amendment to Commercial Contract – Unimproved Property dated April 9, 2018 (the “First Amendment”), as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated April 24, 2018 (the “Second Amendment”), as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018 (the “Third Amendment”; and together with the Contract, the Addendum, the First Amendment and the Second Amendment, collectively, the “Agreement”); and

WHEREAS, Saigebrook assigned all of its right, title and interest in and to the Agreement to Buyer pursuant to that certain Assignment and Assumption of Commercial Contract – Unimproved Property; and

WHEREAS, Buyer and Seller desire to further amend the Agreement as more particularly set forth below.

NOW THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. RECITALS: The above recitals are true and correct and incorporated into this Amendment by this reference.

2. DEFINITIONS: Any capitalized terms not defined in this Amendment shall have the meaning given to such term in the Agreement.

3. FEASIBILITY PERIOD: Notwithstanding anything in the Agreement to the contrary, the Feasibility Period shall expire at 5:00 p.m. Central Time on March 29, 2019. All references to the Feasibility Period in the Agreement shall remain unchanged except for the aforementioned change in date.

4. EARNEST MONEY: Notwithstanding anything in the Agreement to the contrary, unless the Agreement is sooner terminated, the Second Deposit, being $25,000.00, shall be due
and payable to Escrow Agent by 5:00 p.m. Central Time on April 1, 2019. Additionally, subparts (i)-(iii) of Section 2(a) of the Addendum are deleted in their entirety and replaced with the following:

“(i) within two days after the expiration of the Feasibility Period, Ten Thousand Dollars ($10,000.00) of the Escrow Deposit shall become non-refundable to Buyer except upon Seller’s default or as provided in this Agreement;

(ii) if this Agreement has not been terminated by the Buyer by 5:00 p.m. Central Time on April 29, 2019, an additional sum of Ten Thousand Dollars ($10,000.00) from the Escrow Deposit shall become non-refundable to Buyer, for an aggregate hard Escrow Deposit of Twenty Thousand Dollars ($20,000.00), except upon Seller’s default or as provided in this Agreement;

(iii) if this Agreement has not been terminated by the Buyer by 5:00 p.m. Central Time on May 29, 2019, an additional sum of Ten Thousand Dollars ($10,000.00) from the Escrow Deposit shall become non-refundable to Buyer, for an aggregate hard Escrow Deposit of Thirty Thousand Dollars ($30,000.00), except upon Seller’s default or as provided in this Agreement;

5. **BINDING EFFECT:** This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

6. **HEADINGS:** Headings in this Amendment are for convenience and reference only and shall not be used to interpret or construe its provisions.

7. **COUNTERPARTS:** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. Any signature delivered by facsimile, email, or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party. Either party or both parties shall be permitted to electronically execute this Amendment and all other related documents, in accordance with Texas Statutes Chapter 322.

8. **CONFLICT:** In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail. Except as modified herein, the Agreement remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects.

*(Remainder of page intentionally blank. Signature page to follow.)*
IN WITNESS WHEREOF, the parties hereto hereby execute this Amendment as of the date first above written.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: Cedar Contracting, Inc., a Texas corporation, its general partner

By:

Jimmy Nassour

BUYER:

VI COLLINA, LLC, a Texas limited liability company

By:

Name: Megan Lasch

Title: President
CONFIRMATION AND RATIFICATION TO FIFTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY

THIS CONFIRMATION AND RATIFICATION TO FIFTH AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY (this “Confirmation”) is entered into by and between CEDAR WILLOW CREEK, LTD., a Texas limited partnership ("Seller"), and SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company ("Buyer").

RECITALS

WHEREAS, Seller and Buyer heretofore entered into that certain Commercial Contract – Unimproved Property, dated on or about December 8, 2017 (the “Contract”), as modified and supplemented by that certain Addendum to Commercial Contract – Unimproved Property of even date therewith (the “Addendum”), as amended by that certain First Amendment to Commercial Contract – Unimproved Property dated April 9, 2018 (the “First Amendment”), as further amended by that certain Second Amendment to Commercial Contract – Unimproved Property dated April 24, 2018 (the “Second Amendment”), as further amended by that certain Third Amendment to Commercial Contract – Unimproved Property dated on or about October 25, 2018 (the “Third Amendment”), as further amended by that certain Fourth Amendment to Commercial Contract – Unimproved Property dated as of February 22, 2019 (the “Fourth Amendment”), as further amended by that certain amendment inadvertently titled “Fourth Amendment” to Commercial Contract – Unimproved Property dated as of March 15, 2019, by and between Seller and Vi Collina, LLC (“Vi Collina”), as successor in interest to Buyer (the “Fifth Amendment”; and together with the Contract, the Addendum, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, collectively, the “Agreement”);

WHEREAS, on or about February 27, 2019, Seller executed that certain Consent to Assignment of Commercial Contract – Unimproved Property, whereby Seller acknowledged and agreed to the assignment of the Agreement from Buyer to Vi Collina;

WHEREAS, the parties acknowledge that Vi Collina has not yet been formed, and that the Fifth Amendment was intended to be executed by Buyer;

WHEREAS, the parties acknowledge that the Fifth Amendment was intended to be titled “Fifth Amendment to Commercial Contract – Unimproved Property”; and

WHEREAS, the parties desire to (i) confirm and ratify the Agreement, and all of their respective obligations thereunder despite (a) Vi Collina executing the Fifth Amendment instead of Buyer and (b) the Fifth Amendment being inadvertently titled “Fourth Amendment”; and (ii) to amend the Agreement to provide that it may be assigned to an entity controlled by or under common control with O-SDA Industries, LLC, without the consent of Seller.

NOW THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Buyer hereby agree as follows:
1. **RECORDS:** The above recitals are true and correct and incorporated into this Confirmation by this reference.

2. **DEFINITIONS:** Any capitalized terms not defined in this Confirmation shall have the meaning given to such term in the Agreement.

3. **RATIFICATION OF AGREEMENT:** The Agreement is hereby ratified, confirmed and reaffirmed in all respects, and shall be treated in the same manner as though (i) Buyer, instead of Vi Collina, had been the original party and signatory to the Fifth Amendment; and (ii) the Fifth Amendment was titled “Fifth Amendment to Commercial Contract – Unimproved Property”.

4. **ASSIGNMENT:** Notwithstanding any limitation or prohibition in the Agreement, Buyer shall be entitled to assign its right, title and interest in the Agreement to an entity controlled by or under common control with O-SDA Industries, LLC, without the necessity of Seller consent.

5. **FULL FORCE AND EFFECT:** Except as specifically modified by this Confirmation, all other provisions of the Agreement remain in full force and effect. To the extent of any conflict between the provisions of the Agreement and this Confirmation, the provisions of this Confirmation shall control.

6. **AUTHORITY:** Seller and Buyer represent and warrant to the other that such party has the full right, power, and lawful authority to enter into, execute, and perform under this Confirmation and that such actions do not violate any other agreement, covenant, or restriction placed upon such party. Seller and Buyer further represent and warrant to the other that the person signing this Confirmation on its behalf has been duly authorized to sign this Confirmation.

7. **GOVERNING LAW:** This Confirmation shall be governed by the laws of the State of Texas, without application of its conflict of law principles.

8. **BINDING EFFECT:** This Confirmation shall be binding upon, and shall inure to the benefit of, Seller, Buyer, and their respective successors or assigns.

9. **HEADINGS:** The headings contained in this Confirmation are for convenience of reference only and shall not be construed as limiting or defining in any way the provisions of this Confirmation.

10. **COUNTERPARTS:** This Confirmation may be executed in counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Any signature delivered by facsimile or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party.

{remainder of this page intentionally left blank}
IN WITNESS WHEREOF, Seller and Buyer have executed this Confirmation as of this 29 day of March, 2019.

SELLER:

CEDAR WILLOW CREEK, LTD., a Texas limited partnership

By: Cedar Contracting, Inc., a Texas corporation, its general partner

By: [Signature]

Jimmy Nassour

BUYER:

SAIGEBROOK DEVELOPMENT, LLC, a Florida limited liability company

By: [Signature]

Name: Lisa Stephens
Title: President
Multifamily Finance Division staff will place scanned copies of scoring notices behind this tab in the application .pdf
Multifamily Finance Division staff will place documents related to Requests for Administrative Deficiencies behind this tab in the application.pdf
Real Estate Analysis Division staff will place scanned copies of RFI documents behind this tab in the application .pdf
Department staff will place scanned copies of appeal documents behind this tab in the application .pdf
Multifamily Finance Division staff will place scanned copies of public comment received behind this tab in the application .pdf
Multifamily Finance Division staff will place scanned copies of Commitment or Determination Notice documents behind this tab in the application .pdf
Multifamily Finance Division staff will place scanned copies of Direct Loan Program Award Letters behind this tab in the application .pdf
Multifamily Finance Division staff will place scanned copies of Carryover Allocation Agreement documents behind this tab in the application .pdf