

RESOLUTION NO. 20-022

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (THE WALZEM) SERIES 2020; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Walzem), Series 2020 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and Wilmington Trust, National Association, as trustee (the "Trustee"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to The Walzem Apartments, LLC, a Kansas limited liability company (the "Borrower") in order to finance the cost of acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within

the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on February 27, 2020 declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and expects to receive a reservation of private activity bond allocation from the State of Texas; and

WHEREAS, it is anticipated that the Department, the Borrower and JPMorgan Chase Bank, N.A., a national banking association, as initial purchaser (the "Purchaser") will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the cost of the acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Loan Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a Subordinate Multifamily Leasehold Deed of Trust, Security Agreement and Assignment of Rents and Leases (the "Bond Mortgage") from the Borrower for the benefit of the Department and assigned to the Trustee; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Indenture, the Note and the Bond Mortgage will be assigned to the Trustee pursuant to an Assignment of Deed of Trust and Loan Documents (the "Assignment") from the Department to the Trustee; and

WHEREAS, the Board has determined that the Department, the Trustee, Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, as fee owner (the "Fee Owner"), and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Bexar County, Texas; and

WHEREAS, the Board has determined that the Department, the Trustee and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement") to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Bonds, the Development, and the use and investment of Proceeds of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") with the Borrower and the Purchaser,

setting forth certain terms and conditions upon which the Purchaser will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Purchaser; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Assignment, the Tax Exemption Agreement, and the Bond Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Bond Mortgage and the Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Bond Mortgage and the Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1

ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. The Bonds shall bear interest at the Index Interest Rate (as defined in the Indenture), to be determined periodically and subject to adjustment as provided in the Indenture; provided that, in no event shall the interest rate (including any default rate) on the Bonds exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Bonds shall be \$20,000,000; (iii) the final maturity of the Bonds shall be July 9, 2039; and (iv) the price at which the Bonds are sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined in Section 1.13 below) each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Loan Agreement. That the form and substance of the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower, the Fee Owner and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Bexar County, Texas.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement, and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.7 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Purchaser is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower and the Purchaser.

Section 1.8 Acceptance of the Note and the Bond Mortgage. That the form and substance of the Note and the Bond Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Note to the order of the Trustee without recourse.

Section 1.9 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Trustee.

Section 1.10 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.11 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in

the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department ("Bond Counsel"), may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.12 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B - Indenture
- Exhibit C - Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Tax Exemption Agreement
- Exhibit F - Bond Purchase Agreement
- Exhibit G - Note
- Exhibit H - Bond Mortgage
- Exhibit I - Assignment

Section 1.13 Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) 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 Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Loan Agreement will

produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with Section 2306.032 of the Texas Government Code, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act regarding meetings of the Governing Board.

PASSED AND APPROVED this 21st day of May, 2020.

EXHIBIT A

Description of Development

Borrower: The Walzem Apartments, LLC, a Kansas limited liability company

Development: The Development is a 200-unit affordable, multifamily housing development to be known as The Walzem, to be located at 7810 Walzem Road, San Antonio, Bexar County, Texas 78244. It consists of two (2) residential apartment buildings with approximately 176,991 net rentable square feet. The unit mix will consist of:

60	one-bedroom/one-bath units
100	two-bedroom/two-bath units
40	three-bedroom/two-bath units
<hr/>	
200	Total Units

Unit sizes will range from approximately 670 square feet to approximately 1,165 square feet.

TRUST INDENTURE

By and Between

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

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee**

Dated as of [June 1], 2020

**Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020**

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TRUST INDENTURE

THIS TRUST INDENTURE is entered into as of [June 1], 2020 (this “**Indenture**”), by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the “**Issuer**”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, as trustee (together with any successor trustee hereunder, the “**Trustee**”).

RECITALS

Certain of the terms and words used in these Recitals, and in the following Granting Clauses and Agreements, are defined in Section 1.01 of this Indenture.

The Issuer is authorized under Chapter 2306, Texas Government Code, as amended (the “**Act**”) to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

The Walzem Apartments, LLC, a Kansas limited liability company (the “**Borrower**”) intends to construct certain Improvements on the Land which will include a multifamily apartment housing facility consisting of total of 200 units and related personal property and equipment to be known as The Walzem (the “**Project**”); and

Pursuant to, and in accordance with the Act, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “**Bonds**”), and use the proceeds thereof to make a mortgage loan to the Borrower, upon the terms and conditions of that certain Loan Agreement dated as of the same date as this Indenture among the Issuer, JPMorgan Chase Bank, N.A., a national banking association, as Purchaser (the “**Purchaser**”) and the Borrower (the “**Loan Agreement**”) and a promissory note dated the Closing Date from the Borrower to the Issuer in the original principal amount of \$20,000,000 in the form attached as Exhibit B-1 to the Loan Agreement (the “**Note**”), for the purpose of paying a portion of the costs of the acquisition, construction and equipping of the Project; and

The Borrower has delivered the Note to the Issuer, evidencing the Borrower’s obligation to repay the Loan. The Issuer has made the Loan to the Borrower, subject to the terms and conditions of the Loan Agreement and this Indenture, including the terms and conditions thereof and hereof governing the disbursement of advances and the investment earnings thereon; and

As security for the Bonds, the Issuer intends to assign to the Trustee the Note, the security therefor and all of the Issuer’s rights under the Loan Agreement (other than the Reserved Rights of the Issuer); and

To provide and secure amounts to repay to the Issuer the Loan during the period starting on the Closing Date and ending on the Conversion Date (the “**Cash-Collateralized Mode**”), the Borrower has obtained a taxable construction loan (the “**Construction Loan**”) from Bank of America, N.A., a national banking association (the “**Construction Lender**”) and caused the Construction Lender to make certain payments to the Trustee under this Indenture; and

To provide and secure amounts to repay the Issuer the Loan during the period starting on the Conversion Date and ending on the Maturity Date (the “**Permanent Mode**”), the Borrower has executed the Loan Agreement, a Permanent Mode Deed of Trust and other documents executed and delivered for the purpose of securing the Loan during the Permanent Mode; and

The obligations of the Borrower under the Loan Agreement and the Note will be secured by (i) the proceeds of the Bonds deposited into the Project Fund created pursuant to Section 4.01 of this Indenture; and (ii) the Trust Estate; and

The Trustee has agreed to accept the trusts herein created upon the terms set forth herein; and

The issuance, sale and delivery of the Bonds and the execution and delivery of this Indenture and the Loan Agreement have been in all respects duly and validly authorized in accordance with the Act.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds issued and sold by the Issuer under this Indenture by the Holders thereof, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds and the payment and performance of all other of the Issuer’s Obligations, the Issuer does hereby grant, bargain, sell, convey, pledge and assign, without recourse, unto the Trustee and unto its successors in trust forever, and grants to the Trustee and to its successors in trust, a security interest in, the following (such property being herein referred to as the “**Trust Estate**”):

I.

All right, title and interest of the Issuer in and to all Revenues, derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of this Indenture and the Loan Agreement (other than the Reserved Rights of the Issuer), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate;

II.

All right, title and interest of the Issuer in and to the Note (other than the Reserved Rights of the Issuer) including all payments and proceeds with respect thereto or replacement thereof;

III.

All moneys (including Collateral Payments) which are at any time or from time to time on deposit in any fund or account created under this Indenture (excluding funds in the Costs of Issuance Fund and the Rebate Fund);

IV.

All right, title and interest of the Issuer in and to, and rights and remedies under, the Indenture, the Loan Agreement and the Bond Mortgage (other than the Reserved Rights of the Issuer); and

V.

All funds, moneys and securities and any and all other rights and interests in property, including Permanent Mode Deed of Trust, whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

PROVIDED, HOWEVER, that there shall be excluded from the granting clauses of this Indenture all the Reserved Rights of the Issuer, including all amounts paid or collected by the Issuer in connection therewith, and all amounts on deposit in the Rebate Fund, which shall be held for the sole benefit of the United States of America;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in trust forever.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit, security and protection of all Holders from time to time of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds.

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of the Bonds issued hereunder, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required under Article VIII hereof or by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and all other of the Issuer's Obligations to be kept, performed and observed by it, the Rebate Amount shall be paid in full and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payment, as further provided in Section 8.01 hereof, and the termination of the Loan Agreement, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall remain in full force and effect.

AND IT IS EXPRESSLY DECLARED that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all such property, moneys, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective holders from time to time of the Bonds, or any part thereof, as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.01 Definitions. Certain terms used in this Indenture are defined in the Loan Agreement or the Regulatory Agreement and when and if used herein, such terms shall have the meanings given to them by the Loan Agreement or the Regulatory Agreement unless the context clearly indicates otherwise. In addition, when used in this Indenture, the following terms shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

“Act” has the meaning set forth for such term in the recitals to this Indenture.

“Additions” means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

“Additional Interest” means, beginning after the Conversion Date, as determined by the Servicer, an amount equal to the excess of (i) the amount of interest an Owner (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) would have received during the period of time commencing on the date that the interest on the Bonds becomes subject to federal income taxation to the earlier of the date of the payment of the Bonds or the date on which the Bonds are redeemed pursuant to Section 3.02(b)(ii) hereof following a Determination of Taxability (excluding from such period any time in which the tax on such interest is uncollectible) at a per annum rate equal to the Taxable Rate, over (ii) the aggregate amount of interest received by an Owner for such period.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Amortization Schedule” means the amortization schedule attached as Exhibit C to the Loan Agreement, as it may be revised from time to time pursuant to Section 3.09 of this Indenture

“Authorized Denomination” means, (1) during the Cash-Collateralized Mode, \$5,000 or any integral multiple of \$5,000 in excess thereof, and (2) during the Permanent Mode, \$100,000, or any integral multiple of \$5,000 in excess thereof.

“Authorized Officer” means the Chair or Vice Chair of the Board, the Executive Director of the Issuer, the Director of Administration of the Issuer, the Director of Financial Administration of the Issuer, the Director of Bond Finance and Chief Investment Officer of the Issuer, the Director of Multifamily Bonds of the Issuer, the Director of Texas Homeownership of the Issuer, and the Secretary or Assistant Secretary to the Board.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as in effect now and in the future, or any successor statute.

“Board” means the Governing Board of the Issuer.

“Bond Counsel” means nationally recognized bond counsel who is selected by, and under contract to provide such services to, the Issuer and initially means Bracewell LLP.

“Bond Fund” means the Bond Fund created in Section 4.01 hereof.

“Bond Mortgage” means the Subordinate Multifamily Leasehold Deed of Trust, Security Agreement and Fixture Filing, dated of even date with this Indenture, from the Borrower to [] for the benefit of the Trustee and the Issuer, as the same will be amended and restated upon the occurrence of the Conversion Date, and as the same may be further amended, supplemented or restated.

“Bond Payment Date” means each Interest Payment Date and any other date interest or principal on the Bonds are due, whether at maturity, upon redemption, mandatory tender or acceleration or otherwise.

“Bond Purchase Fund” means Bond Purchase Fund created pursuant to Section 4.01 hereof.

“Bond Year” has the meaning as set forth in the Tax Exemption Agreement.

“Bondholder” or “Holder of the Bonds” or “Holder” or “Owner of the Bonds” or “Owner” when used with respect to any Bond, means the person or persons in whose name such Bond is registered as the owner thereof on the books of the Issuer maintained at the Trust Office for that purpose, and initially shall mean the Purchaser.

“Bonds” means the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Walzem) Series 2020, issued, authenticated and delivered under this Trust Indenture, which are identified as such in Section 2.01(a) hereof.

“Borrower” means The Walzem Apartments, LLC, a Kansas limited liability company, its successors and assigns.

“Borrower Documents” means the Loan Agreement, the Note, the Tax Exemption Agreement, the Regulatory Agreement, the Collateral Fund Agreement, the Initial Bond Purchase Agreement, the Forward Bond Purchase Agreement, the Construction Loan Documents, the Permanent Loan Documents, the Operating Agreement and any and all documents, agreements or instruments executed by the Borrower in connection with the Loan evidenced by the Loan Agreement.

“Borrower Representative” means a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by one of its officers, which certificate may designate an alternate or alternates.

“Borrower’s Obligations” means the obligations of the Borrower under the Loan Agreement, the Note, and the other Borrower Documents to (a) pay the principal of, and interest

on the Note, when and as the same shall become due and payable (whether at the stated maturity thereof, on any payment date or by acceleration of maturity or otherwise), (b) pay all other amounts required by the Loan Agreement, the Note, and the other Borrower Documents to be paid by the Borrower to the Issuer, as and when the same shall become due and payable, and (c) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Borrower is required by the Loan Agreement, the Note, the Regulatory Agreement, and any of the other Borrower Documents, to perform or observe.

“Business Day” or “business day” means a day, other than a Saturday or Sunday, on which (a) banks located in New York, New York, or in the city in which the Trustee or the Purchaser is located, are not required or authorized by law or executive order to close for business, (b) the New York Stock Exchange is not closed, and (c) when used in connection with the LIBOR Rate, the term “Business Day” shall also exclude any day on which banks are not open for dealings in U.S. Dollar deposits in the London interbank market.

“Calculation Agent” means the Majority Owner, or any other Person appointed by the Bondholder to serve as calculation agent for the Bonds.

“Cash-Collateralized Mode” means the period starting on the Closing Date and ending on the Conversion Date.

“Cash Flow Projection” means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Purchaser, establishing, to the satisfaction of the Holder, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay interest and principal on the Bonds, the Trustee’s Ongoing Fee and the Issuer Fees, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds and (ii) any Extension Period.

“Closing Date” means the date of initial delivery of the Bonds to the Purchaser in exchange for the purchase price thereof.

“Code” has the meaning set forth for such term in the Regulatory Agreement.

“Collateral Fund” means the Collateral Fund created in Section 4.01 hereof.

“Collateral Fund Agreement” means the Agreement Regarding Collateral Funds dated as of the Closing Date, by and among the Borrower, the Trustee and the Construction Lender.

“Collateral Payments” means Eligible Funds to be paid by or on behalf of the Borrower, to the Trustee for deposit into the Collateral Fund pursuant to Section 3.3 of the Loan Agreement and Section 4.09 hereof as a prerequisite to the disbursement of money held in the Project Fund.

“Completion Certificate” means a certificate submitted by the Borrower Representative to the Issuer and the Trustee as provided in Section 3.5 of the Loan Agreement.

“Completion Date” has the meaning set forth for such term in the Construction Loan Agreement.

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

“Computation Date” means (i) during the Cash-Collateralized Mode, the day that is three (3) Business Days immediately preceding each Interest Payment Date, and (ii) during the Permanent Mode, the date that is two (2) Business Days immediately preceding each Interest Payment Date.

“Construction Deed of Trust” means the Leasehold Deed of Trust, Assignment, Security Agreement and Fixture Filing with Joinder of Fee Owner, dated [June 1], 2020, granted by the Owner with respect to the Project to PRLAP, Inc., a Texas corporation, as trustee under such deed of trust thereunder for the benefit of the Construction Lender, as the same may be amended, modified or supplemented from time to time.

“Construction Lender” means Bank of America, N.A., a national banking association, or its successors and assigns.

“Construction Loan Repayment Fund” means the Construction Loan Repayment Fund created in Section 4.01 hereof.

“Construction Loan” means the taxable construction loan from the Construction Lender to the Borrower pursuant to the Construction Loan Agreement.

“Construction Loan Agreement” means the construction loan agreement dated as of even date with this Indenture, between the Borrower and the Construction Lender, as the same may be supplemented, amended or modified.

“Construction Loan Documents” means the Construction Deed of Trust, the Construction Loan Agreement, the construction note, and all other documents required by the Construction Lender in connection with the Construction Loan.

“Conversion” has the meaning set forth in the Forward Bond Purchase Agreement.

“Conversion Conditions” has the meaning set forth in the Forward Bond Purchase Agreement.

“Conversion Date” means the date specified by the Permanent Lender in the Conversion Notice after the Project meets the Conversion Conditions, and on which date the Bonds shall convert from the Cash-Collateralized Mode to the Permanent Mode; provided such Conversion Date shall not occur prior to July 1, 2022.

“Conversion Deadline” means the Termination Date, as such term is defined in the Forward Bond Purchase Agreement.

“**Costs**” with respect to the Project shall be deemed to include all items permitted to be financed under the provisions of the Code and the Act.

“**Costs of Issuance**” means all fees, costs and expenses payable or reimbursable directly or indirectly by the Issuer or the Borrower and related to the authorization, issuance and sale of the Bonds.

“**Costs of Issuance Deposit**” means the deposit in the amount of \$[_____] which is to be funded by the Borrower into the Costs of Issuance Fund pursuant to Section 4.01 hereof.

“**Costs of Issuance Fund**” means the Costs of Issuance Fund created pursuant to Section 4.01 hereof.

“**Designated Office**” of the Trustee, the Lender, the Issuer or the Purchaser means, respectively, the office of the Trustee, the Lender, the Issuer or the Purchaser at the respective Notice Address set forth in this Section 1.01 or at such other address as may be specified in writing by the Trustee, the Lender, the Issuer or the Purchaser, as applicable, as provided in Section 12.06 hereof.

“**Determination of Taxability**” means (a) a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on any Bond is or was includable in the gross income of a Holder of the Bonds for Federal income tax purposes (other than an Holder who is a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code); or (b) the enactment of federal legislation that would cause interest on the Bonds to be includable in gross income for federal income tax purposes; provided, that no such decree, judgment, or action under (a) will be considered final for this purpose unless the Borrower has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Holder of a Bond, and until the conclusion of any appellate review, if sought.

“**Documents**” means and shall include (without limitation), with respect to the Bonds, this Indenture, the Loan Agreement, the Note, the Regulatory Agreement, the Tax Exemption Agreement, the Permanent Loan Documents and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, to evidence or secure the Issuer’s Obligations or the Borrower’s Obligations, or any part thereof, or in connection therewith, and any and all Supplements thereto, but excluding the Construction Loan Documents.

“**Eligible Funds**” means, as of any date of determination, any of:

(a) The proceeds of the Bonds (including any additional amount paid by the Purchaser to the Trustee as the purchase price of the Bonds);

(b) Money received by the Trustee representing advances to the Borrower of proceeds of the Construction Loan, Permanent Loan and payments under the Swap Agreement;

(c) Money received by the Trustee from the Purchaser for deposit into the Negative Arbitrage Account or into the Collateral Fund;

(d) Any other amounts for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

(e) The proceeds of draws by the Trustee on any letter of credit provided to the Trustee for the benefit of the Borrower;

(f) Any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, provided that no Act of Bankruptcy has occurred during such period; and

(g) Investment income derived from the investment of the money described in (a) through (f) above.

“Eligible Investments” means, subject to the provisions of Section 6.01 hereof, any of the following investments that mature (or are redeemable at the option of the Trustee without penalty) at such time or times as to enable timely disbursements to be made from the fund in which such investment is held or allocated in accordance with the terms of this Indenture:

(1) Governmental Obligations; and

(2) to the extent permitted in Section 6.01 hereof, shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or if Moody’s is not the Rating Agency or a new rating scale is implemented, the equivalent Rating Category given by the Rating Agency for that general category of security) at the time of purchase and whose investment portfolio consists solely of Governmental Obligations including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, advisor, administrator, shareholder, servicing agent and/or custodian or subcustodian; and

(3) Obligations of any state or political subdivision of any state, which (i) are rated at the time of purchase in the Highest Rating Category by the Rating Agency and (ii) have an interest accrual period, interest payment dates and principal payment dates that provide for timely payments and which are unconditionally payable from the obligations of the character described in (1) and (2) above in amounts sufficient to meet the payment obligations under the Indenture.

“Encumbrance” means any mortgage, pledge, lien, security interest, charge or other encumbrance, including but not limited to (i) any covenant or agreement restricting, regulating or otherwise affecting the use of, and binding on and running with, the Land or the Property and (ii) utility easements or service agreement which benefit the Property and which do not encroach upon the Improvements.

“Event of Default” or “Default” means, when used in this Indenture, those events of default or defaults specified in Section 9.01 hereof and, when used in the Loan Agreement, those events of default or defaults specified in Section 7.01 thereof.

“Expense Fund” means the Expense Fund created pursuant to Section 4.01 hereof.

“Extension Payment” means the amount due, if any, to provide adequate additional funds for the payment of interest and principal on the Bonds, the Trustee’s Ongoing Fee and the Issuer Fees during the Extension Period in connection with the extension of the Mandatory Redemption Date pursuant to Section 3.02 hereof, and which (a) shall be determined by a Cash Flow Projection and (b) must consist of Eligible Funds.

“Extension Period” means (i) a period of twelve (12) calendar months commencing on the Initial Mandatory Redemption Date and ending on July 1, 2022 and (ii) a period of twelve (12) calendar months commencing on July 1, 2022 and ending on July 1, 2023, in both cases subject to the provisions of Section 3.02 hereof (including any Extension Payment), to extend a Mandatory Redemption Date

“Fee Owner” has the meaning set forth in the Regulatory Agreement.

“Forward Bond Purchase Agreement” means the Forward Bond Purchase Agreement dated [June 1], 2020, among the Borrower, the Purchaser and Permanent Lender.

“Governmental Obligations” means direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of Treasury), and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by the United States of America.

“Highest Rating Category” means, with respect to an Eligible Investment, that the Eligible Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below “Aaa” or “Aaa/VMIG 1” if rated by Moody’s or “A-1+” or “AA+” if rated by S&P.

“Improvements” means all structures or buildings now or hereafter erected or placed on the Land, including, without limitation, the Project, and all Additions thereto.

“Indenture” means this Trust Indenture, dated as of [June 1], 2020, between the Issuer and the Trustee, and any and all Supplements thereto.

“Independent” means any person not an employee or officer of the Borrower or its affiliates.

“Index Interest Rate” means, (a) during the Cash-Collateralized Mode, (i) for the first Interest Period, ___% per annum (which rate shall be based on the one-year LIBOR swap rate as of 6 calendar days prior to the Closing Date plus 75 basis points (0.75%)) and (ii) for the second Interest Period the rate will be the two-year LIBOR rate in effect three calendar days prior to such second Interest Period, plus 80 basis points (0.80%), in each case the applicable Index Interest Rate shall be rounded upward to the second decimal place and shall never be less than 0.75% per annum; and (b) during the Permanent Mode, for each Interest Period, a per annum rate equal to the sum of (a) the product of (I) 0.79, times (II) the LIBOR Rate, plus (b) two percent (2.0%); in either case as determined by the Calculation Agent in accordance with Section 2.01(d) hereof and in all cases not to exceed the Maximum Interest Rate.

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

“Initial Bond Purchase Agreement” means the Bond Purchase Agreement dated [June 1], 2020, among the Issuer, the Borrower and Purchaser.

“Initial Deposit” means Eligible Funds in the amount of \$_____ to be deposited into the Negative Arbitrage Account of the Bond Fund on the Closing Date.

“Initial Mandatory Redemption Date” means July 1, 2021.

“Interest Payment Date” means (1) during the Cash-Collateralized Mode, (a) the first (1st) day of each month commencing on the first (1st) day of the first (1st) month following the Closing Date, and (b) each Redemption Date, and (2) the Mandatory Tender Date, and (3) during the Permanent Mode, commencing on the ninth (9th) day of the second month following the Conversion Date and on the ninth (9th) day of each calendar month thereafter.

“Interest Period” means, (a) during the Cash-Collateralized Mode, (i) initially, the period from the Closing Date to but not including July 1, 2021, and (ii) thereafter, the period from July 1, 2021 to but not including July 1, 2023, and (b) during the Permanent Mode, (i) the period commencing on the Conversion Date and ending on the eighth (8th) day of the second month following the Conversion Date, and (ii) thereafter, the period commencing on the ninth (9th) day of each month and ending on the eighth (8th) day of such month.

“Interest Rate for Advances” means the rate per annum which is 6.0 percent plus that interest rate announced by the Trustee in its lending capacity as a bank as its “Prime Rate” or its “Base Rate”.

“Investor Member” means Bank of America, N.A., a national banking association, and its successors or assigns.

“Issuer” means the Texas Department of Housing and Community Affairs, a public and official agency of the State, and its successors and assigns.

“Issuer Documents” means the Loan Agreement, the Indenture, the Regulatory Agreement, the Initial Bond Purchase Agreement, the Forward Bond Purchase Agreement, the Tax Exemption Agreement and any and all documents, agreements or instruments executed by the Issuer in connection with the Loan evidenced by the Loan Agreement.

“Issuer Administration Fee” means the fee payable annually in advance to the Issuer on each [June 1], in the amount of .10% per annum of the aggregate principal amount of Bonds Outstanding at the inception of each payment period. On the Closing Date, the Borrower will pay the Issuer Administration Fee in advance to the Issuer for the period from the Closing Date to [May 31], 2022. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), payable solely from funds provided by the Borrower, all payments of the Issuer Administration Fee due on or after [June 1], 2022.

“**Issuer Compliance Fee**” means the fee payable annually in advance to the Issuer on each [June 1], in the amount of \$25 per Low-Income Unit in the Project. The first annual Issuer Compliance Fee shall be paid on the Closing Date. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), solely from funds provided by the Borrower, all payments of the Issuer Compliance Fee due on or after [June 1], 2023. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

“**Issuer Fees**” means, collectively, the Issuer Administration Fee and the Issuer Compliance Fee.

“**Issuer’s Obligations**” means the obligations of the Issuer under the Bonds, this Indenture, and the other Documents to pay the principal of and interest on the Bonds (including supplemental interest), when and as the same shall become due and payable (whether at the stated maturity thereof, or by acceleration of maturity or after notice of prepayment or otherwise), but solely from amounts available in the Trust Estate.

“**Land**” shall mean the parcel of real property located in San Antonio, Texas, on which the Project is located, as more particularly described in the recitals of the Loan Agreement.

“**Lender**” means (1) during the Cash-Collateralized Mode, the Construction Lender and (2) during the Permanent Mode, the Permanent Lender.

“**LIBOR Rate**” means the London Inter-Bank Offered Rate for United States Dollars for a term of one month which appears on Reuters Screen LIBOR01 Page (or any generally recognized successor method or means of publication) as of 11:00 a.m. London time, two (2) Business Days prior to the eighth (8th) day of each month. Permanent Lender’s internal records of applicable interest rates shall be determinative in the absence of manifest error, provided that in no event shall LIBOR be less than zero percent (0.0%). The LIBOR Rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration for purposes of setting the LIBOR Rate. As a result, it is possible that commencing in 2022, the LIBOR Rate may no longer be available or deemed an appropriate reference rate. Upon the Borrower and Permanent Lender, as counterparty under the Swap Documents, adopting the fallback protocol to be published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”) for purposes of implementing an alternative rate index under the Swap Documents (the “**ISDA Fallback Protocol**”), the index and the calculation period set forth in the ISDA Fallback Protocol shall be the replacement interest rate hereunder (the “**New Index**”), and Permanent Lender may adjust the margin applicable to the New Index, if required by the ISDA Fallback Protocol. The New Index is not necessarily the lowest rate charged by Permanent Lender on its loans. If the New Index becomes unavailable during the term of the Loan, Permanent Lender may designate a substitute index, and potentially adjust the margin applicable to such substitute index, after notifying Borrower, Trustee and the Issuer. In any event, the adoption of a New Index or any other substitute index will be conditioned upon the receipt of a Favorable Opinion of Bond Counsel (as defined in the Tax Exemption Agreement).

“Loan” means the loan by the Issuer to Borrower in the principal amount of \$20,000,000 made by the Issuer to the Borrower evidenced by the Note, described in the Loan Agreement and made in connection with the issuance of the Bonds.

“Loan Agreement” means the Loan Agreement dated as of the same date as this Indenture, among the Issuer, the Purchaser and the Borrower and any and all Supplements thereto.

“Loan Payments” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.1 of the Loan Agreement.

“Local Time” means Central Time (daylight or standard, as applicable) in the State.

“Majority Owner” means, (i) during the Cash-Collateralized Mode, the Purchaser, and (ii) during the Permanent Mode, the Person who owns at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds, or, if no single person owns at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds, the person who is designated in writing to exercise the powers of “Servicer” and “Majority Owner” hereunder by persons who collectively own at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds.

“Mandatory Redemption Date” means (i) initially, the Initial Mandatory Redemption Date, and (ii) subsequently, the first day of the month following the conclusion of the prior Extension Period, as applicable.

“Mandatory Tender Date” means the Conversion Date.

“Maturity Date” means [July 9, 2039].

“Maximum Interest Rate” means the interest rate equal to the lesser of: (a) 12% per annum, or (b) the maximum interest rate that may be paid on the Bonds under State law pursuant to Chapter 1204 of the Texas Government Code.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Holder.

“Negative Arbitrage Account” means the Negative Arbitrage Account within the Bond Fund created in Section 4.01 hereof.

“Net Proceeds” means when used with respect to any Condemnation awards or insurance proceeds allocable to the Property, the gross proceeds from Condemnation or insurance remaining after payment of all expenses (including reasonable attorneys’ fees) incurred in the collection of such gross proceeds.

“Note” means the Promissory Note dated the Closing Date from the Borrower to the Issuer in substantially the form attached as **Exhibit B-1** to the Loan Agreement, and any amendments, Supplements or modifications thereto, which Note has been assigned by the Issuer to the Trustee.

“Notice Address” means, unless otherwise designated pursuant to Section 12.06 hereof:

(a) As to the Issuer:

Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711
Attention: Director of Multifamily Bonds
Telephone: (512) 475-3344
Facsimile: (512) 475-1895
Email: teresa.morales@tdhca.state.tx.us

(b) As to the Trustee:

Wilmington Trust, National Association
15950 North Dallas Parkway, Suite 550
Dallas, Texas 75248
Attention: Dayna Smith
Telephone: 972.383.3154
Facsimile: (972) 385-0844
Email: dlsmith@wilmingtontrust.com

(c) As to the Borrower:

The Walzem Apartments, LLC
c/o Cohen-Esrey Affordable Partners
8500 Shawnee Mission Parkway, Suite 150
Merriam, Kansas 66202
Attention: Jeanette Jayne
Telephone: 913-671-3347
Email: jjayne@cohenesrey.com

With a copy to:

Sandberg Phoenix
4600 Madison Avenue, Suite 1000
Kansas City, Missouri 64112
Attention: James Neeld
Telephone: 816-714-1041
Email: jneeld@sandbergphoenix.com

(d) As to the Fee Owner:

Bexar Management and Development Corporation
1954 E Houston Street, Suite 104
San Antonio, Texas 78202
Attention: Tammye Trevino
Email: Tammye.trevino@habctx.org

With a copy to:

Bracewell LLP
300 Convent Street, Suite 2700
San Antonio, Texas 78205
Attention: Jim Plummer
Telephone: 210.299.3530
Email: james.plummer@bracewell.com

(e) As to the Construction Lender:

Bank of America, N.A.
Mail Code: IL4-135-06-11
135 S La Salle Street
Chicago, IL 60603-4157
Attention: Stephanie Mack

With a copy to:

Bank of America, N.A.
Mail Code: NC1-026-06-01
900 W. Trade Street, Suite 650
Charlotte, North Carolina 28255
Attention: CREB Loan Administration

With a copy to:

Tiber Hudson LLC
1340 Smith Avenue, Suite 200
Baltimore, MD 21209
Attention: Matthew M. Grant, Esq.
Telephone Number: 410.204.8510
Email: matthew@tiberhudson.com

(f) As to the Investor Member:

Bank of America, N.A.
MA1-225-02-02
225 Franklin Street
Boston, MA 02110
Attention: Asset Manager (The Walzem)

With a copy to:

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

(g) As to the Purchaser:

JPMorgan Chase Bank, N.A.
[Mailing Address]
Attention: _____
Telephone Number: _____
Telecopier Number: _____
Email: _____

With a copy to:

Tiber Hudson LLC
1900 M Street NW, 4th Floor
Washington, DC 20036
Attention: Kent Neumann
Telephone Number: 202-973-0107
Email: kent@tiberhudson.com

(h) As to the Permanent Lender:

Cedar Rapids Bank & Trust
500 First Avenue Northeast
Cedar Rapids, Iowa 52401
Attention: Sam Kramer
Telephone Number: (319) 743-7122
Telecopier Number: (319) 862-0918
Email: skramer@crbt.com

With a copy to:

Winthrop & Weinstine
525 Park Street, Suite 465
St. Paul, MN 55103
Attention: Holly A. Stocker
Telephone Number: (612) 604-6490
Telecopier Number: (612) 604-6990
Email: hstocker@winthrop.com

“Operating Agreement” means that certain Amended and Restated Operating Agreement of Borrower dated _____, 2020.

“Opinion of Counsel” means an opinion from an attorney or firm of attorneys, acceptable to the Trustee and the Issuer, with experience in the matters to be covered in the opinion.

“Optional Redemption Date” means during the Permanent Mode, the date on which the Bonds may be subject to optional redemption, as permitted in and pursuant to the Permanent Loan Agreement.

“Outstanding,” “outstanding” or “Bonds Outstanding” when used with respect to the Bonds means any Bonds theretofore authenticated and delivered under this Indenture, except:

(a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;

(b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee in accordance with Article VIII; or

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

“Permanent Lender” means Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation or its successors and assigns.

“Permanent Loan” means the loan from the Permanent Lender to the Borrower pursuant to the Permanent Loan Agreement.

“Permanent Loan Agreement” means the Continuing Covenants Agreement, to be entered into between the Borrower and the Permanent Lender upon Conversion and pursuant to the Forward Bond Purchase Agreement.

“Permanent Loan Amount” means the amount of the Permanent Loan, as set forth in the Conversion Notice provided by the Permanent Lender on the Conversion Date.

“Permanent Loan Documents” shall have the meaning assigned to such term in the Permanent Loan Agreement.

“Permanent Mode” means the period starting on the Conversion Date and ending on the Maturity Date (as defined in the Permanent Loan Agreement).

“Permanent Mode Deed of Trust” means the Deed of Trust, Assignment, Security Agreement and Fixture Filing, dated the Conversion Date, executed by the Borrower in favor of the Issuer and assigned to the Trustee as security for the Bonds during the Permanent Mode.

“Permitted Encumbrances” means (a) any matters set forth in any policy of title insurance issued to the Construction Lender and insuring the Construction Lender’s interest in the Project which are acceptable to the Construction Lender and Permanent Lender as of the date hereof, (b) the Encumbrances and interests of the Construction Mode Deed of Trust or Permanent Mode Deed of Trust, as applicable, (c) any other Encumbrance approved in writing by the Construction Lender and the Permanent Lender; provided, however that the consent of the

Construction Lender shall not be required during the Permanent Phase, (d) the Regulatory Agreement, (e) the Bond Mortgage, (f) the Swap Mortgage, (g) the TCAP RF Loan, (h) liens for property taxes not delinquent or being contested in good faith and by appropriate proceedings, (i) granting liens or other security interests in favor of the Issuer, Trustee, Construction Lender or Permanent Lender, and (j) any agreements, restrictions and covenants existing and required in connection with any tax-exempt bond financing, tax abatement, LRSP and/or Section 42 of the Internal Revenue Code.

“Person” shall include an individual, association, unincorporated organization, corporation, partnership, joint venture, trust, or government or agency or political subdivision or public body thereof.

“Prepayment Fee” means, during the Permanent Mode as described in the Permanent Loan Agreement.

“Project” has the meaning described in the recitals.

“Project Costs” has the meaning set forth in the Tax Exemption Agreement.

“Project Fund” means the Project Fund created in Section 4.01 hereof.

“Purchaser” means JPMorgan Chase Bank, N.A., or any successor.

“Qualified Project Costs” has the meaning set forth in the Tax Exemption Agreement.

“Rating Agency” means Moody’s or S&P.

“Rating Category” means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Eligible Investment.

“Rebate Amount” has the meaning set forth in the Tax Exemption Agreement.

“Rebate Analyst” has the meaning set forth in the Tax Exemption Agreement. The initial Rebate Analyst will be Tiber Hudson LLC.

“Rebate Fund” means the Rebate Fund created in Section 4.01 hereof.

“Record Date” means the 15th day of the month preceding the date on which interest is due and payable.

“Redemption Date” means any date hereunder on which the Bonds are to be redeemed, including (a) the Maturity Date, (b) the date of acceleration of the Bonds, or (c) pursuant to Section 3.01 hereof.

“Regulatory Agreement” means the Regulatory and Land Use Restriction Agreement relating to the Project, of even date herewith, by and among the Issuer, the Trustee, the Borrower and the Fee Owner, as it may be amended, supplemented or restated from time to time.

“Requisition” means the request to make a disbursement from the Project Fund in the manner provided pursuant to Section 5.03 hereof.

“Reserved Rights of the Issuer” means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to Section 4.4 of the Loan Agreement, including the Issuer Fees; (c) all rights of the Issuer to receive any Rebate Amount required to be rebated to the United States of America under the Code in connection with the Bonds, as described in the Tax Exemption Agreement; (d) all rights of the Issuer to receive notices, reports or other information, and to make determinations and grant approvals or consent hereunder and under the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Permanent Mode Deed of Trust or the Bond Mortgage, as applicable, regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act, this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Permanent Mode Deed of Trust, the Bond Mortgage or the Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Permanent Mode Deed of Trust, the Bond Mortgage and the Note; and (h) any and all limitations of the Issuer’s liability and the Issuer’s disclaimers of warranties set forth in this Indenture, the Regulatory Agreement, the Tax Exemption Agreement or the Loan Agreement, and the Issuer’s right to inspect and audit the books, records and permits of the Borrower and the Project.

“Revenues” means (a) the Loan Payments, (b) the Collateral Payments, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (d) any money and investments in the Project Fund and the Collateral Fund, and (e) all income and profit from the investment of the foregoing money. The term *“Revenues”* does not include any money or investments in the Rebate Fund, amounts paid as fees, reimbursement for expenses or for indemnification of the Issuer and the Trustee, or amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer.

“S&P” means S&P Global Ratings, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Holder.

“Securities Depository” means the Depository Trust Company, its successors and assigns, or any other securities depository for the Bonds designated by the Issuer or the Borrower to the Trustee in writing.

“Servicer” means, during the Permanent Mode, the Permanent Lender, or, if the Permanent Lender appoints a separate entity to be the servicer, such servicer. During any other times as no

servicer has been appointed pursuant to Section 7.11 hereof, all references herein and in the Loan Documents to the Servicer shall be deemed to refer to the Majority Owner.

“Servicing Agreement” means any servicing agreement entered into between the Permanent Lender or the Majority Owner and the Servicer, as the same may be amended, modified or supplemented from time to time.

“Special Funds” means, collectively, the Bond Fund, the Project Fund and the Collateral Fund, and any accounts therein.

“State” means the State of Texas.

“Supplement” or “Supplements” means any and all extensions, renewals, modifications, amendments, supplements and substitutions.

“Swap Agreement” means (i) that certain ISDA Master Agreement dated _____, 2020, the related Schedule thereto, and each Confirmation thereunder, each between Swap Counterparty and Borrower, and (ii) any other interest rate exchange, hedge or similar agreement, entered into in order to hedge or manage the interest payable on all or a portion of the Bonds, whether then existing or to be entered into, between the Borrower and the Swap Counterparty, as such agreements may be amended, supplemented or substituted from time to time.

“Swap Counterparty” means Cedar Rapids Bank and Trust Company and its permitted successors and assigns during the term of the initial Swap Agreement and thereafter any person entering into a Swap Agreement with the Borrower.

“Swap Documents” means the Swap Agreement, the Swap Mortgage and any and all other documents, agreements or instruments executed by the Borrower in connection with the Swap Agreement.

“Swap Mortgage” means the SWAP Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of [June 1], 2020 from the Borrower for the benefit of the Swap Counterparty as security for the Borrower’s obligations under the Swap Agreement.

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

“Taxable Rate” means, (i) during the Cash-Collateralized Mode, a rate of interest per annum equal to __% and (ii) during the Permanent Mode, a rate of interest per annum equal to the sum of (a) the LIBOR Rate, plus (b) two and one-half percent (2.50%), in either case not to exceed the Maximum Interest Rate.

“TCAP RF Loan” means the loan of certain funds from the Tax Credit Assistance Program (TCAP) Repayment Funds in the maximum principal amount of \$[4,000,000] by the

Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, to the Borrower, as evidenced and secured by a Swap Mortgage encumbering the Project.

“Trustee” or “Corporate Trustee” means Wilmington Trust, National Association, a national banking association, and its successor or successors in the trust created by this Indenture.

“Trustee’s Ongoing Fee” means (i) the Trustee’s initial fee of \$1,500, payable on the Closing Date from moneys in the Costs of Issuance Fund pursuant to Section 4.08 hereof and (ii) the Trustee’s ongoing fee of \$3,500, payable on each [June 1], beginning on [June 1], 2020, which shall be paid by the Borrower from moneys other than from the Trust Estate.

“Trust Estate” has the meaning given such term in the Granting Clauses of this Trust Indenture.

“Trust Office” means the trust office of the Trustee located at the address set forth in Article I hereof or such other office designated by the Trustee from time to time, or such other offices as may be specified in writing to the Issuer by the Trustee.

“Undelivered Bond” means any Bond that is required under this Indenture to be delivered to the Trustee for purchase on the Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

Section 1.02 Rules of Construction. The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Indenture in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections, and other subdivisions of this Indenture.

The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Any reference to particular sections or subsections of the Code and applicable Income Tax Regulations shall include any successor provisions of law or regulations, to the extent the same shall apply to the Bonds.

Any reference to a Bond or to the Bonds shall include each portion in the minimum authorized denomination of any registered bond having a denomination greater than the minimum authorized denomination.

Whenever the Lender is required to give its consent or approval to any matter, whether stated as “consent,” “written consent,” “prior written consent,” “approval,” “written approval,”

“prior written approval” or otherwise, the giving of such consent or approval by the Lender shall be in its sole and complete discretion.

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

ARTICLE II

CREATION OF BONDS; DETAILS OF THE BONDS

Section 2.01 *Authorization and Terms of Bonds.*

(a) *Authorization of Bonds.* The Issuer hereby authorizes for issuance under this Indenture, bonds in the original aggregate principal amount of \$20,000,000, which shall be designated “Multifamily Housing Revenue Bonds (The Walzem) Series 2020” shall be in Authorized Denominations, and shall be dated the Closing Date to be issued as hereinafter provided.

(b) *Registered Form; Numbering; Initial Bond.* The Bonds shall be issuable only as fully registered Bonds in Authorized Denominations, substantially in the form, appropriately completed, attached hereto as Exhibit A-1 (or upon Conversion Exhibit A-2) and made a part hereof. The Bonds shall be lettered “R” and shall be numbered separately from “1” consecutively upwards except for the Initial Bond which shall be numbered I-1.

The Initial Bond, which shall be numbered I-1 and payable to the Underwriter and registered by the Comptroller, shall be identical to the form of Bond attached as Exhibit A-1, except that the second-to-last paragraph of the Initial Bond shall be replaced with the following:

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

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

“REGISTRATION CERTIFICATE OF COMPTROLLER OF PUBLIC ACCOUNTS

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

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

Witness my signature and seal of office this _____.

Comptroller of Public Accounts of the
State of Texas

(SEAL)”

The provisions of Exhibit A-1 may be rearranged or re-ordered for purposes of the Initial Bond.

(c) *Date, Denominations, Dates from Which Interest Payable, Interest Rate and Maturity.* The Bonds shall be dated the Closing Date, shall be issued in Authorized Denominations, and shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest for each Interest Period at the Index Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of (i) during the Cash-Collateralized Mode, a 360-day year consisting of twelve 30-day months, and (ii) during the Permanent Mode, a 360-day year and the actual number of days elapsed. The Bonds shall mature on the Maturity Date, subject to prior redemption as set forth in Section 3.02 hereof and subject to mandatory tender for purchase as set forth in Section 3.05 hereof.

(d) *Interest Rate.* The interest rate on the Bonds shall be the Index Interest Rate. On the Mandatory Tender Date, the Bonds shall be subject to mandatory tender pursuant to Section 3.01 hereof. If insufficient funds are available to pay the purchase price on the Bonds following such mandatory tender on the Mandatory Tender Date, the Bonds shall accrue interest at the Maximum Interest Rate until funds are available for payment of the purchase price, with interest being paid monthly on the first Business Day of each month.

During each Interest Period, the Bonds shall bear interest at the Index Interest Rate. The Calculation Agent shall determine the Index Interest Rate on each Computation Date, and such rate shall become effective on the Interest Payment Date next succeeding the Computation Date. Promptly following the determination and confirmation of the Index Interest Rate, the Calculation Agent shall give notice thereof to the Trustee, the Issuer and the Borrower, and the Trustee promptly shall give notice thereof [**by first class mail**] to the Bondholders. If the Index Interest Rate is not determined by the Calculation Agent on a Computation Date, the rate of interest borne on the Bonds shall be the rate in effect for the immediately preceding Interest Period until the Calculation Agent next determines the Index Interest Rate.

(e) *Permanent Mode* Provided the Trustee receives notice pursuant to Section 3.08 of this Indenture, the Trustee shall provide notice by first-class mail, postage prepaid, to all Owners (with a copy to the Issuer and the Borrower) at their addresses shown on the bond register stating that the Bonds will be converted to the Permanent Mode effective on the

Conversion Date. Failure to mail any such notice or any defect in the mailing thereof in respect of any Bond shall not affect the validity of the conversion of such Bond.

(f) *Taxable Rate.* Upon the occurrence of a Determination of Taxability, the amount owed to the Owners will be equal to (i) an additional amount equal to the difference between (A) the amount of interest paid on the Bonds during the taxable period, and (B) the amount of interest at the Taxable Rate that would have been paid on the Bonds during the taxable period had the Bonds borne interest at the Taxable Rate, plus (ii) an amount equal to any interest, penalties on overdue interest and additions to tax owed by the Owners as a result of the occurrence of a Determination of Taxability. This provision shall survive the discharge of this Indenture pursuant to Article VIII hereof.

(g) *Additional Interest.* The Owners of the Bonds shall also be entitled to Additional Interest, which amount, if any, shall be deposited into the Bond Fund pursuant to the provisions of Section 4.2(c) of the Loan Agreement.

(h) *Medium and Place of Payment.* Principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, at the respective times of payment, is legal tender for the payment of public and private debts, but only from the Revenues and any other monies made available to the Issuer for such purpose. Principal of the Bonds shall be payable at the Trust Office upon presentation and surrender of the Bonds as the same become due, and upon the request of any registered owner of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, such principal shall be paid by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee. Interest on the Bonds shall be payable to the registered Owners of the Bonds by check or draft mailed to such Owners at their addresses as they appear on registration books kept by the Trustee as Bond Registrar, or, upon the request of any registered Owner of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee at least three (3) Business Days prior to the applicable payment date.

(i) *Form of Bonds.* The definitive Bonds, which may be printed, typewritten, photocopied, or otherwise reproduced, including the Trustee's Certificate of Authentication to be endorsed thereon, shall be substantially in the form as set forth in **Exhibit A-1** (or upon Conversion **Exhibit A-2**) attached hereto with such appropriate variations, omissions and insertions as permitted or required by this Indenture.

(j) *Payments or Actions to be taken on Saturdays, Sundays and Holidays.* In any case where the date of any action required hereunder to be taken or the date of maturity of interest on or principal of the Bonds, shall not be a Business Day, then payment of interest or principal or the taking of such action need not be made or taken on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date such action was to be taken.

Section 2.02 Source of Payment of Bonds. The Issuer shall be obligated to pay the principal of and the interest on the Bonds only out of (a) the Revenues pledged for the payment

thereof under this Indenture, (b) the amounts held in any fund or account created under this Indenture, other than amounts held in the Rebate Fund and the Costs of Issuance Fund, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. All the Bonds to be issued hereunder shall be equally and ratably secured, to the extent provided herein, by this Indenture.

Section 2.03 Execution of Bonds. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of an authorized officer of the Issuer, and the seal of the Secretary or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the manual or facsimile signature of an authorized officer of the Issuer. In case any authorized officer of the Issuer whose signature or a facsimile of whose signature shall appear on any of the Bonds shall cease to be an authorized officer of the Issuer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such authorized officer of the Issuer had remained in office until delivery. Furthermore, it shall not be necessary that the same authorized officer of the Issuer sign all of the Bonds that may be issued hereunder at any one time or from time to time.

Section 2.04 Certificate of Authentication. Only such Bonds, other than the Initial Bond, as shall have endorsed thereon a certificate of authentication substantially in the form set forth in the form of the Bond herein provided and duly executed by the Trustee shall be entitled to any right or benefit under this Trust Indenture. No Bond, other than the Initial Bond, shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Trust Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder. At the time of authentication of any Bond, the Trustee shall insert therein the date from which interest on such Bond shall be payable as provided in Section 2.01(c).

Section 2.05 Authentication and Delivery of Bonds. The Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to the purchaser or purchasers as may be directed by the Issuer as provided in this Section.

Prior to the authentication by the Trustee of the Bonds, there shall have been filed with the Trustee:

- (a) A copy, certified by an Authorized Officer of the Issuer, of all resolutions adopted and proceedings had by the Issuer relating to the Bonds, authorizing the execution, delivery and performance of this Indenture and the Loan Agreement;
- (b) An [**original,**] fully executed counterpart of this Indenture;
- (c) An [**original,**] fully executed counterpart of the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement and the [**original,**] fully executed Note;

(d) An opinion of Bond Counsel with respect to the exclusion from gross income for federal income tax purposes of interest payable on the Bonds;

(e) An Opinion of Counsel addressed to the Issuer and the Trustee, of a law firm or law firms (who may be independent counsel) to the effect that the Bonds and the documents specifically listed in the definition of Documents have been duly executed and delivered by the parties thereto and constitute valid and binding obligations of such parties, enforceable against such parties in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose;

(f) A request and authorization signed by an Authorized Officer of the Issuer authorizing the Trustee to authenticate and to deliver the Bonds to the Purchaser therein identified upon payment to the Trustee for the account of the Issuer of the amount specified in such request and authorization plus accrued interest, if any, thereon to the date of delivery;

(g) The Initial Deposit; and

(h) An executed Investor Letter from the Purchaser substantially in the form attached hereto as **Exhibit C** hereto.

The proceeds from the sale of the Bonds shall be paid over directly to the Trustee and deposited to the credit of the Project Fund, as provided under Article V hereof.

Section 2.06 *Mutilated, Lost, Stolen or Destroyed Bonds.* In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity, interest rate and denomination as that of the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. The Trustee may, with the consent of the Holder, provide to the Holder a typewritten (or similarly reproduced) Bond certificate in lieu of a printed Bond certificate. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond their expenses and reasonable fees, if any, in connection with the preparation, execution and authentication of a replacement Bond.

Section 2.07 *Registration, Negotiability, Transfer and Exchange of Bonds.* All of the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. So long as any of the Bonds shall remain outstanding, the Issuer shall maintain and keep at the Trust Office, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at such office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Issuer or the Trustee may prescribe, any Bond entitled to registration or transfer.

Each Bond shall be transferable only upon the books of the Issuer maintained for such purpose by the Trustee, at the written request of the registered Owner thereof or his attorney duly authorized in writing, upon presentation and surrender thereof, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of any Bond, the Issuer shall issue, and the Trustee shall authenticate, in the name of the transferee, in Authorized Denominations, a new Bond or Bonds without coupons of the same aggregate principal amount, series, maturity and interest rate as the surrendered Bond.

The Issuer and the Trustee may deem and treat the person in whose name any Outstanding registered Bond shall be registered upon the books of the Issuer as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

If the Bonds are redeemed in part, then upon the presentation and surrender of each Bond, the Trustee shall authenticate and deliver in exchange for such Bond, a new Bond or Bonds of the same series, maturity and interest rate and in any Authorized Denomination, in an aggregate principal amount equal to the unredeemed portion of such Bond or Bonds. Notwithstanding the foregoing, if following the Conversion Date, a Bond held by the Permanent Lender is redeemed in part, such partial redemption may be noted on such Bond and the Trustee shall not be obligated to authenticate and deliver any replacement Bond.

For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Indenture to the contrary, any expenses of the Issuer or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge) shall be paid by the Borrower as required by the Loan Agreement. The Issuer shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an Interest Payment Date on the Bonds.

No transfer of a Bond (or any interest therein) shall be made except to a purchaser who shall furnish to the Trustee and the Issuer an Investor Letter in the appropriate form set forth in **Exhibit C** hereto and written confirmation from such purchaser of the Bonds that the Servicing Agreement remains in effect (or that the Servicing Agreement has been assigned to, and assumed by, another Servicer in accordance with the Servicing Agreement, or that another Servicer has agreed to enter into a new servicing agreement with the Trustee in substantially the form of the Servicing Agreement, all without separate charge to the Borrower). The Trustee and the Issuer shall be entitled to rely, without inquiry, on the statements on such Investor Letter.

Each purchaser acknowledges that each Bond will contain a legend substantially to the following effect:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO TRANSFER SUCH SECURITY ONLY (A) TO THE PERMANENT LENDER OR ANY PERSON CONTROLLED BY OR UNDER COMMON MANAGEMENT OR CONTROL WITH EITHER THE BORROWER OR THE PERMANENT LENDER, OR (B) TO A PERSON WHO, BASED ON SUCH PERSON'S REPRESENTATIONS, IS A "QIB" AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT, ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE QIBS OR ACCREDITED INVESTORS) (BUT NOT AN INDIVIDUAL) AS DEFINED IN REGULATION D PROMULGATED UNDER THE SECURITIES ACT) AND TO WHOM NOTICE IS GIVEN THAT THE SALE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR REGULATION D, AS APPLICABLE, EACH AS PROMULGATED UNDER THE SECURITIES ACT AND PURSUANT TO THE TRANSFER RESTRICTIONS CONTAINED IN THE INDENTURE, OR (C) TO AN ACCREDITED INVESTOR (BUT NOT AN INDIVIDUAL), ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE ACCREDITED INVESTORS (BUT NOT AN INDIVIDUAL) OR QIBS), SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH TRANSFER TO REQUIRE THE DELIVERY OF AN INVESTOR LETTER IN SUBSTANTIALLY THE FORM SET FORTH IN **EXHIBIT C** TO THE INDENTURE AND WRITTEN CONFIRMATION FROM THE PURCHASER OF THE BONDS THAT THE SERVICING AGREEMENT REMAINS IN EFFECT (OR THAT THE SERVICING AGREEMENT HAS BEEN ASSIGNED TO, AND ASSUMED BY, ANOTHER SERVICER IN ACCORDANCE WITH THE SERVICING AGREEMENT, OR THAT ANOTHER SERVICER HAS AGREED TO ENTER INTO A NEW SERVICING AGREEMENT WITH THE TRUSTEE IN SUBSTANTIALLY THE FORM OF THE SERVICING AGREEMENT, ALL WITHOUT SEPARATE CHARGE TO THE BORROWER).

Section 2.08 *Obligation of Issuer Limited.* The Bonds, together with interest thereon, do not constitute an indebtedness to which the faith and credit of the Issuer or the State are pledged but are limited obligations of the Issuer payable from (a) the Revenues pledged for the payment thereof under this Trust Indenture, (b) the amounts held in any fund or account created under this Trust Indenture, other than amounts held in the Rebate Fund, and (c) from any other moneys held pursuant to the Trust Estate, and shall be a valid claim of the respective Holders thereof only against the Trust Estate, which is hereby assigned for the equal and ratable payment of the Bonds and the interest thereon and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in this Indenture.

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

Section 2.09 *Cancellation and Destruction of Bonds.* All Bonds which have been surrendered for payment, cancellation or for registration of transfer or exchange pursuant to Section 2.08 hereof shall be cancelled and destroyed by the Trustee and shall not be reissued, and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer and, upon written request therefor, to the Borrower. Any Bonds so cancelled may be retained by the Trustee for such period of time as the Trustee may determine and shall be destroyed by the Trustee at the end of such period. Any Bond so cancelled shall thereafter no longer be considered Outstanding for any purpose of this Indenture or the Loan Agreement.

ARTICLE III

REDEMPTION, MANDATORY TENDER AND CONVERSION

Section 3.01 *Mandatory Tender.*

(a) Except for Bonds subject to mandatory redemption pursuant to Section 3.02(b) hereof, all Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on the Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the Mandatory Tender Date.

(b) While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

(c) Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.01 will not be purchased if such Bond matures or is redeemed on or prior to the Mandatory Tender Date.

(d) The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority: (i) amounts on deposit in the Bond Purchase Fund, to pay the principal amount of Bonds tendered for purchase, (ii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest; if any, on Bonds tendered for purchase, (iii) amounts on deposit in the Project Fund to pay the accrued interest, if any, on the Bonds tendered for purchase and (iv) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

(e) Bonds shall be deemed to have been tendered for purposes of this Section 3.01 whether or not the Holders shall have delivered such Bonds to the Trustee, and subject to the right of the Holders of any such undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such undelivered Bonds shall be null and void after the Mandatory Tender Date.

(f) With respect to the mandatory tender on the Conversion Date, at the written direction of the Borrower, the Trustee shall sell or redeem Eligible Investments on deposit in the Project Fund and Collateral Fund and use the proceeds thereof to repay the Construction Lender as described in Section 4.09 hereof; provided, however, the Trustee is permitted to sell Eligible Investments or redeem Eligible Investments prior to maturity at a price below par only if the Trustee receives a Cash Flow Projection and any Eligible Funds required pursuant to such Cash Flow Projection.

Section 3.02 *Mandatory Redemption.*

(a) Prior to the Conversion Date. Unless a mandatory tender under Section 3.01 hereunder (in connection with Conversion) shall have previously occurred, the Bonds shall

be subject to mandatory redemption in whole on any Mandatory Redemption Date if the Borrower fails to deliver written notice to the Trustee and the Holder at least sixty (60) days but not more than ninety (90) days prior to such Mandatory Redemption Date that the Borrower requests an extension of the Mandatory Redemption Date. Such redemption price for the Bonds shall be equal to 100% of the Outstanding principal amount thereof, plus accrued interest to the redemption date. Nevertheless, the Bonds shall not be redeemed on such Mandatory Redemption Date, and a new Mandatory Redemption Date shall be established (as agreed to by the Holder and the Borrower in writing), if, not less than three (3) days prior to such existing Mandatory Redemption Date: the Borrower shall deliver to the Trustee (i) for deposit into the Negative Arbitrage Account, an Extension Payment; and (ii) a written certification by the Borrower that (A) no Event of Default has occurred and is continuing; and (B) all Loan or other commitments related to the Project remain in full force and effect without default thereunder throughout any Extension Period. Bonds subject to redemption under this Section 3.02(a) shall be payable from amounts on deposit in the Collateral Fund, the Bond Fund (including the Negative Arbitrage Account therein), the Project Fund or other Eligible Funds hereunder.

(b) On the Mandatory Tender Date. The Bonds shall be subject to redemption on the Mandatory Tender Date in an amount equal to the difference between (i) the original principal amount of the Bonds (\$_____) and (ii) the Permanent Loan Amount from amounts transferred to the Bond Fund from the Collateral Fund pursuant to Section 4.09(d) hereof and the Trustee shall cancel the portion of the Bonds redeemed in accordance with Section 4.08 hereof.

(c) Following the Conversion Date.

(i) *Mandatory Sinking Fund Redemption.* The Bonds shall be subject to mandatory redemption prior to maturity beginning on _____, 20__, at a redemption price equal to 100% of the principal amount thereof (plus accrued interest to the date of redemption) from mandatory sinking fund installments which are required to be made in amounts sufficient to redeem the Bonds on the dates and in the principal amounts set forth in Schedule ___ and Schedule ___ of Exhibit __, attached hereto.

(ii) *Mandatory Redemption Upon Determination of Taxability.* Upon a Determination of Taxability with respect to the Bonds, the Bonds are subject to mandatory redemption in whole, but not in part, at a redemption price equal to 100% of the Outstanding principal amount thereof, plus accrued interest at the Taxable Rate to the redemption date. Such redemption shall occur on the earliest practicable date selected by the Bondholder but in no event later than five (5) Business Days following the notification to the Bondholder of a Determination of Taxability.

Section 3.03 *Redemption Price.*

With respect to any redemption as described in Section 3.02(a) hereof, the redemption price for the Bonds shall be equal to 100% of the Outstanding principal amount thereof, plus accrued interest to the redemption date, and shall be payable from amounts on deposit in the Collateral

Fund, the Bond Fund (including the Negative Arbitrage Account therein), the Project Fund or other Eligible Funds hereunder.

Section 3.04 *Partial Redemption of Bonds.*

In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then Outstanding, each \$5,000 unit of face value of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of face value represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the Holder of that Bond shall surrender the Bond to the Trustee (a) for payment of the redemption price of the \$5,000 unit or units of face value called for redemption (including without limitation, the interest accrued to the date fixed for redemption and any premium), and (b) for issuance, without charge to the Holder thereof, of a new Bond or Bonds of the same series, of any Authorized Denomination in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

If less than all of an Outstanding Bond of one maturity in a Book-Entry System is to be called for redemption, the Trustee shall give notice to the Securities Depository or the nominee of the Securities Depository that is the Holder of such Bond, and the selection of the Beneficial Owners of that Bond to be redeemed shall be at the sole discretion of the Securities Depository and its participants.

Section 3.05 *Notice of Redemption.*

Unless waived by any Holder of Bonds to be redeemed, official notice of redemption shall be given by the Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first class mail, postage prepaid, to the Holder of each Bond to be redeemed, at the address of such Holder shown on the Register at the opening of business on the fifth day prior to such mailing, not less than 20 days nor more than 30 days prior to the date fixed for redemption. A second notice of redemption shall be given, as soon as practicable, by first class mail to the Holder of each Bond which has been so called for redemption (in whole or in part) but has not been presented and surrendered to the Trustee within 60 days following the date fixed for redemption of that Bond.

All official notices of redemption shall be dated and shall state:

- (a) the redemption date,
- (b) the redemption price,
- (c) if less than all Outstanding Bonds are to be redeemed, the identification by designation, letters, numbers or other distinguishing marks (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (d) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,

- (e) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Designated Office of the Trustee, and
- (f) that the notice of redemption is conditioned upon there being deposited with the Trustee on or prior to the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed and, in the case of any redemption premium on Bonds, that there be on deposit Eligible Funds sufficient to pay such redemption premium.

Notices of redemption shall be revocable in the event that there is not on deposit with the Trustee prior to the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed or, in the case of any redemption premium on Bonds, there is not on deposit Eligible Funds sufficient to pay such redemption premium.

If the Bonds are not then held in a Book-Entry System, in addition to the foregoing notice, further notice shall be given by the Trustee as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(i) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information deemed necessary in the sole discretion of the Trustee to identify accurately the Bonds being redeemed.

(ii) Each further notice of redemption shall be sent at least 15 days before the redemption date by telecopy, registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(iii) Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number (if any) identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Failure to receive notice by mailing or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any other Bond.

Notice of any redemption hereunder with respect to Bonds held under a Book-Entry System shall be given by the Trustee only to the Securities Depository, or its nominee, as the Holder of such Bonds. Selection of Beneficial Owners of the Bonds called for redemption is the responsibility of the Securities Depository and any failure of such Securities Depository to notify the Beneficial Owners of any such notice and its contents or effect will not affect the validity of such notice of any proceedings for the redemption of such Bonds.

Section 3.06 *Payment of Redeemed Bonds.*

Notice having been mailed in the manner provided in Section 3.05 hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, including interest accrued to the redemption date.

Upon the payment of the price of Bonds being redeemed or prepaid, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed or prepaid with the proceeds of such check or other transfer.

If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Trustee on the redemption date, so as to be available therefor on that date and if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be Outstanding hereunder. If such money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

All money deposited in the Bond Fund and held by the Trustee for the redemption, purchase or prepayment of particular Bonds shall be held in trust for the account of the Holders thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

Section 3.07 *Mandatory Tender Notice.*

(a) Not less than 10 days preceding the Mandatory Tender Date, the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Issuer and the Investor Member) by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (a) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase no later than 12:00 p.m. Local Time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to the Mandatory Tender Date; and

(iv) any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

(b) In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 30th day following the Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Neither failure to give or receive any notice described in this Section 3.06, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.06.

Section 3.08 *Conversion Notice; Commencement of Permanent Mode.*

(a) Unless otherwise agreed in writing by the Permanent Lender, the Conversion Date shall be the date selected by the Permanent Lender, the Borrower and the Issuer as specified in a conversion notice, substantially in the form attached hereto as **Exhibit D** (the "Conversion Notice"). At such time as the Conversion Conditions have been satisfied (or, if not satisfied, such Conversion Conditions are waived by the Permanent Lender with prior written consent of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed), the Permanent Lender shall deliver the Conversion Notice to the Borrower, the Issuer and the Trustee; provided, however, that the Conversion Notice shall be delivered no later than thirty (30) days prior to the Conversion Date. Upon the satisfaction of the conditions set forth in this Section 3.08 and the Conversion Notice, the Permanent Mode will commence on the Conversion Date.

(b) On the Conversion Date:

(i) the Borrower shall deliver, or shall cause to be delivered, certain funds of the Borrower to the Trustee for deposit into the Bond Purchase Fund;

(ii) the Permanent Lender shall deliver to the Trustee funds in an amount equal to the Permanent Loan Amount for deposit into the Bond Purchase Fund;

(iii) the Trustee shall (A) pay the tender price of Bonds subject to mandatory tender pursuant to Section 3.01 hereof, and (B) redeem and cancel the portion of the Bonds, if any, subject to Section 3.02(b) hereof, in accordance with such Section and Section 4.08 hereof;

(iv) pursuant to Section 4.09(d) and Section 4.11 hereof, the Trustee shall transfer funds on deposit in the Collateral Fund to the Construction Loan Repayment Fund to pay to the Construction Lender the full outstanding principal balance of the Construction Loan;

(v) the Trustee shall disburse amounts on deposit in the Bond Purchase Fund pursuant to Section 4.10 hereof to pay the purchase price of the Bonds in connection with a mandatory tender of the Bonds on such date;

(vi) the Trustee shall redeem a portion of the Bonds in accordance with Section 3.02(iii) such that the outstanding principal amount of the Bonds at Conversion equals the Permanent Loan Amount; and

(vii) upon delivery to the Trustee by the Permanent Lender of the Permanent Loan Amount (as defined in the Conversion Notice), the Trustee shall register the Bonds to the Permanent Lender in the form attached hereto as **Exhibit A-2** and in the amount set forth in the Conversion Notice, and deliver such Bonds at the direction of the Permanent Lender.

Section 3.09 *Revisions to Amortization Schedule.*

Upon (a) any partial redemption of the Bonds requiring a revision to the Amortization Schedule or (b) any adjustment of the applicable Interest Rate or (c) a correction or change in the assumed Conversion Date, the Purchaser or Permanent Lender, as applicable, will provide to the Trustee, the Issuer and the Borrower a revised Amortization Schedule which shall provide for monthly payments on the remaining principal amount of the Bonds at the applicable Interest Rate over the remainder of the original Permanent Mode (assuming a forty (40) year amortization), in which event the payment obligations with respect to the principal amount of the Bonds and the corresponding payment obligations of the Borrower under the Note and the Loan Agreement shall be so modified without further action on the part of the Issuer, the Trustee or the Borrower or amendment to this Indenture, the Bonds or the Issuer Documents.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 *Creation of Funds and Accounts.* The following trust funds and accounts are hereby created by the Issuer and ordered established with the Trustee to be used for the purposes as hereinafter provided in this Indenture:

- (a) the Bond Fund, including therein, the Negative Arbitrage Account;
- (b) the Expense Fund;
- (c) the Project Fund;
- (d) the Costs of Issuance Fund;
- (e) the Rebate Fund;
- (f) the Collateral Fund;
- (g) the Construction Loan Repayment Fund; and
- (h) the Bond Purchase Fund.

The Trustee may create one or more accounts or subaccounts within any fund authorized by this Indenture for the purpose of accounting for funds deposited into or held in each fund or for carrying out any of the requirements of this Indenture. The Trustee may transfer funds between accounts and subaccounts within any fund.

Section 4.02 ***Deposits into the Bond Fund; Use of Moneys in Bond Fund.*** On the Closing Date, the Trustee shall deposit the Initial Deposit into the Negative Arbitrage Account of the Bond Fund, to be invested pursuant to Section 6.01 hereof. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.07 hereof shall also be deposited into the Negative Arbitrage Account.

The Trustee shall deposit into the Bond Fund all amounts paid by the Borrower pursuant to Section 4.2 of the Loan Agreement.

Prior to the Conversion Date, moneys in the Bond Fund shall be used solely for the payment of the principal of and interest on the Bonds when due. On any date on which payment of interest on the Bonds is due and payable, after taking into account any amounts on deposit in the Bond Fund, including the Negative Arbitrage Account therein, any available interest earnings in the Collateral Fund and the Project Fund, up to an amount equal to the interest due on the Bonds, shall be transferred on such date to the Bond Fund to make such payment.

Principal on the Bonds, when due and payable, shall be paid (a) in the first instance from the money on deposit in the Bond Fund (other than the Negative Arbitrage Account therein), (b) next from money on deposit in the Negative Arbitrage Account of the Bond Fund, (c) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (d) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Following the Conversion Date all moneys transferred to the Bond Fund shall be applied to the following items in the following order of priority:

- (a) on each Interest Payment Date, to the payment of regularly scheduled interest on the Bonds;
- (b) on each Bond Payment Date, to the payment of the principal of or redemption price of, accrued interest on, and any Prepayment Fee or Additional Interest due with respect to, the Bonds;
- (c) on the first day of each month (or the next Business Day if such first day of the month is not a Business Day), to the payment of any other amounts then due and owing under the Loan Documents; and
- (d) on the first day of each month (or the next Business Day if such first day of the month is not a Business Day), to the Borrower or such other party as may be legally entitled thereto.

In the event the amount of the monthly payment received by the Trustee from the Borrower is insufficient to fund in full the deposits required in the foregoing clauses (a) through (d), the Trustee shall provide the Servicer, the Borrower and the Issuer with prompt notice of such

deficiency and then, if directed in writing by the Servicer, the Trustee shall transfer moneys on deposit in such funds and accounts between such funds and accounts as directed by the Servicer so as to allow for payment of such items as are directed by the Servicer, provided, however, in all events the first priority of payments shall be payment of the Issuer Fee, the Trustee's Ongoing Fee and the fees due and payable to the Rebate Analyst and any Rebate Amount due and owing to the United States. References to unpaid expenses payable to the Trustee or the Issuer shall include any amounts payable to such parties pursuant to any indemnification hereunder or under any of the Documents.

Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee and the payment of amounts payable to the United States pursuant to Section 5.08 hereof, any amounts remaining in the Bond Fund shall be paid to the Borrower.

Section 4.03 *Custody of the Bond Fund.* The Bond Fund shall be in the custody of the Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Trustee (a) to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same become due and payable, and (b) to make such funds so withdrawn available to the Trustee, as paying agent, for the purpose of paying such principal and interest, which authorization and direction the Trustee accepts.

Section 4.04 *Non-Presentation of Bonds.* Subject to the provisions of Section 10.21 hereof, in the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on its part under this Indenture or on, or with respect to, such Bond. Any such Bonds shall cease to bear interest on the specified maturity and such Bonds or portions thereof shall no longer be protected by or subject to the benefit or security of this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture.

Section 4.05 *Payment to Borrower of Excess Moneys in Bond Fund.* Any amounts remaining in the Bond Fund (except for amounts then held by the Trustee for payment of principal, or interest on any of the Bonds) after payment in full of the principal of and interest, on the Bonds and other costs associated with the discharge of the Bonds (or provision for payment thereof having been made as provided in Section 8.01 hereof) and payment in full, or provision for payment, of the final Rebate Amount and payment in full of any outstanding fees and expenses of the Paying Agent, Issuer and Trustee and any other fees and expenses due under the Documents, shall, upon written instruction to the Trustee from the Issuer at the request of Borrower, be deemed to be overpayments by the Borrower under the Loan Agreement and shall be paid to the Borrower upon the expiration or sooner termination of the term of the Loan Agreement.

Section 4.06 *Expense Fund.* The Trustee shall apply moneys on deposit in the Expense Fund solely for the following purposes, on the dates specified below, in the following order of priority:

(a) to the Trustee to pay all amounts required to reimburse the Trustee for all out-of-pocket expenses, fees, costs and other charges, including reasonable counsel fees and taxes (excluding income, value added and single business taxes), reasonably and necessarily incurred by the Trustee in performing its duties as Trustee under this Indenture, to the extent not included in the Trustee's Ongoing Fee; and

(b) to the Issuer to pay all amounts required to reimburse the Issuer for all out-of-pocket expenses, fees, costs and other charges, including reasonable counsel fees and taxes (excluding income, value added and single business taxes), reasonably and necessarily incurred by the Issuer, to the extent not included in the Issuer Fees.

To the extent moneys in the Expense Fund are not sufficient to pay the fees and expenses of the Issuer and the Trustee, such deficiency shall be paid by the Borrower immediately upon written demand.

Section 4.07 *Rebate Fund.* The Rebate Fund shall not be subject to the lien or encumbrance of this Indenture, but shall be held in trust for the benefit of the United States of America, and shall be subject to the claim of no other person, including that of the Trustee and Bondholders. The money deposited in the Rebate Fund, together with all investments thereof and income from investments therefrom, shall be held in trust and applied solely as provided in the Tax Exemption Agreement. The Trustee shall make deposits to and disbursements from the Rebate Fund, as well as investments of the amounts therein, in accordance with the Tax Exemption Agreement. To the extent permitted by the Tax Exemption Agreement, the Trustee shall pay to the Borrower any amount remaining in the Rebate Account after the Rebate Amount has been finally calculated and/or paid. Notwithstanding the foregoing, the Trustee with respect to the Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it under this Indenture.

Section 4.08 *Costs of Issuance Fund.* On the Closing Date, the Trustee shall deposit the Costs of Issuance Deposit in the Costs of Issuance Fund to pay costs of issuance from amounts available therein upon the written direction of the Issuer, which costs of issuance shall not exceed the amounts set forth in a certificate of the Issuer. Any funds remaining in the Costs of Issuance Fund more than one hundred eighty (180) days after the Closing Date, and not specifically committed to the payment of Costs of Issuance, shall be delivered to the Borrower to the extent such funds are not Bond Proceeds or otherwise restricted funds. If such remaining funds are Bond Proceeds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

Section 4.09 *Collateral Fund.*

The Trustee shall establish and maintain a separate fund to be known as the "Collateral Fund" as set forth below, provided however, that the Trustee will close the Collateral Fund following the Conversion Date:

(a) The Trustee shall deposit into the Collateral Fund all Collateral Payments received pursuant to Section 4.2(c) of the Loan Agreement and any other Eligible Funds received by the Trustee for deposit into the Collateral Fund. Section 4.2(c) of the Loan Agreement requires the Borrower to cause the Construction Lender to make Collateral Payments to the Trustee for deposit into the Collateral Fund in a principal amount equal to, and as a prerequisite to the disbursement of, the amount of Bond proceeds on deposit in the Project Fund to be disbursed by the Trustee to pay Project Costs.

(b) The Trustee shall hereby be required to invest all amounts on deposit in the Special Funds, in Eligible Investments. At no time shall the Borrower direct that any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code.

(c) Each deposit into the Collateral Fund shall constitute an irrevocable deposit solely for the benefit of the Holders, subject to the provisions hereof.

(d) The Trustee shall apply moneys on deposit in the Collateral Fund as follows: (i) prior to the Conversion Date, on any Redemption Date, the Trustee shall transfer from the Collateral Fund to the Bond Fund moneys in an amount, together with moneys on deposit in the Bond Fund, sufficient to pay the redemption price on the Bonds on such Redemption Date; and (ii) on the Conversion Date, (a) first, to redeem Bonds in the amount set forth in Section 3.02(b) hereof; and (b) second, to the Construction Loan Repayment Fund as set forth in Section 4.11 hereof.

(e) The Bonds shall not be, and shall not be deemed to be, paid or prepaid by reason of any deposit into the Collateral Fund.

(f) Following the Conversion Date, or upon earlier redemption of the Bonds, the Trustee shall close the Collateral Fund.

Section 4.10 *Bond Purchase Fund.*

The Trustee shall establish and maintain a separate fund to be known as the “Bond Purchase Fund.” On or prior to the Conversion Date, the Trustee shall deposit into the Bond Purchase Fund proceeds of the Permanent Loan delivered to the Trustee by the Permanent Lender pursuant to the terms of the Forward Bond Purchase Agreement (in an amount equal to the principal amount of the Permanent Loan). On the Conversion Date, the Trustee will use moneys on deposit in the Bond Purchase Fund to pay the purchase price of the Bonds tendered on such date pursuant to Section 3.08(b)(iii) hereof and will thereafter close the Bond Purchase Fund.

Section 4.11 *Construction Loan Repayment Fund.*

The Trustee shall establish and maintain a separate fund to be known as the “Construction Loan Repayment Fund.” On the Conversion Date, following the application by the Trustee of moneys on deposit in the Collateral Fund pursuant to Section 4.09(d) hereof to redeem Bonds as set forth in Section 3.02(b) hereof, (i) the Trustee shall transfer to the Construction Loan Repayment Fund any amounts remaining in the Collateral Fund, and (ii) pursuant to Section 4.3

of the Loan Agreement, the Borrower shall deliver to the Trustee, for deposit into the Construction Loan Repayment Fund, funds in an amount equal to the difference between (A) the outstanding principal balance of the Construction Loan and (B) the amount transferred from the Collateral Fund to the Construction Loan Repayment Fund pursuant to clause (i) of this Section 4.11. Following such transfers, the Trustee shall deliver to the Construction Lender moneys on deposit in the Construction Loan Repayment Fund in an amount sufficient to repay in full the outstanding principal balance of the Construction Loan, and shall thereafter close the Construction Loan Repayment Fund.

ARTICLE V

CUSTODY AND APPLICATION OF PROJECT FUND

Section 5.01 *Custody and Application of Bond Proceeds.* The proceeds received upon the issuance and sale of the Bonds shall be deposited into the Project Fund and invested by the Trustee as set forth in Section 6.01 hereof.

Section 5.02 *[Reserved]*

Section 5.03 *Procedure for Making Disbursements from Project Fund.* Upon the deposit of Collateral Payments into the Collateral Fund, if required and as provided in Section 4.09 hereof, the Trustee shall disburse the Bond proceeds on deposit in the Project Fund solely to pay Project Costs and only upon the receipt by the Trustee of requisition forms in substantially the form attached as **Exhibit B** hereto, each of which shall (A) be approved by the Lender in accordance with the Collateral Fund Agreement and (B) include a certification by a Borrower Representative that such costs are qualified costs pursuant to Section 142 of the Code. Each requisition shall evidence disbursements from (i) the Project Fund and (ii) the Costs of Issuance Fund. The Trustee shall not disburse money from the Project Fund, other than to pay interest and principal on the Bonds, unless and until Collateral Payments or other Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited into the Collateral Fund; provided, however, that the Trustee shall transfer funds from the Project Fund to the Collateral Fund upon receipt of an opinion of Bond Counsel to the effect that such transfer shall not cause the interest on any of the Bonds to be or become includible in the gross income of the owners thereof for federal income tax purposes. To the extent money on deposit in the Project Fund is invested in Eligible Investments yet to mature at the time of any such requested and permitted disbursement hereunder, the Trustee is hereby authorized to exchange an amount of such Eligible Investments in the Project Fund for a like amount of Collateral Payments on deposit in the Collateral Fund and then disburse such amounts from the Project Fund to pay Project Costs without the need to sell or terminate such Eligible Investments prior to their stated maturity date. In accordance with Section 3.3 of the Loan Agreement, and prior to making any disbursement from the Project Fund (except to make necessary interest payments), the Trustee shall determine that the aggregate account balance in (a) the Collateral Fund and (b) the Project Fund (less the requested disbursement amount) is at least equal to the then-Outstanding principal amount of the Bonds.

Money in the Project Fund shall be disbursed in accordance with the provisions of Section 3.3 of the Loan Agreement and this Section 5.03. To the extent money is not otherwise available to the

Trustee, including money on deposit in the Bond Fund or the Collateral Fund, the Trustee shall transfer from the Project Fund to the Bond Fund sufficient money to make the necessary interest and principal payments, if any, on each Interest Payment Date without further written direction.

All disbursements from the Project Fund will be made by the Trustee directly to the Borrower, the Lender, or to the Title Company pursuant to the Collateral Fund Agreement, as Borrower may instruct on the Disbursement Schedule to each requisition, and shall not be made more frequently than once per month, unless approved by the Issuer, in its sole discretion.

The Trustee and the Issuer shall not in any event be responsible or liable to any person (other than the Borrower, but only in the case of the Trustee and only in the event of a failure by the Trustee to make disbursements following request for disbursements in accordance with the Documents, when such failure is within the Trustee's control, and after notice of such failure actually received by a responsible officer of Trustee and a 3-day opportunity to cure such failure after receipt of such notice) for the disbursement of, or failure to disburse, moneys from the Project Fund, or any part thereof, and no contractor, subcontractor or material or equipment supplier shall have any right or claim against the Trustee or the Issuer under this Indenture.

If for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds immediately following receipt of funds from the entity making such collateral deposit into the Collateral Fund, the Trustee shall promptly transfer such funds back to the Lender and not deposit the same into the Collateral Fund.

Section 5.04 *Trustee May Rely on Requisitions and Certifications.* In making any disbursement from the Project Fund, the Trustee may rely on any requests, requisitions and/or confirmations delivered to it pursuant to Section 5.03 hereof, and the Trustee shall be relieved of all liability with respect to making such payments in accordance with such requests, requisitions and confirmations.

Section 5.05 *Completion of Project.* The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced for the Project by the filing with the Trustee and Issuer of (a) the certificate of the Borrower Representative required by the provisions of Section 3.5(a) of the Loan Agreement and (b) a certificate signed by the Borrower Representative stating that all obligations and costs in connection with the Project and payable out of the Project Fund have been paid and discharged except for amounts retained by the Trustee for the payment of Project Costs not then due and payable or then in dispute as provided in the Loan Agreement; provided, however, that no amounts necessary to pay principal and interest on the Bonds at maturity, shall be held by the Trustee in the Project Fund beyond such Maturity Date. Additionally, the Borrower has agreed pursuant to Section 3.6 of the Loan Agreement that in the event that there are insufficient moneys available in the Project Fund to pay the Project Costs, the Borrower will complete the Project and pay the portion of the Project Costs in excess of the moneys available therefore in the Project Fund.

Section 5.06 *Disposition of Moneys in Project Fund After Completion of Project.*

Subject to the proviso in Section 5.05 above, as soon as practicable after the date of the certificate referred to in clause (b) of Section 5.05, any balance remaining in the Project Fund

(other than the amounts retained by the Trustee referred to in Section 5.05) shall be deposited into the Bond Fund and used to pay principal of the Bonds on the Mandatory Tender Date. To the extent any moneys from any payments made by the Borrower pursuant to the Loan Agreement remain in the Project Fund or Bond Fund after there are no Bonds Outstanding and payment in full, or provision for payment, of the final Rebate Amount, such moneys shall be paid to the Borrower.

Notwithstanding the provisions of this Section or any other provision herein set forth, none of the moneys in the Project Fund will be disbursed for or be used to pay any cost, or to reimburse the Issuer or the Borrower for any cost, which is not permitted by the Act, the Code, the Loan Agreement or this Indenture.

ARTICLE VI

INVESTMENT OF FUNDS AND ACCOUNTS

Section 6.01 *Investment of Funds.*

The Issuer and the Trustee each covenants that it will not knowingly make or (to the extent it exercises control or direction) permit to be made, any use of the proceeds of the Bonds, or of any moneys, securities or other obligations that may be deemed to be proceeds of the Bonds (collectively, “**Bond Proceeds**”) within the meaning of Section 148 of the Code that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

The Trustee shall hold and invest Bond Proceeds within its control in Eligible Investments as directed in writing by the Borrower Representative in accordance with the Tax Exemption Agreement, as such direction may be amended from time to time in accordance with the advice of Bond Counsel. Neither the Issuer nor the Trustee shall incur any liability in connection with any action as contemplated by this Section 6.01 so long as each acts in good faith, or, with respect to the Trustee, upon written instructions from the Borrower Representative or in accordance with this Indenture. In the absence of instructions from the Borrower, the Trustee shall invest Bond Proceeds in [Blackrock Liquidity Fed Funds].

Investments of Bond Proceeds shall mature or be redeemable at the times and in the amounts necessary to provide money to pay any amounts due on the Bonds as they become due on each Interest Payment Date. In addition, investment of money in the Project Fund shall mature or be redeemable at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund. Any investment in the Bond Fund, the Project Fund or the Collateral Fund that is no longer classified as an Eligible Investment shall be invested in Governmental Obligations upon receipt by Trustee of a written direction from the Borrower.

The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable hereunder to and at times required for the purposes of paying any amounts due on the Bonds, and shall do so without necessity for any order or direction from or on behalf of the Issuer or the Borrower and without restriction by reason of any order or direction. An investment and earnings thereon made from money credited to a fund or account shall constitute part of that fund or account; provided, however that all investment earnings from

amounts on deposit in the Project Fund and the Collateral Fund shall be allocated to the Bond Fund; and provided, further that all gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Project Fund and the Collateral Fund shall be credited to and become part of the Bond Fund. Anything herein to the contrary notwithstanding, earnings received by the Trustee from a sale or redemption of Governmental Obligations for the purpose of paying principal and interest on the Bonds shall be held uninvested.

Any investments may be purchased from or sold to the Trustee, or any bank, trust company or savings and loan association which is an affiliate or subsidiary of the Trustee provided that all such investments must be Eligible Investments.

All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Rebate Fund shall be retained therein.

The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Indenture.

The Trustee may conclusively rely upon the Borrower Representative's written instructions as to both the suitability and legality of the directed investments.

Subject to the following sentence, investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary to do so in order to provide moneys to make any transfer, withdrawal, payment or disbursement from the applicable Special Fund. Prior to the Mandatory Tender Date, at the direction of the Borrower, the Trustee is permitted to invest in Eligible Investments that mature on or before the Mandatory Redemption Date then in effect, but is not permitted to sell or otherwise dispose of such Eligible Investment prior to maturity at a price below par without first receiving from or on behalf of the Borrower (i) a Cash Flow Projection, and (ii) Eligible Funds in the amount, if any, set forth in such Cash Flow Projection as necessary for the Trustee to have sufficient funds to pay the tender price of any Bonds subject to mandatory tender on the Mandatory Tender Date.

Section 6.02 *Investment of Rebate Fund.* Any moneys held as part of the Rebate Fund, and not immediately required for the purposes of the Rebate Fund, shall be invested or reinvested by the Trustee, at the written direction of the Borrower Representative and with the prior written approval of the Issuer, in Governmental Obligations or in any money market or short term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof having maturities consonant with the need for funds as estimated by the Borrower.

Section 6.03 *Accounting for Termination of Investments; No Arbitrage.* In the event the moneys in the Project Fund or the Bond Fund are invested in any investment agreement at any time or for any reason fails to satisfy the requirements of Section 6.01 hereof, the Trustee shall, at the written direction of the Borrower Representative and the Issuer, terminate any such investment, and the proceeds of such termination, shall be credited to the Project Fund or the Bond Fund, respectively.

Subject to Section 6.01 hereof, all investment earnings on moneys or any investment held in any fund or account created hereunder shall be credited to the respective fund or account hereunder and used for the purposes thereof.

If the Issuer is of the opinion, upon receipt of advice of Bond Counsel, that it is necessary to restrict or limit the yield on the investment of any moneys, securities or other obligations paid to or held by the Trustee hereunder in order to comply with the provisions of the Documents intended to prevent any Bonds from being considered “arbitrage bonds” within the meaning of Section 148 of the Code, an authorized officer of the Issuer may give written notice to the Trustee and the Borrower to such effect (together with appropriate written instructions), in which event the Trustee will take such action as is set forth in such written instructions to restrict or limit the yield on such investment so as to comply with Section 148 of the Code.

Section 6.04 *Trustee’s Own Bond or Investment Department.* The Trustee may make any and all investments permitted under Section 6.01 through its own bond or investment department or that of any affiliate.

Section 6.05 *Moneys to be Held in Trust.* Subject to Section 4.07 hereof, all moneys required to be deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and claim created by this Indenture.

The Trustee, acting in its capacity as Trustee and not as sponsor, advisor or manager in connection with any investments hereunder, shall not be liable for any loss arising from investments made in accordance with this Section, or for any loss resulting from the redemption or sale of any such investments as authorized by this Section.

ARTICLE VII

GENERAL COVENANTS

Section 7.01 *Payment of Bonds.* Each and every covenant made in this Indenture, including all covenants made in the several sections of this Article, is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall be payable solely (a) from Revenues, which are specifically assigned to secure the payment of the Bonds in the manner and to the extent specified in this Indenture, (b) from the moneys held in the funds and accounts created under this Indenture, except for amounts held in the Costs of Issuance Fund and the Rebate Fund, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer.

The Issuer covenants that it will promptly pay, as provided herein, the principal of and interest on the Bonds from the Trust Estate at the place, on the date and in the manner provided herein and in the Bonds.

The Revenues are to be remitted by the Borrower directly to the Trustee for the account of the Issuer and constitute a part of the Trust Estate and are subject to the lien and claim created by this Indenture. Such amounts, in addition to the amounts held in the Project Fund, are to be sufficient in amount at all times to pay the principal of and interest on the Bonds when due. The entire amount of Revenues (exclusive of the Reserved Rights of the Issuer) are assigned to secure the payment of the principal of and interest on the Bonds.

Section 7.02 *Performance of Covenants.* The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto, subject, however to the limitations set forth in Section 2.09. The Issuer covenants that it is duly authorized under the laws of the State to issue the Bonds, to enter into this Indenture and the Loan Agreement and to assign the Revenues, and that, upon issuance, authentication, and delivery, the Bonds are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

Section 7.03 *Maintenance of Existence; Compliance with Laws.* The Issuer will use all reasonable efforts to (i) maintain its existence or to assure the assumption of its obligations under this Indenture by any public body succeeding to its powers under the Act, and (ii) comply with all valid material acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to this Indenture and the Loan Agreement.

Section 7.04 *Enforcement of Borrower's Obligations.* So long as any of the Bonds are Outstanding, the Issuer will cooperate with the Trustee in enforcing the obligations of the Borrower to pay, or cause to be paid, all the payments and other costs and charges payable pursuant to the Loan Agreement. Nothing contained in this Section or in any other section of this Indenture shall be deemed to modify the provisions of the Act and Section 2.09 hereof or require that the Issuer expend any of its own funds or assets to enforce the obligations of the Borrower under the Documents.

Section 7.05 *Further Assurances, Instruments and Actions.* The Issuer will from time to time execute and deliver such further instruments, conveyances, assignments and transfers and take such further actions as may be reasonable and as may be required to better assure, convey, grant, assign or confirm the Trust Estate and all other rights, revenues or funds pledged, assigned or intended to be so pledged or assigned hereunder for the benefit of the owners of the Bonds; provided, however, that no such instruments or actions shall pledge the credit or taxing power of the State, the Issuer or any other political subdivision of the State, or create or give rise to any monetary obligation or liability of the Issuer.

Section 7.06 *Priority of Pledge.* The Issuer covenants and agrees that it will not create any lien or claim upon the Revenues other than the liens and claims hereby created. Except for the assignment to the Trustee, the Issuer will not sell, lease or otherwise dispose of or encumber any of the Revenues, and will cooperate in causing to be discharged or satisfied any lien or charge on any part of the Trust Estate.

Section 7.07 *Books and Documents Open to Inspection.* The Issuer covenants and agrees that all books and documents in its possession relating to the Bonds, the Project, and the

moneys, revenues and receipts derived from the Project, if any, that shall at any time be in its possession, shall, within a reasonable time of a request by the Trustee or the Borrower, be open to inspection during the Issuer's regular business hours by such accountants or other agents as the Trustee or the Borrower may from time to time designate.

Section 7.08 *Borrower to Indemnify and Hold Issuer and Trustee Harmless from Liability.* The Borrower has agreed to indemnify and hold the Issuer and the Trustee harmless from and against liability arising out of claims as defined and as provided in Sections 6.2 and 7.4 of the Loan Agreement.

Section 7.09 *Tax-Exempt Status of Bonds.* The Issuer and the Trustee each agrees that it will not (a) take any action, (b) fail to take any action, or (c) make any use of the Project or the proceeds of the Bonds, which it knows would cause the interest on any of the Bonds to be or become includible in the gross income of the owners thereof for federal income tax purposes (except for minimum or preference tax purposes or other indirect taxation). In connection with the foregoing, the Issuer and the Trustee may rely upon the advice of Bond Counsel.

ARTICLE VIII

DISCHARGE

Section 8.01 *Release of Indenture.*

If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all principal and interest due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Regulatory Agreement and the Note, then this Indenture shall cease, determine and become null and void (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 8.03 hereof if applicable,

(A) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer, and

(B) the Trustee shall assign and deliver to the Issuer any property subject at the time to the lien of this Indenture which then may be in their possession, except amounts in the Bond Fund required (i) to be paid to the Borrower under Section 4.05 hereof, or (ii) to be held by the Trustee under Section 6.01 hereof or otherwise for the payment of principal and interest due on the Bonds.

Section 8.02 *Payment and Discharge of Bonds.*

All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 8.01 hereof, if:

(A) the Trustee shall have received, in trust for and irrevocably committed thereto, sufficient money, or

(B) the Trustee shall have received, in trust for and irrevocably committed thereto, noncallable Governmental Obligations which are certified by an Independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any money to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all principal and interest due on those Bonds on the date(s) due.

Any money held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable Governmental Obligations having maturity dates, or having redemption dates which, at the option of the Holder of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 4.05 hereof for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 8.02, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 8.02.

Section 8.03 *Survival of Certain Provisions.*

Notwithstanding the foregoing, any provisions of the Bond Resolution and this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of money in trust, and repayments to the Borrower from the Bond Fund, the rebate of money to the United States in accordance with Section 4.07 hereof, and the rights and duties of the Trustee in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture. The obligations of the Borrower to pay the Trustee and the Issuer their respective fees and expenses hereunder shall survive the release, discharge and satisfaction of this Indenture, but shall terminate effective automatically upon payment in full by the Borrower of all fees and expenses owed by the Borrower to the Trustee and the Issuer.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 9.01 *Events of Default and Acceleration.* If any of the following events occur, it is hereby defined as and declared to be and constitute an “Event of Default”:

- (a) any installment of interest on any Bond payable hereunder is not paid when due and payable; or
- (b) During the Permanent Mode, the failure to pay any installment of principal and interest as provided in the Permanent Loan Agreement; or
- (c) the principal of any Bond is not paid or the redemption price of any Bond on the date on which the same becomes due, whether at the stated maturity thereof, by call for redemption, acceleration or otherwise; or
- (d) an Event of Default occurs under the Loan Agreement; or
- (e) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as specified in (i), (ii) or (iii) of this Section 9.01) contained in the Bonds or in this Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of 90 days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; provided, however, that if such default be such that it is correctable but cannot be corrected within 90 days, it shall not be an Event of Default if the Issuer or the Borrower is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Loan or the Bonds.

If any Loan payment required under the Loan Agreement to avoid a default under (a) or (b) of this Section shall not have been received at the close of business on the last business day preceding the day on which payment must be made to avoid a default under such (a) or (b), the Trustee shall use commercially reasonable efforts to give telephonic notice of such default to the Borrower, which telephonic notice shall be confirmed by telegraphic or written notice to the Borrower. If any other default shall occur under the provisions of this Section, the Trustee shall, within five days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower and the Holders of the Bonds. A default or an Event of Default specified in (i) through (v) above shall occur even though the Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

If an Event of Default specified in (a), (b) or (c) of this Section 9.01 shall occur and be continuing, the Trustee, may, and upon written request of the Majority Owner, shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer and the Borrower, and upon such declaration such principal,

together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

If an Event of Default specified in (d) or (e) of this Section 9.01 shall occur and be continuing, the Trustee, upon written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding, shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer and the Borrower, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

Section 9.02 *Trustee to Enforce Rights of Issuer.* Only in accordance with the provisions of this Indenture, the Trustee, as the assignee of all the right, title and interest of the Issuer in and to each of the documents constituting a part of the Trust Estate (except the Reserved Rights of the Issuer), may enforce the rights granted to the Issuer pursuant to such documents. In the enforcement of any rights or remedies under such documents, no provision of such documents shall require, and none shall be construed to require, that the Trustee post a bond or establish any surety of any kind as a condition precedent to exercising any such rights or remedies.

Section 9.03 *Remedies in Addition to Acceleration.* Upon the happening of any Event of Default, then and in every such case the Trustee in its discretion may, and upon the written request of the Majority Owner and receipt of satisfactory indemnity shall (in addition to its right or duty to accelerate as provided in Section 9.01):

- (a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents;
- (b) bring suit upon the Bonds; or
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Section 9.04 *Termination of Proceedings.* In case any proceeding taken by the Trustee on account of any default or Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Issuer, the Trustee, the Bondholders, and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 9.05 *Right of Bondholders to Direct Proceedings.* Prior to Conversion, no Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or any other remedy hereunder or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of not less than 51% in

principal amount of the Bonds then outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds hereby secured shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within 60 days after receipt of notice and compliance with the foregoing terms and conditions, whereupon, the Holders of 51% aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing this Indenture contained shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest, on each of the Bonds issued hereunder to the respective Holders of the Bonds at the time, place, from the source and in the manner herein and in such Bonds expressed.

Section 9.06 *Right of Servicer to Direct Proceedings.* On or following the Conversion Date, if an Event of Default under this Indenture shall have occurred and be continuing, notwithstanding anything in this Indenture to the contrary, the Servicer, after notice to the Issuer, shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings under this Indenture, provided that such direction is in accordance with law and the provisions of this Indenture; provided further that nothing in this Section 9.05 shall impair the right of the Trustee in its discretion to take any other action under this Indenture which it may deem proper and in the best interests of the Holders and which is not inconsistent with such direction by the Servicer. Notwithstanding the foregoing, the Servicer shall not bring any proceeding to enforce this Indenture or its remedies under this Indenture, to which it names the Issuer as a party, in any jurisdiction outside the State without the Issuer's prior written consent.

Section 9.07 *Remedies Vested in Trustee.* All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

Section 9.08 *Remedies Non-Exclusive and Cumulative.* No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall

be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 9.09 *Delays or Omissions by Trustee.* No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or any acquiescence therein; and every power and remedy given by this Article IX to the Trustee and to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 9.10 *Application of Moneys.* All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article IX shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee and the Issuer with respect thereto, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

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

First - To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the direct order of the maturity of the installments of such interest and, if the amounts available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

Second - To the payment to the persons entitled thereto of the unpaid principal, on any of the Bonds, which shall have become due (other than Bonds which have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in the Bond Fund or otherwise held by the Trustee), with interest on such principal from the respective dates upon which the same became due and, if the amount available shall not be sufficient to pay in full the amount of principal, and the interest due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege;

Third - To the payment to the persons entitled thereto of all other of the Issuer's Obligations and the Borrower's Obligations, and, if the amount available shall not be sufficient to pay such Obligations in full, then to the payment ratably, according to the amounts then due, to the persons entitled thereto without discrimination or privilege; and

Fourth - The remainder, if any, shall be paid over to the Borrower, its successors or assigns, or whomever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal of and interest and premium then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto without any discrimination or privilege. Any remaining funds shall be applied in accordance with the paragraphs designated “*Third*” and “*Fourth*” of subsection (i) above.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts or principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 9.11 *Severability of Remedies.* It is the purpose and intention of this Article to provide rights and remedies to the Trustee and Bondholders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

ARTICLE X

THE TRUSTEE

Section 10.01 *Acceptance of Trusts.* The Trustee hereby accepts the duties and obligations as Trustee as expressly provided under this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee shall not be liable for any acts or omissions, except for such losses, damages or expenses which have been finally adjudicated by a court of competent jurisdiction to have directly resulted from the Trustee’s negligence or willful misconduct.

Section 10.02 *Trustee Not Responsible for Recitals, Statements and Representations.* Except as otherwise expressly provided herein, any representations or warranties by the Issuer in this Indenture or in the Bonds contained shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

Section 10.03 *Action by Trustee Through and Reliance Upon Others.* The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees and shall not be responsible for the acts or omissions of any such attorney, agent, receiver or employee appointed with due care. The Trustee shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder, and the written advice or opinion of such counsel shall be full and complete authorization and protection for any action taken or omitted by it in good faith and in accordance with such advice or opinion. The Trustee may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts hereof, such compensation to be paid as described under Section 10.04 hereof. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust, except only for negligence or willful misconduct with respect to its responsibilities hereunder.

Except for fraud and willful misconduct, no personal recourse may be taken, directly or indirectly, against any officer, director, employee or agent of the Trustee with respect to the obligations of the Trustee under this Indenture or any certificate or other writing delivered in connection therewith. The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Trustee's officers, directors, agents and employees.

The Trustee's immunities and protections from liability and its right to payment of compensation and indemnification in connection with performance of its duties and functions under this Indenture shall survive the Trustee's resignation or removal and the final payment of the Bonds.

Section 10.04 *Fees and Expenses of Trustee.* The Trustee shall be entitled to payment and/or reimbursement of such fees as the Trustee, the Issuer and the Borrower shall agree upon, or in the absence of such agreement, to payment and/or reimbursement of reasonable fees, for its services rendered hereunder, and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services, in an amount that is no less than the Trustee's Ongoing Fees. Any amounts payable to the Trustee pursuant to this Section 10.04 shall be payable upon demand and shall bear interest from the date of demand therefor at the Interest Rate for Advances.

Section 10.05 *Trustee's Obligations to Take or Have Notice of Default.* The Trustee shall not be required to take notice, or to be deemed to have notice, of any default under this Indenture other than a default under Section 9.01(a) or Section 9.01(b) hereof, unless specifically notified in writing of such default by the Issuer or by the Holders of not less than 25% in principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

Section 10.06 *Duties of Trustee.* (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default,

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine those certificates and opinions to determine whether they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(i) This paragraph does not limit the effect of paragraph (b) of this Section,

(ii) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts,

(iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it in accordance with this Indenture, and

(iv) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(d) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense, but the Trustee shall not require indemnity as a condition to making any payments on the Bonds, or declaring the principal of and interest on the Bonds to be due immediately hereunder.

(e) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Indenture and final payment of the Bonds.

(f) Except as otherwise provided in this Article, the Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing to do so by the Holders of not less than 51% in principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may

require, with security and satisfactory indemnity. The foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action in respect of any default without such notice or request from the Bondholders, or without such security or indemnity.

(g) The permissive rights of the Trustee to do things enumerated in this Agreement shall not be construed as a duty and, with respect to such permissive rights, the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) In the event that any portion of the Trust Estate shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Trust Estate, the Trustee is hereby expressly authorized, in its reasonable discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Trustee obeys or complies in good faith with any such writ, order or decree, it shall not be liable to any of the parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

(i) Other than as specifically provided herein, neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Borrower or Issuer, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee may assume performance by all such persons of their respective obligations, unless the Trustee has knowledge or is deemed to have knowledge otherwise. Except as provided in the Documents to which it is a party, the Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other person.

(j) The Trustee shall have no duty to know or inquire as to the performance or nonperformance of any provision of any other agreement, instrument, or document other than this Indenture and any other document to which it is a party.

(k) The Trustee shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Indenture and any other document to which it is a party, whether or not an original or a copy of such agreement has been provided to the Trustee.

Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a) through (k) of this Section.

Section 10.07 Trustee May Make Advances to Effect Performance. If the Issuer shall fail to perform any of the covenants or agreements contained in this Indenture other than the covenants or agreements in respect of the payment of the principal of and interest on the Bonds, the Trustee may, in its absolute discretion and without notice to the Bondholders, at any time and from time to time, make advances to effect performance of the same on behalf of the Issuer,

but the Trustee shall be under no duty or obligation so to do; and any and all moneys paid or advanced by the Trustee for any such purposes, together with interest thereon at the Interest Rate for Advances, shall be a claim in favor of the Trustee upon the Trust Estate prior to the claim of the Bonds; but no such advance shall operate to relieve the Issuer from any default hereunder.

Section 10.08 *Trustee May Rely Upon Instruments.* The Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any indenture, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Documents, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements, and shall be protected and shall incur no liability in acting or proceeding in good faith in reliance thereon. The Trustee shall not be bound to recognize any person as a Holder of any Bond or to take any action at his request unless such Bond shall be deposited with the Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee.

Section 10.09 *Trustee May Own and Deal in Bonds and Deal With Issuer and Borrower.* The Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondholder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower or any related entity, and may act as depository, trustee, or agent for any committee or body of Holders of the Bonds secured hereby or other obligations of the Issuer as freely as if it were not Trustee hereunder.

Section 10.10 *Financial Liability of the Trustee.* No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur or risk any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers if it will have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Except as may otherwise be provided in this Indenture, prior to taking or omitting to take an action hereunder or related to the Bonds, the Trustee will have the right to request or demand at the cost of the Borrower, in respect to the taking of any action hereunder or related to the Bonds or omitting to take any action, any showings, certificates, opinions (including Opinions of Counsel), appraisals or other information, or corporate action or evidence thereof, that the Trustee deems desirable for the purpose of establishing the right of the Trustee to take or omit to take such action.

Section 10.11 *Trustee May Construe Ambiguous or Inconsistent Provisions.* The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provisions hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders.

Section 10.12 *Resignation of Trustee.* The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than 60 days written notice to the Issuer and the Holders specifying the date when such resignation shall take effect and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed, in which event such resignation shall take effect immediately on the appointment of such successor, provided that such resignation shall not take effect unless and until a successor shall have been appointed.

Section 10.13 *Removal of Trustee.* The Trustee shall be removed by the Issuer if at any time so requested by an instrument or concurrent instruments in writing, filed with the Trustee and the Issuer, and signed by the Holders of a majority in principal amount of the Bonds then Outstanding or their attorney-in-fact duly authorized, excluding any Bonds held by or for the account of the Issuer. The Issuer may also remove the Trustee at any time, except during the existence of any event of default as defined in Section 9.01 hereof, for cause or breach of trust or for acting or proceeding in violation of, or failing to act or proceed in accordance with any provision of this Indenture with respect to the duties and obligations of the Trustee by filing with the Trustee an instrument signed by an authorized officer of the Issuer. A copy of each such instrument providing for any such removal shall be delivered by the Issuer to any Bondholder who shall have filed his name and address with the Issuer.

Section 10.14 *Appointment of Successor Trustee.* In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Issuer at the direction of the Purchaser or Majority Owner covenants and agrees that it will thereupon appoint a successor Trustee.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provision of this Section within 45 days after the Trustee shall have given to the Issuer written notice, as provided in Section 10.12 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee, the Borrower or the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, prescribe and appoint a successor Trustee.

Any Trustee appointed under the provision of this Section 10.14 in succession to the Trustee shall be a bank or trust company or national banking association with trust powers, having a combined capital, surplus and undivided profits of at least \$50,000,000 if there be such a bank or trust company or national bank association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 10.15 *Appointment of Successor Trustee by Court.* In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a

successor Trustee shall be made pursuant to the foregoing provisions of this Article within six months after a vacancy shall have occurred in the office of Trustee, the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Trustee.

Section 10.16 *Acceptance of Trust by Successor Trustee.* Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trust, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act, and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

Section 10.17 *Merger or Consolidation of Trustee with Another Corporation.* Any entity into which any Trustee hereunder may be merged or with which it may be consolidated, or any entity resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 10.18 *Intentionally Omitted.*

Section 10.19 *Notice of an Event of Default.* Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default known to the Trustee, the Trustee shall within 30 days give written notice thereof to the Issuer and to each Bondholder at its last address appearing upon the registration books of the Issuer kept by the Trustee unless such Event of Default shall have been cured before the giving of such notice.

Section 10.20 *Trustee May Intervene.* In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of the Bonds, the Trustee may intervene on behalf of the Holders of the Bonds and shall, upon receipt of satisfactory indemnity do so if requested in writing by the Holders of not less than 51% in principal amount of Bonds then outstanding, if such intervention is permitted by the court having jurisdiction in the premises.

Section 10.21 *Unclaimed Moneys.* Anything herein to the contrary notwithstanding, and subject to applicable escheatment laws of the State, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two years after the date when such Bonds have become due and payable, either at maturity or by call for redemption, if such moneys are held by the Trustee at said date, or for two years after the date of deposit of such moneys if deposited with the Trustee after the date when such Bonds became due and payable, shall be paid by the Trustee to the Issuer as its absolute property and free from

trust, and the Trustee shall thereupon be released and discharged with respect thereto and the holders of such Bonds shall look only to the Issuer for the payment thereof; provided, however, that before being required to make any such payment to the Issuer, the Trustee shall cause to be mailed to the holders of such Bonds, at their addresses shown on the Bond Register, notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 nor more than 60 days after the date of mailing such notice, the balance of such moneys then unclaimed will be paid to the Issuer; and provided further, that the provisions of this Section shall not apply to the extent disposition of any moneys so held by the Trustee shall be governed by any laws applicable to the Trustee or the Issuer dealing with the disposition of such unclaimed property.

Section 10.22 *Appointment of Co-Trustee.* It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as a trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Loan Agreement, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section are adopted to these ends.

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

Approval in writing from the Issuer shall be required prior to the appointment of the separate or co-trustee by the Trustee. All such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer at the expense of the Borrower. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law and so approved by the Issuer, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee.

Section 10.23 *Financing Statements.* Pursuant to Section 5.6 of the Loan Agreement, the Borrower shall perfect, or shall cause to be perfected any security interest created hereunder by the filing of financing statements which fully comply with the State of Texas Uniform Commercial Code—Secured Transactions. Notwithstanding the foregoing, the Trustee shall file all necessary continuation statements with respect to any such original financing statements, of which a legible copy showing the date and place of filing is delivered to the Trustee, at the expense of the Borrower within the time prescribed by the State of Texas Uniform Commercial Code—Secured Transactions.

ARTICLE XI

MODIFICATION OF INDENTURE AND OTHER DOCUMENTS

Section 11.01 *Limitation on Amendments to this Indenture.* This Indenture shall not be modified or amended in any respect except as provided in accordance with and subject to the provisions of this Article.

Section 11.02 *Amendments to Indenture and Loan Agreement Not Requiring Consent of Bondholders.*

(a) The Issuer and the Trustee may, from time to time prior to the Conversion Date, without the consent of Bondholders, enter into agreements supplemental to this Indenture and the Loan Agreement as follows:

- (i) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;
- (ii) to cure any formal defect, omission or ambiguity in this Indenture or the Loan Agreement if such action does not materially adversely affect the rights of the Bondholders;
- (iii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as heretofore in effect;
- (iv) to add to the covenants and agreements of the Issuer in this Indenture or the Loan Agreement other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Loan Agreement as theretofore in effect;
- (v) to add to the limitations and restrictions in this Indenture or the Loan Agreement, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Loan Agreement as theretofore in effect;
- (vi) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, this Indenture, of the Revenues or of any other moneys, securities or funds; or
- (vii) to modify, amend or supplement this Indenture or the Loan Agreement in any respect which, in the judgment of the Trustee, is not materially adverse to the interests of the owners of the Bonds.

(b) Before the Issuer shall enter into any agreement supplemental to this Indenture pursuant to this Section, there shall have been filed with the Trustee an opinion of Bond Counsel stating that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms. The opinion of Bond Counsel filed with the Trustee shall also state that the effectiveness of the supplemental indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Trustee and the Issuer shall be entitled to rely upon any such opinion of Bond Counsel.

(c) The Trustee shall send written notice to the Borrower of any amendment to this Indenture or the Loan Agreement.

Notwithstanding the foregoing, on or after Conversion there shall be no amendments of any kind to this Indenture without the written consent of the Majority Owner.

Section 11.03 Amendments to Indenture Requiring Consent of Bondholders.

(a) Subject to the terms and provisions contained in this Section and not otherwise, prior to the Conversion Date, the Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding, and following the Conversion Date, the Servicer at the written direction the Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding, shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any agreement supplemental to this Indenture as shall be deemed necessary or desirable by the Issuer and the Trustee for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Indenture; provided, however, that, unless approved in writing by, prior to the Conversion Date, the Holders of all of the Bonds then Outstanding, and following the Conversion Date, the Servicer at the written direction of the Holders of all the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by this Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in this Indenture, including (without limitation) that required for consent to such supplemental indentures. This Section shall not limit or otherwise affect the ability of the Issuer to enter into agreements supplemental to this Indenture without the consent of the Bondholders pursuant to Section 11.02 hereof.

(b) If at any time the Issuer and the Trustee shall determine to enter into any supplemental indenture for any of the purposes of this Section, the Trustee shall cause written notice of the proposed supplemental indenture to be given to the Servicer (if any) and the all Holders of the Bonds; provided, however, that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant hereto. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that a copy thereof is on file at the Trust Office for inspection by all Bondholders.

(c) Within 120 days after the date of giving such notice, the Issuer and the Trustee may enter into such supplemental indenture in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding (or 100% if required hereunder) and (ii) an opinion of counsel stating that (1) such supplemental indenture is authorized or permitted by this Indenture and complies with its terms, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms and (2) the effectiveness of the supplemental indenture will not affect the exemption from federal income taxes of the interest on the Bonds.

(d) If the Holders of not less than the percentage of Bonds required by this Section shall have consented to and approved the supplemental indenture as herein provided, no Holder of any Bond shall have any right to object to such supplemental indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

(e) Upon the effectiveness of any supplemental indenture entered into pursuant to the provisions of this Section, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then outstanding shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

Section 11.04 *Supplemental Indentures Part of Indenture.* Any supplemental indenture entered into in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such supplemental indenture as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of this Indenture for any and all such purposes.

Section 11.05 *Required Consent.* Notwithstanding anything herein to the contrary, the Trustee shall not be required to enter into or consent to any supplemental indenture or any amendment of any other Document that would materially adversely affect the rights, obligations, powers, privileges, indemnities, immunities or other security provided the Trustee herein or therein, except to the extent necessary, as set forth in an opinion of Bond Counsel, to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 11.06 *Amendments to Documents Requiring Consent of Bondholders.* Except as provided in Section 11.02 of this Indenture, the Issuer and the Trustee shall not consent to any amendment, change or modification of the Documents without the giving of notice and the written approval or consent of the Holders of the Bonds at the time Outstanding given and procured as provided in Section 11.03 hereof; provided, however, no such separate approval or consent shall be required in connection with the issuance of refunding bonds if any required consent of the required number of Holders to the issuance thereof shall have been previously obtained. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice

of such proposed amendment, change, or modification to be given in the same manner as provided by Section 11.03 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Trust Office for inspection by all Bondholders.

ARTICLE XII

MISCELLANEOUS

Section 12.01 *Issuer's Successors.* In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

Section 12.02 *Indenture for Benefit of Issuer, Trustee and Bondholders.* Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, other than the Issuer, the Trustee and the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer and the Trustee and the Holders of the Bonds; provided that this Indenture shall also be for the benefit of the Borrower and the Issuer, and the Borrower and the Issuer shall be deemed to be third-party beneficiaries of and in connection with those matters in which the terms of this Indenture fairly construed are indicative that they are for the benefit of the Borrower.

Section 12.03 *Severability.* In case any one or more of the provisions of this Indenture or of the Bonds for any reason, is held to be illegal or invalid such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds, and this Indenture and the Bonds shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced as if such illegal or invalid provisions had not been contained therein.

Section 12.04 *Officials of Issuer Not Liable.* No personal recourse may be taken, directly or indirectly, against any past, present or future officer, director, employee or agent of the Issuer with respect to the obligations of the Issuer under this Indenture or any certificate or other writing delivered in connection therewith. The Issuer's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Issuer's past, present and future officers, directors, employees and agents.

Section 12.05 *Governing Law.* The laws of the State shall govern the construction of this Indenture and of all Bonds issued hereunder.

Section 12.06 *Notices; Publication of Notice.*

(a) All notices, advice, certifications or other communications hereunder between the Issuer and the Trustee shall be sufficiently given and shall be deemed given when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by electronic means (including, without limitation, facsimile transmission) addressed to the appropriate Notice Address. The Issuer or the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to persons other than the Issuer or the Trustee (such as, for example, notices to owners of Bonds) shall be governed by the other applicable provisions of this Indenture.

(b) Whenever the Issuer or the Trustee is required or permitted to give or publish notice of any event or occurrence under this Indenture, such notice shall be given or published in such manner and by such means as the Issuer or the Trustee, as the case may be, shall determine to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Trustee, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to one or more “nationally recognized municipal securities information repositories” (as such terms is defined in Securities and Exchange Commission Rule 15c2-12) or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the person entitled to receive the notice at such person’s address as shown on the records of the Issuer or the Trustee.

Section 12.07 Trustee as Paying Agent and Bond Registrar. The Trustee is hereby designated and agrees to act as paying agent and Bond registrar for and in respect to the Bonds.

Section 12.08 Execution of Instruments by Bondholders and Proof of Ownership of Bonds. Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of the Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Bonds shall be conclusively proved by the registration books kept under the provisions of Section 2.08 of this Indenture.

Nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient. Any request or consent of the Holder of any Bond shall bind every

future Holder of the same Bond in respect of anything done by the Trustee pursuant to such request or consent.

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

Section 12.10 U.S.A. Patriot Act Requirements of the Trustee. To help the government of the United States of America fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust or other legal entity, the Trustee may request documentation to verify such Person's formation and existence as a legal entity and the identity of the owners or controlling persons thereof. The Trustee may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

Section 12.11 Compliance with Texas Government Code.

The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Indenture, the Regulatory Agreement and the Tax Exemption Agreement, and such representation is hereby incorporated by reference into each of the documents referenced herein. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Trustee understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

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

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

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a

foreign terrorist organization. The Trustee understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

[Execution pages follow.]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name and behalf by its Authorized Officer and its official seal to be hereunto affixed, and the Trustee has caused this Indenture to be signed in its name by one of its duly authorized officers, all as of the day and year first above written.

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

By: _____
Name: James B. "Beau" Eccles
Title: Secretary to Board

(SEAL)

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**, as Trustee

By: _____
Name: Dayna L. Smith
Title: Vice President

EXHIBIT A-1

FORM OF BONDS PRIOR TO CONVERSION

No. [R-___][I-1]

\$[_____]

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY HOUSING REVENUE BONDS
(THE WALZEM)
SERIES 2020**

THIS BOND IS A RESTRICTED SECURITY AND MAY BE TRANSFERRED ONLY AS PROVIDED HEREIN AND IN THE HEREIN DESCRIBED INDENTURE.

DATED DATE	INTEREST RATE	INITIAL MANDATORY REDEMPTION DATE	MATURITY DATE
[June 1], 2020	As stated below	_____	[_____, 20__]

REGISTERED OWNER: JPMORGAN CHASE BANK, N.A.

PRINCIPAL AMOUNT: _____

FOR VALUE RECEIVED, the **Texas Department of Housing and Community Affairs**, a public and official agency of the State of Texas (the “Issuer”), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the registered owner identified above, or its successor or registered assignee or legal representative, unless previously called for redemption, the principal amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of Wilmington Trust, National Association, as trustee, or its successor in trust (the “Trustee”), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the Dated Date identified above to, but not including the Maturity Date specified above (or earlier redemption date), at the Interest Rate per annum identified below (subject to adjustment or change as herein provided), payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed by the Trustee to the registered owner hereof at his address as it appears on the registration books

of the Issuer, or, upon the request of any registered holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered owner to the Trustee in writing, such interest being payable on each Interest Payment Date.

This Bond is one of an issue of the Issuer's Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the "Bonds"), issued under and pursuant to the Constitution and laws of the State of Texas, including particularly Chapter 2306, Texas Government Code, as amended (the "Act") and a resolution of the Governing Board of the Issuer, for the purpose of making a loan of the proceeds thereof to The Walzem Apartments, LLC, a Kansas limited liability company (the "Borrower") to finance the costs of acquisition, construction and equipping of a multi-family residential rental housing project in San Antonio, Texas, and to be known as The Walzem (the "Project"). The proceeds of the Bonds are being lent to the Borrower by the Issuer under a Loan Agreement dated as of [June 1], 2020 among the Borrower, JPMorgan Chase Bank, N.A. and the Issuer (the "Loan Agreement") and evidenced by a Promissory Note dated [June 1], 2020 from the Borrower to the Issuer (the "Note").

The Bonds are issued under a Trust Indenture dated as of [June 1], 2020 between the Issuer and the Trustee (the "Trust Indenture"), and, to the extent provided therein, are, equally and ratably secured and entitled to the protection given by the Trust Indenture. Pursuant to the Trust Indenture, the Issuer has assigned to the Trustee, for the benefit of the Holder of the Bonds (among other things) all of its right, title and interest (except the Reserved Rights of the Issuer) in and to the Loan Agreement and Note. Pursuant to the Note and the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee. The obligations of the Borrower under the Note and the Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund created pursuant to the Trust Indenture for payment to the Holder of the Bonds.

Reference is made to the Trust Indenture, the Note, and the Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the Holder of the Bonds and provisions for defeasance of such rights. Capitalized terms used herein have the same meaning as set forth in the Trust Indenture. The terms and conditions set forth herein concerning payment and other rights and remedies of the owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Trust Indenture.

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID

CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.**

This Bond is negotiable and is transferable, subject to certain restrictions as provided in the Trust Indenture and described below, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of authorized denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Trust Indenture. The Issuer and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for all purposes; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO TRANSFER SUCH SECURITY ONLY (A) TO THE PERMANENT LENDER OR ANY PERSON CONTROLLED BY OR UNDER COMMON MANAGEMENT OR CONTROL WITH EITHER THE BORROWER OR THE PERMANENT LENDER, OR (B) TO A PERSON WHO, BASED ON SUCH PERSON'S REPRESENTATIONS, IS A "QIB" AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT, ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE QIBS OR ACCREDITED INVESTORS) (BUT NOT AN INDIVIDUAL) AS DEFINED IN REGULATION D PROMULGATED UNDER THE SECURITIES ACT) AND TO WHOM NOTICE IS GIVEN THAT THE SALE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR REGULATION D, AS APPLICABLE, EACH AS PROMULGATED UNDER THE SECURITIES ACT AND PURSUANT TO THE TRANSFER RESTRICTIONS CONTAINED IN THE INDENTURE, OR (C) TO AN ACCREDITED INVESTOR (BUT NOT AN INDIVIDUAL), ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH

SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE ACCREDITED INVESTORS (BUT NOT AN INDIVIDUAL) OR QIBS), SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH TRANSFER TO REQUIRE THE DELIVERY OF AN INVESTOR LETTER IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT C TO THE INDENTURE AND WRITTEN CONFIRMATION FROM THE PURCHASER OF THE BONDS THAT THE SERVICING AGREEMENT REMAINS IN EFFECT (OR THAT THE SERVICING AGREEMENT HAS BEEN ASSIGNED TO, AND ASSUMED BY, ANOTHER SERVICER IN ACCORDANCE WITH THE SERVICING AGREEMENT, OR THAT ANOTHER SERVICER HAS AGREED TO ENTER INTO A NEW SERVICING AGREEMENT WITH THE TRUSTEE IN SUBSTANTIALLY THE FORM OF THE SERVICING AGREEMENT, ALL WITHOUT SEPARATE CHARGE TO THE BORROWER).

This Bond shall bear interest at the Index Interest Rate. On each Interest Payment Date, interest accrued through the day immediately preceding such Interest Payment Date shall be payable. While this Bond bears interest at the Index Interest Rate, interest on this Bond shall be computed on the basis of a 360-day year consisting of twelve 30-day months. While this Bond bears interest at the Taxable Rate, interest on this Bond shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or any integral multiple of \$5,000 in excess thereof.

The Bonds are subject to mandatory redemption prior to maturity as set forth in the Indenture.

The Bonds are subject to mandatory tender in whole on the Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the tender date.

The Holder of this Bond shall have no right to enforce the provisions of the Trust Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Trust Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Indenture. The Trustee shall treat the registered owner of this Bond as the person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the owner of this Bond.

All acts, conditions and things required by the statutes of the State of Texas, the Act and the Trust Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed.

In any case where the date of maturity of or interest on this Bond shall be, in the city wherein the corporate trust office of the Trustee is located, a Saturday, a Sunday or legal holiday,

or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day not a Saturday, a Sunday or a legal holiday or day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity.

This Bond shall not be entitled to any benefit under the Trust Indenture, or be valid or become obligatory for any purpose, until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name under its official seal by the manual or facsimile signature of its Chair or Vice Chair and attested by the manual or facsimile signature of its Secretary all as of the Dated Date hereof.

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

(SEAL)

By: _____
Title: [Vice] Chair

ATTEST:

By: _____
Title: Secretary

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Trust Indenture referred to in this Bond.

Wilmington Trust, National Association, as Trustee

By _____
Authorized Signature

Date of Authentication: _____

Date from which interest is payable: [June 1], 2020

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number: _____

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to transfer the said bond on the books of the within-named Issuer maintained by the Trustee for the registration thereof, with full power of substitution in the premises.

Notice: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed.

Signature guaranteed by:

[Bank, Trust Company or Firm]

Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

EXHIBIT A-2

FORM OF BONDS FOLLOWING CONVERSION

No. R - ___

\$[_____]

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY HOUSING REVENUE BONDS
(THE WALZEM)
SERIES 2020**

THIS BOND IS A RESTRICTED SECURITY AND MAY BE TRANSFERRED ONLY AS PROVIDED HEREIN AND IN THE HEREIN DESCRIBED INDENTURE.

DATED DATE INTEREST RATE MATURITY DATE CUSIP NUMBER

As stated below _____

**REGISTERED
OWNER:**

**PRINCIPAL
AMOUNT:** _____ (\$[_____])

FOR VALUE RECEIVED, the **Texas Department of Housing and Community Affairs**, a public and official agency of the State of Texas (the "Issuer"), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the registered owner identified above, or its successor or registered assignee or legal representative, unless previously called for redemption, the principal amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of Wilmington Trust, National Association, as trustee, or its successor in trust (the "Trustee"), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the Dated Date identified above to the Maturity Date at the Interest Rate per annum identified below (subject to adjustment or change as herein provided), payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered holder of Bonds on the applicable Record Date having an aggregate principal amount

of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed by the Trustee to the registered owner hereof at his address as it appears on the registration books of the Issuer, or, upon the request of any registered holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered owner to the Trustee in writing, such interest being payable on each Interest Payment Date.

This Bond is one of an issue of the Issuer's Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the "Bonds"), issued under and pursuant to the Constitution and laws of the State of Texas, including particularly Chapter 2306, Texas Government Code, as amended (the "Act") and a resolution of the Governing Board of the Issuer, for the purpose of making a loan of the proceeds thereof to The Walzem Apartments, LLC, a Kansas limited liability company (the "Borrower") to finance the costs of acquisition, construction and equipping of a multi-family residential rental housing project in San Antonio, Texas, and to be known as The Walzem (the "Project"). The proceeds of the Bonds are being lent to the Borrower by the Issuer under a Loan Agreement dated as of [June 1], 2020 among the Borrower, JPMorgan Chase Bank, N.A. and the Issuer (the "Loan Agreement") and evidenced by a Promissory Note dated [June 1], 2020 from the Borrower to the Issuer (the "Note").

The Bonds are issued under a Trust Indenture dated as of [June 1], 2020 between the Issuer and the Trustee (the "Trust Indenture"), and, to the extent provided therein, are, equally and ratably secured and entitled to the protection given by the Trust Indenture. Pursuant to the Trust Indenture, the Issuer has assigned to the Trustee, for the benefit of the Holder of the Bonds (among other things) all of its right, title and interest (except the Reserved Rights of the Issuer) in and to the Loan Agreement and Note. Pursuant to the Note and the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee. The obligations of the Borrower under the Note and the Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund created pursuant to the Trust Indenture for payment to the Holder of the Bonds.

Reference is made to the Trust Indenture, the Note, and the Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the Holder of the Bonds and provisions for defeasance of such rights. Capitalized terms used herein have the same meaning as set forth in the Trust Indenture. The terms and conditions set forth herein concerning payment and other rights and remedies of the owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Trust Indenture.

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE,

ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.**

Interest Rates: Commencing on the Dated Date identified above and until the earlier of the (i) Maturity Date, or (ii) date of redemption prior to maturity, this Bond shall bear interest at the Index Interest Rate applicable during the Permanent Mode. On each Interest Payment Date, interest accrued through the day immediately preceding such Interest Payment Date shall be payable. While this Bond bears the Index Interest Rate during the Permanent Mode, interest on the Bonds shall be computed on the basis of a year of 360 days and the actual days elapsed. While this Bond bears interest at the Taxable Rate, interest on this Bond shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed.

Taxable Rate. If a Determination of Taxability occurs, this Bond shall bear interest from the date of the Determination of Taxability at the Taxable Rate, and the Owner shall also be paid Additional Interest and any additional amounts owed, as provided in the Indenture.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$100,000 each or any integral multiple of \$5,000 in excess thereof.

On or following the Conversion Date the Bonds are subject to optional and mandatory redemption prior to maturity as a whole or in part at such time or times, under such circumstances, at such redemption prices and in such manner as is set forth in the Indenture.

The amount of any partial redemption, and the date on which the same is actually made, shall be noted by the Trustee on its records maintained at the Principal Corporate Trust Office of the Trustee and, if presented to the Trustee for notation (with due endorsement for transfer or accompanied by a written instrument of transfer in form satisfactory to the Trustee), on **Schedule**

A attached hereto, but the failure to so note any such partial redemption shall not affect the validity of any payment actually received by the Holder of such Bond.

Except as otherwise stated in the Indenture, the redemption price of any redemption (whether by optional or mandatory redemption) shall be an amount equal to 100% of the principal amount to be redeemed, plus all unpaid interest to the date of redemption, plus a premium in certain instances described in the Indenture.

This Bond shall be registered on the books of the Trustee to be kept for that purpose by the Trustee. This Bond shall be transferable only upon such books (which transfer shall be similarly noted on the registration table attached hereto as **Schedule B** and made a part hereof) held by the Trustee. This Bond may be transferred upon presentation hereof at the Principal Corporate Trust Office of the Trustee, with a written instrument of transfer satisfactory to the Trustee, duly executed by the Holder hereof or its duly authorized attorney. The Trustee shall promptly send written notice of any transfers of this Bond to the Issuer and to the Borrower. Such transfers shall be without charge to the Holder hereof, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder requesting such transfer as a condition precedent to the exercise of such privilege.

This Bond is negotiable and is transferable, subject to certain restrictions as provided in the Trust Indenture and described below, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of authorized denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Indenture.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO TRANSFER SUCH SECURITY ONLY (A) TO THE PERMANENT LENDER OR ANY PERSON CONTROLLED BY OR UNDER COMMON MANAGEMENT OR CONTROL WITH EITHER THE BORROWER OR THE PERMANENT LENDER, OR (B) TO A PERSON WHO, BASED ON SUCH PERSON'S REPRESENTATIONS, IS A "QIB" AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT, ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE QIBS OR ACCREDITED INVESTORS) (BUT NOT AN INDIVIDUAL) AS DEFINED IN REGULATION D PROMULGATED UNDER THE SECURITIES ACT) AND TO WHOM NOTICE IS GIVEN THAT THE SALE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR REGULATION D, AS APPLICABLE, EACH AS PROMULGATED UNDER THE SECURITIES ACT AND PURSUANT TO THE TRANSFER RESTRICTIONS CONTAINED IN THE INDENTURE, OR (C) TO AN ACCREDITED INVESTOR (BUT NOT AN INDIVIDUAL), ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH

SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE ACCREDITED INVESTORS (BUT NOT AN INDIVIDUAL) OR QIBS), SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH TRANSFER TO REQUIRE THE DELIVERY OF AN INVESTOR LETTER IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT C TO THE INDENTURE AND WRITTEN CONFIRMATION FROM THE PURCHASER OF THE BONDS THAT THE SERVICING AGREEMENT REMAINS IN EFFECT (OR THAT THE SERVICING AGREEMENT HAS BEEN ASSIGNED TO, AND ASSUMED BY, ANOTHER SERVICER IN ACCORDANCE WITH THE SERVICING AGREEMENT, OR THAT ANOTHER SERVICER HAS AGREED TO ENTER INTO A NEW SERVICING AGREEMENT WITH THE TRUSTEE IN SUBSTANTIALLY THE FORM OF THE SERVICING AGREEMENT, ALL WITHOUT SEPARATE CHARGE TO THE BORROWER).

The Holder of this Bond shall have no right to enforce the provisions of the Trust Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Trust Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Indenture. The Trustee shall treat the registered owner of this Bond as the person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the owner of this Bond.

All acts, conditions and things required by the statutes of the State of Texas, the Act and the Trust Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed.

In any case where the date of maturity of or interest on this Bond shall be, in the city wherein the corporate trust office of the Trustee is located, a Saturday, a Sunday or legal holiday, or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day not a Saturday, a Sunday or a legal holiday or day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity.

This Bond shall not be entitled to any benefit under the Trust Indenture, or be valid or become obligatory for any purpose, until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name under its official seal by the manual or facsimile signature of its Chair or Vice Chair and attested by the manual or facsimile signature of its Secretary all as of the Dated Date hereof.

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

(SEAL)

By: _____
Title: [Vice] Chair

ATTEST:

By: _____
Title: Secretary

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Trust Indenture referred to in this Bond.

Wilmington Trust, National Association, as Trustee

By _____
Authorized Signature

Date of Authentication: _____,

Date from which interest is payable: _____

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number: _____

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to transfer the said bond on the books of the within-named Issuer maintained by the Trustee for the registration thereof, with full power of substitution in the premises.

Notice: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed.

Signature guaranteed by:

[Bank, Trust Company or Firm]

Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

SCHEDULE A

Multifamily Housing Revenue Bonds (The Walzem) Series 2020

REDEMPTION SCHEDULE

DATE OF REDEMPTION

AMOUNT OF REDEMPTION

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SCHEDULE B

Multifamily Housing Revenue Bonds (The Walzem) Series 2020

Transfer of Bond

The transfer of this Bond may be registered only by the registered owner in person or by its duly authorized officer or attorney upon presentation hereof to the Bond Registrar, who shall make note thereof in the books kept for such purpose and in the registration blank below.

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT B

FORM OF REQUISITION

STATEMENT NO. _____ REQUESTING DISBURSEMENT OF FUNDS FROM
PROJECT FUND PURSUANT TO SECTION 3.3 OF THE LOAN
AGREEMENT

Pursuant to Section 3.3 of the Loan Agreement dated as of [June 1], 2020 (the “*Loan Agreement*”) among the Texas Department of Housing and Community Affairs (the “*Issuer*”), JPMorgan Chase Bank, N.A., a national banking association, as Purchaser and The Walzem Apartments, LLC, a Kansas limited liability company (the “*Borrower*”), the undersigned Authorized Borrower Representative hereby requests and authorizes Wilmington Trust, National Association, as trustee (the “*Trustee*”), as depository of the Project Fund created by the Trust Indenture dated as of [June 1], 2020 (the “*Indenture*”), between the Issuer and the Trustee, to pay [to the Borrower] [to Bank of America, N.A., as Construction Lender] [or to the Person(s) listed on the Disbursement Schedule hereto] out of the money deposited in the Project Fund the aggregate sum of \$ _____ to pay the costs of the items listed in the Disbursement Schedule. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture and in the Tax Exemption Agreement.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

(a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Loan Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.

(b) Each such item is or was incurred in connection with the acquisition, construction, installation, equipment or improvement of the Project.

(c) The Borrower has received, or will concurrently with payment receive and deliver to the Trustee, appropriate waivers of any mechanics’ or other liens with respect to each item for which disbursement is requested hereunder.

(d) After taking into account the proposed disbursement,

(i) no more than 5% of the proceeds of the Bonds will have been used for costs that are not Qualified Project Costs;

(ii) less than 25% of the proceeds of the Bonds will have been used for the cost of acquiring land; and

(iii) not more than 2% of the proceeds of the Bonds will have been used for Costs of Issuance.

(e) There is no current or existing default or event of default pursuant to the terms of the Loan Agreement, the Regulatory Agreement or the Tax Exemption Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

(f) There are no liens on the Project except Permitted Encumbrances and those permitted or provided for by the Loan Agreement

(g) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This ____ day of _____, 20__.

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: The Walzem Apartments Manager, LLC
a Kansas limited liability company,
its managing member

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT
DEVELOPMENT CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

Approved:

[Lender Signature Block]

DISBURSEMENT SCHEDULE

TO STATEMENT NO. _____ REQUESTING AND AUTHORIZING DISBURSEMENT OF FUNDS FROM
PROJECT FUND PURSUANT TO SECTION 3.3 OF THE LOAN AGREEMENT

EXHIBIT C
FORM OF INVESTOR LETTER

[June 1], 2020

Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Wilmington Trust, National Association
15950 North Dallas Parkway, Suite 550
Dallas, TX 75248
Attention: Dayna L. Smith

RE: Multifamily Housing Revenue Bonds (The Walzem) Series 2020

Ladies and Gentlemen:

The undersigned representative of _____ (the “Purchaser”), the initial purchaser of the Texas Department of Housing and Community Affairs \$20,000,000 Multifamily Housing Revenue Bonds (The Walzem), Series 2020, dated [June 1], 2020 (the “Bonds”), does hereby certify, represent and warrant for the benefit of the Texas Department of Housing and Community Affairs (the “Issuer”) and Wilmington Trust, National Association, as trustee (the “Trustee”), that the Purchaser is an “accredited investor” as defined under Regulation D of the Securities Act of 1933, as amended (an “Accredited Investor”), excluding Section 230.501(a)(4), (a)(5) and (a)(6), or a “qualified institutional buyer” as defined in Rule 144A under the Securities Act of 1933, as amended (a “QIB”).

The Purchaser hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Trustee, as follows:

(1) The Purchaser is purchasing the Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof, other than the deposit of the Bonds in a custodial or trust arrangement each of the beneficial owners of which shall be required to be an Accredited Investor or a QIB.

(2) The Purchaser has such knowledge and experience in business and financial matters and with respect to the purchase and ownership of multifamily housing revenue bonds, tax-exempt securities and other investment vehicles similar in character to the

Bonds, so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Purchaser has no need for liquidity in such investment and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Purchaser acknowledges that it has been provided with, and has had the opportunity to review, the documents relating to the issuance of the Bonds by the Issuer. The Purchaser either has been supplied with or has had access to information, including financial statements, and other financial information, and has had the opportunity to ask questions and receive answers from individuals concerning the Issuer, The Walzem Apartments, LLC, a Kansas limited liability company (the “Borrower”), and its credit standing, the Loan Agreement dated as of [June 1], 2020, among the Issuer, JPMorgan Chase Bank, N.A., a national banking association, as Purchaser and the Borrower (the “Loan Agreement”), the Indenture of Trust dated as of [June 1], 2020, between the Issuer and the Trustee (the “Indenture”), and the Bonds so that, as a sophisticated investor, the Purchaser has been able to make its decision to purchase the Bonds.

(4) The Purchaser has had the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information it may request.

(5) THE PURCHASER UNDERSTANDS THAT:

(a) NEITHER THE STATE OF TEXAS NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, SHALL BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS; AND

(b) THE ISSUER HAS NO TAXING POWER AND PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS IS PAYABLE SOLELY OUT OF THE MONEYS TO BE RECEIVED BY THE TRUSTEE ON BEHALF OF THE ISSUER UNDER THE LOAN AGREEMENT AND AMOUNTS ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED AND PLEDGED UNDER THE INDENTURE.

(6) The Purchaser understands that in connection with any proposed transfer or exchange of Bonds, there must be delivered to the Trustee a letter of the transferee in substantially the same effect as this letter or otherwise as permitted under the Indenture.

(7) The Purchaser understands that, in connection with any proposed transfer of the Bonds, such transfer must be limited to an Eligible Purchaser. "Eligible Purchaser" means a prospective transferee that the Purchaser has clear grounds to believe and does believe can make representations with respect to itself to substantially the same effect as the representations set forth herein.

(8) THE PURCHASER INDEMNIFIES THE ISSUER AND THE TRUSTEE AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) THAT RESULT IF THE REPRESENTATIONS CONTAINED IN THIS PURCHASER'S LETTER ARE FALSE IN ANY MATERIAL RESPECT.

(9) The Purchaser is acquiring 100% of the Bonds.

The Purchaser has conducted its own investigation to the extent it deemed necessary. The Purchaser has been offered an opportunity to have made available to it any and all such information it might request from the Issuer and the Borrower. On this basis, it is agreed by the Purchaser that the Purchaser is not relying on any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

The Bonds for this Purchaser should be registered with the Trustee as follows and an executed W-9 has been attached:

Name: _____
Address: _____
Tax ID #: _____

Payment instructions: () wire () check

This letter and the representations and agreements contained herein are made for your benefit.

IN WITNESS WHEREOF, I have hereunto set my hand the _____ day of _____.

PURCHASER:

By: _____

Name: _____

Title: _____

**MUST BE SIGNED BY ACTUAL
PURCHASER. MAY NOT BE SIGNED BY
NOMINEE OR AGENT.**

EXHIBIT D

FORM OF CONVERSION NOTICE

PROJECT NAME: The Walzem
PROJECT LOCATION: San Antonio, Texas
AGGREGATE BOND \$20,000,000
AMOUNT:
ISSUER: Texas Department of Housing and Community Affairs
TRUSTEE: Wilmington Trust, National Association
BORROWER: The Walzem Apartments, LLC

The Permanent Lender hereby acknowledges that all Conversion Conditions have been satisfied or waived by the Permanent Lender, and therefore, the loan shall be converted to the Permanent Mode.

1. The Permanent Loan Amount is \$_____.
2. The Redemption Amount is \$_____.
3. The Borrower Collateral Loan Repayment Account contribution is \$_____.
3. The Conversion Date will occur on _____.
4. The Loan Equalization Payment due is \$_____. If applicable, the Loan Equalization Payment shall be paid by the Borrower to the Trustee not less than two (2) Business Days prior to the Conversion Date.
5. If applicable, a revised Amortization Schedule for the Permanent Loan Amount is attached.

PERMANENT LENDER

[PERM LENDER SIGNATURE BLOCK]

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

**JPMORGAN CHASE BANK, N.A., a national banking association,
as Purchaser**

and

**THE WALZEM APARTMENTS, LLC, a Kansas limited liability company,
as Borrower**

LOAN AGREEMENT

Relating to

\$20,000,000

**Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020**

Dated as of [June 1], 2020

The interest of the Texas Department of Housing and Community Affairs (the “Issuer”) in this Loan Agreement has been assigned (except for the “Reserved Rights” as defined in the Indenture) pursuant to the Trust Indenture (the “Indenture”) dated as of the date hereof between the Issuer and Wilmington Trust, National Association, as trustee (the “Trustee”), and is subject to the security interest of the Trustee thereunder.

(This Table of Contents is not a part of the Loan Agreement and is only for convenience of reference.)

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into as of [June 1], 2020, among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the “**Issuer**”), **JPMORGAN CHASE BANK, N.A.**, a national banking association (the “**Purchaser**”), and **THE WALZEM APARTMENTS, LLC**, a Kansas limited liability company (the “**Borrower**”);

W I T N E S S E T H:

WHEREAS, the Issuer is authorized under Chapter 2306, Texas Government Code, as amended (the “**Act**”) to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

WHEREAS, the Borrower intends to construct certain Improvements on the real property located at 7810 Walzem Road, San Antonio, Bexar County, Texas 78244 (the “**Land**”), which Land is more particularly described in **Exhibit A** attached hereto. On the Land will be constructed a multifamily apartment housing facility consisting of total of 200 units and related personal property and equipment to be known as The Walzem (the “**Project**”); and

WHEREAS, the Borrower has requested the Issuer to issue its Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “**Bonds**”), the proceeds of which will be utilized to make a mortgage loan to the Borrower (the “**Loan**”) for purposes of paying a portion of the costs of the acquisition, construction and equipping of the Project; and

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to finance a portion of the acquisition, construction and equipping of the Project [**and the payment of certain costs of issuance**] by issuing the Bonds, pursuant to a Trust Indenture by and between the Issuer and Wilmington Trust, National Association, as Trustee, of even date herewith (the “**Indenture**”); and [**BORROWER CONFIRM – WILL BOND PROCEEDS BE USED TO PAY COSTS OF ISSUANCE?**]

WHEREAS, the Loan will be evidenced by this Loan Agreement and a promissory note dated the date of delivery of the Bonds and in the form attached hereto as **Exhibit B-1** (the “**Note**”) from the Borrower to the Issuer; and

WHEREAS, to provide and secure amounts to repay to the Issuer the Loan during the Cash Collateralized Mode, the Borrower has obtained the Construction Loan from Bank of America, N.A., a national banking association (the “**Construction Lender**”) and caused the Construction Lender to make certain payments to the Trustee under the Indenture; and

WHEREAS, to provide and secure amounts to repay the Loan during the Permanent Mode, the Borrower has executed this Loan Agreement, the Permanent Mode Deed of Trust and other documents executed and delivered for the purpose of securing the Loan; and

WHEREAS, the obligations of the Borrower under this Loan Agreement and the Note will be secured by (i) the proceeds of the Bonds deposited in the Project Fund created pursuant to Section 4.1 of the Indenture; and (ii) the Trust Estate (as defined in the Indenture); and

WHEREAS, the Issuer has expressly determined and hereby confirms that the issuance of the Bonds will accomplish a valid public purpose of the Issuer by enabling the Issuer to require the Borrower to comply with the provisions of this Loan Agreement with respect to the Project and the Regulatory Agreement, dated as of the same date as this Loan Agreement; and

WHEREAS, the acquisition, construction and equipping of the Project will be financed in part with proceeds of the Bonds; and

WHEREAS, the parties hereto, intending to be legally bound hereby, and for and in consideration of the premises and the mutual covenants hereinafter contained, do hereby covenant, agree and bind themselves as follows; provided, that any obligation of the Issuer created by or arising out of this Loan Agreement shall never constitute a debt or a pledge of the faith and credit or the taxing power of the State of Texas (the “**State**”), but shall be payable solely out of the Trust Estate (as defined in the Indenture), anything herein contained to the contrary by implication or otherwise notwithstanding:

ARTICLE I DEFINITIONS

1.1. Definitions.

In this Loan Agreement, all capitalized, undefined terms used herein shall have the same meanings as used in Article I of the Indenture. In addition to the words and terms defined in the Indenture and elsewhere herein, the following words and phrases shall have the following meanings:

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower and its affiliated companies from time to time concerning or relating to bribery or corruption.

“**Arbitration**” means the submitting of a dispute as provided under Section 6.1 of the Loan Agreement regarding the removal of a Managing Member, in the manner provided under the Commercial Arbitration Rules of the American Arbitration Association then in effect; such Arbitration shall be conducted before one arbitrator, chosen in accordance with such rules in the State, and shall be binding on all parties to the dispute; judgment on the award of such arbitrator may be rendered by any court having jurisdiction of such parties and the subject matter. The expense of such Arbitration shall be borne equally by the Borrower and the Managing Member.

“**Class B Special Member**” means Cohen-Esrey Walzem, LLC, Inc., a Kansas limited liability company.

“**Condemnation**” means any taking of title, of use, or of any other property interest under the exercise of the power of eminent domain, by any governmental body or by any person acting under Governmental Authority.

“Force Majeure” means, to the extent the Project is materially adversely affected, fire, earthquake, major flooding, any other condition causing the area within which the Project is located to be declared a federal disaster area, other acts of nature, strike, lockout, acts of public enemy, riot, insurrection, emergency affecting the sale or transportation of materials or supplies needed to construct the Project, or any similar condition not in the control of the Borrower.

“Governmental Requirements” means all laws, ordinances, orders, rules or regulations of all Governmental Authorities applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws.

“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 at the Project is prohibited by any federal, state or local authority; any substance that requires special handling under any Hazardous Materials Law; 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, but does not include any such substance that is a customary and ordinary household, cleaning, office, swimming pool or landscape maintenance product used on the Project by the Borrower or any tenant or agent of the Borrower, or customary construction materials used during the course of construction of the Project by the Borrower, provided such use is in accordance with applicable hazardous material laws.

“Hazardous Materials Law” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to the Borrower or to the Project. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs, including laws of the State.

“Managing Member” means The Walzem Apartments Manager, LLC, a Kansas limited liability company.

“Permitted Transfers” means any of the following, subject to the laws of the State as then in effect at the time of such Permitted Transfer; provided, however, any such transfer shall have received the prior written consent of the Issuer, as required by the applicable provisions of Section 10 of the Regulatory Agreement (all such terms used in this definition and not otherwise defined in this Indenture shall have the meanings as set forth in the Regulatory Agreement):

(a) a Transfer to which the Construction Lender and the Permanent Lender have consented;

(b) prior to the Conversion Date, a Transfer which satisfies the following subparagraphs A through C: (A) that is either: (i) by the Managing Member or the Special Member of all or a portion of its membership interest in the Borrower directly or indirectly only to another entity which is Controlled by the Investor Member or an Affiliate of the Managing Member or the Special Member, (ii) by a partner or member of the Managing Member or Special Member of its partnership or membership interest in the Managing Member or Special Member provided that, immediately after the Transfer, the Managing Member or managing member of the Managing Member is the Investor Member or an Affiliate of the Investor Member, or (iii) the pledge and encumbrance of the interests of the Managing Member or the Special Member to or for the benefit of any financial institution which enables the Managing Member to make its capital contributions to the Borrower as well as the taking of such interests by such financial institution and their admission as a partner in the Borrower; (B) the partners or members owning not less than seventy-five percent (75%) of the ownership interest in the Managing Member are Financial Institutions or Publicly Held Corporations with a rating of BBB- or better by Standard & Poor's or Baa3 or better by Moody's Investors Service, Inc., or wholly owned subsidiaries of such entities or otherwise approved by the Construction Lender in writing, and (C) the Construction Lender has received at least fifteen (15) days advance written notice of the Transfer (which notice shall include the identity of the transferee and its owners) and Construction Lender shall have received any additional information with respect to the Transfer as reasonably requested by the Construction Lender;

(c) after the Conversion Date, a Transfer which is permitted under Section [] of the Permanent Loan Agreement;

(d) provided the Construction Lender and/or the Permanent Lender has received information with respect to the Transfer in advance thereof, including the identity of the substitute managing member or class B special member and any other information reasonably requested by the Lender, the removal of the Managing Member or Class B Special Member for cause as set forth under Section 7.7 of the Operating Agreement so long as any substitute managing member or class B special member is an Affiliate of the Investor Member;

(e) a Transfer that occurs by devise, descent or by operation of law upon the death of a natural person;

(f) the grant of leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;

(g) 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 Documents otherwise consented to by the Lender;

(h) other than Permitted Encumbrances, the grant of an easement, servitude or restrictive covenant provided that, before the grant, the Lender has determined that the easement,

servitude or restrictive covenant will not materially affect the operation or value of the Project or the Lender's interest in the Project and the Borrower pays to the Lender, within ten (10) days of demand, all costs and expenses incurred by the Lender in connection with reviewing the Borrower's request;

(i) the creation of a tax lien or mechanic's lien or judgment lien against the Project which is bonded off, released of record or otherwise remediated to the Lender's satisfaction within sixty (60) days of the date of creation;

(j) the execution, delivery and recordation of documents required in order to exercise the buyout option by and between the Managing Member, or one or more of its affiliates, and the [**Investor Member**] or its Affiliate as set forth in the Operating Agreement, provided that the same is subject, subordinate and inferior to the liens and security interests of the Documents and that the exercise of any rights thereunder shall be subject to the Documents; and

(k) any Permitted Encumbrances.

"Plans and Specifications" means the plans and specifications for the Project approved in writing by the Issuer, together with such amendments thereto as are made from time to time in accordance with this Loan Agreement.

"Special Member" means Banc of America CDC Special Holding Company, Inc., a North Carolina corporation.

"Termination Date" means the date on which the principal of, premium (if any) and interest on the Bonds and the Note have been paid in full, and all of the Borrower's Obligations and the Issuer's Obligations are fully satisfied unless an Act of Bankruptcy shall occur within ninety-one (91) days thereafter, in which event the Termination Date shall not be deemed to occur until the Issuer, the Trustee or the Holders (as the case may be) is or are conclusively entitled (whether by final adjudication or otherwise) to retain such payment.

"Transfer" means (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 Project at a judicial or non-judicial foreclosure sale under the Security Instrument or (ii) the Project becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code.

1.2. Accounting Terms.

Unless specifically provided otherwise, all accounting terms shall have the definitions given them in accordance with generally accepted accounting principles as applied to the applicable Person on a consistent basis in the preparation of its previous annual financial statements.

1.3. Rules of Construction.

The words “hereof”, “herein”, “hereunder”, “hereto”, “Agreement”, and other words of similar import refer to this Loan Agreement in its entirety.

The term “including” shall mean “including, but not limited to”.

References to Articles, Sections and other subdivisions of this Loan Agreement are to the designated Articles, Sections and other subdivisions of this Loan Agreement.

The headings of this Loan Agreement are for convenience only and shall not define or limit the provisions thereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Any reference to particular sections or subsections of the Code shall include any successor or predecessor provisions of law or regulations, to the extent the same shall apply to the Bonds.

“Reasonable” in the context of fees and expenses shall mean those fees and expenses charged by nationally recognized Bond Counsel firms; *provided, however*, that all costs and fees awarded by a court are not subject to the “reasonable” standard.

1.4. Uses of Phrases.

Any percentage of Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific sections of the Code refer to such sections of the Code and all successor or replacement provisions thereto.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1. Representations, Covenants and Warranties of the Issuer.

The Issuer represents, covenants and warrants that:

(a) The Issuer is a public and official agency of the State. Under the provisions of the Act, the Issuer is authorized to enter into this Loan Agreement and the Indenture and the transactions contemplated hereunder and thereunder and to carry out its obligations hereunder and thereunder. By proper action of its Board of Directors, the Issuer has been duly authorized to execute and deliver the Issuer Documents and to issue and sell the Bonds.

(b) The Issuer covenants that it will not pledge the amounts derived from this Loan Agreement other than as contemplated by the Indenture.

(c) The Issuer hereby finds and determines that financing the Project by the issuance of the Bonds will achieve the public purposes of the Act.

(d) No member or director of the Issuer, nor any other official or employee of the Issuer, has any interest, financial, employment or other, in the Borrower, the Project or in the transactions contemplated hereby.

(e) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, which (i) affects or questions the existence or the title to office of any member of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any of the Issuer Documents, or the issuance, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of any of the Issuer Documents or the Bonds; (iv) questions the exclusion from gross income for federal income taxation of interest on the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under any of the Issuer Documents or the Bonds or to carry out the transactions contemplated by any of the Issuer Documents or the Bonds.

(f) The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the acquisition, construction and equipping of the Project or that the Project will be adequate or sufficient for the Borrower's intended purposes.

2.2. *Representations, Covenants and Warranties of the Borrower and the Managing Member.*

The Borrower and the Managing Member, as applicable, represent, covenant and warrant that:

(a) Good Standing; Single Purpose Covenants

(1) The Borrower (i) is a limited liability company duly organized and validly existing under the laws of the State of Kansas qualified to transact business in the State, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Loan Agreement and the Tax Exemption Agreement, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State. The Borrower's business and purpose have always and shall consist solely of the ownership, development, operation and management of the Project and such other lawful activities as are incidental, necessary or appropriate thereto. The Borrower shall not incur any indebtedness other than Project indebtedness approved by the Issuer, indebtedness required under the Operating Agreement, indebtedness pursuant Section 2.10 of the Indenture, and normal trade accounts payable in the ordinary course of the Borrower's business and/or advances on account of the Borrower. The Borrower shall not assume or guaranty any other Person's indebtedness or obligations. The Borrower shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Borrower is not contemplating and shall not institute or consent to any bankruptcy, insolvency or reorganization

proceedings with respect to it, consent to the appointment of a receiver or similar official with respect to it, make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due. The Borrower shall: maintain books and records and bank accounts separate from those of any other Person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements. The Borrower shall not commingle its assets or funds with those of any other Person.

(2) The Managing Member (i) is a limited liability company duly organized and existing in good standing under the laws of the State, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Loan Agreement, and the Tax Exemption Agreement, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State. The Managing Member's business and purpose shall consist solely of acting as the Managing Member of the Borrower. The Managing Member shall not incur any indebtedness other than such obligations under the Project documents, the Borrower's Operating Agreement and related documents, the Borrower's Project indebtedness approved by the Issuer and normal trade accounts payable in the ordinary course of its and the Borrower's business and shall not assume or guaranty any other Person's indebtedness or obligations. The Managing Member shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Managing Member shall not, with respect to itself or the Borrower, institute or consent to any bankruptcy, insolvency or reorganization proceedings, consent to the appointment of a receiver or similar official, make or consent to any assignment for the benefit of creditors or admit in writing its or the Borrower's inability to pay debts generally as they become due. The Managing Member shall: maintain books and records and bank accounts separate from those of any other Person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates using reasonable and customary terms pursuant to enforceable

agreements. The Managing Member shall not commingle its assets or funds with those of any other Person.

(b) Authority. The Borrower and the Managing Member have full power and authority to (i) execute and deliver the Borrower Documents and (ii) incur the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary corporate action. All consents or approvals of any public authority which are required as a condition to the validity of this Loan Agreement, the Tax Exemption Agreement, the Note, the Bond Purchase Agreement, and the Regulatory Agreement have been obtained.

(c) Binding Agreements. The Borrower Documents have been properly executed by a duly authorized partner or member, as applicable, of the Borrower and the Managing Member (as applicable) and constitute valid and legally binding obligations of the Borrower, and are fully enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose.

(d) Litigation. There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened in writing against the Borrower, the Managing Member or the Project before any court or administrative agency which, if determined adversely to the Borrower, will materially adversely affect the Borrower or the Project, or the authority of the Borrower to enter into or perform under the Borrower Documents.

(e) No Events of Default. To the Borrower's knowledge, no event has occurred and no condition exists with respect to the Borrower or the Project that would constitute a Default that is continuing or which, with the lapse of time, if not cured, or with the giving of notice, or both, would become a Default

(f) Conflicts; Defaults. There is (i) no provision of the Borrower's or Managing Member's organizational documents or resolutions of the Borrower and no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower or the Managing Member or affecting any of the Borrower's property and (ii) to the Borrower's or Managing Member's knowledge, no provision of law or order of court binding upon the Borrower or Managing Member or affecting any of the Borrower's property, in either case which would conflict with or in any way prevent the execution, delivery, or performance of the terms of the Borrower Documents, or which would be in default or violated as a result of such execution, delivery or performance. The Borrower is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(g) Title to Project. The Borrower has or will have on the Closing Date a leasehold interest in the land and a fee simple interest in the buildings constituting the site of the Project free and clear of any liens or encumbrances, other than the liens contemplated by the Construction Loan Documents, Permitted Encumbrances and Issuer Documents.

(h) Financial Statements. The financial statements of the Borrower and the Managing Member delivered to the Issuer are each complete and correct and fairly present in all material respects the financial position of the Borrower and the Managing Member and the results of operations as of the dates and for the periods referred to and, with respect to the Borrower and Managing Member only, have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved. There are no liabilities (of the type required to be reflected on balance sheets prepared in accordance with generally accepted accounting principles), direct or indirect, fixed or contingent, of the Borrower or the Managing Member as of the date of such financial statements which are not reflected therein or in the notes thereto. There has been no material adverse change in the financial condition or operations of the Borrower or the Managing Member since the date of such balance sheet (and to the Borrower's and Managing Member's knowledge no such material adverse change is pending or threatened), and none of the Borrower or the Managing Member has guaranteed the obligations of, or made any investment in or loans to, any Person except as disclosed in such balance sheet or as provided for in the Documents. The Borrower and Managing Member have good and marketable title to all of its properties and assets, including the Property, and all of such properties and assets, including the Property, are free and clear of encumbrances (other than Permitted Encumbrances), except as reflected on such financial statements or in the notes thereto.

(i) Indenture. The Indenture has been submitted to the Borrower for its examination, and the Borrower acknowledges, by execution of this Loan Agreement, that it has reviewed the Indenture, and it hereby approves the Indenture. The Borrower agrees to perform fully and faithfully all the duties and obligations which the Issuer has covenanted and agreed to in the Indenture to cause the Borrower to perform and any duties and obligations which the Borrower or the Issuer is required by the Indenture to perform. The foregoing shall not apply to any duty or undertaking of the Issuer which by its nature cannot be delegated or assigned.

(j) Events Affecting Tax Exemption. The Borrower has not taken or permitted to be taken any action that would impair the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds, and the Borrower has never been advised that the interest is or will be subject to inclusion in gross income. As of the Closing Date, the Borrower is in compliance with all requirements contained in the Tax Exemption Agreement, and the representations set forth in the Tax Exemption Agreement pertaining to the Borrower and the Project are true and accurate in all material respects. Notwithstanding the above, if the Borrower becomes aware of any situation, event or condition which would result in the interest on the Bonds being included in gross income for federal income tax purposes, the Borrower shall promptly give written notice thereof to the Issuer and the Trustee.

(k) Compliance with Laws. The Project is of the type authorized and permitted by the Act and will, from the Closing Date forward, be operated in compliance with the provisions of the Act and the provisions of the Code applicable thereto. The Borrower will use due diligence to cause the Project to be operated in accordance with the Act and all other applicable laws, rulings, regulations and ordinances of the State and the departments, agencies and political subdivisions thereof. The Borrower has obtained or will cause to be timely obtained all requisite approvals of the State and of other federal and local governmental bodies required for the operation of the Project.

(l) No Material Misstatements. The representations and warranties of the Borrower and the Managing Member contained in the Borrower Documents (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance or delivery of the Bonds on the Closing Date), contain no material misstatement of fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Closing Date, are true, correct and complete in all material respects, do not contain any untrue statement or misleading statement of material fact, and do not omit to state a material fact necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and assumptions contained in this Loan Agreement and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the most accurate information available to the Borrower.

(m) Interest of Member or Agent of Issuer. To the knowledge of the Borrower, no member or agent of the Issuer has been or is in any manner interested, directly or indirectly, in that Person's own name or in the name of any other Persons, in the loan of the bond proceeds, the Bonds, the Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Documents.

(n) Arbitrage Bonds. No money on deposit or to be deposited in any fund or account in connection with the Bonds, whether or not such money was or is to be derived from other sources, has been or will be used by or under the direction of the Borrower in any manner which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(o) No Purchase of Bonds. The Borrower will not purchase, pursuant to a formal or informal arrangement, the Bonds or other obligations of the Issuer in an amount related to the amount of the Loan.

(p) Tax Returns. The Borrower has filed or caused to be filed all required federal, state and local tax returns and has paid all taxes as shown on such returns as such taxes have become due. No claims have been assessed and are unpaid with respect to such taxes.

(q) No Reliance on Issuer. The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds.

(r) Fees. The Borrower shall pay all fees as provided under the Note and in this Loan Agreement, including the Issuer Fees.

(s) Place of Business of Borrower. The Borrower has a place of business in the State.

(t) Name of Borrower and Managing Member. The Borrower filed a Certificate of Formation with the State and since its date of filing has done business only under the name of The Walzem Apartments, LLC. The Managing Member is BMDC Walzem, LLC, a Texas limited liability company.

(u) Governmental Requirements. To the Borrower's knowledge, no violation of any Governmental Requirement exists with respect to the Project, the Borrower, or any other asset of the Borrower, the Project conforms in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, all necessary utilities are available or will be available to the Project, and the Borrower has obtained or will obtain all requisite zoning approvals necessary with respect to the Project.

(v) Condemnation. No condemnation, eminent domain or similar proceeding is pending, or to the knowledge of the Borrower, threatened in writing, with respect to the Project or any portion thereof.

(w) Compliance with Leasing Requirements of Code. At all times during the Qualified Project Period, as defined in the Regulatory Agreement, at least forty percent (40%) of the units in the Project are occupied by tenants with incomes of sixty percent (60%) or less of the area median income as adjusted for family size and as determined in accordance with the provisions of Section 142(d) of the Code and applicable regulations issued thereunder. Within five (5) days after the commencement of the Qualified Project Period, the Borrower shall provide the Servicer and the Issuer with a certificate confirming that the Project is in compliance with the set-aside requirements of Section 142(d) of the Code.

(x) Exterior Installation Finish System. To the extent applicable, the Borrower will: (i) ensure that the subcontractor(s) installing the exterior finishes for the Project have at least 5 years of experience or be certified by the manufacturer in installing Exterior Installation Finish System ("EIFS") material, and (ii) represent that the installation of such EIFS material will be accompanied by a 10-year warranty on the material and a 5 year warranty on labor and replacement costs.

(y) Not an Employee Benefit Plan. The Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. section 2510.3-101.

(z) Regulation U. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other Regulation of such Board of Governors, or for any purpose prohibited by law or any Document.

(aa) Securities Law. The Borrower is not (i) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (ii) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal, State, or state law or regulation which purports to restrict or regulate its ability to borrow money.

(bb) No Fraud. The Borrower has not entered into the Loan or any Document with the actual intent to hinder, delay, or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Documents.

(cc) Intellectual Property. The Borrower possesses and will at all times possess all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted or as it is intended to be conducted with respect to the Project, without known conflict with any rights of others.

(dd) Utilities. All utility services necessary and sufficient for the construction, development and operation of the Project are presently or will be, and, to the best of Borrower’s knowledge, will at all times necessary for the construction, development and operation of the Project be, available through dedicated public rights-of-way or through perpetual private easements with respect to which the Security Instrument creates a valid and enforceable first lien. The Borrower will also promptly obtain all utility installations and connections required for the operation and servicing of the Project for its intended purposes.

(ee) Flood Hazard Insurance. No part of the Property which is essential to the operation of the Project is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any such part of the Property is an area identified as an area having special flood hazard, adequate flood insurance has been obtained by the Borrower.

(ff) 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, partners, members, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its subsidiaries and their respective officers, partners 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, partners, members 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 Loan established hereby, is a Sanctioned Person. No advance from the Project Fund or use of Proceeds of the Bonds or other transaction contemplated by this Loan Agreement will violate Anti-Corruption Laws or applicable Sanctions.

(gg) Governmental Approvals. The Borrower has obtained, or will obtain and has maintained as currently in full force and effect, or will be in full force and effect, all consents,

and permits, licenses, accreditations, certifications and other approvals (governmental or otherwise) that:

(i) would constitute a condition precedent to, or the absence of which would materially adversely affect, the enforceability of and the performance by the Borrower of its obligations hereunder; and

(ii) are necessary for the acquisition, construction, financing and operation of the Project.

2.3. *Additional Representations, Warranties and Undertakings of the Borrower and the Managing Member.*

The Borrower and the Managing Member, as applicable, make the following additional representations as the basis for their covenants and agreements herein:

(a) The execution and delivery of the Borrower Documents, and the consummation of the transactions herein and therein contemplated, including the application of the proceeds of the Bonds as so contemplated, will not conflict with, or constitute a breach of, or default by it under its formation and governance documents, or any statute, indenture, mortgage, deed of trust, lease, note, loan agreement or other agreement or instrument to which it is a party or by which it or its properties are bound, and will not constitute a violation of any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties. Additionally, the Borrower is not in breach, default or violation of any statute, indenture, mortgage, deed of trust, note, loan agreement or other agreement or instrument which would allow the obligee or obligees thereof to take any action which would preclude performance under the Borrower Documents by the Borrower.

(b) There are no actions, suits or proceedings of any type whatsoever pending or, to its knowledge, threatened in writing against or affecting it or its assets, properties or operations which, if determined adversely to it or its interests, could have a material adverse effect upon its financial condition, assets, properties or operations and it is not in default with respect to any order or decree of any court or any order, regulation or decree of any federal, state, municipal or governmental agency, which default would materially and adversely affect its financial condition, assets, properties or operations, or the completion of the construction of the Project.

(c) Neither any information, exhibit or report furnished to the Issuer by the Borrower in connection with the negotiation of the Borrower Documents nor any of the foregoing representations contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) The Borrower shall have the right, without creating a Default hereunder, to contest the validity or amount of any lawful claims against the Borrower or the Property in good faith by timely and appropriate proceedings at its sole cost and expense, *provided that* (i) the Borrower shall give the Servicer, the Issuer and the Trustee written notice of its intention to contest such claims, (ii) the Borrower shall diligently prosecute such claims, (iii) the Borrower shall at all times effectively stay or prevent the imposition of any lien against the Property as a result of such

lawful claims and the enforcement of such claim until resolution of the contest, or, to the extent any lien is imposed as a result of any such lawful claim, shall immediately bond off such lien, (iv) the Borrower's ability to pay and perform the Borrower's Obligations or the security for the Borrower's Obligations is not, in the reasonable discretion of the Servicer and the Issuer materially impaired during the period of contest, and (v) the Borrower shall establish reasonable reserves or obtain bonding for such liabilities being contested if the Servicer reasonably determines, after consulting with the Issuer, such reserves or bonding to be necessary. If clauses (i) through (v) are not satisfied, the Borrower shall promptly pay and discharge such claims, and the failure to so pay such claims shall constitute a Default under this Loan Agreement.

(e) The Borrower shall maintain such insurance as required by the Servicer and such other insurance with insurance companies on such of its properties, in such amounts and against such risks, as is customarily maintained by similar businesses operating in the same vicinity, and shall provide evidence of such insurance to the Trustee, the Issuer, and the Servicer as reasonably requested. Such insurance shall name the Issuer, the Servicer and the Trustee as additional insureds and as loss payees, as their interest may appear.

(f) The Borrower shall maintain in good standing its existence as a limited liability company under the laws of the State of Kansas, and maintain in good standing its qualification to transact business in the State. The Managing Member shall maintain in good standing its existence as a limited liability company under the laws of the State.

(g) The Project shall at all times after completion of construction operate and maintain 200 rental units and the Borrower shall not at any time convert any of the rental units in the Project into non-residential space.

(h) The Borrower shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials in violation of Governmental Requirements, except for amounts of substances which are customarily used in the construction or operation of a multifamily residential rental project, and then only in compliance with applicable Governmental Requirements; nor shall the Borrower cause or permit, as a result of any intentional or unintentional act or omission on the part of the Borrower or any tenant or occupant, a release of Hazardous Materials onto the Property or the Project or, in the case of the Borrower, onto any other property. The Borrower shall comply with and ensure compliance by all tenants and occupants with all applicable Governmental Requirements concerning Hazardous Materials, whenever and by whoever triggered, and shall obtain and comply with, and shall ensure that all tenants and subtenants obtain and comply with any and all approvals, registrations or permits required thereunder. The Borrower shall conduct all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Land or the Project in accordance with, and as may be necessary to comply with all applicable Governmental Requirements.

(i) The Borrower shall comply with all restrictive covenants affecting the Land, the Property and the Project, including, without limitation, the Regulatory Agreement.

(j) The Borrower and the Managing Member shall promptly notify the Trustee, the Issuer, and the Servicer in writing, with a full description, of all threatened (in writing) or

pending litigation of which the Borrower or the Managing Member receives written notice, and of all proceedings before any court or any Governmental Authority in which the Borrower or the Managing Member is a party or of which the Borrower or the Managing Member receives written notice, which if adversely determined, would materially adversely affect the conduct of the business of the Borrower or the Managing Member, the condition (financial or otherwise) of the Borrower or in any manner materially adversely affecting the Property, including, but not limited to, tax deficiencies and any prospective Condemnation, change of zoning or other action affecting the Property or the Project. The Borrower shall provide prior written notice to the Servicer and the Issuer, prior to entering into a settlement in any litigation or proceedings involving (i) a recovery, or an uninsured payment, by the Borrower in excess of \$25,000, so long as (A) any payment under \$25,000 is not made from the revenues of the Project, and (B) all other payments in excess of \$25,000 are approved by the Servicer and the Issuer, such approval not to be unreasonably withheld, (ii) a change in the permitted use of the Property, (iii) the inclusion in gross income of interest on the Bonds, or (iv) the creation of a lien on the Property.

(k) The Borrower shall be solely responsible for, and shall promptly make all disclosures and file or cause to be filed by the Issuer all reports required by all applicable federal and state securities laws in connection with the Bonds, the Loan and the Project, including, if applicable, SEC Rule 15c2-12 and any similar or successor rules hereinafter made applicable to the Bonds, and will provide the Trustee and the Issuer with all information necessary for the Trustee or the Issuer, as applicable, to make any such required disclosures or file such reports. The Servicer shall be provided with a copy of each disclosure or report filed by the Borrower or the Issuer pursuant to the provisions of this paragraph (k).

(l) The Borrower shall keep and maintain the Property and each part thereof in good condition, working order and repair, and make all necessary or appropriate repairs, replacements and renewals thereto so that each part thereof shall at all times be in good condition, fit and proper for the respective purposes for which it was originally intended, erected or installed and to ensure that the security for the Bonds and the Loan shall not be impaired. The Borrower shall not use or occupy the Property or knowingly permit the same to be used or occupied in any manner which would cause structural injury to the Project or which would cause the value or the usefulness of the Property or any part thereof to diminish (ordinary wear and tear for its business excepted), or which would constitute a public or private nuisance or waste. Upon the written demand of the Servicer, the Borrower shall commence and proceed promptly and diligently to maintain and repair the Project in good condition, working order and repair and to correct any structural injuries or defects in the Project. In the event the Borrower fails to maintain and repair the Property or to correct structural injuries or defects in accordance with the terms of this subsection, the Servicer shall have the right to enter onto the Property in order to take any and all actions deemed necessary by the Servicer to so maintain and repair the Property, and all sums expended by the Servicer in connection therewith shall be payable by the Borrower with interest, on demand.

(m) The Borrower shall make such capital improvements as may be required to satisfy the Borrower's obligation to maintain the Property as set forth in Section 2.3(l) hereof.

(n) The Borrower shall not, without the prior written consent of the Servicer and the Issuer, create, assume or suffer to exist any other indebtedness or liability for the debts or obligations of any other Person except the Construction Loan and the Permanent Loan.

(o) The Borrower shall not enter into any agreement, contract or undertaking containing any provision which would be violated or breached by the performance by the Borrower of any obligations hereunder or under any other Document.

(p) The Borrower shall deliver to the Servicer, the Issuer and the Trustee, on demand by either or both, as applicable, any contracts, bills of sale, statements, receipted vouchers or agreements, under which the Borrower claims title to any materials, fixtures or articles incorporated in the Project or subject to the lien of this Loan Agreement or the Deed of Trust.

(q) [Intentionally omitted].

(r) [Intentionally omitted].

(s) The Borrower agrees to provide to the Issuer or the Trustee, as applicable, all information necessary to enable the Issuer or the Trustee, as applicable, to complete and file all forms and reports required by the laws of the State and the provisions of the Code in connection with the Project and the Bonds.

(t) At all times during the term of the Loan, the Borrower shall comply, and take all necessary steps to ensure compliance, with all requirements of Section 42 of the Code and all rules and regulations promulgated pursuant thereto by the Federal government or the applicable tax credit housing agency relating to the Section 42 low-income housing tax credits, including, but not limited to, all restrictive covenants and agreements with the applicable tax credit housing agency.

(u) At all times during the term of the Loan, the Borrower and the Managing Member warrant and represent that neither it nor any person or entity who holds any direct or indirect interest in the Borrower or the Managing Member, the Project or the proceeds of the Loan described herein, or is in any way affiliated with or will benefit from any of the above, (i) is described in, covered by, or specially designated pursuant to or affiliated with any person or entity described in, covered by, or specially designated pursuant to “Executive Order 13224 Blocking Terrorist Property and a Summary of the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), Terrorism List Governments Sanctions Regulations (Title 31, Part 596 of the U.S. Code of Federal Regulations), and Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of U.S. Code of Federal Regulations)” (“**Executive Order 13224**”), or any other list or designation promulgated by the United States of America or any department or agency thereof of persons or entities transactions with which are blocked or prohibited by any statute, regulation or governmental order and (ii) is not, and shall not become a person or entity with whom any individual or entity is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as amended from time to time (the “**USA Patriot Act**”) or Executive Order 13224, and any regulations promulgated pursuant thereto.

(v) The Borrower shall pay all actual, out-of-pocket fees, costs and expenses required to be paid by the Borrower under the terms of this Loan Agreement.

(w) The Borrower shall notify the Trustee promptly of the receipt of any prepayment of the Note, whether upon acceleration, by reason of application of insurance or condemnation proceeds, optional prepayment or otherwise. If such prepayment results in revisions to the Amortization Schedule, the Purchaser or Majority Owner, as applicable, shall provide the revised Amortization Schedule to the Trustee, the Issuer and the Borrower in accordance with Section 3.09 of the Indenture.

All representations of the Borrower contained herein and in any certificate or other instrument delivered by the Borrower pursuant to the Borrower Documents or in connection with the transaction contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale and delivery of the Bonds.

2.4. *Tax-Exempt Status of the Bonds.*

Excluding any representations made therein by or on behalf of another party thereto, the Borrower hereby represents, warrants and agrees that the Tax Exemption Agreement executed and delivered by the Borrower concurrently with the issuance and delivery of the Bonds is true, accurate and complete in all material respects as of the date on which executed and delivered.

2.5. *Commencement and Completion.*

The Borrower shall, within sixty (60) days of the Closing Date, deliver to its general contractor for the Project (with a copy to the Lender) a “notice to proceed” with respect to the construction of the Project. Construction of the Project shall be completed no later than **[December 31, 2022]** (as may be extended by Force Majeure or with the written consent of the Servicer), or such earlier date as required to ensure compliance with Section 42 of the Code relating to the “in service” requirements for the Section 42 low-income housing tax credits relating to the Project. The Borrower shall cause the Project to be completed in a good and workmanlike manner substantially in accordance with the Plans and Specifications (with such changes as approved by the Lender) and in accordance with the Budget (with such changes as approved by the Lender) and applicable Governmental Requirements. The Plans and Specifications shall be construed in such a manner that any work, structures or parts thereof exhibited in the Plans and not mentioned in the Specifications, or vice versa, shall be completed the same as if they were exhibited in the Plans and mentioned in the Specifications. The Borrower shall install and pay for all work provided in the Plans and Specifications. The Borrower shall obtain at its expense all permits and licenses which may be required by any governmental agency, including municipal, county and state authorities. The Borrower further agrees that the Lender, the Issuer and their designated representatives may audit the books of account pertaining to the Project covered by this Loan Agreement.

2.6. *Notice of Determination of Taxability.*

Promptly after the Borrower first becomes aware of any investigation relating to the tax status of the Bonds, or a Determination of Taxability, the Borrower shall give written notice thereof

to the Issuer, the Permanent Lender and the Trustee at the address of each party listed in Article I of the Indenture.

2.7. *Compliance with Texas Government Code.*

The Borrower hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Loan Agreement, the Initial Bond Purchase Agreement, the Regulatory Agreement and the Tax Exemption Agreement, and such representation is hereby incorporated by reference into each of the documents referenced herein, is a contract for goods or services, will not boycott Israel during the term of this Loan Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Borrower understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Borrower and exists to make a profit.

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

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

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

ARTICLE III CONSTRUCTION OF THE PROJECT; ISSUANCE OF THE BONDS

3.1. *Agreement to Construct the Project.*

The Borrower agrees to make all contracts and do all things necessary for the construction of the Project. The Borrower further agrees that it will construct the Project with all reasonable dispatch and use its best efforts to cause construction of the Project to be completed by the Completion Date, or as soon thereafter as may be practicable, except due to delays caused by Force Majeure or with the written consent of the Servicer and Issuer; but if for any reason such

construction is not completed by said Completion Date there shall be no resulting liability on the part of the Borrower or the Issuer and no diminution in or postponement of the payments required in Section 4.2 hereof to be paid by the Borrower.

3.2. Agreement to Issue, Sell and Deliver the Bonds; Deposit of Bond Proceeds.

In order to provide funds for the payment of the Qualified Project Costs, the Issuer, concurrently with the execution of this Loan Agreement, will issue, sell, and deliver the Bonds and deposit the proceeds thereof with the Trustee, which amounts shall be immediately deposited into the Project Fund.

3.3. Disbursements from the Project Fund.

In the Indenture, the Issuer has authorized and directed the Trustee to make disbursements from the Project Fund to pay Qualified Project Costs upon satisfaction of the requirements of the Indenture.

Disbursements from the Project Fund for the payment of Qualified Project Costs shall be made by the Trustee only to, or at the direction of, the Borrower, upon satisfaction of all of the following conditions:

(i) The receipt by the Trustee of a completed Requisition providing the amount of the disbursement request (a “Disbursement Amount”) and the expected date of disbursement (a “Disbursement Date”).

(ii) Promptly upon receipt of a completed and fully-executed Requisition, the Trustee will notify the Borrower if (A) the Disbursement Amount exceeds the available account balance of the Project Fund or (B) the Trustee has actual knowledge that an Event of Default has occurred and is continuing. If such an Event of Default has occurred and is continuing to the knowledge of the Trustee, the Trustee shall make no further disbursements from the Project Fund so long as such Event of Default continues to exist.

(iii) Unless the Borrower is given notice from the Trustee of the matters described in clause (ii) above, on or before the expected Disbursement Date the Borrower will cause Collateral Payments equal to the Disbursement Amount to be delivered to the Trustee in immediately available funds.

(iv) Upon receipt by the Trustee of the Collateral Payments in an amount equal to the Disbursement Amount, such Collateral Payments shall be deposited into the Collateral Fund. In the event that the amount of the Collateral Payments received by the Trustee does not equal the amount of the Requisition, the Trustee shall promptly return such Collateral Payments to the applicable collateral provider and shall not make the requested disbursement.

(v) Subject to Section 4.2 hereof, upon satisfaction of the conditions set forth in clauses (i) through (iv) above, the Trustee shall be unconditionally and irrevocably obligated to disburse funds from the Project Fund in accordance with the Requisition. The Trustee shall disburse funds from the Project Fund in accordance with the instructions contained in the Requisition (A) on the same Business Day that it receives the Collateral Payment in the event the Trustee receives the Collateral Payment with respect to such

Requisition prior to 10:30 AM Local Time (or such later time that is acceptable to the Trustee in its discretion) on such Business Day or (B) on the next succeeding Business Day if the Trustee receives the Collateral Payment after such time.

The Borrower hereby acknowledges and agrees that it shall submit Requisitions to the Trustee no more frequently than once each calendar month and that it shall not request, and the Trustee shall not be required to make, any disbursement which is in excess of the amount of Eligible Investments then available to be withdrawn or liquidated at par and without penalty. Each such Requisition shall be consecutively numbered.

The Borrower shall not request disbursements from the Project Fund the aggregate amount of which exceeds the principal amount of the Loan.

The Borrower acknowledges and agrees that any Requisitions for any item not described in, or the cost for which item is other than as described in, the information statement filed by the Issuer in connection with the issuance of the Bonds as required by Section 149(e) of the Code, and in the notice of public hearing pertaining to the Bonds shall be accompanied by an Opinion of Bond Counsel to the effect that such disbursement will not adversely affect the Federal Tax Status of the Bonds. The Trustee may conclusively rely on the Borrower's Requisitions as to the eligibility of costs included in the Requisitions.

Any money in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Qualified Project Costs promptly shall be transferred into the Bond Fund for payment of principal and interest on the Bonds when due.

Notwithstanding any provision of this Loan Agreement or any provision of the Indenture to the contrary, the Trustee shall not disburse funds from the Project Fund unless and until the Trustee confirms that the amount in the Collateral Fund plus the amount in the Project Fund, less the amount of the requested disbursement from the Project Fund, is at least equal to the then outstanding principal amount of the Bonds.

3.4. [Reserved].

3.5. Establishment of Completion Date.

(a) The Borrower Representative shall evidence completion of the Project and the actual date of completion to the Issuer and the Trustee by an executed Completion Certificate in the form attached hereto as **Exhibit D**. The Completion Certificate shall be furnished by the Borrower to the Issuer and the Trustee promptly following the completion of the Project.

(b) If at least ninety-five percent (95%) of the proceeds of the Bonds have not been used to pay Qualified Project Costs, any amount (exclusive of amounts retained by the Trustee in the Project Fund for payment of Qualified Project Costs not then due and payable) remaining in the Project Fund shall be transferred by the Trustee into the Bond Fund and used by the Trustee (i) to pay the principal of and interest on the Bonds or (ii) for any other purpose provided that the Trustee is furnished with an opinion of Bond Counsel to the effect that such use is lawful under the Act and will not cause interest on the Bonds to be included in gross income for federal income tax purposes. Until used for one or more of the foregoing purposes, such segregated amount may be invested as permitted by the Indenture provided that prior to any such investment

the Trustee is provided with an opinion of Bond Counsel to the effect that such investment will not cause interest on the Bonds to be included in gross income for federal income tax purposes.

3.6. *Borrower Required to Pay in Event Project Fund Insufficient.*

In the event the moneys in the Project Fund are not sufficient to pay the Qualified Project Costs in full, the Borrower agrees to complete the Project and to pay that portion of the Qualified Project Costs in excess of the moneys available therefore in the Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Qualified Project Costs will be sufficient to pay all of the Qualified Project Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Qualified Project Costs pursuant to the provisions of this Section, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under this Loan Agreement.

3.7. *Special Arbitrage Certifications.*

The Borrower and the Issuer covenant (i) not to take any action or fail to take any action which would cause the interest on any of the Bonds to be or become includable in the gross income of the Holders for federal income tax purposes and (ii) not to cause or direct any moneys on deposit in any fund or account to be used in a manner that would cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code. The Borrower certifies and covenants to and for the benefit of the Issuer and the Holders of the Bonds that so long as there are any Bonds Outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner that will cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code.

3.8. *Rebate Calculations and Payments.*

The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower’s rebate requirement or yield reduction payments (both as may be required under the Tax Exemption Agreement) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to comply with all arbitrage and rebate requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Exemption Agreement. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Loan Agreement. The Borrower shall obtain such records of the computations made pursuant to this Section as are required under Section 148(f) of the Code and shall retain such records for at least six (6) years after the maturity or retirement of the Bonds.

3.9. *Rebate Analyst.*

In accordance with Section 3.8, the Rebate Analyst shall perform any calculations required under Section 4.07 of the Indenture and under the Tax Exemption Agreement at the sole expense of the Borrower. The Borrower shall appoint a Rebate Analyst in accordance with the Tax

Exemption Agreement, the expense of which shall be borne by the Borrower, and the Borrower shall give prompt notice in writing to the Trustee of such appointment. The Borrower further covenants that, during the term of the Bonds, in the event the Borrower sells or otherwise disposes of the Project, it will require that the transferee execute a covenant similar to that in this Section in the sale or other documents concerning the disposition and will require such transferee to include such a covenant in future transfer documents. The special covenants of the Borrower in this Section shall survive the defeasance or payment in full of the Bonds notwithstanding any other provision of this Loan Agreement until the requirements for payment of any Rebate Amount has been fully satisfied.

ARTICLE IV LOAN PROVISIONS

4.1. *Loan of Proceeds.*

The Issuer agrees, upon the terms and conditions contained in this Loan Agreement and the Indenture, to finance the Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. Such proceeds shall be disbursed to or on behalf of the Borrower as provided in Section 3.3 hereof.

4.2. *Amounts Payable.*

(a) The Borrower hereby covenants and agrees to repay the Loan on or before any date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in any account of the Bond Fund, will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or acceleration or otherwise) interest on the Bonds as provided in the Indenture. Payments by the Trustee of principal and interest on the Bonds from amounts in the Bond Fund shall be credited against the Borrower's obligation to pay principal and interest on the Loan. The Borrower also covenants and agrees to pay any additional amounts that may be due as a result of a Determination of Taxability or in connection with any prepayment of the Loan required to allow the Bonds to be redeemed such that the outstanding principal amount thereof is equal to the Actual Project Loan Amount in accordance with Section 4.3 hereof.

It is understood and agreed that all payments of principal and interest payable by the Borrower under subsection (a) of this Section 4.2 are assigned by the Issuer to the Trustee for the benefit of the Holders of the Bonds (excluding amounts on deposit in the Rebate Fund). The Borrower consents to such assignment.

(b) In the event the Borrower should fail to make any of the payments required in this Section 4.2, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

(c) In consideration of and as a condition to the disbursement of Bond proceeds in the Project Fund to pay Project Costs, and to secure the Borrower's obligation to make Loan Payments, the Borrower shall deliver or cause to be delivered to the Trustee prior to each such disbursement, Collateral Payments equal to the amount of the proposed disbursement from the Project Fund. All such Collateral Payments shall be paid to the Trustee for the account of the Issuer and shall be held in the Collateral Fund and disbursed in accordance with the provisions of the Indenture. Collateral Payments will not be used to pay for Project Costs.

Notwithstanding any provisions to the contrary herein or in the other Financing Documents, upon receipt of a Collateral Payment and a Requisition that conform to the requirements of Section 3.6 hereof, the Trustee shall be obligated to either (i) promptly disburse funds in the same amount from the Project Fund in accordance with the applicable Requisition or (ii) return the Collateral Payment to the to the party that delivered such Collateral Payment within one Business Day after receipt of the Collateral Payment, but the Trustee shall only be obligated to make such a disbursement to the extent of the amount of proceeds of the Bonds remaining in the Project Fund, and if the Trustee received a Collateral Payment in excess of the available amount, the Trustee shall promptly return the excess to the party that delivered such Collateral Payment.

(d) After the Conversion Date, the Borrower shall pay to the Trustee, for deposit into the Bond Fund, on the Business Day immediately preceding each Interest Payment Date, an amount equal to the sum of (i) the interest due on the Bonds on such date (after taking into account funds available for such purpose, if any, in the Negative Arbitrage Account of the Project Fund), plus (ii) the principal due on the Bonds on such date, including the amount of mandatory redemption payments, if any, required pursuant to Section 4.01 of the Indenture (to the extent of money not already on deposit with the Trustee with respect to such mandatory redemption payments). Amounts so paid to the Trustee by the Borrower shall be in immediately available funds or shall be such that on the Bond Payment Date they are available funds.

(e) The Borrower understands that the interest rate applicable under the Note and with respect to the Bonds is based upon the assumption that interest income paid on the Bonds will be excludable from the gross income of the Owners under Section 103 of the Code and applicable state law. In the event that an Initial Notification of Taxability shall occur, then the interest rate on the Note and the Bonds, and on all obligations under this Loan Agreement (other than those to which the Alternative Rate applies) shall, effective on the date of such Initial Notification of Taxability, be increased to a rate equal to the Taxable Rate. The Borrower shall, in addition, pay to the Trustee, for deposit into the Bond Fund, promptly upon demand from the Trustee or the Servicer, an amount equal to the Additional Interest payable on the Bonds. The Borrower shall also indemnify, defend and hold the Owners, Issuer and Trustee (and each of their directors, members, officers and employees) harmless from any penalties, interest expense or other costs, including reasonable attorneys' fees (including all reasonably allocated time and charges of Owners', Issuer's and Trustee's "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Bonds and any interest payable to any Owner with respect to the Bonds. The obligations of the Borrower under this Section 4.2(d) shall survive termination of this Loan Agreement and the Note and repayment of the Loan. If, following any increase in interest rates pursuant to this Section 4.2(c), a final determination is made, to the satisfaction of the Owners, that interest paid

on the Bonds is excludable from the Owners' gross income under Section 103 of the Code and applicable state law, the Owners shall promptly refund to the Borrower any Additional Interest and other additional amounts paid by the Borrower pursuant to this Section 4.2(c).

4.3. *Construction Loan Repayment Fund.*

On or prior to the Conversion Date, the Borrower shall deliver, or shall cause to be delivered, to the Trustee, for deposit into the Construction Loan Repayment Fund, moneys other than proceeds of the Bonds in an amount which, when combined with funds transferred by the Trustee from the Collateral Fund to the Construction Loan Repayment Fund pursuant to Section 4.11 of the Indenture, is sufficient to repay in full the outstanding principal balance of the Construction Loan. The Trustee shall apply such funds as set forth in Section 4.11 of the Indenture.

4.4. *Fees and Expenses.*

At the closing, the Borrower agrees to cause to be deposited the Costs of Issuance Deposit into the Costs of Issuance Fund as required under the Indenture, to pay, from moneys on deposit therein or in the Expense Fund or from other funds, the Issuer Fees, the Trustee Ongoing Fee and the fee of the Rebate Analyst (including the reasonable fees and expenses of their respective counsel actually incurred) in connection with the issuance of the Bonds and the performance of their duties in connection with the transactions contemplated hereby, including, without limitation, all costs of recording and filing, to the extent such fees and expenses are not otherwise paid from the Expense Fund or the Costs of Issuance Fund in accordance with Section 4.06 or Section 4.08 of the Indenture. All such amounts shall be paid directly to the parties entitled thereto for their own account as and when such amounts become due and payable. The Borrower will also pay any reasonable expenses actually incurred in connection with any redemption of the Bonds. Additionally, and without limiting the foregoing, the Borrower agrees to pay to the Issuer, the Trustee or to any payee designated by the Issuer (whether such amounts are due on the Closing date or not), all reasonable costs and expenses incurred by the Issuer for post-closing actions including but not limited to consents, review, and modifications, all reasonable costs and expenses incurred by the Trustee in its administration of the trusts created by the Indenture and in the performance of its duties under the Documents, and all reasonable third-party expenses incurred by the Trustee, the Servicer, or the Issuer in servicing the Loan and the Bonds.

The obligations of the Borrower under this Section shall survive the termination of this Loan Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, including the Regulatory Agreement.

4.5. *Obligations of the Borrower Unconditional.*

The obligations of the Borrower to make the payments required under this Loan Agreement, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any right of notice, setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Trustee or any other Person. Subject to termination as provided herein, the Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Loan Agreement, (ii) will perform and observe all of its other agreements contained in this Loan Agreement and (iii) will

not terminate this Loan Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, or change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Loan Agreement, whether express or implied, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, whether express or implied.

ARTICLE V SPECIAL COVENANTS

5.1. *No Warranty of Condition or Suitability by Issuer.*

THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY AS TO THE PROJECT OR THE CONDITION THEREOF, OR THAT THE PROJECT WILL BE SUITABLE FOR THE PURPOSES OR NEEDS OF THE BORROWER. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE BORROWER WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PROJECT. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE BORROWER'S PURPOSES.

5.2. *Access to the Property.*

Subject to the rights of the tenants under the Leases, the Borrower agrees that the Issuer, the Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Property and the construction thereof at all reasonable times with 48 hours' advance notice. The Borrower acknowledges that the Issuer shall monitor the construction of the Project. The Issuer, the Trustee and their duly authorized agents shall also be permitted, at all reasonable times with 48 hours' advance notice, to examine the books, accounts, contracts, documents, and other papers of the Borrower with respect to the Project which shall all be maintained by the Borrower in reasonable condition and for audit.

5.3. *Alterations, Additions and Improvements.* Except for the construction of the Project substantially in accordance with the Plans and Specifications as defined in the Intercreditor Agreement, and as may otherwise be provided in the Documents, the Borrower will not construct any additional improvements on the Land without the prior written consent of the Servicer and the Issuer, such consent not to be unreasonably withheld, and no portion of the Project or any other improvements or equipment now or hereafter covered by the lien and security interest of this Loan Agreement or the Security Instrument, shall be removed demolished or materially altered, without

the prior written consent of the Servicer and the Issuer, such consent not to be unreasonably withheld.

Subject to the provisions of Article III with respect to the construction of the Project, the Borrower will complete and pay for, within a reasonable time, any structure or improvement permitted or required under this Loan Agreement, and will:

(a) Compliance With Restrictions. Construct, erect and complete any permitted improvements (including but not limited to the Project) on any part of the Land (i) in good and workmanlike manner and strictly in accordance with all applicable Governmental Requirements and in accordance with the orders, rules and regulations of the National Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, (ii) except as otherwise set forth in the Plans and Specifications, entirely on lots or parcels of Land, (iii) except as otherwise set forth in the Plans and Specifications, so as not to encroach upon any easement or right of way or upon the land of others, (iv) except as otherwise set forth in the Plans and Specifications, wholly within the building restriction lines however established, and (v) so as not to violate use and other restrictions contained in prior conveyances, zoning ordinances or restrictions;

(b) Insurance. Furnish, in connection with any such work, general public liability insurance for the benefit of the Issuer, the Trustee and the Holders, as their interest may appear, in the limits required by the Servicer;

(c) Payment. Promptly pay for all such improvements; and

(d) Liens; Surety Bond. Discharge any and all encumbrances (other than the Permitted Encumbrances) filed against the Property (unless the Borrower in good faith contests any such liens by appropriate and diligent proceedings), and upon the request of the Servicer or the Issuer, deposit with the Trustee for the benefit of the Holders a one hundred percent (100%) surety bond, twenty-five percent (25%) letter of credit or other security satisfactory to the requesting party to assure the payment for and completion of any such changes, additions, alterations, substitutions, replacements, removals or improvements.

All such changes, additions, alterations, substitutions, replacements, removals and improvements shall become a part of the Project and subject to the lien and security interest of this Loan Agreement and the Deed of Trust.

5.4. *Further Assurances and Corrective Instruments.*

The Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Loan Agreement.

5.5. *Issuer and Borrower Representatives.*

Whenever under the provisions of this Loan Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given in writing both for the Issuer by an authorized representative of the Issuer and for the Borrower by a Borrower Representative. The Trustee shall be authorized to act on any such approval or request pursuant to the Indenture.

5.6. *Financing Statements.*

The Borrower shall, or shall cause to be executed and filed any and all financing statements, or any amendments thereof or continuation statements thereto, to perfect the security interests granted in the Indenture, in the manner prescribed in the Indenture. The Borrower shall pay all costs of filing such instruments and any fees and expenses (including reasonable attorney's fees) associated therewith.

5.7. *Insurance.*

The Borrower shall obtain and keep in force such insurance coverage as may be required by the Servicer. All insurance policies and renewals thereof relating to the Project shall be in a form acceptable to the Issuer in its reasonable discretion and shall designate the Issuer and the Trustee as additional insureds for liability insurance. The Issuer shall be furnished with full copies of all policies within fifteen (15) calendar days of Borrower's receipt and shall have the right to receive duplicate copies of policies and renewals, and the Borrower shall promptly furnish the Issuer and the Lender with copies of all renewal notices and all receipts for paid premiums within thirty (30) calendar days of receipt thereof. The Borrower shall notify the Issuer at least thirty (30) days in advance of an endorsement or of any change in the terms of coverage adverse to the Issuer. In the event of loss, the Borrower shall give prompt notice to the insurance carrier and the Issuer.

With respect to any casualty insurance, it shall (i) be in an amount equal to the greater of the actual cash value of the replacement cost of the insurable, then existing improvements and equipment in the Project and (ii) be provided by an insurance company with a claims paying ability rating of not less than "A" by the Rating Agency.

5.8. *Requisitions.*

(a) At such time as the Borrower shall desire to obtain an advance from the Project Fund, the Borrower shall complete, execute and deliver to the Issuer a Requisition. Each Requisition shall be signed on behalf of the Borrower, shall be in the form set forth in the Intercreditor Agreement.

(b) The amounts deposited into the Project Fund may be disbursed by the Trustee only in accordance with Section 5.04 of the Indenture, including any required deposits of a corresponding amount into the Collateral Fund and delivery of a written Requisition of the Borrower satisfying the requirements of this Section 5.8 and Section 5.04 of the Indenture. If for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds immediately following receipt of funds from Lender for deposit into the Collateral Fund, Trustee shall promptly wire transfer such funds back to Lender and not deposit same in the Collateral Fund.

5.9. Covenants Regarding Tax Credits.

The Borrower hereby agrees to comply with all of the following covenants and with the practices and procedures related to the monitoring of Tax Credits (each, a “**Tax Credit Covenant**”):

(a) To observe and perform all obligations imposed on the Borrower in connection with the federal low income housing tax credits awarded to the Project (the “Tax Credits”), including the obligation to have the Project “placed in service” (within the meaning given in Section 42 of the Code) in a timely manner; and to operate the residential units of the Project, and to use the Borrower’s best efforts to cause all appropriate parties to operate the same, in accordance with all requirements, statutes, and regulations governing the Tax Credits;

(b) To preserve, to the best of Borrower’s ability, at all times the award and availability of the Tax Credits;

(c) Not to release, forego, or materially alter, amend, or modify its rights to the Tax Credits without the Servicer’s prior written consent, which the Servicer may give or withhold in the Servicer’s reasonable discretion;

(d) Not to execute any residential lease of all or any portion of the Project that does not comply fully with all requirements, statutes, and regulations governing the Tax Credits, without the Servicer’s prior written consent, which the Servicer may give or withhold in the Servicer’s reasonable discretion;

(e) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income level of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the Tax Credits in connection with the low-income occupancy of the Project;

(f) To comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal regulations (the “**Federal Laws**”), all requirements of the allocating authority in respect of the Tax Credits (the “**Allocation Authority**”) and all applicable laws and regulations (the “**Local Laws**”) applicable to the creation, maintenance and continued availability of the Tax Credits;

(g) To certify compliance with the set-aside requirements and report the dollar amount of qualified basis and maximum applicable percentage, date of placement in service and any other information required for the Tax Credits at such time periods as required by Federal Laws, the Allocation Authority or Local Laws for such Tax Credits, as applicable;

(h) To set aside the appropriate number of units for households with incomes meeting the required standards of the median income of the jurisdiction in which the Project is located to qualify for the Tax Credits (as determined pursuant to Section 42 of the Code and/or Local Laws), adjusted for family size, and to operate and maintain all such units as “low-income units” qualifying for the Tax Credits under Section 42(i)(3) of the Code and/or Local Laws;

(i) To exercise good faith in all activities relating to the operation and maintenance of the Project in accordance with the requirement of Federal Laws and Local Laws;

(j) To deliver within ten (10) Business Days to the Issuer and the Servicer true and correct copies of all notices or other documents or communications received or given by the Borrower with regard to or relating in any way to the Borrower's membership interests and/or the Tax Credits that could have a material adverse impact on the Project. Promptly upon receipt thereof, the Borrower shall deliver to the Servicer a copy of (i) the fully-executed 42(m) letters for the Project; (ii) the basis audit (as required by Section 42 of the Code) for the Project (including a certificate of the Borrower's accountant and attorneys, if requested by them); (iii) the first annual income certification for all tenants of the Project showing that the tenants are qualified for purposes of the Borrower's obtaining Tax Credits, and (iv) the fully-completed Form 8609 (required by the Code) issued for the Project. The Borrower shall deliver within ten (10) Business Days to the Issuer and the Servicer such other certificates, income certificates, reports and information as they may request; and

(k) The Borrower understands and acknowledges that the Holders are purchasing the Bonds based, in part, upon the value of the Tax Credits, and the Tax Credits, directly or indirectly, constitute part of the Trustee's security on behalf of the Holders for the Bond obligations. The Borrower agrees to indemnify, defend and hold the Holders harmless for, from, and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with the Borrower's failure in a material manner to comply with one or more Tax Credit Covenants that results in the Borrower having to repurchase the Investor's limited membership interests in the Borrower or a reduction in the Investor's remaining Capital Contributions pursuant to the Operating Agreement, excepting, with respect to any Holder, those arising out of, or resulting, solely from such Holder's gross negligence or willful misconduct.

All of the proceeds of the Bonds shall be used in a manner that complies with the applicable sections of the Code.

5.10. *[Intentionally omitted].*

5.11. *Borrower's Obligations Upon Redemption of Bonds.*

Unless a mandatory tender under Section 3.01 of the Indenture shall have previously occurred, if the applicable Mandatory Redemption Date is not extended pursuant to Section 3.02 of the Indenture and a sufficient amount is not available in the Collateral Fund, the Negative Arbitrage Account of the Bond Fund, or the Project Fund as provided in Section 3.02 of the Indenture for the purpose of paying the redemption price of such Bond, the Borrower will cause to be paid to the Trustee by the applicable times provided in the Indenture, an amount equal to the amount by which the redemption price of the Bonds, together with interest accrued to the Mandatory Redemption Date, exceeds the amount otherwise available to redeem the Bonds in full.

5.12. *Option to Terminate.*

The Borrower shall have the option to cancel or terminate this Loan Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, and (b) sufficient

money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee to meet all Loan Payments due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed. Such option shall be exercised by the Borrower, giving the Issuer and the Trustee five (5) days' notice in writing of such cancellation or termination and such cancellation or termination shall become effective at the end of such notice period. The provisions of this Section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

ARTICLE VI
RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING;
INDEMNIFICATION

6.1. *Restriction on Transfer; Removal of Managing Member.*

(a) Except for Permitted Transfers and Permitted Encumbrances and as otherwise set forth in this Section 6.1, in the event the Borrower intends to sell, lease (except to the tenants who will occupy units in the Project), sublease or otherwise materially encumber the whole of or any part of the Project or sell, assign or otherwise, except as otherwise provided herein, transfer any interest in the Borrower (a “**transfer**”), it shall (i) apply to the Issuer for consent to transfer, provided that consent of the Issuer shall not be unreasonably withheld with respect to any transfer which is subject to Issuer approval pursuant to this Section 6.1 and (ii) comply with the provisions of the Regulatory Agreement, including particularly Section 10 thereof, restricting any such transfer.

(b) In addition, in connection with a proposed transfer, the Borrower and any transferee shall comply with all applicable provisions of the laws and regulations of the State in effect at that time regarding notice to tenants, and tenants' rights generally. The transferee shall expressly assume the Borrower's duties and obligations under this Loan Agreement and any other Documents to which the Borrower is a party in writing simultaneously with any approved transfer as set forth in this Section 6.1. The Borrower shall make available to the Issuer copies of any documents reflecting an amendment to membership interests in the Borrower or other organizational documents relating to the sale or other transfer of membership interests of the Borrower.

(c) Except as otherwise provided for herein, Permitted Transfers and/or Permitted Encumbrances or with the prior written consent of the Issuer in its reasonable discretion, the Borrower will not, directly or indirectly, by operation of law or otherwise, sell, assign, grant a deed of trust, pledge, hypothecate, transfer or otherwise dispose of the Project or any interest in the Project, and will not encumber, alienate, hypothecate, grant a security interest in or grant any other ownership or control interest whatsoever in the Project, in the leases or in the rents, issues and profits therefrom.

(d) Except as otherwise provided for herein, Permitted Transfers and/or Permitted Encumbrances, no interest in the Borrower and no ownership interest in the Managing Member may be sold, conveyed, transferred, assigned, pledged or otherwise transferred, in whole or in part, directly or indirectly, by operation of law or otherwise other than the transfer of other than the transfer of the Investor Member interests after the Investor Member has paid all installments of the equity contribution required to be contributed under the Borrower's Operating

Agreement and such transfer shall be expressly permitted hereunder without the consent of the Issuer, except to the extent required under Section 10 of the Regulatory Agreement.

(e) Notwithstanding anything contained in the subsections above, each of the following transactions are hereby deemed to be expressly permitted hereunder:

(i) Issuance of membership interests in the Borrower equal to 99.99% of the profits, losses, credits, distributions and other interests in the Borrower to the Managing Member and the Special Member;

(ii) The transfer by the Managing Member or the Special Member of the their respective membership interests in the Borrower to any other entity which is an Affiliate of the Managing Member, the Special Member or which is controlled by Managing Member;

(iii) The transfer by the Managing Member and the Special Member of their respective membership interests in the Borrower to any other entity which is not an Affiliate of the Managing Member or which is controlled by the Managing Member with the Issuer's sole consent;

(iv) The pledge and encumbrance of the interests of the Managing Member or the Special Member to or for the benefit of any financial institution which enables the Managing Member to make its capital contributions to Borrower and any subsequent realization by any such lender upon the interests of the Managing Member in the Borrower;

(v) The removal of the Managing Member by the Special Member pursuant to the terms of the Operating Agreement of the Borrower and the replacement of the Managing Member with the Special Member or an Affiliate of the Special Member;

(vi) A change in the beneficial ownership of the Managing Member or the Special Member, so long as each such entity remains controlled by the Managing Member, Special Member or Affiliates thereof; or

(vii) Any Permitted Transfer

(f) The Borrower shall not, without the prior written consent of the Servicer and the Issuer, enter into any merger, consolidation, other business combination or dissolution or sell, lease, or otherwise dispose of any of the Collateral or its other assets (except assets customarily consumed, leased, or customarily disposed of and replaced in the ordinary course of operating an apartment project).

(g) Notwithstanding anything herein to the contrary, no transfers shall be permitted during the Permanent Mode except as otherwise expressly permitted pursuant to the terms of the Permanent Loan Agreement.

(h) The Borrower will not seek the dissolution or winding up, in whole or in part, of the Borrower or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, or assignment for the benefit of creditors or similar proceedings.

(i) The Borrower will not take any action that would adversely affect the exclusion of interest on the Bonds from gross income, for purposes of federal income taxation nor omit or fail to take any action required to maintain the exclusion of interest on the Bonds from gross income, for purposes of federal income taxation.

(j) The Managing Member shall be subject to removal by the Special Member or any successor in interest if:

(i) the Managing Member has failed or refused to perform any of its obligations as set forth in this Loan Agreement or any of the Borrower Documents, which failure or refusal has a material adverse impact on the Project and the Managing Member does not, within a period of thirty (30) calendar days following written notice of such failure or refusal, commence the performance of such obligation and cure within a reasonable time thereafter, the adverse effects of such failure or refusal; or

(ii) the Managing Member has engaged or is engaging in an activity which has or may have an adverse impact on the Project or is intentionally injurious to the Project.

Written notice of this election to remove the Managing Member (the “**Removal Notice**”) shall be served upon the Managing Member either by certified or by registered mail, return receipt requested, or by personal delivery at the notice address as provided in this Loan Agreement. Such notice shall set forth the date upon which the removal is to become effective (which date shall be not less than fourteen (14) calendar days following the transmittal of such Removal Notice.) If the Managing Member to be so removed objects to the determination that any of the circumstances described in subparagraphs (i) and (ii) have occurred, the Managing Member shall notify the Issuer of its objection within seven (7) calendar days of its receipt of the Removal Notice, in which case such removal shall not become effective unless and until the preconditions therefore are confirmed by Arbitration, which shall be conducted as quickly as practicable. Any successor Managing Member shall be selected and approved in accordance with this Loan Agreement and the Operating Agreement and approved by the Issuer in accordance with Section 10 of the Regulatory Agreement.

(k) This Loan Agreement may not be sold, transferred or otherwise disposed of by the Borrower without the prior written consent of the Issuer in accordance with Section 10 of the Regulatory Agreement. Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Regulatory Agreement. In the event of a conflict between the provisions of this Loan Agreement and the Regulatory Agreement, the provisions of the Regulatory Agreement shall control.

(m) The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided,

that it may do so if the surviving, resulting or transferee entity is other than the Borrower, it assumes in writing all of the obligations of the Borrower under the Borrower Documents and it has a net worth equal to or greater than that of the Borrower immediately prior to such consolidation, merger, sale or transfer. The Borrower shall not permit one or more other entities to consolidate with or merge into it; or take any action or allow any action to be taken to terminate the existence of the Borrower except as provided herein. No sale, assignment or transfer of title to the Project, except as may be otherwise required by the Lender, shall be made unless (a) the Lender consents to such assignment or transfer, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower Documents, provided that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder, except the Borrower's obligation to indemnify the Issuer and Trustee and reimburse the Issuer and the Trustee for the fees and expenses of the Issuer and Trustee, and (c) no Default as certified in writing to the Issuer and the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Loan Agreement. Upon the assumption of the duties of the Borrower by an assignee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; provided, however, the Borrower shall not be released from its obligation to pay or reimburse the fees and expenses of the Issuer and the Trustee and to indemnify the Trustee and the Issuer without the express written consent of the Trustee and the Issuer, as applicable, which consent shall not be unreasonably withheld.

(n) Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Permanent Loan Documents.

6.2. *Indemnification by Borrower, Guarantor and Managing Member.*

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

OFFICERS, AGENTS OR EMPLOYEES, THE BORROWER SHALL DEFEND THE ISSUER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

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

NOTWITHSTANDING ANY PROVISION OF THIS LOAN AGREEMENT TO THE CONTRARY, THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM THE ISSUER'S OWN GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM ANY SUCH PARTY'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT

(b) The Borrower, the Guarantor and the Managing Member (the “**Indemnitors**”) hereby agree to indemnify and save harmless the Trustee from and against all liabilities, obligations, suits, actions, claims, judgments, demands, damages, penalties, fines, assessments, losses, expenses, fees (including all fees of attorneys, auditors, and consultants), taxes (including rebate to the United States) but exclusive of income taxes on fees earned by the Trustee, contributions, and costs of every kind and nature (including litigation and court costs, amounts paid in settlement by or with the approval of the Borrower and amounts paid to discharge judgments) (collectively, “**Claims**”) incurred by, asserted or imposed against an Indemnified Party (hereinafter defined), the Indemnitors or any other Person directly or indirectly resulting from or arising out of or relating to (but excluding such Claims arising from the negligence or willful misconduct of the Trustee):

(i) the issuance, offering, sale or delivery of the Bonds; provided, however, that the Borrower shall not be responsible for any act or inaction of the Placement Agent that is subject to the Placement Agent’s indemnification obligations, if any, under the Bond Purchase Agreement;

(ii) the design, construction, installation, operation, use, occupancy, maintenance, repair, management or ownership of the Project;

(iii) the enforcement of (a) the provisions of this Loan Agreement, the other Borrower Documents and any other document executed by the Borrower in connection with issuance of the Bonds and the making of the Loan and (b) the obligations of the Borrower imposed hereby or thereby;

(iv) any untruthful, misleading or inaccurate information supplied by the Borrower relating to the Project, the Borrower, the Project manager or to the terms of financing relating to the Project, including, but not limited to, any breach of any representation or warranty of the Borrower set forth in the Borrower Documents or any certificate delivered pursuant thereto, and any representation, or warranty of the Borrower, or any information provided by the Borrower that contains or contained any untrue or misleading statement of fact or omits or omitted to state any material fact necessary to make the statements made therein not misleading in light of the circumstances under which they were made;

(v) any breach or alleged breach (except in the case of a breach alleged by the Trustee and such alleged breach is not found by a court of competent jurisdiction) by the Borrower of the covenants contained herein;

(vi) any injury to or death of any Person or damage to property in or upon the Project or growing out of or connected with the repair, management, ownership, operation, use, non-use, maintenance, construction, design, installation, rehabilitation, condition or occupancy of the Project or any part thereof, including any and all acts or operations relating to any construction, rehabilitation, operation, use, non-use, design, management, ownership, condition, occupancy, maintenance, installation or repair performed by the Borrower in connection with the Project;

(vii) violation or breach of any agreement, covenant, representation, warranty or condition of this Loan Agreement (except in the case of a breach alleged by the Trustee and such alleged breach is not found by a court of competent jurisdiction) or the Note, except by the Trustee;

(viii) any Determination of Taxability with respect to the Bonds, including, but not limited to, the fees and expenses of the Trustee and their counsel with respect to such Determination of Taxability in responding to any inquiry or audit by the Internal Revenue Service;

(ix) the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking, or other placement or release in, on or from the Project of Hazardous Materials in violation of any Hazardous Materials Law or official interpretation thereof in connection with the Project or the land on which it is located;

(x) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever related to the Project or the Bonds, commenced or threatened in writing against the Project or an Indemnified Party;

(xi) any action, suit, claim, demand or proceeding contesting or affecting title to the Project;

(xii) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Project or an Indemnified Party that might adversely affect the validity or enforceability of the Bonds, the Borrower Documents, or the performance by the Borrower or by any Indemnified Party of their respective obligations under the Borrower Documents, the Indenture or any other document executed in connection therewith by the Borrower or any Indemnified Party; and

(xiii) failure of the Borrower to pay the Issuer Fee, the Trustee's Ongoing Fee or the fees of the Rebate Analyst, or other amounts that the Borrower is obligated to pay pursuant to the Reimbursement Rights granted to such parties under this Loan Agreement or any of the other Documents.

(xiv) information provided by the Borrower or required and failed to be furnished by the Borrower relating to the Borrower or the Project, including, without limitation, any information furnished by the Borrower for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Issuer, any other information or certification obtained from the Borrower to assure the

exclusion of the interest on the Bonds from gross income of the Holders thereof for federal income tax purposes, and the transactions contemplated by the Indenture, the Bonds, and the Borrower Documents and the carrying out by the Borrower of any of the transactions contemplated by the Bonds, the Indenture and the Borrower Documents.

All references to the Trustee in this Section shall be deemed to include all its respective past, present, and future officers, directors, members, employees, commissioners, and agents and their permitted successors and assigns (also referred to herein as “**Indemnified Parties**”).

The Indemnitors shall indemnify and save each Indemnified Party harmless from any such Claims (but excluding such Claims arising from the willful misconduct of the Issuer or the negligence or willful misconduct of the Trustee) and upon notice from such Indemnified Party, the Indemnitors shall defend them or either of them in any such action or proceeding as provided below.

Any Indemnified Party, after receipt of notice of the existence of a Claim in respect of which indemnity hereunder may be sought or of the commencement of any action against an Indemnified Party in respect of which indemnity hereunder may be sought, shall notify the Indemnitors in writing of the existence of such Claim or commencement of such action. The Indemnitors shall undertake promptly to defend, at their sole cost and expense, any and all Claims against an Indemnified Party in connection with any of the matters indemnified against in this Section. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought under this Loan Agreement, the Indemnitors, upon receipt by either of written notice from the Indemnified Party, shall assume the investigation and defense of the Claims, including the employment of counsel selected by the Indemnitors, subject to the approval of the Indemnified Party in such party’s sole discretion. The Indemnitors shall pay all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same, provided that the Trustee shall have the right to review and approve or disapprove any such compromise or settlement. If (i) an Indemnified Party determines that a potential conflict of interest exists or may arise as a result of any of the Indemnitors assuming the investigation and defense of any claims, (ii) an Indemnified Party shall have been advised by counsel that there may be legal defenses available to it which are different from or additional to those available to the Indemnitors, or that a conflict exists that could affect the zealous defense of such Claims by the Indemnitors, (iii) the Indemnitors shall not have assigned the defense of such action and employed counsel therefor satisfactory to the Indemnified Party within a reasonable time after notice of commencement of such action, such Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense of the action or proceeding, and the Indemnitors shall pay the fees and expenses of such separate counsel.

(c) Failure of an Indemnified Party to provide notification to the Indemnitors required under this Section shall not operate as a waiver of the Indemnitors’ indemnification obligations in this Section.

(d) Notwithstanding anything to the contrary contained herein, neither the Borrower, the Managing Member nor their respective partners, shareholders, members, directors, officers, employees and/or agents shall have any liability to indemnify (A) the Trustee or any Trustee Indemnified Party against Claims resulting from such Trustee's or Trustee Indemnified Party's negligence or willful misconduct. The obligations of the Borrower and the Managing Member under this Section 6.2 are joint and several, and are in addition to and shall not be limited by any other provisions of this Loan Agreement hereof and shall survive the termination of this Loan Agreement.

This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except that in the case of the foregoing indemnification of the Trustee or any Trustee Indemnified Party, to the extent such damages are caused by the negligence or willful misconduct of such Person. The obligations of the Indemnitors under this Section are joint and several, and are in addition to and shall not be limited by the provisions of Section 9.3 hereof and shall survive the termination of this Loan Agreement.

6.3. *Issuer to Grant Security Interest to Trustee.*

The parties hereto agree that pursuant to the Indenture, the Issuer shall assign to the Trustee, in order to secure payment of the Bonds, all of the Issuer's right, title and interest in and to this Loan Agreement and the Note, except for Reserved Rights of the Issuer.

ARTICLE VII DEFAULTS AND REMEDIES

7.1. *Defaults Defined.*

The following shall be "Defaults" under this Loan Agreement and the term "Default" shall mean, whenever it is used in this Loan Agreement, the occurrence of any one or more of the following events and continuation thereof beyond all applicable grace or cure periods:

(a) Failure by the Borrower to pay any amount required to be paid under subsection (a) or (b) of Section 4.2 hereof when the same are due and payable.

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed herein other than as referred to in subsection (a) of this Section or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Tax Exemption Agreement, for a period of 60 days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower by the Issuer or the Trustee; provided, with respect to any such failure covered by this subsection (b), no event of default will be deemed to have occurred so long as a course of action adequate to remedy such failure will have been commenced within such 60 day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby.

(c) The dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy,

insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for sixty (60) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due.

(d) The occurrence of a Default under the Indenture or any Permanent Loan Document.

The provisions of subsection (b) of this Section are subject to the following limitation: if by reason of Force Majeure it is impossible for the Borrower in whole or in part, despite its best efforts, to carry out any of its agreements contained herein (other than its obligations contained in Article IV hereof), the Borrower shall not be deemed in Default during the continuance of such inability. Such Force Majeure event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement. The settlement of strikes and other industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to settle strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

7.2. Remedies on Default.

Whenever any Default referred to in Section 7.1 hereof shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, as the assignee of the Issuer's rights hereunder, in its sole discretion may take (but only with the approval of the Servicer and after Notice to the Issuer), and upon written direction of the Servicer and Notice to the Issuer shall take, or the Issuer (in the event the Trustee fails to act) may take, one or any combination of the following remedial steps:

(a) If the Trustee has declared the Bonds immediately due and payable pursuant to Section 9.01 of the Indenture, by written notice to the Borrower, declare an amount equal to all amounts then due and payable on the Bonds, whether by acceleration of maturity (as provided in the Indenture) or otherwise, to be immediately due and payable, whereupon the same shall become immediately due and payable; and

(b) [Reserved].

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement, the Note, the Regulatory Agreement or any other Document in the event of default thereunder (including without limitation foreclosure of the Deed of Trust).

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

7.3. *No Remedy Exclusive.*

Subject to Section 9.01 of the Indenture, no remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee 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 required in this Article. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Holders of the Bonds, subject to the provisions of the Indenture, including, but not limited to the Reserved Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements herein contained.

7.4. *Agreement to Pay Attorneys' Fees and Expenses.*

In the event the Borrower should default under any of the provisions of this Loan Agreement or under the Note and the Issuer and/or Trustee should employ attorneys or incur other expenses for the collection of payments required hereunder or under the Note, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein or in the Note, the Borrower agrees that it will on demand therefor pay to the Issuer and the Trustee, as the case may be, the fees and expenses of such attorneys and such other expenses so incurred by the Issuer and/or the Trustee. This Section 7.4 will continue in full force and effect notwithstanding the full payment of the obligations under this Loan Agreement or the termination of this Loan Agreement for any reason.

7.5. *No Additional Waiver Implied by One Waiver.*

In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

7.6. *Right to Cure.*

Notwithstanding anything herein to the contrary, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform and, as a result a default or event of default occurs or may occur, the Managing Member and the Special Member shall have the right, but not the obligation, to perform such act or pay such amount on behalf of the Borrower and thereby cure or prevent such default or event of default, provided such default or event of default is cured within any applicable cure period or grace period provided herein to the Borrower.

**ARTICLE VIII
DAMAGE TO THE PROPERTY; APPLICATION OF NET PROCEEDS**

8.1. *Damage to the Property.* During the Permanent Mode and subject to the terms of the Intercreditor Agreement, if at any time prior to the Termination Date, the Project or any part thereof is Damaged, either temporarily or permanently, the Borrower shall be obligated to continue to pay the amounts specified herein and in the Note, and the Net Proceeds resulting from any Damage will be applied as set forth in Section 3.2 of the Permanent Loan Agreement. Provided, however, nothing contained in this Article shall be construed as limiting the Issuer in exercising any right of Condemnation in relation to the Property, nor shall the exercise of any right of Condemnation by the Issuer be deemed a breach of the terms, conditions and covenants of this Loan Agreement or any of the other Documents, or the exercise of bad faith. Any Condemnation by the Issuer shall be deemed covered and shall be governed by the applicable provisions of this Article.

ARTICLE IX MISCELLANEOUS

9.1. *Term of Agreement.*

This Loan Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds and all amounts payable hereunder and under the Indenture shall have been fully paid or provision made for such payments, whichever is later, provided, that all representations and certificates of the Borrower and the Managing Member as to matters affecting the tax-exempt status of the Bonds, and the provisions of Sections 3.8, 6.2, and 7.4 hereof shall survive termination of this Loan Agreement.

9.2. *Notices.*

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed each party's Notice Address. A duplicate copy of each notice, certificate or other communication given hereunder by the Issuer or the Borrower shall also be given to the Trustee. The Issuer, the Borrower, and the Trustee may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

9.3. *Nonrecourse Liability of Borrower.*

(a) General Rule. The liability of the Borrower and the Managing Member under this Loan Agreement during the Cash Collateralized Mode shall be limited to the Collateral Fund. During the Permanent Mode the liability of all principal and interest due under the Note shall be only against the Project, and the rents, issues and profits thereof, and any other security for the Borrower's Obligations, and not against the Borrower, any direct or indirect member, partner, officer or director of the Borrower or the Managing Member, or any successor or assign of the Borrower, any direct or indirect member, shareholder, manager, officer or director of the Borrower or the Managing Member. The Issuer and the Trustee shall look respectively thereto or to such other security as may from time to time be given or have been given for payment of the Bonds, and any judgment rendered against the Borrower or the Managing Member under this Loan Agreement shall be limited as described above and any other security including the Guaranty so given for satisfaction thereof; and (ii) no deficiency or other personal judgment shall be sought or

rendered against the Borrower or the Managing Member or their respective successors, transferees or assigns, in any action or proceeding arising out of this Loan Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing herein shall limit the Issuer's or the Trustee's ability to exercise any right or remedy with respect to any property pledged or granted to the Issuer or any Trustee under this Loan Agreement, or both, or to exercise any right against the Borrower or the Managing Member, on account of any claim for fraud and deceit. Notwithstanding anything herein to the contrary, nothing in this Section shall limit the rights of indemnification against the Borrower and the Managing Member pursuant to Section 6.2 hereof. Furthermore, notwithstanding anything to the contrary, the Borrower and the Managing Member shall be fully liable for: (1) amounts payable to the Issuer constituting Reserved Rights of the Issuer, (2) any amount due and owing as a result of any calculation or determination which may be required in connection with the Bonds for the purpose of complying with Section 148 of the Code (including rebate liability) or any applicable Treasury regulation, and (3) the indemnification and the payment obligations to the Issuer under Sections 6.2 and 7.4 hereof.

(b) No Application to Guaranty or Indemnification Obligations. Nothing in this Section 9.3 shall be deemed to limit in any way whatsoever (i) the liability of the Guarantor under the Guaranty or the Environmental Guaranty, which shall be recourse obligations of the Guarantor, or (ii) any obligation of the Borrower, the Guarantor, or the Managing Member to indemnify the Issuer, the Holders, the Servicer, any Indemnified Party (as defined herein) or the Trustee under the terms of this Loan Agreement or any of the other Documents, including indemnification for environmental liability, each of which shall be recourse obligations of the Borrower, the Guarantor, and the Managing Member. In connection with each of the Guaranty, for any period of time in which the Guarantor or its affiliate does not have a membership interest in the Borrower, the Issuer agrees that it shall timely provide to the Guarantor notice of its intent to enforce the Guaranty or Environmental Guaranty, as applicable, against the Guarantor pursuant to the terms thereof; provided, however, that the Issuer's failure to provide such notice to the Guarantor shall in no way impair the Issuer's exercise of any rights and remedies under the Guaranty, the Environmental Guaranty or this Loan Agreement.

The limit on the Borrower's and the Managing Member's liability set forth in this Section shall not, however, be construed, and is not intended to in any way, to constitute a release, in whole or in part, of the indebtedness evidenced by this Loan Agreement or a release, in whole or in part, or an impairment of the security interest, or in case of any default or enforcing any other right of the Issuer under this Loan Agreement or to alter, limit or affect the liability of any Person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Loan Agreement.

Notwithstanding the foregoing, the provisions of this Section shall be null and void and have no force and effect to the extent of any loss suffered by the Issuer, the Trustee, any Owner or any beneficiary of or the trustee under the Deed of Trust as a result of the Borrower's: (a) committing any act of fraud; (b) misapplication of any condemnation award or casualty insurance proceeds; (c) failure to apply the revenues of the Project in the manner and for the purposes provided in the Issuer Documents, whether before or after a Default; or (d) violation of any environmental laws. Nothing herein shall be deemed to prohibit the naming of the Borrower in an action to realize upon the remedies provided herein either at law or in equity, subject to the

foregoing limitation against a personal money judgment or deficiency decree against the Borrower, the Managing Member or their heirs, personal representatives, successors and assigns, or to prohibit the naming of any person in any action to realize upon the remedies provided in the Managing Member Documents, the Guarantor Documents or any other guaranty given in favor of the Issuer, the Trustee or the Servicer.

The provisions of this Section shall survive the termination of this Loan Agreement.

9.4. *No Pecuniary Liability of Issuer.*

No agreements or provisions contained in this Loan Agreement or any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project or any property of the Borrower financed, directly or indirectly, out of proceeds of the Bonds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer (including tax and rebate liability) or its past, present or future officers, directors, employees, commissioners, agents or members of its governing body and their successors and assigns or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Trust Estate. No failure of the Issuer to comply with any terms, covenants or agreements in this Loan Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer or its past, present or future officers, directors, employees, commissioners, agents and members of its governing body and their successors and assigns to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Trust Estate. Without limiting the requirement to perform its duties or exercise its rights and powers under this Loan Agreement upon receipt of appropriate indemnity or payment, none of the provisions of this Loan Agreement or the Indenture will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Loan Agreement. Nothing in this Loan Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in this Loan Agreement or in the Indenture; provided that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Loan Agreement or made available under the Indenture by the Borrower and pledged to the payment of the Bonds.

No covenant, agreement or obligation contained herein or in any other financing instrument executed in connection with the Project or the making of the Loan shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee, commissioner, or agent of the Issuer in his or her individual capacity so long as he or she does not act in bad faith, and no such director, officer, employee, commissioner or agent of the Issuer in his or her individual capacity shall be subject to any liability under any agreement to which the Issuer is a party or with respect to any other action taken by him or her so long as he or she does not act in bad faith.

9.5. *Binding Effect.*

This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Holders of Bonds and their respective successors and assigns.

9.6. *Severability.*

In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

9.7. *Amounts Remaining in Funds.*

Subject to the provisions of the Indenture, it is agreed by the parties hereto that any amounts remaining in any account of the Bond Fund, the Project Fund, the Collateral Fund or any other fund (other than the Rebate Fund) created under the Indenture upon expiration or earlier termination of this Loan Agreement, as provided in this Loan Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees and expenses of the Trustee and the Issuer in accordance with the Indenture, shall belong to and be paid to the Borrower by the Trustee so long as those remaining amounts do not constitute Bond Proceeds.

9.8. *Amendments, Changes and Modifications.*

Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise herein expressly provided, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, in accordance with the provisions of the Indenture.

9.9. *Execution in Counterparts.*

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

9.10. *Applicable Law.*

This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

9.11. *Intercreditor Agreement to Govern.*

In the event of a conflict between the provisions of this Loan Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

9.12. Captions

The captions and headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Loan Agreement.

9.13. Use of Proceeds of the Bonds

Notwithstanding anything contained in any of the documents executed in connection with the issuance of Bonds to the contrary, all of the proceeds of the Bonds shall, for federal income tax purposes, be (i) allocated on a pro rata basis to each building in the Project and the land on which such building is located and (ii) used exclusively to pay costs of the acquisition or construction of the Project which are includible in the aggregate basis of any building and the land on which the building is located (“**Eligible Costs**”) in a manner such that each building satisfies the requirements of Section 42(h)(4)(B) of the Code. No proceeds of the Bonds will be deemed or considered to have been used [**to pay any of the costs of the issuance of Bonds or**] to fund any reserve accounts other than a Project Fund to be used to pay Eligible Costs.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed in their respective official names and their respective official seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

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

By: _____
Name: James B. "Beau" Eccles
Title: Secretary to Board

(SEAL)

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: The Walzem Apartments Manager, LLC
a Kansas limited liability company,
its managing member

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT
DEVELOPMENT CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

JPMORGAN CHASE BANK, N.A.,
a national banking association,
as Purchaser

By: _____
Name: _____
Title _____

The Managing Member hereby agrees to comply with the representations set forth in Article II and the obligations set forth in Section 6.2 of this Loan Agreement.

THE WALZEM APARTMENTS MANAGER, LLC,
a Kansas limited liability company

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT DEVELOPMENT
CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

EXHIBIT A

PROPERTY DESCRIPTION

BEING a 7.043 acre tract of land situated in the Josefa Leal Survey No. 39, Abstract No. 420, County Block 5080, in the City of San Antonio, Bexar County, Texas, being out of the remaining portion of a called 9.549 acre tract of land, as conveyed to Walzem Partners, Ltd., and recorded in Volume 6640, Page 919, of the Official Public Records of Bexar County, Texas, and said 7.043 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a ½” iron pin with cap stamped “DAM #5348 PROP. COR.” set in the Southwesterly Right-of-Way (R.O.W.) line of Walzem Road (a 120’ wide R.O.W.), being the most Easterly corner of Lot 20, Block 2, County Block 5080, Ventura Subdivision Unit 3, as recorded in Volume 9500, Page 148, of the Deed and Plat Records of Bexar County, Texas, and being the most Northerly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE with the Southwesterly R.O.W. line of said Walzem Road, same being the Northeasterly line of the remaining portion of said 9.549 acre tract of land, S 30° 54’ 11” E, a distance of 703.66 feet to a ½” iron pin with cap found in the Southwesterly R.O.W. line of said Walzem Road, being the most Northerly corner of Lot 1, Block 24, County Block 5080, Randolph Brooks Federal Credit Union Subdivision, as recorded in Volume 9540, Page 169, of the Deed and Plat Records of Bexar County, Texas, and being an Easterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE departing the Southwesterly R.O.W. line of said Walzem Road, and with the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, S 59° 10’ 28” W, a distance of 215.40 feet to a ½” iron pin with cap found for the most Westerly corner of said Lot 1, and being a Southeasterly interior corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE continuing with the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, S 30° 48’ 36” E, a distance of 70.50 feet to a ½” iron pin with cap stamped “DAM #5348 PROP. COR.” set in the Southwesterly line of said Lot 1, being in a Southeasterly line of the remaining portion of said 9.549 acre tract of land, and being a Southeasterly corner of this herein described tract of land;

THENCE departing the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, and across and through the remaining portion of said 9.549 acre tract of land, S 59° 10’ 28” W, a distance of 191.48 feet to a ½” iron pin with cap stamped “DAM #5348 PROP. COR.” set in the Northeasterly R.O.W. line of Gulf Shore boulevard (a 50’ wide R.O.W.), being in the southwesterly line of the remaining portion of said 9.549 acre tract of land, and being the most Southerly southwest corner of this herein described tract of land;

THENCE with the Northeasterly R.O.W. line of said Gulf Shore Boulevard, and with the Southwesterly line of the remaining portion of said 9.549 acre tract of land, the following courses:

N 40° 48' 42" W, a distance of 55.58 feet to a ½" iron pin with cap stamped "MBC" found for a Southwesterly corner, and being at the beginning of a curve to the right;

With said curve to the right, having an arc length of 43.72 feet, a radius of 250.00 feet, a delta angle of 10° 01' 14", a tangent length of 21.92 feet, and a chord bearing said distance of N 35° 46' 20" W, 43.67 feet to a ½" iron pin with cap stamped "MBC" found for a Southwesterly corner:

THENCE continuing with the Northeasterly R.O.W. line of said Gulf Shore Boulevard, and with the Southwesterly line of the remaining portion of said 9.549 acre tract of land, N 30° 50' 43" W, a distance of 654.63 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Northeasterly R.O.W. line of said Gulf Shore Boulevard, being the most Southerly corner of a 22' wide Drain R.O.W., Block 2, C.B. 5080, of said Ventura Subdivision Unit 3, and being the most Westerly Northwest corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE departing the Northeasterly R.O.W. line of said gulf Shore boulevard, and with the common line between said 22' wide Drain R.O.W. and the remaining portion of said 9.549 acre tract of land, N 59° 18' 51" E, a distance of 120.00 feet to a ½" iron pin with cap stamped "MBC" found for the most Easterly corner of said 22' wide Drain R.O.W., and being a Northwesterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE continuing with the common line between said 22' wide Drain R.O.W. and the remaining portion of said 9.549 acre tract of land, N 31° 57' 50" W, a distance of 21.12 feet to a ½' iron pin found in concrete for the most Northeasterly corner of said 22' wide Drain R.O.W., same being the most Easterly corner of Lot 1, Box 2, County Block 5080, of said Ventura Subdivision Unit 3, being the most Southerly corner of Lot 18, Block 2, County Block 5080, of said Ventura Subdivision Unit 3, and being a Northwesterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE with the Southeasterly lines of Lots 18, 19, and 20, Block 2, County Block 5080, of said Ventura Subdivision Unit 3, and with the Northwest line of the remaining portion of said 9.549 acre tract of land, N 59° 05' 10" E, a distance of 300.00 feet to the POINT OF BEGINNING, and containing 7.043 acres of land, more or less.

Bearings based on the Texas State Plane Coordinate System, Texas South Central Zone (4204), North American Datum 1983.

EXHIBIT B-1

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

\$20,000,000

[_____]

FOR VALUE RECEIVED, THE WALZEM APARTMENTS, LLC, a Kansas limited liability company (the “Borrower”), promises to pay to the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Issuer”), or its order, the principal sum of TWENTY MILLION DOLLARS (\$20,000,000) (the “Loan”) or so much of that sum as may be advanced by the Issuer under the Loan Agreement of even date herewith executed between the Borrower and the Issuer (the “Loan Agreement”) with interest payable as set forth below. Capitalized, undefined terms used herein shall have the same meanings as used in Loan Agreement or in the Indenture (as defined herein).

Borrower promises to pay to the Issuer the principal sum of this Note, together with interest and all assessments, taxes and premiums as follows:

The Borrower shall pay to the Issuer interest on the outstanding principal balance of the Loan at the Index Interest Rate. The Borrower shall make or cause to be made interest payments at least one business day preceding each Interest Payment Date on the Bonds, which Interest Payment Date shall be (1) during the Cash-Collateralized Mode, (a) the first (1st) day of each month commencing on the first (1st) day of the first (1st) month following the Closing Date, and (b) each Redemption Date; (2) the Mandatory Tender Date, if any; and (3) during the Permanent Mode, commencing on the ninth (9th) day of the second month following the Conversion Date and on the ninth (9th) day of each calendar month thereafter.

(a) The entire principal balance of the Note, plus any accrued but unpaid interest to and including the Maturity Date, shall be due and payable one business day preceding the Maturity Date.

(b) Payments made by Wilmington Trust, National Association (the “Trustee”), as trustee for the Issuer’s Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “Bonds”) to the holders of the Bonds, from funds available under the Trust Indenture for the Bonds dated as of [June 1], 2020 (the “Indenture”), will be credited against the Borrower’s obligation to pay interest and principal under this Note. The Borrower shall be obligated to pay any deficiency between amounts due under this Note and amounts paid to bondholders by the Trustee pursuant to the Indenture.

(c) [If any installment of interest, principal, or any other payment due under this Note is not paid within five (5) days from receiving notice that such installment or payment is due, the Borrower promises to pay to the Issuer a “late charge” equal to 5% of the aggregate monthly payment required by this Note.]

(d) This Note is secured by the proceeds of the Bonds deposited into the Bond Fund, Project Fund, and Collateral Fund created pursuant to Section 4.01 of the Indenture, and (ii) the Trust Estate (as defined in the Indenture).

(e) Upon a Default, as defined in the Indenture, the unpaid principal, together with all accrued interest thereon, and all other sums due and payable shall, at the option of the holder of this Note, become immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise this option in the event of any subsequent default.

(f) As to this Note and any other documents or instruments evidencing or securing the Loan (the "Loan Documents"), the Borrower and all guarantors, if any, severally waive all applicable exemption rights, whether under any state constitution, homestead laws or otherwise, and also severally waive valuation and appraisal, presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and expressly agree that the maturity of this Note, or any payment under this Note, may be extended from time to time without in any way affecting the liability of the Borrower and all guarantors.

(g) All payments due under this Note shall be made during regular business hours at the Designated Office (as defined in the Indenture) of the Trustee or at any other place that the Issuer may designate in writing, and shall be made in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public or private debts.

(h) The Borrower represents and warrants that it is a limited liability company within the meaning set forth in the Kansas revised limited liability company act, as amended (the "State Code") and further represents and warrants that the Loan evidenced by this Note was made and transacted solely for the purpose of carrying on or acquiring a business or commercial enterprise within the meaning of the State Code.

(i) Neither the Borrower nor any direct or indirect partner, member, shareholder, officer, director, employee, agent or any of their respective affiliates of the Borrower shall have any personal liability for principal or interest payments or any other payments due under this Note, except as provided in Section 9.3 of the Loan Agreement.

(j) The Borrower hereby acknowledges that, pursuant to the Indenture, the Issuer is assigning to the Trustee all of the Issuer's right, title, and interest in and to this Note, the Indenture, the Loan Agreement and the Bond Mortgage, exclusive of the Reserved Rights of the Issuer, to be held under the Indenture as part of the Trust Estate. Such assignment is being made as security for the payment of the Bonds of the Issuer. All of the terms, conditions and provisions of the Indenture are, by this reference thereto, incorporated herein as part of this Note.

Notwithstanding any other provision contained in this Note, it is agreed that the execution of this Note shall impose no personal liability on the maker hereof for payment of the indebtedness evidenced hereby and in the event of a default, the holder of this Note will not seek or obtain any deficiency or personal judgment against the maker hereof except such judgment or decree as may be necessary to foreclose and bar its interest in the property.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered on its behalf on the date first written above.

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: The Walzem Apartments Manager, LLC
a Kansas limited liability company,
its managing member

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT
DEVELOPMENT CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

ENDORSEMENT

Pay to the order of Wilmington Trust, National Association., without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: James B. "Beau" Eccles
Title: Secretary to Board

Dated: _____, 20__

EXHIBIT C
AMORTIZATION SCHEDULE

EXHIBIT D

\$20,000,000
Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020

COMPLETION CERTIFICATE

Pursuant to Section 3.5(a) of the Loan Agreement (the “**Loan Agreement**”) among the Texas Department of Housing and Community Affairs (the “**Issuer**”) and The Walzem Apartments, LLC, a Kansas limited liability company (the “**Borrower**”) and the Trustee and Purchaser named therein, dated as of [June 1], 2020, relating to the captioned Bonds, the undersigned Borrower Representative hereby certifies that (with capitalized words and terms used and not defined in this Certificate having the meanings assigned or referenced in the Loan Agreement or the Tax Exemption Agreement):

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

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

(c) The costs of the Project financed with the loans from the Issuer were \$_____.

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

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

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

IN WITNESS WHEREOF, the Authorized Officer has set his or her hand as of the _____ day of _____, 20__.

Borrower Representative

By: _____

REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,
as Issuer,

WILMINGTON TRUST, NATIONAL ASSOCIATION,
a national banking association,
as Trustee,

BEXAR MANAGEMENT AND DEVELOPMENT CORPORATION,
a Texas nonprofit public facility corporation,
as Fee Owner

and

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company,
as Borrower

Dated as of [June 1], 2020

Relating to

\$20,000,000
Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020

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REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement” or this “Regulatory Agreement”) dated as of [June 1], 2020 is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Issuer”), a public and official agency of the State of Texas (the “State”), **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, as trustee under the hereinafter defined Indenture (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “Trustee”), **BEXAR MANAGEMENT AND DEVELOPMENT CORPORATION**, a Texas nonprofit public facility corporation (together with its permitted successors and assigns, the “Fee Owner”) and **THE WALZEM APARTMENTS, LLC**, a Kansas limited liability company (together with its permitted successors and assigns, the “Borrower”).

RECITALS

WHEREAS, pursuant to the Act (as hereinafter defined), the Issuer is authorized to issue bonds and to use the proceeds thereof to provide monies to aid in financing the acquisition, construction and equipping of residential rental property for dwelling units in the State; and

WHEREAS, the Borrower has requested the assistance of the Issuer in financing a multifamily residential rental housing development located on the real property described in Exhibit A hereto (as defined herein, the “Development Site”) and described in Exhibit B-1 hereto (as defined herein, the “Development Facilities” and, together with the Development Site, the “Development”), and, as a condition to such assistance, the Borrower has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Development; and

WHEREAS, the Fee Owner owns fee simple title to the real property described in Exhibit A hereto and the Borrower owns a leasehold estate pursuant to the Ground Lease (as hereinafter defined), and the Fee Owner has agreed to enter into this Regulatory Agreement as the Fee Owner and will receive significant benefits under the Ground Lease; and

WHEREAS, the Issuer has determined to assist in the financing of the Development by issuing its Multifamily Housing Revenue Bonds (The Walzem) Series 2020 in the aggregate principal amount of \$20,000,000 (the “Bonds”), and loaning the proceeds of such Bonds to the Borrower, upon the terms and conditions set forth in the Loan Agreement (as hereinafter defined); and

WHEREAS, in order for interest on the Bonds to be excludable from gross income for federal income tax purposes under the Code (as defined herein), and in order to comply with the Act, the use and operation of the Development must be restricted in certain respects; and

WHEREAS, the Issuer, the Trustee, the Fee Owner and the Borrower have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, equipping and operation of the Development and in order to ensure that the Development will be acquired, constructed, equipped, used and operated in accordance with the Code and the Act.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Trustee, the Fee Owner and the Borrower hereby agree as follows:

Section 1. Definitions and Interpretation. In addition to terms defined above, capitalized terms have the respective meanings assigned to them in this Section 1 or as elsewhere defined in this Regulatory Agreement, in the Indenture, in the Loan Agreement or in the Tax Exemption Agreement, unless the context in which they are used clearly requires otherwise:

“**Act**” means Chapter 2306, Texas Government Code, as amended from time to time.

“**Agreement**” or “**Regulatory Agreement**” means this Regulatory and Land Use Restriction Agreement, as it may be amended from time to time.

“**Annual Income**” means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by Section 142(d) of the Code.

“**Available Unit**” means a Unit (except for any Unit reserved for any resident manager, security personnel or maintenance personnel that is reasonably required for the Development) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Development is acquired by the Borrower or (ii) the Closing Date is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after the renovations are completed.

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

“**Closing Date**” means the date upon which the Bonds are issued and delivered in exchange for the proceeds representing the purchase price of the Bonds paid by the original purchasers thereof.

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

“**Compliance Monitoring Rules**” means the rules published by the Issuer in Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code.

“**Development**” means the Development Facilities and the Development Site.

“**Development Amenities**” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program application scoring process, as more fully set forth in Exhibit B-2 hereto.

“**Development Facilities**” means the multifamily housing structure and related buildings and other improvements to be constructed on the Development Site as more fully set forth in Exhibit B-1 hereto, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements constituting the Development.

“Development Site” means the parcel or parcels of real property described in Exhibit A, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances appertaining thereunto.

“Eligible Tenants” means (a) individuals and families of low, very low and extremely low income, (b) families of moderate income (in each case in the foregoing clauses (a) and (b) as such terms are defined by the Issuer under the Act), and (c) Persons with Special Needs, in each case, with an Annual Income not in excess of 140% of the area median income; provided that all Low-Income Tenants are Eligible Tenants.

“Favorable Opinion of Bond Counsel” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the excludability of interest payable on the Bonds from gross income for federal income tax purposes under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

“Fee Owner” means the Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, and its permitted successors and assigns.

“Ground Lease” means the Ground Lease between the Fee Owner, as landlord, and the Borrower, as tenant, dated as of _____.

“Housing Act” means the United States Housing Act of 1937, as amended, or a successor thereto.

“HUD” means the United States Department of Housing and Urban Development or its successors.

“Indenture” means the Trust Indenture of even date herewith between the Issuer and the Trustee, relating to the issuance of the Bonds, and any indenture supplemental thereto.

“Loan” means the loan of the proceeds of the Bonds made by the Issuer to the Borrower pursuant to the Loan Agreement and as evidenced by the Mortgage Note.

“Loan Agreement” means the Loan Agreement of even date herewith among the Issuer, JPMorgan Chase Bank, N.A, a national banking association, as purchaser, and the Borrower, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

“Loan Documents” means the Mortgage, the Mortgage Note, the Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Loan.

“Low-Income Tenant” means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under Sections 142(d)(2)(B) and (E) of the Code and in accordance with this Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of Section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under Section 42(i)(3)(D) of the Code.

“Low-Income Unit” means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

“**Mortgage**” means the Subordinate Multifamily Leasehold Deed of Trust, Security Agreement and Assignment of Rents and Leases from the Borrower, as the grantor, in favor of Issuer, as the beneficiary, and assigned to the Trustee, as the same may be supplemented, amended or modified.

“**Multifamily Tax Subsidy Program Income Limit**” (or successor term) means the income limits provided by HUD pursuant to Section 142(d) of the Code.

“**Official Intent Date**” means February 27, 2020.

“**Organizational Documents**” means the Amended and Restated Operating Agreement of the Borrower dated as of [_____], 2020, as the same may be amended, modified, supplemented or restated from time to time.

“**Persons with Special Needs**” means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Issuer as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Issuer.

“**Qualified Project Period**” means, with respect to the Development, the period beginning on the first day on which 10 percent of the Units are occupied and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied, (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued with respect to the Development is outstanding for federal income tax purposes, or (c) the date on which any assistance provided with respect to the Development under Section 8 of the Housing Act terminates.

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

“**Related Person**” has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

“**Replacement Reserve**” means the account required to be established by the [Replacement Reserve Agreement].

[“**Replacement Reserve Agreement**” means the Replacement Reserve and Security Agreement dated the date hereof by and between the Borrower and Cedar Rapids Bank and Trust Company.]

“**Set Aside**” means the requirement that at least 40% of the Available Units be occupied or set aside for occupancy at all times by Low-Income Tenants.

“**State Conversion Date**” means the date of the first amortization payment on the note relating to the Loan.

“**State Reserve Period**” means, with respect to the Development, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change

in ownership of the Development; (b) the date on which the Borrower suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored; (c) the date on which the Development is demolished; (d) the date on which the Development ceases to be used as multifamily rental property; or (e) the end of the State Restrictive Period.

“**State Restrictive Period**” means, with respect to the Development, the period beginning on the first day on which the Borrower takes legal possession of the Development and ending on the latest of (a) the date that is 30 years after the first day of the State Restrictive Period, (b) the first date on which no tax-exempt private activity bond issued with respect to the Development is outstanding for federal income tax purposes, and (c) the date on which any assistance provided with respect to the Development from the federal government terminates.

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

“**Tenant Income Certification**” means a certification form available on the Issuer’s website at the time of submission used to certify income and other matters executed by the household members of each Unit in the Development.

“**Unit**” means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Development; provided that, a unit will not fail to be treated as a Unit merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code).

“**Unit Status Report**” means the certified residential rental housing program compliance report with respect to the Development to be filed by the Borrower with the Issuer electronically through the filing system available on the Issuer’s website in the form available on the Issuer’s website at the time of submission of the report or in such other form as the Issuer may reasonably prescribe in writing to the Borrower pursuant to Section 4(e) hereof.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender include each other gender, and words of the singular number include the plural number, and vice versa. This Regulatory Agreement and all the terms and provisions hereof are to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms are to be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and do not in any way modify or restrict any of the terms or provisions hereof and are not to be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent arises.

Section 1. Section 1A. Acquisition, Construction and Equipping of the Development.
The Borrower hereby represents, covenants and agrees as follows:

(a) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee or both, including specifically the representations and expectations set forth in the Tax Exemption Agreement, are true and correct in all material respects as and when made.

(b) [Reserved].

(c) The Borrower will submit to the Issuer and the Trustee evidence of construction completion as required in the Loan Agreement and within 30 days of completion in the format prescribed by the Issuer as required pursuant to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code. The Borrower further agrees to cause the architect of record to submit a certification that the Development was built in compliance with all applicable laws and the engineer of record (if applicable) must submit a certification that the Development was built in compliance with design requirements.

(d) The Borrower will take or not fail to take, as is applicable, all actions necessary to cause the proceeds of the Bonds to be applied in a manner consistent with the requirements of the Indenture, the Loan Agreement, the Tax Exemption Agreement and this Regulatory Agreement. The Borrower acknowledges that such requirements have been designed for the purpose of ensuring compliance with the provisions of the Act or the Code applicable to the Borrower and the Development.

(e) The Borrower is a qualified “housing sponsor” as defined in the Act.

Section 2. Tax-Exempt Status of the Bonds. The Borrower will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes (subject to any exceptions contained in the opinion delivered upon the original issuance of the Bonds). With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees, unless it has received and filed with the Issuer and Trustee a Favorable Opinion of Bond Counsel:

(a) That the Development will be owned, managed and operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Borrower covenants and agrees, continuously during the Qualified Project Period, as follows:

(i) that the Development will be comprised of residential Units and facilities functionally related and subordinate thereto;

(ii) that each Unit will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from other Units; provided that, a Unit will not fail to meet these requirements merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code);

(iii) that the land and the facilities that are part of the Development will be functionally related and subordinate to the Units comprising the Development and will be of a character and size that is commensurate with the character and size of the Development;

(iv) that at no time during the Qualified Project Period will any of the Units be utilized (A) on a transient basis by being leased or rented for a period of less than six months (unless the Unit serves as a single room occupancy unit or transitional housing for the homeless (as described in Section 42(i)(3)(B)), in which case such lease may be on a month-to-month basis) or (B) as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer park or court used on a transient basis;

(v) that the Development will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (B) will be owned by the same person for federal income tax purposes, and (C) will be financed pursuant to a common plan;

(vi) that substantially all of the Development will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Development tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the Development, such as heating and cooling equipment, trash disposal equipment, and Units for resident managers, security personnel or maintenance personnel;

(vii) that at no time during the Qualified Project Period will any Unit in any building or structure in the Development that contains fewer than five Units be occupied by the Borrower;

(viii) that each Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in this Regulatory Agreement, the Tax Exemption Agreement and the Loan Agreement) at all times during the longer of (A) the remaining term of the Bonds or (B) the Qualified Project Period, that the Borrower will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants and other Eligible Tenants as provided herein, and that at no time will any portion of the Development be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that except, if applicable, during the 12-month "transition period" beginning on the Closing Date, as provided under Revenue Procedure 2004-39, 2004-2 C.B. 49, the Development will meet the Set Aside. For the purposes of this Section 2(a)(ix), a vacant Unit that was most recently occupied by a Low-Income Tenant is treated as rented and occupied by a Low-Income Tenant until reoccupied, at which time the character of such Unit must be redetermined. No tenant qualifying as a Low-Income Tenant will be denied continued occupancy of a Unit because, after the most recent Tenant Income Certification, such tenant's Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant's Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low-Income Tenant of the same family size and such Low-Income Tenant constitutes a portion of the Set Aside, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the

meaning of Section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Borrower will obtain, complete and maintain on file (A) Tenant Income Certifications and supporting documentation from each Low-Income Tenant dated immediately prior to the initial occupancy of such Low-Income Tenant in the Development and (B) thereafter, annual certification regarding, at a minimum, information regarding household composition and student status in the form available on the Issuer's website; provided that, if any Units in the Development are ever made available to tenants who are not Low-Income Tenants, then the Borrower will obtain, complete and maintain annual Tenant Income Certifications in accordance with Section 142(d)(3)(A) of the Code. The Borrower will obtain such additional information as may be required in the future by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations that are tax-exempt private activity bonds described in Section 142(d) of the Code. The Borrower will make a diligent and good-faith effort to determine that the income information provided by an applicant in any certification is accurate by taking steps required under Section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the Borrower will document income and assets in accordance with HUD Handbook 4350.3 and the Issuer's Compliance Monitoring Rules;

(xi) that, on or before each March 31, the Borrower will submit to the Secretary of the Treasury, with a copy provided to the Issuer, the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Development continues to meet the requirements of Section 142(d) of the Code; and

(xii) that the Borrower will prepare and submit the Unit Status Report in the form available on the Issuer's website at the time of such submission to the Issuer (via the electronic filing system available on the Issuer's website) in accordance with Section 4(e) hereof. The Borrower will retain all documentation required by this Section 2(a)(xii) until the date that is three years after the end of the Qualified Project Period.

(b) That the Borrower will maintain complete and accurate records pertaining to the Low-Income Units and will permit, at all reasonable times during normal business hours and upon reasonable notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the Development and to inspect and photocopy the books and records of the Borrower pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units. The Borrower will retain all records maintained in accordance with this Section 2 until the date that is three years after the end of the Qualified Project Period.

(c) That the Borrower will provide to the Trustee and the Issuer a certificate in the form attached hereto as Exhibit D certifying, within 90 days thereof, the dates on which (i) 10% of the Units are occupied, and (ii) 50% of the Units are occupied.

(d) That the Borrower will prepare and submit to the Issuer and the Trustee, within 60 days prior to the last day of the Qualified Project Period, a certificate setting forth the date on which the Qualified Project Period will end, which certificate must be in recordable form; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower, and which is required to be noticed, represented or certified by the Borrower hereunder or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Bonds.

Section 3. Modification of Tax and State Restrictive Covenants. The Borrower, the Fee Owner, the Trustee and the Issuer hereby agree as follows:

(a) During the Qualified Project Period and the State Restrictive Period, to the extent any amendments to the Act or the Code, in the written opinion of Bond Counsel filed with the Issuer, the Trustee, the Borrower and the Fee Owner, impose requirements upon the ownership or operation of the Development more restrictive than those imposed by this Regulatory Agreement, this Regulatory Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as is necessary to document such automatic amendment hereof to be effective for the duration of such more restrictive requirements. In addition, this Regulatory Agreement will be amended to the extent required by, and in accordance with, the Loan Agreement.

(b) During the Qualified Project Period and the State Restrictive Period, to the extent that the Act, the Code, or any amendments thereto, in the written opinion of Bond Counsel filed with the Issuer, the Trustee, the Borrower and the Fee Owner, impose requirements upon the ownership or operation of the Development less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee, the Borrower and the Fee Owner and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with compliance with the requirements of this Section will be paid by the Borrower and its successors in interest.

Section 4. Housing Development During the State Restrictive Period. The Issuer and the Borrower hereby recognize and declare their understanding and intent that the Development is to be owned, managed and operated as a “housing development,” as such term is defined in Section 2306.004(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Issuer until the expiration of the State Restrictive Period.

To the same end, the Borrower hereby represents, covenants and agrees as follows during the State Restrictive Period:

(a) except for Units occupied or reserved for a resident manager, security personnel and maintenance personnel that are reasonably required for the Development, to assure that 100% of the Units are reserved for Eligible Tenants;

(b) to assure that the provisions of Sections 2(a)(viii) and 2(a)(ix) hereof continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant in the Development (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant's initial occupancy of a Unit in the Development, and, if required as described in Section 2(a)(x) hereof, at least annually thereafter in the manner as described in Section 2(a)(x) hereof, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Development (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Issuer to the Borrower from time to time that (i) such lease is subordinate to the Mortgage and this Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility requirements of this Regulatory Agreement and the Loan Agreement are substantial and material obligations of tenancy in the Development, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Borrower, the Trustee and the Issuer, and (v) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;

(e) to cause to be prepared and submitted to the Issuer (via the electronic filing system available on the Issuer's website) by the tenth calendar day of each January, April, July and October or other schedule as determined by the Issuer with written notice to the Borrower, a certified quarterly Unit Status Report in a form available on the Issuer's website at the time of submission or in such other form as the Issuer may reasonably prescribe in writing to the Borrower with the first quarterly report due on the first quarterly reporting date after leasing activity commences;

(f) to the extent legally permissible and upon reasonable notice to permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Borrower pertaining to the Development or the incomes of Development tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Issuer's requirements;

(g) that the Borrower is qualified to be a "housing sponsor" as defined in the Act and will comply with all applicable requirements of the Act, including submitting (via the electronic filing system available on the Issuer's website) the Annual Owner's Compliance Report to the Issuer in the form available on the Issuer's website at the time of submission by April 30 of each year, commencing April 30, 2022;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached hereto as Exhibit C in the manner provided in such Exhibit, or from any additional supportive services added to the Issuer's rules at any future date as agreed to in writing by the Issuer in accordance with Title 10, Part 1, Chapter 10, Subchapter E, Section 10.405 of the Texas Administrative Code. The Borrower must maintain documentation satisfactory to the Issuer of social services provided and such documentation will be reviewed during onsite visits beginning with the second onsite review and must be submitted to

the Issuer upon request. The Borrower must provide the social services throughout the State Restrictive Period;

(i) to comply with Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code and other Issuer rules regarding affirmative marketing and written policies and procedures, as such requirements may be amended from time to time;

(j) to maintain the property in compliance with HUD's Uniform Physical Condition Standards and to provide regular maintenance to keep the Development sanitary, safe and decent and to comply with the requirements of Section 2306.186 of the Texas Government Code; provided, however, that the Issuer must first provide notice of any default or breach to the Borrower and the Lender, and the Borrower will have 30 days to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Development pursuant to Section 2306.185(c) of the Texas Government Code;

(l) the Borrower is not a party to and will not enter into a contract for the Development with, a housing developer that (i) is on the Issuer's debarred list, including any parts of that list that are derived from the debarred list of HUD; (ii) breached a contract with a public agency; or (iii) misrepresented to a subcontractor the extent to which the Borrower has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Borrower's participation in contracts with the agency and the amount of financial assistance awarded to the Borrower by the agency;

(m) to cooperate fully with the Issuer with respect to its compliance and oversight requirements and to cause the manager of the Development to so comply;

(n) to ensure that Units intended to satisfy the Set Aside under Section 2(a)(ix) hereof will be distributed evenly throughout the Development and will include a reasonably proportionate amount of each type of Unit available in the Development; and

(o) to ensure that the Development conforms to the federal Fair Housing Act.

Section 2. Section 4.A. Repairs and Maintenance Required by State Law. The Borrower will maintain the Replacement Reserve required by and created pursuant to the [Replacement Reserve Agreement] or a similar account for the longer of: (a) the period of time required pursuant to the [Replacement Reserve Agreement], or (b) the State Reserve Period as required by Section 2306.186 of the Texas Government Code.

Section 3. Section 4.B. Development Amenities. The Borrower hereby represents, covenants and agrees that the Development will include the Development Amenities as described in Exhibit B-2 attached hereto.

Section 5. [Reserved].

Section 6. Persons With Special Needs. The Borrower represents, covenants and warrants that during the State Restrictive Period, it will make at least 5% of the Units within the Development available for occupancy by Persons with Special Needs.

Section 7. Consideration. The Issuer has issued the Bonds to provide funds to make the Loan to finance the Development, all for the purpose, among others, of inducing the Borrower to acquire, construct, equip and operate the Development. In consideration of the issuance of the Bonds by the Issuer, and in consideration of the Borrower entering into the Ground Lease, the Borrower and the Fee Owner have entered into this Regulatory Agreement and have agreed to restrict the uses to which the Development can be put on the terms and conditions set forth herein.

Section 8. Reliance. The Issuer, the Trustee, the Fee Owner and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all Persons interested in the legality and validity of the Bonds, and in the excludability of interest on the Bonds from gross income for federal income tax purposes under existing law. In performing their duties and obligations hereunder, the Borrower, the Fee Owner, the Issuer and the Trustee may rely upon statements and certificates of the Low-Income Tenants or Eligible Tenants and the Issuer and the Trustee may rely upon (i) statements and certifications by the Borrower and the Fee Owner; (ii) audits of the books and records of the Borrower and the Fee Owner pertaining to the Development; and (iii) with respect to the Trustee, any other information provided to the Trustee, pursuant to this Regulatory Agreement. In addition, the Issuer, the Borrower, the Fee Owner and the Trustee may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Borrower, the Fee Owner or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Borrower or the Fee Owner exists under this Regulatory Agreement, the Trustee is not required to conduct any investigation into or review of the operations or records of the Borrower or the Fee Owner and may rely on any written report, notice or certificate or other information delivered to the Trustee, as required by this Regulatory Agreement, by any Person retained to review the Borrower's or Fee Owner's compliance with this Regulatory Agreement or by the Borrower, the Fee Owner or the Issuer with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

Section 9. Development in Bexar County. The Borrower hereby represents that the Development is located entirely within Bexar County, Texas.

Section 10. Sale or Transfer of the Development or Change in Managing Member.

(a) The Borrower and the Fee Owner covenant and agree not to sell, transfer or otherwise dispose of the Development, prior to the expiration of the Qualified Project Period (other than pursuant to the lease of Units to Eligible Tenants), without (i) providing 30 days prior written notice to the Issuer, (ii) complying with any applicable provisions of this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and other Loan Documents and (iii) obtaining the prior written consent of the Issuer. Such consent of the Issuer will not be unreasonably withheld and will be given if the following conditions to the sale or other disposition are met or waived in writing by the Issuer: (A) there is delivered to the Trustee and the Issuer a written opinion of independent legal counsel reasonably satisfactory to the Trustee and the Issuer, addressed to the Trustee and the Issuer, concluding that the transferee has duly assumed all of the rights and obligations of the Borrower or the Fee Owner, as applicable, under this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the other Loan Documents and that each of the documents executed by the transferee in connection therewith has been duly authorized, executed and delivered by the transferee and is a valid and enforceable obligation of the transferee, subject to customary qualifications, (B) the Issuer receives a Favorable Opinion of Bond Counsel, with a copy to the Trustee and the Borrower, which opinion will be furnished at the expense of the Borrower or the transferee, (C) the Issuer receives an assumption fee equal to 0.25% of the principal balance of the Bonds Outstanding at the time of such transfer, (D) the proposed purchaser or

assignee executes any document requested by the Issuer with respect to assuming the obligations of the Borrower or the Fee Owner under this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the other Loan Documents, and (E) the Issuer has performed a previous participation review on the proposed purchaser or assignee or any affiliated party, the results of which are satisfactory to the Issuer in accordance with Title 10, Part 1, Chapter 1, Subchapter C, Section 1.301, Texas Administrative Code, and the Issuer does not further have any reason to believe the proposed purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements and instruments binding on such proposed purchaser or assignee relating to the Development, including but not limited to this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement, the Mortgage and other Loan Documents. The foregoing provisions do not apply to transfer by foreclosure or deed in lieu of foreclosure or other similar involuntary transfers, but such provisions apply to any transfer subsequent to such involuntary transfers. Notwithstanding anything to the contrary contained herein, the following shall be permitted and shall not require the prior written approval of Issuer or Trustee, provided that written notice thereof has been provided to the Issuer, (a) the transfer by the Investor Member of its non-Controlling interest in Borrower in accordance with the terms of the Organizational Documents, (b) the removal of the Managing Member of the Borrower in accordance with the Organizational Documents and the temporary replacement thereof with the Investor Member or any of its respective affiliates, (c) the transfer by the Investor Member of its interests in Borrower to the Managing Member of the Borrower or any of its respective affiliates and (d) any amendment to the Organizational Documents to memorialize a transfer or removal described above. For the purposes of the preceding sentence, "Control" or "Controlling" has the meaning given to such term in Title 10, Part 1, Subchapter A, Section 11.1, Texas Administrative Code. The Borrower and the Fee Owner hereby expressly stipulate and agree that any sale, transfer or other disposition of the Development in violation of this subsection will be ineffective to relieve the Borrower or the Fee Owner of its obligations under this Regulatory Agreement. Upon any sale, transfer or other disposition of the Development in compliance with this Regulatory Agreement, the Borrower or the Fee Owner so selling, transferring or otherwise disposing of the Development will have no further liability for obligations under the Loan Agreement, this Regulatory Agreement or any other Loan Document arising after the date of such disposition. The foregoing notwithstanding, the duties of the Borrower and the Fee Owner as set forth in the Loan Agreement, this Regulatory Agreement or any other Loan Document with respect to matters arising prior to the date of such sale, transfer or other disposition will not terminate upon the sale, transfer or other disposition of the Development.

(b) No transfer of the Development will release the Borrower or the Fee Owner from its obligations under this Regulatory Agreement arising prior to the date of such transfer, but any such transfer in accordance with this Regulatory Agreement will relieve the Borrower or the Fee Owner, as applicable, of further liability for obligations under this Regulatory Agreement arising after the date of such transfer.

(c) Except as set forth in Section 10(a) above, the Borrower will not change its Managing Member by transfer, sale or otherwise without the prior written consent of the Issuer, which consent will not be unreasonably withheld. A change in the Borrower's Managing Member includes any transfer of any controlling ownership interest in the Managing Member other than by death or incapacity.

Section 11. Term. This Regulatory Agreement and all and each of the provisions hereof will become effective upon its execution and delivery, will remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, will terminate in its entirety at the end

of the State Restrictive Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Loan Agreement and defeasance or termination of the Indenture; provided, however, that the provisions related to the Qualified Project Period that are not incorporated into the State Restrictive Period will terminate in their entirety at the end of the Qualified Project Period.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements set forth herein will terminate, without the requirement of any consent by the Issuer or the Trustee, and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal or State law or an action of a federal agency after the Closing Date which prevents the Issuer or the Trustee from enforcing the provisions hereof, or foreclosure or transfer of title by deed in lieu of foreclosure or other similar involuntary transfer, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Bonds are retired in full or amounts received as a consequence of such event are used to provide a “qualified residential rental project” that meets the requirements of the Code and State law including, but not limited to, the provisions set forth in Sections 1A through 6, 10, 11 and 12 of this Regulatory Agreement. The provisions of the preceding sentence will cease to apply and the requirements referred to therein will be reinstated if, at any time during the Qualified Project Period, after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, the Borrower or any Related Person obtains an ownership interest in the Development for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, the Borrower and the Fee Owner upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Issuer and the Trustee incurred in connection with the termination of this Regulatory Agreement will be paid by the Borrower and its successors in interest.

Section 12. Covenants to Run With the Land. The Borrower and the Fee Owner hereby subject the Development (including the Development Site) to the covenants, reservations and restrictions set forth in this Agreement. The Issuer, the Trustee, the Borrower and the Fee Owner hereby declare that the covenants, reservations and restrictions set forth herein are covenants running with the land and will pass to and be binding upon the Borrower’s and the Fee Owner’s successors in title to the Development; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or any portion thereof prior to the termination of this Regulatory Agreement will conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

No breach of any of the provisions of this Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Development or any portion thereof.

Section 13. Burden and Benefit. The Issuer, the Trustee, the Borrower and the Fee Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Development is rendered less valuable thereby. The Issuer, the Trustee, the Borrower and the Fee Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Development by Low-Income Tenants and Eligible Tenants and by furthering the public purposes for which the Bonds were issued.

Section 14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof will apply uniformly to the entire Development in order to establish and carry out a common plan for the use, development and improvement of the Development Site.

Section 15. Default; Enforcement by the Trustee and Issuer. If the Borrower or the Fee Owner defaults in the performance or observance of any covenant, agreement or obligation of the Borrower or the Fee Owner, as applicable, set forth in this Regulatory Agreement, and if such default remains uncured by the Borrower or the Fee Owner for a period of 60 days after written notice thereof has been given by the Issuer or the Trustee to the Borrower and the Fee Owner at the Notice Addresses set forth in the Indenture, then the Trustee, acting on its own behalf or on behalf of the Issuer and after being indemnified as provided in the Indenture, will declare an "Event of Default" to have occurred hereunder; provided, however, that, if the default stated in the notice is of such a nature that it cannot be corrected within 60 days, such default will not constitute an Event of Default hereunder and will not be declared an Event of Default so long as (i) the Borrower or the Fee Owner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) the Borrower delivers to the Issuer and the Trustee a Favorable Opinion of Bond Counsel.

Following the declaration of an Event of Default hereunder, the Trustee or the Issuer, each subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower or the Fee Owner, as applicable, to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Borrower or the Fee Owner, as applicable, pertaining to the Development during regular business hours following reasonable notice; and
- (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower or the Fee Owner hereunder.

The Borrower and the Fee Owner hereby agree that specific enforcement of the Borrower's and the Fee Owner's agreements contained herein is the only means by which the Issuer and the Trustee may obtain the benefits of such agreements made by the Borrower and the Fee Owner herein, and the Borrower and the Fee Owner therefore agree to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower or the Fee Owner hereunder. In addition, if the Issuer succeeds in an action for specific performance of an obligation, covenant or agreement of the Borrower or the Fee Owner contained herein, it is entitled to the relief provided in Section 16(b) hereof to the extent provided in that provision.

All rights and remedies herein given or granted are cumulative, nonexclusive and in addition to any and all rights and remedies that the parties may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance provided for in this Section, promptly upon determining that a violation of this Regulatory Agreement has occurred, the Issuer will to the extent that it has actual knowledge thereof, by notice in writing, use its best efforts to inform the Trustee, the Borrower and the Fee Owner (provided that the failure to notify will not adversely affect the Issuer's or the Trustee's rights under this Regulatory Agreement) that a violation of this Regulatory Agreement has occurred.

It is specifically declared that this Regulatory Agreement or obligations hereunder may not be enforced by tenants or prospective tenants of the Development (except as described in Section 16 below) or, except as specifically provided in the Indenture, by the owners of the Bonds.

Section 16. Enforcement of Certain Provisions by Tenants and other Private Parties.

(a) Following the declaration of an Event of Default hereunder with respect to Sections 4(i) and 4(j) hereof only, a tenant of the Development or any private party may, at its option by mandamus or other suit, including injunctive relief, require the Borrower to perform its obligations and covenants under Sections 4(i) and 4(j) hereof.

(b) If the Issuer, a tenant of the Development, or any private party brings an action to enforce the obligations and covenants of the Borrower under Sections 4(i) and 4(j) hereof, such party has the right to recover attorney's fees directly from the Borrower, without recourse to the Development, if such party is successful in an action seeking enforcement of the obligations and covenants of the Borrower hereunder. This is the only monetary relief a tenant of the Development or other private parties may receive under this Regulatory Agreement and any such recovery is subject to the provisions set forth in Section 15 above.

Section 17. The Trustee. The Trustee will act only as specifically provided herein, in the Indenture and in the Tax Exemption Agreement. Subject to the right of the Trustee to be indemnified as provided in the Indenture, the Trustee agrees to act as the agent of and on behalf of the Issuer when requested in writing by the Issuer to do so, and any act required to be performed by the Issuer as herein provided will be deemed taken if such act is performed by the Trustee. The Trustee is entering into this Regulatory Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers, rights and obligations of the Trustee in acting hereunder will be subject to the provisions of the Indenture and the Tax Exemption Agreement, all of which are incorporated by reference herein. The incorporated provisions of the Indenture and the Tax Exemption Agreement are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Loan Agreement and defeasance or termination of the Indenture and the Tax Exemption Agreement.

Subject to the Trustee's rights under the Indenture, the Trustee will, at the direction of the Issuer, take reasonable actions to enforce compliance by the Borrower and the Fee Owner with the terms of this Regulatory Agreement. The Trustee may rely on certificates, reports or other information delivered to the Trustee, in accordance with this Regulatory Agreement, without independent investigation and the Trustee's responsibility to review and monitor compliance hereunder will not extend beyond the Trustee's receipt of the certificates, reports, and other documents required to be submitted to the Trustee pursuant to this Regulatory Agreement.

The Trustee may resign or be removed only as provided in Sections 10.12 or 10.13, respectively, of the Indenture. Such resignation or removal will not be effective until a successor Trustee satisfying the requirements of the Indenture is appointed and has accepted its appointment. The Trustee's right to

indemnification provided in the Loan Agreement will survive the resignation or removal of the Trustee and the termination of this Regulatory Agreement.

Upon discharge of the Indenture, the Borrower will pay to the Trustee a fee, in an amount mutually agreed upon by the Borrower and the Trustee at the time of such discharge, for the performance of the Trustee's duties under this Agreement through the date upon which all of the Bonds are to be paid in full. After the date upon which all of the Bonds have been paid in full, the Trustee shall no longer have any duties or responsibilities under this Regulatory Agreement and all references to the Trustee in this Regulatory Agreement shall be deemed references to the Issuer.

Section 18. Recording and Filing. The Borrower will cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Bexar County, Texas and in such other places as the Issuer or the Trustee may reasonably request. A file-stamped copy of this Regulatory Agreement and all amendments and supplements thereto will be delivered to the Trustee. The Borrower will pay all fees and charges incurred in connection with any such recording. This Regulatory Agreement is subject to and subordinate to all matters of record as of the date hereof.

Section 19. Reimbursement of Expenses. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture and the Tax Exemption Agreement, throughout the term of this Regulatory Agreement, the Borrower will continue to pay to the Issuer and the Trustee all fees and reimbursement for all expenses actually incurred thereby required to be paid to the Issuer and the Trustee by the Borrower pursuant to the Loan Agreement and the Tax Exemption Agreement.

Section 20. Governing Law. This Regulatory Agreement is governed by the laws of the State of Texas. The Trustee's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Regulatory Agreement, the Loan Agreement, the Indenture and the Tax Exemption Agreement.

Section 21. Amendments. Subject to the provisions of Section 3 hereof, this Regulatory Agreement may be amended only by a written instrument executed by the parties hereto (except that after discharge of the Indenture, consent of the Trustee will not be required), or their successors in title, and duly recorded in the real property records of Bexar County, Texas, and only upon receipt by the Issuer (with a copy to the Trustee) of a Favorable Opinion of Bond Counsel and an opinion of Bond Counsel that such action is not contrary to the provisions of the Act.

Section 22. Notices. Any notice required to be given hereunder to the Issuer, the Trustee, the Borrower and the Fee Owner will be given in the manner and to the address (or facsimile numbers) set forth in the Indenture.

Section 23. Severability. If any provision of this Regulatory Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 24. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which constitute one and the same instrument, and each of which is deemed to be an original.

Section 25. Authorization to Act for Issuer. To the extent allowed by law, the Issuer hereby authorizes the Borrower to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture and the Loan Agreement and to make on behalf of the Issuer all elections and determinations required or permitted to be made by the Issuer hereunder or under the Indenture and the

Loan Agreement. In addition, the Issuer hereby authorizes the Borrower to exercise, on behalf of the Issuer, any election with respect to the Bonds pursuant to the Code or the Regulations, and the Issuer agrees to cooperate with the Borrower and execute any form of statement required by the Code or the Regulations to perfect any such election.

IN WITNESS WHEREOF, the Issuer, the Trustee, the Fee Owner and the Borrower have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

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

By: _____
Name: James B. "Beau" Eccles
Title: Secretary to the Board

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

On this the _____ day of _____, 2020 personally appeared James B. "Beau" Eccles, Secretary to the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, who acknowledged that he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

Notary Public Signature

My Commission expires: _____

(Personalized Seal)

**WILMINGTON TRUST, NATIONAL
ASSOCIATION, as Trustee**

By: _____
Name: Dayna Smith
Title: Vice President

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

On this the _____ day of _____, 2020 personally appeared Dayna Smith, a Vice President of Wilmington Trust, National Association, a national banking association, who acknowledged that she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

Notary Public Signature

My Commission expires: _____

(Personalized Seal)

**BEXAR MANAGEMENT AND
DEVELOPMENT CORPORATION**, a Texas
nonprofit public facility corporation, as Fee
Owner

By: _____
TAMMYE TREVINO, Secretary/Treasurer

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

On this the _____ day of _____, 2020 personally appeared Tammye Trevino, Secretary/Treasurer of Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, who acknowledged that she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

Notary Public Signature

My Commission expires: _____

(Personalized Seal)

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: The Walzem Apartments Manager, LLC
a Kansas limited liability company,
its managing member

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT DEVELOPMENT
CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

On this the _____ day of _____, 2020 personally appeared Tammye Trevino, Secretary/Treasurer of the Bexar Management Development Corporation a Texas nonprofit public facility corporation, the sole member of BMDC Walzem, LLC, a Texas limited liability company, the managing member of The Walzem Apartments Manager, LLC, a Kansas limited liability company, the managing member of The Walzem Apartments, LLC, a Kansas limited liability company, who acknowledged that she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public Signature

My Commission expires: _____

(Personalized Seal)

EXHIBIT A
PROPERTY DESCRIPTION

[TO COME]

EXHIBIT B-1

DESCRIPTION OF DEVELOPMENT

Borrower: The Walzem Apartments, LLC, a Kansas limited liability company

Development: The Development is a 200-unit affordable, multifamily housing development to be known as The Walzem, to be located at 7810 Walzem Road, San Antonio, Bexar County, Texas 78244. It consists of two (2) residential apartment buildings with approximately 176,991 net rentable square feet. The unit mix will consist of:

60	one-bedroom/one-bath units
100	two-bedroom/two-bath units
40	three-bedroom/two-bath units
200	Total Units

Unit sizes will range from approximately 670 square feet to approximately 1,165 square feet.

EXHIBIT B-2

DEVELOPMENT AMENITIES

“Development Amenities” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program pre-application scoring process.

Development Common Amenities must include at least twenty two (22) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of amenities from each section. The Borrower may change, from time to time, the amenities offered; however, the overall points must remain the same. The tenant must be provided written notice of the elections made by the Borrower.

(i) Community Space for Resident Supportive Services

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under 10 TAC §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) through (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Borrower and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) through (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement.

(-1-) The agreement must be between the Borrower and any one of the following: a school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Borrower's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Borrower must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Borrower, the Borrower must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Borrower, the Borrower will not be considered to be in violation of its commitment to the Department. If the Borrower is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (4 points);

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (2 points);

(IV) Service provider office in addition to leasing offices (1 point);

(ii) Safety

- (I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point);
- (II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);
- (IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point);
- (V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points);

(iii) Health/ Fitness / Play

- (I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point);
- (III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);
- (IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (V) of this subparagraph is not selected; or
- (V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected;
- (VI) Horseshoe pit; putting green; shuffleboard court; pool table; or ping pong table in a dedicated location accessible to all residents to play such games (1 point);
- (VII) Swimming pool (3 points);
- (VIII) Splash pad/water feature play area (1 point);
- (IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points);

(iv) Design / Landscaping

- (I) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas) (2 points);
 - (II) Enclosed community sun porch or covered community porch/patio (1 point);
 - (III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);
 - (IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);
 - (V) Porte-cochere (1 point);
 - (VI) Lighted pathways along all accessible routes (1 point);
 - (VII) a resident-run community garden with annual soil preparation and mulch provided by the Borrower and access to water (which may be subject to local water usage restrictions) (1 point);
- (v) Community Resources
- (I) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);
 - (II) Community laundry room with at least one washer and dryer for every 40 Units (2 points);
 - (III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);
 - (IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points);
 - (V) Furnished Community room (2 points);
 - (VI) Library with an accessible sitting area (separate from the community room) (1 point);
 - (VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);
 - (VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
 - (IX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points);
 - (X) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the clubhouse and/or community building (1 point);
 - (XI) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the Development (2 points);
 - (XII) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);
 - (XIII) Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points);
 - (XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point);

(XV) Community car vacuum station (1 point).

Unit, Development Construction and Energy and Water Efficiency Features. The Development must include at least nine (9) points selected from the following list. At least two (2) points must be selected from clause (iii) Energy and Water Efficiency Features. The development must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values.

(i) Unit Features

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);

(XI) 48" upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one bathroom (0.5 point); and

(XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) Thirty year roof (0.5 point);

(III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);

(IV) Electric Vehicle Charging Station (0.5 points);

(V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) through (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, (1 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

(IX) A rainwater harvesting/collection system and/or locally approved greywater collection system (0.5 points).

EXHIBIT C

TENANT SUPPORTIVE SERVICES

The tenant supportive services to be provided must include at least eight (8) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of services from each section. The Borrower may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the Department's rules in subsequent years provide difference services than those listed below, the Borrower may be allowed to select services listed therein as provided in 10 TAC §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Borrower.

(A) Transportation Supportive Services

- (i) shuttle, at least three days a week, to a grocery store and pharmacy and/or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points);
- (ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(B) Children Supportive Services

- (i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7));
- (ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points);

(C) Adult Supportive Services

- (i) Four hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);
- (ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);
- (iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);
- (iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(D) Health Supportive Services

- (i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);
- (ii) annual health fair provided by a health care professional (1 point);
- (iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);
- (iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(E) Community Supportive Services

- (i) partnership with local law enforcement and/or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);
- (ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);
- (iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);
- (v) specific service coordination services offered by a qualified Borrower or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);
- (vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);
- (vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);
- (viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points);
- (ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

EXHIBIT D



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
J.B. Goodwin, *Chair*
Leslie Bingham, *Vice Chair*
Paul A. Braden, *Member*
Asusena Reséndiz, *Member*
Sharon Thomason, *Member*
Leo Vasquez, *Member*

**Multi Family Mortgage Revenue Bond
Qualified Project Period**

The Texas Department of Housing and Community Affairs require the information in Sections A and B below to compute the Qualified Project Period for Mortgage Revenue Bond properties. Please complete the form as the appropriate dates are identified. Upload this form in TDHCA’s Compliance Monitoring Tracking System (CMTS) to the attention of Sussette Kenney immediately after the property reaches the 50% Occupancy Date.

Section A

Property Name	
Address	
Contact Name	
Contact Phone #	

Section B

Initial Bond Closing Date	
Date First Unit Occupied	
10% Occupancy Date	
50% Occupancy Date	
50% Occupancy Date + 15 years	

Signature _____ Date _____

Printed Name _____ Title _____



TAX EXEMPTION CERTIFICATE AND AGREEMENT

Dated as of

[June 1], 2020

among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,
as Issuer

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

and

THE WALZEM APARTMENTS, LLC,
as Borrower

regarding

\$20,000,000
Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020

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TAX EXEMPTION CERTIFICATE AND AGREEMENT

THIS TAX EXEMPTION CERTIFICATE AND AGREEMENT (this “Agreement”) dated as of [June 1], 2020, but effective as of the Closing Date (as defined in the Indenture described below) is among the **Texas Department of Housing and Community Affairs** (together with its successors and assigns, the “Issuer”), a public and official agency of the State (as defined herein), **Wilmington Trust, National Association**, a national banking association organized and existing under the laws of the United States of America, as Trustee under the hereinafter defined Indenture (together with any successor Trustee under the Indenture described below and their respective successors and assigns, the “Trustee”), and **The Walzem Apartments, LLC**, a Texas limited partnership (together with its permitted successors and assigns, the “Borrower”) and is entered into in connection with the issuance of the \$20,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “Bonds”). The representations of facts and circumstances and the covenants of the Issuer made herein are made in part for purposes of fulfilling the requirements set forth in section 1.148-2(b)(2) of the Regulations (as defined herein).

RECITALS

WHEREAS, the Governing Board of the Issuer has determined to authorize the issuance of the Bonds pursuant to and in accordance with the terms of an Indenture (as defined herein) by and between the Issuer and the Trustee for the purpose of obtaining funds to finance the Project (as defined herein), all under and in accordance with the Constitution and laws of the State (as defined herein); and

WHEREAS, the Issuer desires to use the Proceeds (as defined herein) of the Bonds to fund a mortgage loan to the Borrower (i.e., the Loan, as defined herein) upon the terms and conditions set forth in the Loan Agreement (as defined herein) in order to finance Project Costs (as defined herein); and

WHEREAS, the Issuer and the Borrower desire that interest on the Bonds be excludable from gross income for federal income tax purposes under the Code (as defined herein); and

WHEREAS, the purpose of executing this Agreement is to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Project and to establish the expectations of the Issuer, the Borrower, and the Trustee as to future events regarding the Bonds, the Project, and the use and investment of Proceeds of the Bonds.

NOW THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby certify, covenant, represent, and agree on behalf of the Issuer, the Borrower, and the Trustee (but not in their individual capacities), respectively, as follows:

1. **Definitions.** Each capitalized term used in this Agreement has the meaning ascribed to such term below or has the meaning or is the amount, as the case may be, specified for such term in this Agreement or in Exhibits to this Agreement and for all purposes hereof has the meaning or is in the amount therein specified. All capitalized terms used but not defined herein,

to the extent that such terms are defined in the Indenture, the Loan Agreement, or the Regulatory Agreement for all purposes hereof have the meanings therein specified. All such terms defined in the Code or Regulations that are not defined herein will for all purposes hereof have the same meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

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

“Bond Fund” means the “Bond Fund” established pursuant to the Indenture, including the Negative Arbitrage Account therein.

“Bond Purchase Fund” means the “Bond Purchase Fund” established pursuant to the Indenture.

“Bond Year” means each one-year period that ends on the day selected by the Borrower in a certificate provided to the Issuer and the Trustee. The first and last bond years may be short periods. If no day is selected by the Borrower before the earlier of the final Maturity Date of the Bonds or the date that is five years after the Issue Date of the Bonds, a bond year will end on each anniversary of the Issue Date of the Bonds and on the final Maturity Date of the Bonds.

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

“Collateral Fund” means the “Collateral Fund” established pursuant to the Indenture.

“Computation Date” means each Installment Computation Date and the Final Computation Date.

“Construction Loan Repayment Fund” means the “Construction Loan Repayment Fund” established pursuant to the Indenture.

“Costs of Issuance” means costs to the extent incurred in connection with, and allocable to, the issuance of an issuance of obligations within the meaning of section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

“Costs of Issuance Fund” means the “Costs of Issuance Fund” established pursuant to the Indenture.

“Eligible Investments” has the meaning set forth in the Indenture.

“Expense Fund” means the “Expense Fund” established pursuant to the Indenture.

“Favorable Opinion of Bond Counsel” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the excludability from gross income for federal income tax purposes of interest payable on the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

“Fee Owner” means Bexar Management and Development Corporation.

“Final Computation Date” means the date on which the final payment in full of the Bonds is made.

“Financial Advisor” means Stifel, Nicolaus & Company, Incorporated.

“Form 8038” means IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

“Gross Proceeds” means any Proceeds and any Replacement Proceeds.

“Hedged Bonds” means that portion of the Bonds covered by the Swap.

“Indenture” means the Indenture by and between the Issuer and the Trustee, dated as of [June 1], 2020.

“Installment Computation Date” means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

“Investment Proceeds” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from investing Proceeds.

“IRS” means the Internal Revenue Service.

“Issue Date” means, with respect to an issue of obligations, the first date on which an issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any obligation.

“Issue Price” has the meaning ascribed to it in section 1.148-1(f) of the Regulations.

“Loan” means the mortgage loan made by the Issuer to the Borrower pursuant to the Loan Agreement in the aggregate principal amount of \$\$20,000,000 and evidenced by a multifamily note.

“Loan Agreement” means the Loan Agreement among the Issuer, the Trustee, the Purchaser and the Borrower, dated as of [June 1], 2020.

“Maturity Date” means [July 9, 2039].

“Median Gross Income for the Area” means, with respect to the Project, the median income for the households in the area which includes the standard metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of HUD, under Section 8 of the Housing Act (or if such program is terminated, median income determined under the program in effect immediately before such termination), in each case as adjusted for family size.

“Minor Portion” means that portion of the Gross Proceeds of the Bonds that does not exceed in the aggregate \$100,000.

“Net Proceeds” means Sale Proceeds, less the portion of any Sale Proceeds invested in a reasonably required reserve or replacement fund.

“Nonpurpose Investment” means any “investment property,” within the meaning of section 148(b) of the Code, that is not a purpose investment acquired to carry out the governmental purpose of the Bonds.

“Official Intent Date” means February 27, 2020.

“Original Issue Discount” means the excess of the Stated Redemption Price at Maturity over the Issue Price.

“Original Issue Premium” means the excess of the Issue Price over the Stated Redemption Price at Maturity.

“Placed in Service” has the meaning set forth in section 1.150-2(c) of the Regulations and means the date on which, based on all the facts and circumstances, (a) a facility reaches a degree of completion that will permit its operation at substantially its design level, and (b) a facility is, in fact, in operation at such level.

“Pre-Issuance Accrued Interest” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means amounts representing interest that accrued on an obligation for a period not greater than one year before its Issue Date but only if those amounts are paid within one year after the Issue Date.

“Preliminary Expenditures” are described in section 1.150-2(f)(2) of the Regulations and include architectural, engineering, surveying, soil testing, reimbursement bond issuance and similar costs that are incurred prior to commencement of acquisition, construction or rehabilitation of a project, but do not include land acquisition, site preparation and similar costs incident to the commencement of construction or rehabilitation.

“Proceeds” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means any Sale Proceeds and Investment Proceeds.

“Project” means an approximately 200-unit multifamily housing development to be located at 7810 Walzem Road, San Antonio, Bexar County, Texas 78244.

“Project Costs” means the costs relating to the Project.

“Project Fund” means the “Project Fund” established pursuant to the Indenture.

“Purchaser” means JPMorgan Chase Bank, N.A.

“Qualified Administrative Costs” are those costs of issuing, carrying or repaying the Bonds, and any underwriter’s discount. Qualified Administrative Costs do not include the costs of issuing, carrying or repaying the Loan.

“Qualified Project Costs” means Project Costs that meet the following requirements:

(a) The costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that only such portion of the interest accrued on the Bonds during, and fees for a “qualified guarantee” (within the meaning of section 1.148-4 of the Regulations) attributable to the period of, the construction of the Project will constitute Qualified Project Costs as bear the same ratio to all such interest or fees, as applicable, as the Qualified Project Costs bear to all Project Costs.

(b) If any portion of the Project is being constructed or rehabilitated by the Borrower or a Related Person to the Borrower (whether as a general contractor or a subcontractor), such costs include only (i) the actual out-of-pocket costs incurred by the Borrower or such Related Person in constructing or rehabilitating the Project (or any portion thereof), (ii) any reasonable fees for supervisory services actually rendered by the Borrower or such Related Person (but excluding any profit component) and (iii) any overhead expenses incurred by the Borrower or such Related Person that are directly attributable to the work performed on the Project and do not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of section 1504 of the Code) participating in the construction of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof).

(c) The costs are not Costs of Issuance.

(d) (i) The costs were paid no earlier than 60 days prior to the Official Intent Date and (ii) the reimbursement allocation is made no later than 18 months after the later of (A) the date the expenditure was paid and (B) the date the Project is Placed in Service or abandoned, but in no event more than three years after the original expenditure is paid; provided that such limitations do not apply to any amount not in excess of \$100,000 or to Preliminary Expenditures that do not exceed 20 percent of the Sale Proceeds of the Bonds.

“Qualified Project Period” means, with respect to the Project, the period beginning on the first day on which 10 percent of the Units are occupied and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied, (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued

with respect to the Project is outstanding for federal income tax purposes or, (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

“Qualifying Tenant” means a tenant whose Annual Income is 60 percent or less of Median Gross Income for the Area, as determined under sections 142(d)(2)(B) and (E) of the Code. If all the occupants of a Unit are students (as defined under section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under section 6013 of the Code, such occupants are not Qualifying Tenants, unless such students meet the qualifications under section 42(i)(3)(D) of the Code.

“Rebate Amount” has the meaning set forth in section 1.148-3(b) of the Regulations and, generally, means the excess, as of any date, of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments all as determined in accordance with section 1.148-3 of the Regulations.

“Rebate Analyst” means a Person that is (a) qualified and experienced in the calculation of rebate payments under section 148 of the Code, (b) chosen by the Borrower, and (c) engaged for the purpose of determining the amount of required deposits, if any, to the Rebate Fund.

“Rebate Fund” means the “Rebate Fund” established pursuant to the Indenture.

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

“Regulatory Agreement” means the Regulatory and Land Use Restriction Agreement, among the Issuer, the Trustee, the Fee Owner and the Borrower, dated as of [June 1], 2020.

“Related Party” means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and, in reference to a person that is not a governmental unit or a 501(c)(3) organization, a Related Person.

“Related Person” has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

“Replacement Proceeds” has the meaning set forth in section 1.148-1(c) of the Regulations and, generally, consist of amounts that have a sufficiently direct nexus to an issue of obligations or the governmental purpose of an issue of obligations to conclude that the amounts would have been used for that governmental purpose if the Proceeds were not used or to be used for that governmental purpose.

“Sale Proceeds” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from the sale (or other disposition) of any obligation, including amounts used to pay underwriters’ discount or compensation and accrued interest other than Pre-Issuance Accrued Interest. Sale Proceeds also

include amounts derived from the sale of a right that is associated with any obligation and that is described in section 1.148-4(b)(4) of the Regulations.

“**State**” means the State of Texas.

“**Stated Redemption Price at Maturity**” means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate and payable unconditionally at fixed periodic intervals of one year or less during the entire term of the debt instrument).

“**Swap**” means the variable-to-fixed interest rate swap transaction entered into by the Borrower with the Swap Counterparty with respect to the Hedged Bonds.

“**Swap Counterparty**” means Cedar Rapids Bank and Trust Company and its successors and assigns.

“**Substantial User**” has the meaning given to such term in section 1.103-11(b) of the Regulations, and generally includes any person (i) specifically for whom a facility, or part thereof, is constructed, reconstructed, or acquired or (ii) that (A) receives more than five percent of the total revenue derived by all users of such facility as gross revenue or (B) occupies more than five percent of the entire usable area of the facility.

“**Unit**” means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation; provided that, a residential accommodation will not fail to be treated as a “Unit” merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code).

“**Weighted Average Maturity**” means the sum of the products of the Issue Price and the number of years to maturity (taking into account mandatory redemptions) of an obligation, divided by the aggregate Sale Proceeds of such obligation.

“**Yield**” on (a) an issue of obligations has the meaning set forth in section 1.148-4 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments of principal, interest and fees for qualified guarantees to be paid on the obligation produces an amount equal to the Issue Price of such issue and (b) any investment has the meaning set forth in section 1.148-5 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments to be received on the investment produces an amount equal to all payments for the investment.

“**Yield Reduction Payments**” means amounts paid in accordance with section 1.148-5(c) of the Regulations that are treated as payments that reduce the Yield on an investment.

“**40-60 Test**” means the requirement set forth in section 142(d)(1)(B) of the Code providing that 40 percent or more of Units in the Project be occupied by individuals whose income is 60 percent or less of the Median Gross Income for the Area.

2. Authorized Representatives.

(a) Issuer. The undersigned representative of the Issuer represents that such representative (i) is charged, along with others, with the responsibility for the Bonds and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Issuer to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Issuer personnel and consultants to the Issuer, the undersigned representative of the Issuer has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(b) Borrower. The undersigned representative of the Borrower represents that such representative (i) is a duly chosen, qualified and acting officer or other representative of the Borrower, which will be the owner of the Project and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Borrower to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Borrower personnel and consultants to the Borrower, the undersigned representative of the Borrower has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(c) Trustee. The undersigned representative of the Trustee represents that such representative is a duly chosen, qualified and acting officer or other representative of the Trustee and is authorized on behalf of the Trustee to execute and deliver this Agreement.

3. Reasonable Expectations. The Issuer and the Borrower hereby affirm that the facts and estimates that are set forth in this Agreement are accurate and the expectations that are set forth in this Agreement are reasonable in light of such facts and estimates. There are no other facts or estimates that would materially change such expectations. The Issuer has also relied, to the extent appropriate, on the (a) Issue Price Certificate attached hereto as Exhibit A and (b) the Certificate of Financial Advisor attached hereto as Exhibit B, (c) Issuer's Qualified Hedge Identification Certificate attached hereto as Exhibit C, (d) Borrower's Qualified Hedge Identification Certificate attached hereto as Exhibit D, and (e) Certificate of Swap Counterparty attached hereto as Exhibit E. The undersigned representatives of the Issuer and the Borrower are aware of no fact, estimate or circumstance that would create any doubt regarding the accuracy or reasonableness of all or any portion of the representations set forth in such certificates.

4. Reliance on Borrower's Representations and Covenants. Except as otherwise indicated in this Agreement, the representations, expectations, certifications, covenants and warranties of the Issuer concerning the use and investment of the Proceeds of the Bonds and certain other matters described in this Agreement are based solely upon representations, expectations, certifications, covenants and warranties of the Borrower, as set forth in this Agreement or in the Exhibits attached hereto. In relying upon such representations, expectations, certifications, covenants and warranties of the Borrower, the Issuer has not made any independent investigations of the matters pertaining thereto. The Issuer is not aware of any facts or circumstances that would

cause it to question the accuracy or reasonableness of any representation, expectations, certifications, covenants and warranties of the Borrower made in this Agreement or in the Exhibits attached hereto.

5. Completeness of Borrower Information. The Borrower has supplied or caused to be supplied to Bond Counsel all documents, instruments and written information requested by Bond Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Bond Counsel, which have been reasonably relied upon by Bond Counsel in rendering its opinion with respect to the excludability from gross income for federal income tax purposes of the interest on the Bonds, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information for which Bond Counsel has not asked. After due investigation, there is no information not obtained, or any investigation or inspection not heretofore pursued, that would be relevant or material to the certifications set forth below.

6. General Requirements Relating to Issuance of the Bonds.

(a) Governmental Purpose. The Borrower has applied to the Issuer and been approved for the Loan to be made from the Proceeds of the Bonds. The proceeds of the Loan (and, thus, the Proceeds of the Bonds) will be used to finance a portion of the Project Costs.

(b) Public Hearing and Approval. As required under section 147(f) of the Code, the Issuer hosted a forum that provided a reasonable opportunity for interested individuals to express their views, orally or in writing, on the Bonds and the location and nature of the Project on April 28, 2020. The Issuer provided notice reasonably designed to inform residents of the approving governmental unit of the proposed issue no fewer than seven days before the date such public hearing by publication in the newspaper of general circulation available to residents of the governmental unit. The notice stated the time and toll-free telephone number to call in for the public hearing, a general functional description of the type and use of the Project, the maximum stated principal amount of the Bonds, the name of the expected initial legal owner of the Project, and the location of the Project. The Attorney General of Texas approved the issuance of the Bonds.

(c) Volume Cap. The Issuer has received from the Texas Bond Review Board a reservation of State private activity bond volume cap in an amount no less than the aggregate principal amount of the Bonds (or if greater, the Issue Price of the Bonds) for the purpose of issuing the Bonds to finance the Project.

(d) Issue. There are no other obligations that (i) are sold at substantially the same time as the Bonds (i.e., less than 15 days apart), (ii) are sold pursuant to the same plan of financing with the Bonds, and (iii) will be paid out of substantially the same source of funds as the Bonds.

(e) Form 8038. The Borrower has examined the completed Form 8038 with respect to the Bonds, including accompanying schedules and statements, and, to the best of the Borrower's knowledge and belief, the information in Parts IV and V, which was furnished by the Borrower, is true, correct, and complete. The Issuer will cause Form 8038 with respect to the Bonds to be filed timely with the IRS.

(f) Substantial User. No person that was a Substantial User of the Project at any time during the five-year period before the Issue Date of the Bonds or any Related Person to such Substantial User will (i) receive (directly or indirectly) more than five percent of the Proceeds of the Bonds for such user's interest in the Project and (ii) will be a Substantial User of the Project at any time during the five-year period after the Issue Date of the Bonds.

(g) Program Covenant. Neither the Borrower nor any Related Party of the Borrower is, or will be, a party to any agreement, formal or informal, pursuant to which it will purchase any of the Bonds in an amount related to the amount of the Loan made to the Borrower unless the Borrower or such Related Party provides a Favorable Opinion of Bond Counsel to the Issuer.

(h) No Federal Guarantee. Neither the Issuer nor the Borrower will take any action that would result in all or any portion of the Bonds being treated as federally guaranteed within the meaning of section 149(b)(2) of the Code.

7. Sale Proceeds of the Bonds. The amount of Sale Proceeds received by the Issuer from the sale of the Bonds is \$[_____], which represents the Stated Redemption Price at Maturity of the Bonds. The Sale Proceeds of the Bonds will be loaned to the Borrower and deposited as follows:

(a) The amount of \$[_____] will be deposited in the Project Account of the Project Fund and used to pay Project Costs. The aggregate amount of the Project Costs is anticipated to exceed such amount.

(b) [The amount of \$[_____] will be deposited in the Closing Costs Fund and disbursed to pay Costs of Issuance on the Bonds.]

(c) [The amount of \$[_____] will be deposited in the Bond Fund and disbursed to pay interest on the Bonds accruing during a period not to exceed [_____] following the Issue Date of the Bonds. Sale proceeds and investment proceeds of the Bonds expected to be used to pay interest on the Bonds will serve the governmental purpose of the Bonds by temporarily enabling the payment of debt service on the Bonds pending the construction of the Project, which is the basis for payment of debt service on the Bonds.]

8. Pre-Issuance Accrued Interest. There is no Pre-Issuance Accrued Interest on the Bonds.

9. Use of Proceeds of the Bonds.

(a) Qualified Project Costs. At least 95 percent of the Net Proceeds of the Bonds actually expended will be used to pay or reimburse Qualified Project Costs. Not more than five percent of the Net Proceeds of the Bonds will be expended for or allocated to Project Costs that are not Qualified Project Costs.

For purposes of this subparagraph (a) the Project includes only: (i) those portions of buildings included in the Project that are (A) separate and complete facilities for living, sleeping, eating, cooking and sanitation that will be used on other than a transient basis by one or more persons and that will be available on a regular basis for use by members of the general public and will be rented, or available for rental, on a continuous basis during the Qualified Project Period, and (B) facilities in building areas that are functionally related and subordinate thereto, such as centrally located machinery and equipment and common areas in a typical apartment building (but not including any health club facilities, except a facility that will be available only to tenants and their guests with no separate fee to be paid for the use of such facility); and (ii) land and other facilities that are properly allocable to such living facilities, such as parking areas and recreational areas for occupants of the living facilities.

Further, all of the allocable functionally related and subordinate land areas, facilities, and building areas taken into account in determining Qualified Project Costs under this subparagraph (a) are of a character and size commensurate with the number and size of the living facilities and are not functionally related and subordinate to, or properly allocable to, any other facilities.

(b) Additional Limitations.

(i) Costs of Issuance. The Sale Proceeds of the Bonds, for purposes of the limit on Costs of Issuance payable from Proceeds of the Bonds set forth in section 147(g) of the Code, is not less than \$[_____]. **[If paid from Proceeds:** Costs of Issuance in an amount of \$[_____] are expected to be paid out of the Net Proceeds of the Bonds.] The Costs of Issuance financed out of Net Proceeds of the Bonds will not exceed in the aggregate two percent of the Sale Proceeds of the Bonds (i.e., \$[_____]). Costs of Issuance in excess of two percent of Sale Proceeds of the Bonds will be paid by the Borrower from sources other than Net Proceeds of the Bonds]. **[If not paid from Proceeds:** No Costs of Issuance are expected to be paid out of the Net Proceeds of the Bonds. Thus, Costs of Issuance financed out of Net Proceeds of the Bonds are not expected to exceed in the aggregate two percent of the Sale Proceeds of the Bonds (i.e., \$[_____]).] In no event will Costs of Issuance paid from Proceeds of the Bonds exceed two percent of the Sale Proceeds of the Bonds, and any Costs of Issuance in excess of two percent of Sale Proceeds of the Bonds will be paid by the Borrower from sources other than Net Proceeds of the Bonds.

(ii) Acquisition of Existing Property. No portion of the Net Proceeds of the Bonds will be used to pay or reimburse the cost of acquiring any property or an

interest therein unless, except for land, the first use of such property is pursuant to such acquisition.

(iii) Limitation on Land Acquisition. Less than 25 percent of the Net Proceeds of the Bonds will be used (directly or indirectly) to acquire land (or an interest therein) and no portion of the Net Proceeds of the Bonds will be used (directly or indirectly) for farming purposes. For this purpose, an amount is considered used for the acquisition of land (or an interest therein) to the extent of that portion of the acquisition cost of the Project that is properly allocable for all federal income tax purposes to the land component (including interests in land) of the Project. Net Proceeds of the Bonds in the amount of \$[] are expected to be used (directly or indirectly) to acquire land (or an interest therein), and such amount is less than 25 percent of the Net Proceeds of the Bonds.

(iv) Prohibited Facilities. None of the Proceeds of the Bonds will be used to acquire, construct, or equip, and no portion of the Project will be, an airplane, a skybox or any other type of luxury box, a health club facility, a facility primarily used for gambling, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; provided that, any fitness room functionally related to and subordinate to the Project for use by tenants of the Project or their guest is not considered a health club facility for purposes of this subparagraph.

(v) Payments to Related Persons. Any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower will not exceed an arm's-length charge that is the amount that would be charged to a person other than the Borrower. Further, any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower would be paid under the same circumstances by a person other than the Borrower to such affiliated person or entity. Notwithstanding the foregoing, in no event will amounts of Proceeds of the Bonds that are paid to a Related Person to the Borrower be treated as spent until such amounts are spent on capital expenditures by such Related Person.

(vi) No Working Capital. Except for an amount that does not exceed five percent of the Sale Proceeds of the Bonds (and that is directly related to the Project), the Proceeds of the Bonds will only be expended for (A) costs that would be chargeable to the capital account of the Project if the Issuer's income were subject to federal income taxation; (B) interest on the Bonds in an amount that does not cause the aggregate amount of interest paid on the Bonds to exceed that amount of interest on the Bonds that is attributable to the period that commences on the Issue Date of the Bonds and ends on the later of (1) the date that is three years from the Issue Date of the Bonds or (2) the date that is one year after the date on which the Project is Placed in Service; and/or (C) fees for a qualified guarantee of the Bonds or payment for a qualified hedge on the Bonds.

(vii) No Pooling. The Proceeds of the Bonds are not being used to directly or indirectly make or finance loans to two or more ultimate unrelated borrowers.

(viii) Weighted Average Economic Life. The Weighted Average Maturity of the Bonds, as calculated by the Financial Advisor as set forth in Exhibit B hereto, is [WAM] years. The weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds is at least [WAM/1.2] years. Thus, the Weighted Average Maturity of the Bonds is not more than 120 percent of the weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds. Such weighted average estimated economic life is determined in accordance with the following assumptions: (A) the weighted average is determined by taking into account the respective costs of each asset, excluding land; (B) the reasonably expected economic life of an asset is determined as of the later of (1) the Issue Date of the Bonds or (2) the date on which such asset is originally Placed in Service (or expected to be Placed in Service); and (C) the economic lives for the itemized assets are the useful lives that would have been used for depreciation purposes under section 167 of the Code prior to the enactment of the ACRS system under section 168 of the Code (i.e., the mid-point lives under the Class Life Asset Depreciation Range System of section 167(m) of the Code where applicable and the guideline lives under Revenue Procedure 62-21, 1962-2 C.B. 418, in the case of structures). The Borrower hereby covenants not make any changes to the Project that would, at the time made, cause the remaining Weighted Average Maturity of the Bonds to be more than 120 percent of the remaining weighted average estimated economic life of the portion of the Project financed with Proceeds of the Bonds.

(c) Reimbursement. [The Borrower expects that it will use Proceeds of the Bonds in the amount of approximately \$[_____] to reimburse itself for expenditures paid prior to the Issue Date of the Bonds.] Other than (i) an amount not greater than \$100,000 and/or (ii) Preliminary Expenditures up to an amount not in excess of 20 percent of the Issue Price of the Bonds, no portion of the Proceeds of the Bonds will be disbursed to reimburse the Issuer, the Borrower or any Related Person to the Borrower for any expenditures paid or incurred prior to the date that is 60 days before the Official Intent Date, which is the date on which the Issuer adopted a resolution describing the Project, stating the maximum principal amount of obligations expected to be issued for the Project and stating the Issuer's reasonable expectation that expenditures for costs of the Project would be reimbursed with Proceeds of an obligation. Such resolution was not an official intent declared as a matter of course or in an amount substantially in excess of the amount expected to be necessary for the Project. Neither the Issuer nor the Borrower has engaged in a pattern of failure to reimburse actual original expenditures covered by official intents. Such reimbursed portion will be treated as spent for purposes of the "Funds—Project Fund" subparagraph herein and the "Compliance with Yield Reduction and Rebate Requirements; Rebate Fund" paragraph herein.

(d) Allocations and Accounting. The Borrower will prepare a final allocation of the Proceeds of the Bonds to expenditures not later than 18 months after the later of the

date the original expenditure is made or the date the Project is Placed in Service, but in no event later than the date that is 60 days after the fifth anniversary of the Issue Date of the Bonds or the retirement of the Bonds, if earlier; provided that, if such allocation is made pursuant to a reimbursement expenditure described above, such reimbursement allocation will in no event be made later than the date that is three years after the date each such original expenditure is paid. The Borrower hereby elects to consistently allocate the expenditure of Proceeds of the Bonds to Qualified Project Costs of the Project. No Proceeds of the Bonds will be allocated to any expenditures to which Proceeds of any other tax-exempt obligations have heretofore been allocated.

10. Issue Price. In accordance with section 1.148-1(f)(2)(iv) of the Regulations, the Issuer hereby identifies in its books and records maintained for the Bonds the rule the Issuer will use to determine the Issue Price for each maturity of the Bonds as the rule set forth in the second sentence of section 1.148-1(f)(2)(i) of the Regulations, i.e. the Issue Price is the price paid by the single buyer.

Based on the representations set forth in Exhibit A hereto, the aggregate Issue Price of the Bonds is \$20,000,000. The Issue Price of the Bonds represents the Stated Redemption Price at Maturity.

11. Yield on the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Yield on the Bonds will be computed separately for each computation period. For the purposes of this Agreement, the Yield on the Bonds for each computation period is the discount rate that, when used in computing the present value as of the first day of the computation period of all payments of principal and interest on the Bonds that are attributable to the computation period, produces an amount equal to the present value, using the same discount rate, of the aggregate Issue Price (or deemed Issue Price, as determined by section 1.148-4(c)(2)(iv) of the Regulations) of the Bonds as of the first day of the computation period. For each group of substantially identical Bonds, the Issue Price is the first price at which the Bonds were sold to the Purchaser. The Purchaser intends to hold the Bonds for its own account. The Bonds are not being offered to the public and are not being issued in exchange for property.

(b) The Borrower and the Swap Counterparty have entered into the Swap. The Borrower has entered into the Swap primarily to modify the risk of interest rate changes on a portion of the Bonds. As described more fully in the Qualified Hedge Identification Certificates attached hereto as Exhibit C and D, respectively, (i) payments under the Swap will be made to coincide with interest payments on the Hedged Bonds, (ii) the Swap will be for a period of years not longer than the term of the Hedged Bonds, (iii) all of the terms of the Swap are at fair market value, (iv) the Swap will not contain a significant investment element, (v) no payments have been or will be made or received to acquire the Swap, and (vi) the Swap Counterparty is not a related party to the Issuer or the Borrower. By executing the Qualified Hedge Identification Certificates, the Swap was identified by the Issuer and the Borrower on the books and records maintained for the Bonds not later than fifteen days after the date on which the Borrower and the Swap Counterparty entered into

the Swap. Therefore, the Swap will be treated by the Issuer and the Borrower as a qualified hedge. The Borrower will not enter into a different hedging transaction with respect to the Bonds unless there is first received a Favorable Opinion of Bond Counsel. The Swap Counterparty has made certifications relevant to the treatment of the Swap for federal income tax purposes, such certificate being attached as Exhibit E.

(c) As set forth in the Certificate of Financial Advisor attached hereto as Exhibit B, the Yield on the Bonds, calculated in the manner set forth above based on reasonable assumptions and expectations as of the Closing Date, is [Bond Yield] percent.

12. Yield on the Loan. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Loan is allocated to the Bonds. The Yield on the Loan is computed using the same compounding interval and financial conventions used to compute the Yield on the Bonds. For the purposes of this Agreement, the Yield on the Loan is the discount rate that, when used in computing the present value as of the Issue Date of the Bonds of all receipts with respect to the Loan, produces an amount equal to the present value, using the same discount rate, of the aggregate payments with respect to the Loan as of the Issue Date of the Bonds. The aggregate payments made to the Borrower with respect to the Loan include no payments other than the “purchase price” of the Loan. The purchase price of the Loan is the amount loaned to the Borrower by the Issuer on the Issue Date of the Bonds, i.e. \$[_____].

(b) The Loan is a purpose investment that the Issuer intends to treat as a “program investment” within the meaning of section 1.148-1 of the Regulations, because it is part of a governmental program (i) that involves the origination or acquisition of purpose investments; (ii) in which at least 95 percent of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, organizations exempt from tax under section 501(c)(3) of the Code, persons who provide housing and related facilities, or any combination of the foregoing; (iii) in which at least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption; and (iv) in which the program documents prohibit any obligor on a purpose investment financed by the program or any “related party,” within the meaning of section 1.150-1(b) of the Regulations, to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor. The Issuer has not waived the right to treat the Loan as a program investment.

(c) The receipts from the Borrower with respect to the Loan include interest and principal payments with respect to the Loan and the Qualified Administrative Costs paid by the Borrower, and the Qualified Administrative Costs paid by the Borrower have

been taken into account, as provided by 1.148-5(e) of the Regulations, for purposes of computing the yield on the Loan. Because the Issuer intends to treat the Loan as a “program investment” within the meaning of section 1.148-1 of the Regulations, the Qualified Administrative Costs do not include the costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the Loan, which amounts are set forth in Exhibit F hereto.

(d) As set forth in Certificate of Financial Advisor attached hereto as Exhibit B, the Yield on the Loan, calculated in the manner set forth above and based on reasonable assumptions and expectations as of the Closing Date, is [Loan Yield], which does not exceed than the Yield on the Bonds by more than 1.5 percentage points.

13. Investment of Proceeds Pending Expenditure; No Arbitrage.

(a) Investment Proceeds. If Proceeds of the Bonds and amounts that are not Proceeds of the Bonds are commingled in a single fund, the Borrower will take into account for purposes of its covenant to comply with the arbitrage and rebate requirements that Proceeds of the Bonds and amounts that are not Proceeds of the Bonds have been commingled as an investment. Investment Proceeds resulting from the investment of any Proceeds of the Bonds pending expenditure of such Proceeds for Project Costs will be used to pay Qualified Project Costs or, if not used to pay Qualified Project Costs, such amounts will be treated as “bad costs.”

(b) Minor Portion and Yield Reduction Payments. All Gross Proceeds of the Bonds will be invested in accordance with the “Funds” paragraph herein. To the extent such amounts remain on hand following the periods set forth in the “Funds” paragraph herein or exceed the limits set forth in the “Funds” paragraph herein, such amounts will be invested at a restricted Yield as set forth in such paragraph; provided, however, that an amount not to exceed the Minor Portion may be invested at a Yield that is higher than the Yield on the Bonds and, provided further, that, if permitted by section 1.148-5(c) of the Regulations, the Yield restriction requirements may be satisfied by making Yield Reduction Payments to the federal government.

(c) Bonds Are Not Hedge Bonds. Not more than 50 percent of the Proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more. Further, at least 85 percent of the spendable Proceeds of the Bonds are reasonably expected to be used to carry out the governmental purposes of the Bonds within the three-year period beginning on the Issue Date of the Bonds.

(d) No Arbitrage. On the basis of the facts, estimates and circumstances set forth in this Agreement, it is expected by the Issuer and the Borrower that the Gross Proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code. To the best of the knowledge and belief of the undersigned representatives of the Issuer and the Borrower, there are no other facts, estimates or circumstances that would materially change such expectations. Except as provided in the Indenture and the Loan Agreement, the Borrower will not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due

under the Loan Agreement or the note relating to the Loan, will not establish any segregated reserve or similar fund for such purpose and will not prepay any such amounts in advance of the redemption date of an equal principal amount of the Bonds, unless in each case there will have been delivered a Favorable Opinion of Bond Counsel. The Borrower will not, at any time prior to the final maturity of the Bonds, direct or permit the Trustee to invest Gross Proceeds of the Bonds in any investment (or to use Gross Proceeds of the Bonds to replace money so invested), if as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Bonds to stated maturity, except as permitted by section 148 of the Code. The Issuer and the Borrower further covenant and agree that each will comply with and will take all action reasonably required to ensure that the Trustee complies with all applicable requirements of section 148 of the Code relating to the Bonds and the interest thereon.

14. Covenants of Trustee Relating to Investment of Proceeds. The Trustee will invest funds held under the Indenture in accordance with the respective terms of the Indenture and this Agreement, which covenant will extend throughout the term of the Bonds, to all funds and accounts created under the Indenture and this Agreement and all moneys on deposit to the credit of any fund or account.

Notwithstanding any other provisions of the Indenture or of this Agreement, the Trustee will not make or cause to be made any investment or other use of the moneys in the funds or accounts that would cause the Bonds to be classified as “arbitrage bonds” within the meaning of section 148 of the Code or would cause the interest on the Bonds to be includable in gross income for federal income tax purposes. This covenant will extend, throughout the term of the Bonds, to all funds created under the Indenture, and all moneys on deposit to the credit of any fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under the Indenture, the Trustee obligates itself to comply throughout the term of the Bonds with the requirements of section 148 of the Code.

Should the Issuer or the Borrower deliver notice (in the manner required under the Indenture or the Loan Agreement, as applicable) to the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so deliver) or should the Trustee receive an opinion of Bond Counsel to the effect that any proposed investment or other use of Proceeds of the Bonds would cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code, then the Trustee will comply with any written direction of the Borrower regarding such investment or use so as to prevent the Bonds from becoming an “arbitrage bond.”

The Issuer and the Borrower agree that, in complying with the provisions set forth under this subparagraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent the Trustee materially follows the written directions of the Borrower or the Issuer.

15. Compliance with Yield Reduction and Rebate Requirements; Rebate Fund.

(a) Covenant to Comply with Rebate Requirements. The Issuer and the Borrower covenant to comply with the requirement that (i) if Gross Proceeds of the Bonds

have been invested at a Yield that is “materially higher” than the Yield on the Bonds and Yield Reduction Payments are permitted under section 1.148-5(c)(3) of the Regulations, Yield Reduction Payments be made to the federal government and (ii) “rebateable arbitrage earnings” on the investment of the Gross Proceeds of the Bonds, within the meaning of section 148(f) of the Code, be rebated to the federal government.

(b) Rebate Fund. The Indenture established the Rebate Fund, which will be maintained and held in trust by the Trustee and which will be disbursed and applied only as herein authorized in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph. Notwithstanding anything herein to the contrary, all provisions of the Indenture relating to the general administration of the funds created thereunder will apply to the Rebate Fund, and the Trustee is afforded all the rights, protections and immunities otherwise accorded to it thereunder as if the provisions set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph were set forth in the Indenture.

(c) Delivery of Documents and Money by Borrower on Computation Dates. The Borrower will deliver to the Trustee and the Issuer, within 55 days after each Computation Date:

(i) a statement, signed by an officer or other authorized representative of the Borrower, stating the Rebate Amount as of such Computation Date and the amount of any Yield Reduction Payments due; and

(ii) (A) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90 percent of the Rebate Amount and Yield Reduction Payments due as of such Installment Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations), made to the United States of America or (B) if such Computation Date is the Final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount and Yield Reduction Payments due as of such Final Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations) made to the United States of America; and

(iii) an IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (“Form 8038-T”) properly signed and completed as of such Computation Date.

(d) Administration of Rebate Fund and Payment of Rebate.

(i) The Trustee will deposit or transfer to the credit of the Rebate Fund each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. Within five days after each receipt or transfer of funds to the Rebate Fund, the Trustee will withdraw such funds from the Rebate Fund and pay such funds to the United States of America.

The Trustee may conclusively rely on the instructions of the Borrower with regard to any actions to be taken by it pursuant to this paragraph and will have no liability for any consequences of any failure of the Borrower to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided herein, the Trustee will have no duty or responsibility with respect to the Rebate Fund or the Borrower's duties and responsibilities with respect thereto except to follow the Borrower's specific written instructions related thereto.

(ii) Moneys and securities held by the Trustee in the Rebate Fund will not be deemed funds of the Bonds and are not pledged or otherwise subject to any security interest in favor of the owners of the Bonds to secure the Bonds or any other obligations.

(iii) Moneys in the Rebate Fund will be separately invested and reinvested by the Trustee, at the written direction of the Borrower, in Eligible Investments, subject to the Code. The Trustee will sell and reduce to cash a sufficient amount of such Eligible Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(iv) The Borrower will provide to the Trustee and the Trustee will keep such records of the results of the computations made pursuant to this paragraph for a period of three years after the last Bond and any tax-exempt obligations issued to refinance the Bonds is retired. The Trustee will keep and make available to the Issuer and the Borrower such records concerning the investments of Gross Proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Issuer or the Borrower in order to enable the Borrower to make the computations required under section 148(f) of the Code.

(e) Correction of Underpayments. If the Borrower discovers or is notified as of any date that any amount required to be paid to the United States of America pursuant to this Agreement has not been paid as required or that any payment paid to the United States of America pursuant to this Agreement has failed to satisfy any requirement of section 148(f) of the Code or section 1.148-3 of the Regulations (whether or not such failure is due to any default by the Borrower, the Issuer, or the Trustee), the Borrower will (i) deliver to the Trustee (for deposit to the Rebate Fund) and cause the Trustee to pay to the United States of America from the Rebate Fund (A) the Rebate Amount or Yield Reduction Payments due that the Borrower failed to pay, plus any interest specified in section 1.148-3(h)(2) of the Regulations, if such correction payment is delivered to and received by the Trustee within 175 days after such discovery or notice, or (B) if such correction payment is not delivered to and received by the Trustee within 175 days after such discovery or notice, the amount determined in accordance with clause (A) of this subparagraph plus the 50 percent penalty required by section 1.148-3(h)(1) of the Regulations, and (ii) deliver to the Trustee and the Issuer a Form 8038-T completed as of such date. If such Rebate Amount or Yield Reduction Payments, together with any penalty and/or interest due, is not paid to the United States of America in the amount and manner and by the time specified in the Regulations, the Borrower will take such steps as are necessary to prevent the Bonds from becoming "arbitrage bonds" within the meaning of section 148 of the Code.

(f) Fees and Expenses. The Borrower agrees to pay all of the fees and expenses of Bond Counsel, the Rebate Analyst, and any other necessary consultant employed by the Borrower, the Trustee, or the Issuer in connection with computing the Rebate Amount and the Yield Reduction Payments.

(g) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Bonds that is not purchased at fair market value (as defined in section 1.148-5(d)(6)(iii) of the Regulations) or includes terms that the Borrower would not have included if the Bonds were not subject to section 148(f) of the Code.

(h) Amounts Not Required in Certain Circumstances.

(i) Notwithstanding the foregoing, the Borrower will not be required to perform the obligations set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph, except for the obligation to retain accounting records and the payment of expenses as described herein, if (A) the Gross Proceeds of the Bonds have not been invested at a Yield that is “materially higher” than the Yield on the Bonds and therefore is not required to pay Yield Reduction Payments and/or (B) the Borrower has not earned any rebatable arbitrage and, therefore, is not subject to the rebate obligation set forth in section 148(f) of the Code. To the extent that the Borrower will not be required to perform such obligations, the Borrower will send written notice to the Trustee and the Issuer within 55 days after the applicable Computation Date.

(ii) Notwithstanding anything to the contrary in this Agreement requiring a payment to be made based on the Rebate Analyst’s calculations showing a rebate being due, no payment will be made by the Trustee to the United States of America if the Borrower furnishes to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. In such event, the Borrower will be entitled to withdraw funds from the Rebate Fund to the extent provided in such Favorable Opinion of Bond Counsel.

(i) Trustee Reliance on Written Directions. The Issuer and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent it materially follows the written directions of the Borrower, the Issuer, or the Rebate Analyst.

16. Funds.

(a) Bond Fund. Amounts on deposit in the Bond Fund will be used for the purposes set forth in Section 4.02 of the Indenture. The Bond Fund will be used primarily to achieve a proper matching of payments made pursuant to the Loan Agreement and debt service on the Bonds within each Bond Year. Any amounts in the Bond Fund held for longer than 13 months will be invested in obligations the Yield on which is not “materially

higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(b) Expense Fund. Amounts on deposit in the Expense Fund will be used for the purposes of payment of fees and expenses as set forth in Section 4.06 of the Indenture. There is no assurance that amounts on deposit in the Expense Fund will be available to pay debt service on the Bonds.

(c) Project Fund. All of the Proceeds of the Bonds in the Project Account of the Project Fund are expected to be invested and disbursed as described in the Indenture to pay Project Costs. The Issuer and the Borrower hereby waive the temporary period available under Section 1.148-2(e)(2) of the Regulations. Any amounts in the Project Fund will be invested at a Yield that is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(d) Costs of Issuance Fund. Amounts on deposit in the Costs of Issuance Fund used for the purpose of paying Costs of Issuance as set forth in Section 4.08 of the Indenture. Amounts remaining in the Costs of Issuance Fund after the payment of all Costs of Issuance, and in any event not later than six months following the Closing Date of the Bonds, will be (i) to the extent such amounts represent Proceeds of the Bonds, transferred to the Project Account of the Project Fund and (ii) to the extent such amounts represent amounts that are not Proceeds of the Bonds, transferred to the Borrower. There is no assurance that amounts on deposit in the Costs of Issuance Fund will be available to pay debt service on the Bonds.

(e) Rebate Fund. The Rebate Fund will be used in the event the Borrower is required to pay rebatable arbitrage earnings to the federal government, as described in the “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph above. Amounts on deposit in the Rebate Fund are not subject to the lien of the Indenture; accordingly, there is no assurance that amounts on deposit, if any, in the Rebate Fund will be available to pay debt service on the Bonds.

(f) Collateral Fund. Amounts on deposit in the Collateral Fund will be used for the purposes set forth in Section 4.09 of the Indenture. Any amounts held in the Collateral Fund will be invested in obligations the Yield on which is not “materially higher” than the Yield on the Notes, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” and “—Investment Securities” subparagraphs herein.

(g) Construction Loan Prepayment Fund. Amounts on deposit in the Construction Loan Prepayment Fund will be used for the purposes of paying principal and interest on the Construction Loan; accordingly, there is no assurance that amounts on deposit in the Lender Loan Prepayment Fund will be available to pay debt service on the Bonds.

(h) Bond Purchase Fund. Amounts on deposit in the Bond Purchase Fund will be used for the purposes set forth in Section 4.10 of the Indenture. Any amounts in the Bond Purchase Fund will be used within 13 months of receipt of amounts in such account.

17. Replacement Proceeds. The Issuer and the Borrower hereby represent as follows:

(a) No Sinking Funds. Other than the Bond Fund, the Collateral Fund and the Bond Purchase Fund, there is no debt service fund, redemption fund, reserve fund, replacement fund, or similar fund reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds.

(b) No Pledged Funds. Other than amounts in the Bond Fund, the Collateral Fund and the Bond Purchase Fund, there is no amount that is directly or indirectly pledged to pay principal or interest on the Bonds, or to a guarantor of the Bonds, such that such pledge provides reasonable assurance that such amount will be available to pay principal or interest on the Bonds if the Issuer encounters financial difficulty. For purposes of this certification, an amount is treated as so pledged if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders or the guarantor of the Bonds.

(c) No Other Replacement Proceeds. There are no other Replacement Proceeds allocable to the Bonds because the Issuer reasonably expects that the term of the Bonds will not be longer than is reasonably necessary for the governmental purpose of the Bonds. Furthermore, even if the Bonds were outstanding longer than necessary for the purpose of the Bonds, no Replacement Proceeds will arise because the Issuer reasonably expects that no amounts will become available during the period that the Bonds remain outstanding longer than necessary based on the reasonable expectations of the Issuer as to the amounts and timing of future revenues. The Bonds would be issued to achieve the governmental purpose of the Bonds independent of any arbitrage benefit as evidenced by the expectation that the Bonds reasonably would have been issued if the interest on the Bonds were not excludable from gross income (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate and that tax credits issued under section 42 of the Code would be available in connection therewith).

18. Not an Abusive Transaction. The Issuer and the Borrower hereby represent as follows:

(a) General. A device has not been and will not be employed in connection with the issuance of the Bonds to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates. Furthermore, no action taken in connection with the Bonds is or will be an abusive arbitrage device by having the effect of (i) enabling the Issuer or the Borrower to exploit, other than during an allowable temporary period, the difference between tax-exempt and taxable interest rates to obtain a material financial advantage (including as a result of an investment of any portion of the Gross Proceeds of the Bonds over any period of time, notwithstanding that, in the aggregate, the Gross Proceeds of the Bonds are not invested in higher yielding investments over the term of the Bonds) and (ii) overburdening the tax-exempt bond market by issuing more bonds,

issuing bonds earlier or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Bonds, based on all the facts and circumstances. Specifically, (A) the primary purpose of each transaction undertaken in connection with the issuance of the Bonds is a bona fide governmental purpose; (B) each action taken in connection with the issuance of the Bonds would reasonably be taken to accomplish the governmental purposes of the Bonds if the interest on the Bonds were not excludable from gross income for federal income tax purposes (assuming the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate on the Bonds); and (C) the Proceeds of the Bonds will not exceed by more than a Minor Portion the amount reasonably anticipated to be necessary to accomplish the governmental purposes of the Bonds and will in fact not be substantially in excess of the amount of Proceeds allocated to expenditures for the governmental purposes of the Bonds.

(b) No Sinking Fund. No portion of the Bonds has a term that has been lengthened primarily for the purpose of creating a sinking fund or similar fund with respect to the Bonds.

(c) No Window. No portion of the Bonds has been structured with maturity dates the primary purpose of which is to make available released revenues that will enable the Issuer to avoid transferred proceeds or to make available revenues that may be invested to be ultimately used to pay debt service on another issue of obligations.

(d) No Disposition. No portion of the Project is reasonably expected to be disposed of while the Bonds are outstanding.

19. The Project. The Borrower hereby represents and covenants as follows:

(a) The Project is comprised of (i) Units, all of which will be rented to individuals or families for residential occupancy and none of which will be owner-occupied other than any functionally related and subordinate Units used by management for the purpose of housing any resident managers, security personnel or maintenance personnel that is reasonably required for the Project and (ii) facilities, all of which are functionally related and subordinate to the aforementioned Units (i.e., facilities that are of a size and character commensurate with the size and character of such Units). All Units in the Project will be rented to individuals or families for residential occupancy.

(b) There has been and will be no substantial deviation from the description and location of the Project and the Borrower, operator or manager set forth in the notice of hearing published with respect to the Bonds for purposes of satisfying the requirements of section 147(f) of the Code.

(c) The Project will be designed and equipped and will be owned, maintained and operated on a continuous basis in accordance with the Loan Agreement and the Regulatory Agreement. For purposes of this subparagraph, each of the enumerated types of facilities includes the interior furnishings of such facility (including the facility's plumbing, electrical and decorating costs) and the structural components required for the facility (including the facility's walls, ceilings and special enclosures). Each such

enumerated type of facility includes only those normal components of the structure in which it is located, such as the structure's structural supports, to the extent that those components are required because of the facility. The recreational facilities, if any, included as part of the Project will be available only to residential tenants and their guests and no separate fee will be required for the use of such facilities.

(d) Except to the extent that any Unit is a single room occupancy unit under section 42 of the Code, each Unit will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation. Specifically, each Unit will contain a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, full-size refrigerator and sink, all of which are separate and distinct from the facilities included in other Units.

(e) Parking spaces included in the Project are functionally related and subordinate to the Units included in the Project in that they are no greater in number than is normally appropriate for a residential rental facility that is of the size of the Project. Only tenants, prospective tenants, guests of tenants, employees of the Borrower, and employees of the manager are expected to use these parking spaces.

(f) If the Project contains a clubhouse, exercise or similar recreational facility, such facility exists as a tenant amenity and may be used by any tenant free of any separate charge and will be constructed for the exclusive use of tenants of the Project and their guests. Such facility, if any, is of a character and size commensurate with the character and size of the Project and will not be open to the general public on a membership basis.

(g) The Project will not include any nonresidential or commercial space, including particularly, without limitation, any other space or facility not described in this paragraph.

(h) No continual or frequent skilled or unskilled nursing services will be available at the Project, although the tenants will be permitted to engage such services from providers that are not affiliated with the Borrower or the manager. Thus, neither the Borrower nor the manager, nor any Related Person to either the Borrower or the manager, will provide any assistance to any tenant in connection with his or her activities of daily living, other than concierge and valet services. The Project will not be licensed as a convalescent or nursing home, continuing care facility, personal care facility, special care facility or other assisted living facility under State law.

20. Tenant Income Certifications. The Borrower hereby represents and covenants as follows:

(a) The Borrower will obtain and maintain tenant income certifications in a form that satisfies the requirements of section 1.103-8(b)(8) of the Regulations demonstrating that the 40-60 Test is met with respect to the occupied Units continuously throughout the Qualified Project Period.

(b) The Borrower will ensure that each person who is intended to be a Qualifying Tenant will sign and deliver to the Borrower or a manager of the Project a tenant

income certification in the form required by the Regulatory Agreement. In addition, the Borrower will ensure that such person will provide whatever other information, documents or certifications are deemed necessary to substantiate the tenant income certification.

(c) The Borrower will timely file, or take such actions as are necessary to cause any other person who is properly treated as the “operator” for purposes of section 142(d)(7) of the Code to file timely, the annual certifications described in section 142(d)(7) of the Code (currently, IRS Form 8703, Annual Certificate of Residential Rental Project).

(d) For a period of at least three years after the date the Bonds are retired, a tenant income certification in the form required by the Regulatory Agreement will at all times be maintained on file at the applicable location for the Project with respect to each Qualifying Tenant who resides or has resided in a Unit.

21. Form of Lease. The Borrower will ensure that the term of a lease of any Unit will be for a term of not less than six months, subject to the provision that any lease may be terminated if the tenant’s physical condition no longer permits full-time residence in the Project; provided, however, that the form of lease to be utilized by the Borrower in renting any Units to a person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by such person to immediate eviction in accordance with applicable law for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the tenant income certification.

22. Change in Use. The Borrower acknowledges that any failure to satisfy the applicable requirements of sections 103 and 142 through 150, inclusive, of the Code, including the 40-60 Test, with respect to the Project will be treated as a change in use for purposes of section 150(b)(2) of the Code with the result that no deduction will be allowed for federal income tax purposes for interest paid by the Borrower with respect to the portion of the Loan that is allocable to Proceeds of the Bonds that accrues during the period beginning on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date that the Project meets such requirements.

On the earlier of (a) the date on which the Borrower reasonably determines that the Project will not be completed or (b) the date on which the Project is Placed in Service, the Borrower will identify the amount of unspent Net Proceeds of the Bonds, if any, and will use such amount to redeem or, if not permitted by the terms of the Bonds, defease the Bonds, all in accordance with the requirements of section 1.142-2 of the Regulations, the Indenture and the Loan Agreement, as applicable, including the requirement that, if a defeasance is necessary, timely written notice be provided to the IRS.

23. Cashflow Sufficiency. The Borrower reasonably expects that the cash flow from the Project on an annual basis (excluding cash generated from the investment of nonoperating funds or other investment funds maintained by the Borrower) will be sufficient to pay annual debt service on the Loan during each year. Accordingly, the Borrower expects that debt service on the Loan will not be paid, directly or indirectly, from non-operating or other investment funds maintained by the Borrower or any Related Person to the Borrower. Except for the funds described in the “Funds” paragraph above, the Borrower does not expect to create or establish, or otherwise

set aside or dedicate, any fund or account that is expected to be used to pay principal of, or interest on, the Bonds or to be pledged, directly or indirectly, to the payment of principal of, or interest on, the Bonds. Investment Proceeds of the Bonds and amounts earned from the investment of such Investment Proceeds will not be commingled with other receipts or revenues of the Borrower.

24. Post-Issuance Compliance Procedures. The Issuer has implemented written post-issuance tax compliance procedures regarding federal tax compliance that include provisions to ensure that all nonqualified bonds are remediated according to the requirements under the Code and Regulations and to monitor the requirements of section 148 of the Code. A copy of the Issuer's then-current post-issuance tax compliance procedures is and will be available on the Issuer's website during the term of this Agreement. If the Issuer's website is not available, a copy of the then-current post-issuance tax compliance procedures will be made available to the Borrower, upon request. The Borrower agrees to take such actions as required therein to be taken by the Borrower to maintain compliance with requirements in the Code. In the event that the terms of the Issuer's post-issuance tax compliance procedures conflict with the terms of this Agreement, the terms of this Agreement will control.

25. Record Retention. The Borrower and the Trustee will retain or cause to be retained all pertinent and material records relating to any formal elections made for purposes of federal income tax law; the use of the Project; the investment, use and expenditure of the Proceeds of the Bonds; and the calculation of rebate in connection with the Bonds until three years after the Bonds, including any tax-exempt obligations issued to refinance the Bonds, are redeemed or paid at maturity, or such shorter period as authorized by subsequent guidance issued by the Department of the Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the Issuer to retrieve and reproduce such books and records in the event of an examination of the Bonds by the IRS.

26. Examination by IRS. The Borrower acknowledges that, in the event of an examination by the IRS of the exclusion of interest on the Bonds from the gross income of the owners thereof for federal tax purposes, the Issuer will likely be treated as the "taxpayer", and the Borrower agrees to respond in a commercially reasonable manner on behalf of, and at the direction of, the Issuer (and in consultation with the Trustee, who will have the right to participate in all related proceedings (including tax court challenges and appeals)) to such examination and to pay the costs of the counsel selected by the Issuer to provide a defense regarding the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. THE BORROWER WILL INDEMNIFY AND HOLD HARMLESS THE ISSUER AND THE TRUSTEE AGAINST ANY AND ALL COSTS, LOSSES, CLAIMS, DAMAGES, OR LIABILITY OF, OR RESULTING FROM, SUCH AN EXAMINATION AND THE SETTLEMENT THEREOF BY THE ISSUER AND THE TRUSTEE (INCLUDING THE COST OF THE ISSUER'S AND THE TRUSTEE'S LEGAL COUNSEL), EXCEPT AS A RESULT OF THE WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE ISSUER (WITH RESPECT TO INDEMNIFICATION OF THE ISSUER) OR THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE TRUSTEE (WITH RESPECT TO INDEMNIFICATION OF THE TRUSTEE).

27. Term. The obligations of the Issuer, the Borrower and the Trustee, under this Agreement will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the exclusion from gross income of interest on the Bonds for federal income tax purposes.

28. Amendments.

(a) To the extent any amendments to the Code or the Regulations, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement, this Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as will be necessary to document such automatic amendment hereof.

(b) To the extent that the Code or the Regulations, or any amendments thereto, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, this Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All reasonable costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with an amendment to this Agreement will be paid by the Borrower and its successors in interest.

29. Remedies. The Issuer, the Trustee, and the Borrower each hereby agree that the remedies available under Article IX of the Indenture and Article VII of the Loan Agreement apply upon the occurrence of an Event of Default (as defined under the Indenture or the Loan Agreement, as applicable) resulting from an action or omission of an action by any party hereunder with respect to any provision of this Agreement.

30. Miscellaneous.

(a) Severability. If any provision of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such provision will not affect any of the remaining provision hereof.

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

(c) Notices. All notices, demands, communications and requests which may or are required to be given hereunder or by any party hereto will be deemed given on the date on which the same will have been mailed by registered or certified mail, postage prepaid,

addressed to such parties at the addresses set forth in the Indenture and the Loan Agreement, as applicable.

(d) Successors and Assigns. The terms, provisions, covenants and conditions of this Agreement bind and inure to the benefit of the respective successors and assigns of the Issuer, the Borrower, and the Trustee.

(e) Headings. The headings of this Agreement are inserted for convenience only and will not be deemed to constitute a part of this Agreement.

(f) Governing Law. This Agreement is governed by the laws of the State, without regard to the choice of law rules of the State. Venue for any action under this Agreement will lie within the district courts of the State, and the parties hereto consent to the jurisdiction and venue of any such court and hereby waive any argument that venue in such forums is not convenient.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the Issuer, the Borrower and the Trustee (but, as for the Trustee, only with respect to sections 2(c), 14, 15, and 26 through 30) have caused this Agreement to be executed and delivered by duly authorized officers thereof as of Closing Date.

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

By: _____
Name: Monica Galuski
Title: Director of Bond Finance/Chief Investment
Officer

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: BMDC WALZEM, LLC
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMEN DEVELOPMENT
CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
TAMMYE TREVINO, Secretary/Treasurer

**Wilmington Trust, National Association, as
Trustee**

By: _____
Name: _____
Title: _____

EXHIBIT A

ISSUE PRICE CERTIFICATE

I, the undersigned officer of JPMorgan Chase Bank, N.A. (the “Purchaser”), make this certificate in connection with the \$20,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Agreement to which this Exhibit A is attached (the “Tax Exemption Agreement”). I hereby certify as follows as of the Issue Date of the Bonds:

1. I hereby certify as follows in good faith as of the Issue Date of the Bonds:

(a) I am the duly chosen, qualified and acting officer of the Purchaser for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Purchaser. I am the officer of the Purchaser charged, along with other officers of the Purchaser, with responsibility for the Bonds.

(b) The Purchaser is not acting as an Underwriter with respect to the Bonds. The Purchaser has no present intention to sell, reoffer, or otherwise dispose of the Bonds (or any portion of the Bonds or any interest in the Bonds). The Purchaser has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Bonds and the Purchaser has not agreed with the Issuer pursuant to a written agreement to sell the Bonds to persons other than the Purchaser or a Related Party to the Purchaser. The Purchaser is not a Related Party to the Issuer.

(c) The Purchaser has purchased the Bonds from the Issuer for an aggregate purchase price of \$20,000,000, which price includes no amount of pre-issuance accrued interest.

2. The interest rate floor that is part of the Index Interest Rate is not reasonably expected to cause the yield on the Bonds to be more than 25 basis points higher than the expected yield on the Bonds determined without such floor.

3. For purposes of this Issue Price Certificate, the following definitions apply:

(a) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.

(b) “Related Party” means any two or more persons who are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the

partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead Underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this definition to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Purchaser’s interpretation of any laws, including specifically sections 103 and 148 of the Internal Revenue Code. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Federal Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038-G, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds.

[EXECUTION PAGE FOLLOWS]

The foregoing Issue Price Certificate has been duly executed as of the Closing Date.

JPMORGAN CHASE BANK, N.A.

By: _____

Name: _____

Title: _____

EXHIBIT B

CERTIFICATE OF FINANCIAL ADVISOR

I, the undersigned officer of Stifel, Nicolaus & Company, Incorporated (the “Financial Advisor”), make this certificate in connection with the \$20,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Agreement to which this Exhibit B is attached (the “Tax Exemption Agreement”). I hereby certify as follows as of the Issue Date of the Bonds:

1. I am the duly chosen, qualified and acting officer of the Financial Advisor for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Financial Advisor.

2. The Issue Price plus any Pre-Issuance Interest on the Bonds, based on the representations of the Purchaser in the Issue Price Certificate attached as Exhibit A to the Tax Exemption Agreement, is not more than \$20,000,000.

3. Solely for the purposes of demonstrating the fact that the Yield on the Loan is not more than 1.5 percentage points higher than the Yield on the Governmental, the Financial Advisor computed the Yield on the Bonds, based on the Issue Price and assuming semiannual compounding, an assumed interest rate during the Cash-Collateralized Mode of [_____] percent per annum, a Conversion Date of [_____] , and an assumed interest rate during the Permanent Mode of [_____] percent per annum, to be [_____] percent and the Yield on the Loan to be [_____] percent. Accordingly, the Yield on the Mortgage Loan does not exceed the Yield on the Notes by more than 1.5 percentage points.

4. For purposes of determining the Yields in paragraphs 3 and 4 above, the Financial Advisor has performed certain calculations relating to the Bonds and the Loan. Such calculations are attached hereto as Schedule I. The Financial Advisor hereby represents that such calculations are based on assumptions and methodologies provided by Bond Counsel and are in all material respects consistent with the assumptions and methodologies set forth in the “Yield on the Bonds” and “Yield on the Loan” paragraphs of the Tax Exemption Agreement. These calculations include calculations based upon assumptions, information, and estimates obtained from the Borrower and the Issuer, which the Financial Advisor, based on its experience with similar transactions, has no reason to believe are not reasonable in light of the relevant facts and circumstances. To the best of the Financial Advisor’s knowledge, as of the Issue Date of the Bonds, no fact or circumstance has come to the Financial Advisor’s attention that conflicts with the assumptions, information and estimates described in the preceding sentence.

5. As shown in Schedule I attached hereto, the Financial Advisor computed the Weighted Average Maturity of the Bonds, calculated in accordance with the provisions of the Tax Exemption Agreement, to be [WAM] years.

6. The Financial Advisor represents that to the best of its knowledge as of the Issue Date of the Bonds, the statements set forth in paragraphs (a) through (c) of the “Not An Abusive Transaction” paragraph of the Tax Exemption Agreement are true.

The Issuer may rely on the statements made herein in connection with making the representations set forth in the Tax Exemption Agreement and in its efforts to comply with the conditions imposed by the Code on the exclusion of interest on the Bonds from the gross income of their owners. Bracewell LLP also may rely on this certificate for purposes of its opinion regarding the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes and the preparation of the Form 8038.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of Financial Advisor has been duly executed as of the Closing Date.

**STIFEL, NICOLAUS & COMPANY,
INCORPORATED**

By: _____

Name: _____

Title: _____

Signature Page to Certificate of Financial Advisor

SCHEDULE I
TO CERTIFICATE OF FINANCIAL ADVISOR

[See attached]

Schedule I to Certificate of Financial Advisor

EXHIBIT C

ISSUER'S QUALIFIED HEDGE IDENTIFICATION CERTIFICATE

[See Attached]

EXHIBIT D

BORROWER'S QUALIFIED HEDGE IDENTIFICATION CERTIFICATE

[See Attached]

EXHIBIT E
CERTIFICATE OF SWAP COUNTERPARTY

[See Attached]

EXHIBIT F
SCHEDULE OF LOAN COSTS

Paid Prior to Closing

Application Fee	\$4,000
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Paid at Closing

Issuer Closing Fee	[\$100,000]
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Issuer Administration Fee (first two years)	[\$40,000]
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Issuer Compliance Fee (first year)	\$5,000
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Annual Fees

Issuer Administrative Fee (beginning June 1, 2022)	10% per annum of the aggregate principal amount of the Bonds outstanding
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Issuer Compliance Fee (beginning June 1, 2023)	\$25 per unit in the Project
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INITIAL BOND PURCHASE AGREEMENT

\$20,000,000
Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020

June __, 2020

Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711

The Walzem Apartments, LLC
c/o Cohen-Esrey Affordable Partners
8500 Shawnee Mission Parkway, Suite 150
Merriam, KS 66202

Ladies and Gentlemen:

JPMorgan Chase Bank, N.A., in its own capacity, and not as your fiduciary (the “Purchaser”) offers to enter into the following agreement (this “Initial Bond Purchase Agreement”) with the Texas Department of Housing and Community Affairs (the “Issuer”) and The Walzem Apartments, LLC, a Kansas limited liability company (the “Borrower”), which, upon acceptance of this offer, will be binding upon the Issuer, the Borrower and the Purchaser. This offer is made subject to the Issuer’s and the Borrower’s acceptance on or before 3:00 p.m. Local Time today. If this offer is not timely accepted, it will thereafter be subject to withdrawal by the Purchaser upon written notice delivered to the Issuer and the Borrower at any time prior to the acceptance hereof by the Issuer and the Borrower.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture (as hereinafter defined). For purposes of this Initial Bond Purchase Agreement, (a) the term “Issuer Documents” means the Indenture, the Loan Agreement, the Regulatory Agreement and this Initial Bond Purchase Agreement, (b) the term “Borrower Documents” means the Loan Agreement, the Note, the Regulatory Agreement, this Initial Bond Purchase Agreement and any other document executed by the Borrower relating to the Bonds, (c) the term “Trustee Documents” means the Indenture and the Regulatory Agreement, and (d) the term “Financing Documents” means, collectively (but without duplication), the Issuer Documents, the Borrower Documents and the Trustee Documents.

Section 1. Purchase and Sale of the Bonds. Upon the terms and conditions and upon the basis of the representations and warranties herein set forth, the Purchaser hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Purchaser, all but not less than all of the Issuer’s \$20,000,000 Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “Bonds”) at a purchase price equal to 100% of the principal amount thereof. For its services hereunder, the Purchaser will be paid by the Borrower a fee equal to \$169,000 (the “Purchaser’s Fee”), payable in immediately available funds on the Closing Date. The Purchaser’s Fee shall be paid solely and exclusively from funds provided by the Borrower and shall not include the fees of the Purchaser’s counsel.

The Issuer will deliver the Bonds to the order of the Purchaser against payment of the purchase price therefor in immediately available funds by 3:00 p.m. Local Time on the “Closing Date” as defined herein. The Bonds will have the terms (dated date, mandatory redemption dates, interest rate and principal amount) set forth on Schedule I attached hereto.

The Bonds shall be issued pursuant to (a) Chapter 2306, Texas Government Code, as amended (the “Act”), (b) that certain resolution adopted by the governing body of the Issuer on May 21, 2020 (the “Resolution”), and (c) the Trust Indenture (the “Indenture”) dated as of June 1, 2020, between the Issuer and Wilmington Trust, National Association, as trustee (the “Trustee”). The Bonds are being issued for the purpose of funding a loan (the “Loan”) for the benefit of the Borrower, pursuant to the terms of a certain Loan Agreement dated as of June 1, 2020, among the Issuer, the Borrower and the Purchaser. The proceeds of the Loan will be used to finance a portion of the cost of the acquisition, construction, and equipping of the Project. The Loan will be evidenced by a promissory note dated the Closing Date (together with all riders and addenda thereto the “Note”) executed by the Borrower in favor of the Issuer and assigned to the Trustee.

Section 2. Representations and Warranties of the Issuer. The Issuer represents and warrants as of the date hereof to the Purchaser and the Borrower as follows:

(a) The Issuer is a public and official agency of the State of Texas (the “State”) duly organized and validly existing under the laws of the State and has full legal right, power and authority (i) to enter into the Issuer Documents, (ii) to adopt the Resolution, (iii) to issue, sell and deliver the Bonds as provided herein and in the Indenture, (iv) to authorize the Trustee under the Indenture to use the proceeds of the Bonds to make the Loan, to provide for the construction and equipping of the Project and (v) to carry out the transactions on its part contemplated by the Issuer Documents, as they may be amended or supplemented from time to time by the Issuer.

(b) By adopting the Resolution, the Issuer (i) has duly authorized and approved the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Issuer Documents; (ii) has duly authorized and approved the issuance, execution and delivery of, and the performance by the Issuer of its obligations under, the Bonds; and (iii) has duly authorized and approved the consummation by it of all other transactions on its part contemplated by the Issuer Documents. The Resolution has been duly adopted by the Issuer, has not been amended, modified or repealed and is in full force and effect on the date hereof.

(c) To the best of its knowledge, the Issuer is not in breach of or default under any applicable law or administrative regulation of the State or of the United States, or any applicable judgment or decree or any loan agreement, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject which would impair in any material respect the performance of its obligations under the Issuer Documents.

(d) To the best of its knowledge, the execution and delivery by the Issuer of the Bonds and the Issuer Documents, compliance with the provisions of each thereof and the consummation of the transactions contemplated thereby will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject which would impair in any material respect the performance of its obligations under the Issuer Documents; provided, however, that the Issuer makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Note under the Securities Act of 1933, as amended (the “1933 Act”), or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended (the “1939 Act”).

(e) All approvals, consents and orders of any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to the performance by the Issuer of its obligations under the Issuer Documents have been obtained or will be obtained before the Closing Date (other than approvals related to the securities laws of any state or those obligations of the Borrower in Section 4(e) as to which no view is herein expressed); provided, however, that the Issuer makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Note under the 1933 Act, or the qualification of the Indenture under the 1939 Act.

(f) There is no action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, pending or, to the Issuer's actual knowledge, threatened, by or before any court, public board or body, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of revenues or assets of the Issuer pledged or to be pledged under the Issuer Documents to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (i) the use of the proceeds of the Bonds to make the Loan, (ii) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to the Bonds or any of the Issuer Documents, (iii) the tax-exempt status of the interest on the Bonds, (iv) the execution and delivery of the Issuer Documents or the Bonds, or (v) the power of the Issuer to carry out the transactions contemplated by the Bonds or any of the Issuer Documents.

(g) The Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Purchaser as provided herein, will be validly issued and outstanding special limited obligations of the Issuer, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and further subject to the exercise of judicial discretion in accordance with general principles of equity, and entitled to the benefits of the Indenture.

(h) The Issuer Documents, when duly executed and delivered by the Issuer and the other parties thereto, will constitute valid, legal and binding limited obligations of the Issuer, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and further subject to the exercise of judicial discretion in accordance with general principles of equity.

(i) The Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Issuer is a bond issuer whose arbitrage certifications may not be relied upon.

(j) Any certificate signed by any official of the Issuer and delivered to the Purchaser shall be deemed to be a representation and warranty by the Issuer to the Purchaser as to the statements made therein.

(k) The Bonds are special limited obligations of the Issuer payable solely from the Trust Estate established the revenues and assets of the Issuer pledged under the Indenture and from no other revenues or assets of the Issuer. The Bonds do not constitute an indebtedness or obligation of the State, and neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal of or interest on the Bonds. The Issuer has no taxing power.

Section 3. Covenants of the Issuer. The Issuer will cause the Bonds to be delivered by the Trustee to the address and at the time specified in Section 7 hereof in conjunction with the Closing, subject to the terms of this Initial Bond Purchase Agreement and the other Issuer Documents.

Section 4. Representations, Warranties and Agreements of the Borrower. The Borrower represents, warrants and agrees with the Purchaser and the Issuer as follows:

(a) The Borrower is duly organized and existing as a limited liability company under the laws of the State of Kansas, has full legal right, power and authority to own its properties and to conduct its business in the State and to enter into and to carry out and consummate the transactions contemplated by the Borrower Documents, and is duly qualified to do such business and is in good standing wherever such qualification and/or standing are required, including the State.

(b) By all necessary action, the Borrower has duly authorized and approved the execution and delivery of the Borrower Documents, and the performance by the Borrower of the obligations in connection with the issuance of the Bonds on its part contained in the Borrower Documents and the consummation by it of all other transactions contemplated by the Indenture and the Borrower Documents in connection with the issuance of the Bonds.

(c) On the Closing Date, the Borrower Documents will constitute the valid, legal and binding obligations of the Borrower (assuming due authorization, execution and delivery by the respective other parties thereto, where necessary), enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors' rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.

(d) To the best knowledge of the Borrower, after due and diligent inquiry, as of the date hereof, the Borrower is not in any material respect in violation of, breach of or default under any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, which violation or breach of or default would have a material adverse effect upon the transactions contemplated by this Initial Bond Purchase Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Borrower Documents, and compliance with the provisions on the Borrower's part contained therein, do not and will not conflict with or constitute on the part of the Borrower a violation or breach of or default under any constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound which breach or default would have a material adverse effect upon the transactions contemplated by this Initial Bond Purchase Agreement, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided by the Bonds or the Borrower Documents.

(e) All consents, approvals, authorizations, and orders of or filings or registrations with any Governmental Authority, board, agency or commission of any state or of the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations thereunder have been or will be obtained prior to the Closing Date (other than approvals related to the securities laws of any state or those obligations of the Issuer in Section 2(d) as to which no representation or warranty is made) and are or will be in full force and effect prior to the Closing Date.

(f) As of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending for which process has been served or, to the best knowledge of the Borrower, threatened in writing against the Borrower, affecting the existence of the Borrower or the titles of its officers executing this Initial Bond Purchase Agreement, or contesting or affecting as to the Borrower, the validity or enforceability of the Act, the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any Borrower Document, or in any way contesting or challenging the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated hereby or thereby; nor, to the best knowledge of the Borrower, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the Borrower's financial condition or operations or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.

(g) Any certificate signed by the Borrower and delivered to the Purchaser or the Issuer pursuant to the Indenture or the Borrower Documents shall be deemed a representation and warranty by the Borrower to the Purchaser and the Issuer as to the statements made therein.

(h) The Borrower will not take or omit to take any action, which action or omission will adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

(i) The Borrower shall honor all other covenants contained in the Borrower Documents, which agreements are incorporated herein and made a part of this Initial Bond Purchase Agreement; provided, however, that nothing herein shall be deemed to alter the non-recourse nature of any covenants which are, under the terms of the Borrower Documents, without recourse to the Borrower.

The execution and delivery of this Initial Bond Purchase Agreement by the Borrower shall constitute a representation to the Purchaser and the Issuer that the representations and warranties contained in this Section 4 are true and correct as of the date hereof.

Section 5. Indemnification.

(a) The Borrower will indemnify and hold harmless the Issuer and the Underwriter, and each of their officers, directors, employees, agents, officials, members, commissioners, board members and each person who "controls" (as such term is used in Section 15 of the 1933 Act and Section 20 of the 1934 Act) the Issuer (each referred to individually as an "Issuer Indemnified Party" and collectively as the "Issuer Indemnified Parties"), and the Underwriter (each referred to individually as an "Underwriter Indemnified Party" and collectively as the "Underwriter Indemnified Parties," and together with the Issuer Indemnified Parties, the "Indemnified Party" individually or "Indemnified Parties" collectively) against any losses, claims, expenses (including, without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses actually incurred), damages or liabilities, causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "Liabilities") to which the Indemnified Parties may be threatened or become subject, caused by or directly or indirectly arising from or in any way relating to (a) in the case of the Issuer Indemnified Parties, the Bonds, the Project, the loan of the proceeds of the Bonds, this Purchase Contract or any document related to the Bonds, the Project or the loan of the proceeds of the Bonds or any transaction or agreement, written or oral, pertaining to the foregoing, and (b) in the case of the Indemnified Parties, the breach by the Borrower of any representation, warranty or covenant of the Borrower contained herein or in any of the other Financing Documents. This indemnification provision shall not be construed as a limitation on any other liability which the Borrower may otherwise have to any indemnified person, provided that in no event shall the Borrower be obligated for double indemnification. Notwithstanding the foregoing, the

Borrower shall not be required to indemnify any Underwriter Indemnified Party for the gross negligence or willful misconduct of an Underwriter Indemnified Party. The Borrower will not be required to indemnify any Issuer Indemnified Party for such Issuer Indemnified Party's willful misconduct.

(b) The indemnity agreements in paragraph (a) of this Section 5 shall be in addition to any liability which the Borrower may otherwise have hereunder or under the other Borrower Documents, and shall extend on the same terms and conditions to each member, principal, official, officer, commissioner, board member, attorney or employee of the Issuer.

(c) Promptly after receipt by an Indemnified Party under paragraph (a) of this Section 5 of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against the Borrower under any such paragraph, such Indemnified Party will notify the Borrower in writing of the commencement thereof; provided that any delay or failure to give such notification shall be of no effect except to the extent that the Borrower is prejudiced thereby.

(d) In case any action, claim or proceeding, as to which the Borrower is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the Borrower of the commencement thereof, the Borrower may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the Borrower shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.

(e) If the Borrower shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that either (a) there are conflicting interests between the Borrower or the Indemnified Parties or (b) there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Borrower or to any other Indemnified Party (hereinafter referred to as a "separate defense"), (i) the Borrower shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) reasonable legal and other expenses incurred by the Indemnified Party (including without limitation, to the extent permitted by law, reasonable attorney's fees and expenses actually incurred) shall be borne by the Borrower; provided, that the Borrower shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded reasonably that a separate defense is available to it or any other Indemnified Party if (a) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request or (b) the Borrower agrees that a separate defense is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly admitted to practice law before the supreme court of any state and not a full-time employee of any Indemnified Party. Nothing contained in this paragraph (e) will preclude any Indemnified Party, in the case of the Underwriter, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Borrower hereunder.

(f) The Borrower agrees to reimburse any Indemnified Party for any reasonable expense (including reasonable fees and expenses of counsel) incurred as a result of producing documents, presenting testimony or evidence, or preparing to present testimony or evidence (based upon time expended by an Indemnified Party at its then current time charges), in connection with any court or administrative proceeding (including any investigation which may be preliminary thereto) arising out of or relating to any public distribution of the Bonds. The Borrower will not be required to reimburse any Underwriter

Indemnified Party if such court or administrative hearing arises out of the gross negligence of, willful misconduct or breach of, this Purchase Contract by an Underwriter Indemnified Party. The Borrower will not be required to reimburse any Issuer Indemnified Party if such court or administrative hearing arises out of an Issuer Indemnified Party's willful misconduct.

(g) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph (a) or (b) of this Section 5 is for any reason held to be unavailable, the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party (other than the Issuer) may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party (other than the Issuer) in connection with the issuance and administration of the Bonds bears to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds; and provided, further, that the foregoing limitation on an Indemnified Party's liability or responsibility shall not be applicable if the indemnity provided for in paragraph (a) or (b) is unavailable or inapplicable due to the gross negligence or willful misconduct of any Indemnified Party. No person guilty of fraudulent misrepresentation (within Section 10(b) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

(h) The Indemnified Parties, other than the Underwriter and the Issuer, shall be considered to be third-party beneficiaries of this Purchase Contract for purposes of this Section 5. The provisions of this Section 5 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination and cancellation of this Purchase Contract, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

Section 6. Reserved.

Section 7. Closing. On or before 3:00 p.m., Local Time, on the date hereof, or at such other time as shall be agreed upon in writing by the Issuer, the Borrower, and the Purchaser, the Issuer will deliver or cause to be delivered, the initial Bond in temporary, physical form, duly executed and registered by the Comptroller of Public Accounts of the State of Texas, and registered in the name of the Purchaser, and will have available for immediate exchange definitive Bonds in physical form, authenticated by the Trustee, and registered in the name of the Purchaser. Delivery of the Bonds shall be made at the offices of Bond Counsel (or such other place upon which the Purchaser, the Trustee and the Issuer mutually agree). Subject to the terms and conditions hereof, the Issuer shall deliver at the offices of Bond Counsel, the other documents and instruments to be delivered pursuant to this Initial Bond Purchase Agreement (the "Closing Documents") and the Purchaser shall accept delivery of the Bonds and Closing Documents and pay the purchase price for the Bonds as set forth in Section 1 hereof by wire transfer, to the Trustee, in immediately available federal funds. As a condition precedent to such acceptance, the Purchaser shall have received the Purchaser's Fee by wire transfer in immediately available federal funds to the order of the Purchaser, in such manner as shall be agreed upon by the Borrower and the Purchaser. This delivery and payment are herein called the "Closing" and the date on which the Closing occurs is herein called the "Closing Date." The Bonds shall be prepared and delivered as fully registered Bonds in physical form without coupons in Authorized Denominations set forth in the Indenture.

Section 8. Closing Conditions. The Purchaser has entered into this Initial Bond Purchase Agreement in reliance upon representations, warranties and agreements of the Issuer and the Borrower contained herein, in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and the Borrower of their obligations hereunder, as of the Closing Date. Accordingly, the Purchaser's obligations

under this Initial Bond Purchase Agreement to purchase, to accept delivery of and to pay for the Bonds shall be subject to the performance by the Issuer and the Borrower of their obligations to be performed by them hereunder at or prior to the Closing, and to the accuracy in all material respects of the representations and warranties of the Issuer and of the Borrower contained herein as of the Closing Date, and shall also be subject to the following additional conditions:

(a) At the time of the Closing, the Resolution shall have been duly approved and adopted by the Issuer and shall be in full force and effect, and each of the Financing Documents shall have been duly authorized, executed and delivered, and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Purchaser, and there shall have been taken in connection therewith and in connection with the issuance of the Bonds all such actions as, in the opinion of Bond Counsel, and counsel for the Purchaser, shall be necessary and appropriate in connection with the transactions contemplated hereby.

(b) The Purchaser may terminate this Initial Bond Purchase Agreement, without liability therefor, by notifying the Issuer and the Borrower at any time prior to the Closing if:

(i) Any of (A) legislation shall be enacted by the Congress of the United States or adopted by the Senate or House of Representatives of the United States, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to the Senate or House of Representatives by any committee of either such body to which such legislation has been referred for consideration or by a conference committee of such bodies, (B) a decision shall be rendered by a court of the United States or by the Tax Court of the United States, (C) a ruling, regulation or official action shall be rendered by or on behalf of the United States, or (D) a ruling, regulation or official action shall be proposed or issued, in any manner, including by pronouncement, press release or any other form of notice, by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or another governmental agency of the United States or by or on behalf of any member of the Senate or House of Representatives of the United States in any such instance with respect to federal taxation of interest received on obligations of the general character of the Bonds and (1) which, in the opinion of counsel for the Purchaser, would have or proposes action which would have the effect of making such interest includable in gross income for federal income tax purposes or (2) which, in the opinion of the Purchaser, would materially adversely affect any intended utilization of Bond proceeds or other intended action described in the Indenture;

(ii) payment for and delivery of the Bonds is rendered impracticable or inadvisable because (A) trading in securities generally shall have been suspended on the New York Stock Exchange or a general banking moratorium shall have been established by Federal or New York authorities or (B) a war involving the United States shall have been declared or a national emergency, or any other outbreak or escalation of hostilities or another national or international calamity shall have occurred, the effect of any of which, in the reasonable judgment of the Purchaser, materially affects the ability of the Purchaser to purchase the Bonds;

(iii) an occurrence, in the judgment of Purchaser, of a material adverse change in the capital markets which makes the syndication, sale or financing contemplated hereby impractical or which makes it inadvisable to proceed with the syndication, sale or financing contemplated hereby on the terms, manner and basis contemplated hereby; or

(iv) There shall have occurred any change that, in the reasonable judgment of the Purchaser, makes unreasonable or unreliable any of the assumptions upon which (i) the yield on the Bonds for purposes of compliance with the Code, (ii) payment of debt service on the Bonds, or

(iii) the basis for the exclusion from gross income for federal income tax purposes of interest on the Bonds, is predicated.

(c) At or prior to the Closing Date, the Purchaser shall receive the following documents:

(i) an approving opinion of Bond Counsel, dated the Closing Date, relating to the validity of the Bonds and the tax-exempt status of the Bonds, substantially in the form attached hereto as Appendix A, and a letter of such counsel dated the Closing Date and addressed to the Purchaser to the effect that such approving opinion may be relied on by the Purchaser to the same extent as if such opinion were addressed to the Purchaser;

(ii) opinions and/or letters, dated the Closing Date and addressed to the Purchaser and to such other parties as may be appropriate, of

(A) Bond Counsel, substantially in the forms attached hereto as Appendix B;

(B) Borrower's Counsel, substantially in the form attached hereto as Appendix C;

(C) Counsel to the Trustee, substantially in the form attached hereto as Appendix D;

(iii) a certificate, dated the Closing Date and signed on behalf of the Issuer, to the effect that:

(A) the Issuer has not received notice of any pending, nor to the Issuer's actual knowledge is there any threatened, action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, by or before any court, public board or body, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of the Trust Estate to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (1) the use of the proceeds of the Bonds to make the Loan, (2) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to its approval for the issuance of the Bonds or any of the Issuer Documents, (3) the tax-exempt status of the interest on the Bonds, (4) the execution and delivery by the Issuer of the Issuer Documents or the Bonds, or (5) the power of the Issuer to carry out the transactions on its part contemplated in the Issuer Documents; and

(B) the Issuer has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied by the Issuer at or prior to the Closing Date, and the representations and warranties of the Issuer contained herein and in the other Issuer Documents to which it is a party are true and correct in all material respects as of the Closing Date;

(iv) a certificate of the Issuer and the Borrower, dated the Closing Date, with respect to the facts, estimates and circumstances and reasonable expectations pertaining to Section 148 of the Code to support the conclusion that none of the Bonds will be an "arbitrage bond";

(v) a certificate of the Borrower, dated the Closing Date, to the effect that (A) each of the representations and warranties set forth in each of the Borrower Documents (including this Initial Bond Purchase Agreement) is true and correct in all material respects on the Closing Date

with the same effect as if made on the Closing Date, and (B) the Borrower has complied with all agreements and satisfied all the conditions on its part to be performed or satisfied under the Borrower Documents at or prior to the Closing Date;

(vi) counterpart originals or certified copies of each of the Financing Documents;

(vii) such agreements, certificates and opinions as requested by the Purchaser to evidence the closing of the Loan; and

(viii) such additional legal opinions, certificates (including any certificates necessary or desirable in order to establish the exclusion of the interest on the Bonds from gross income for federal income tax purposes), instruments and other documents as the Purchaser may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the Issuer's and the Borrower's representations herein and the due performance or satisfaction by the Issuer and the Borrower at or prior to such date of all agreements then to be performed, and all conditions then to be satisfied by the Issuer and the Borrower.

The Purchaser acknowledges and agrees that the obligation of the Issuer to deliver the Bonds at Closing is subject to certain conditions set forth in the Indenture and the other Financing Documents, including but not limited to, the Purchaser's execution and delivery of an investor letter in substantially the form attached to the Indenture.

Section 9. If any conditions to the obligations of the Purchaser contained in this Initial Bond Purchase Agreement are not satisfied and the satisfaction of such conditions shall not be waived by the Purchaser, then, at the option of the Purchaser and Issuer, (i) the Closing Date shall be postponed for such period, not to exceed seven (7) days, as may be necessary for such conditions to be satisfied or (ii) the obligations of the Purchaser under this Initial Bond Purchase Agreement shall terminate, and neither the Purchaser nor the Issuer shall be under any further obligation hereunder. **Expenses.** The Purchaser shall be under no obligation to pay, and the Borrower hereby agrees to pay, any expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to, the fees and expenses of Issuer's counsel; the fees and expenses of the Trustee and its counsel; and the fees and disbursements of any other experts or consultants retained by the Issuer; the fees and expenses of counsel to the Purchaser; and all other expenses in connection with the issuance and delivery of the Bonds except those included in the Purchaser's Fee in accordance with Section 1 hereof. The Issuer shall have no obligation to pay any fees, expenses or costs associated with or resulting from the issuance and delivery of the Bonds.

The Borrower shall also pay for any expenses (included in the expense component of the Purchaser's fee) incurred by the Purchaser that are incidental to implementing this Initial Bond Purchase Agreement and the issuance of the Bonds, including, but not limited to, meals, transportation and lodging, if any, and any other miscellaneous closing costs.

The Borrower acknowledges that it has had an opportunity, in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred as part of the issuance of the Bonds.

Section 10. Notices. Any notice or other communication to be given to the Issuer or the Borrower at the respective addresses set forth on the cover hereof and any such notice or other communication to be given to the Purchaser may be given by mailing the same to JPMorgan Chase Bank, N.A., [Community Development Banking, 601 Pennsylvania Avenue NW, 6th Floor, Washington, DC 20004, Attention: Brett Macleod].

Section 11. Parties in Interest. This Initial Bond Purchase Agreement is made solely for the benefit of the Issuer, the Borrower and the Purchaser (including any successors or assignees of the Issuer or Purchaser), and, except as provided in Section 5 hereof, no other party or person shall acquire or have any right hereunder or by virtue hereof.

Section 12. Amendments. This Initial Bond Purchase Agreement may not be amended without the written consent of the Issuer, the Borrower and the Purchaser.

Section 13. Survival of Representations and Warranties. The representations and warranties of the Issuer and the Borrower shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of any investigations made by or on behalf of the Purchaser (or statements as to the results of such investigations) concerning such representations and statements of the Issuer and the Borrower and regardless of delivery of and payment for the Bonds.

Section 14. Execution in Counterparts. This Initial Bond Purchase Agreement may be executed by the parties hereto in separate counterparts (including executed counterparts exchanged by email in PDF format), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 15. No Prior Agreements. This Initial Bond Purchase Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the purchase and sale of the Bonds.

Section 16. Effective Date; Termination. This Initial Bond Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the Issuer and the Borrower and shall be valid and enforceable as of the time of such acceptance. If the Issuer or the Borrower is unable to satisfy the conditions precedent to the obligations of the Purchaser contained in this Initial Bond Purchase Agreement, this Initial Bond Purchase Agreement will terminate and the Purchaser, the Borrower and the Issuer will be under no further obligation hereunder. The Purchaser may, in its discretion, waive any one or more of the conditions imposed by this Initial Bond Purchase Agreement and proceed with the Closing on the Closing Date.

Section 17. Governing Law. This Initial Bond Purchase Agreement shall be governed by the laws of the State without giving effect to the conflict of law principles of the State.

Section 18. Severability. If any provision of this Initial Bond Purchase Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule or public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Initial Bond Purchase Agreement invalid, inoperative or unenforceable to any extent whatsoever.

Section 19. Limitation of Liability. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions of any conceivable kind under any conceivable theory under this Initial Bond Purchase Agreement or any document or instrument referred to herein or by reason of or in connection with this Initial Bond Purchase Agreement or other document or instrument except to the extent it receives amounts from the Borrower available for such purpose.

Notwithstanding any provision herein to the contrary, any member, officer, director, partner, agent, commissioner, board members or employee of the Issuer, the Purchaser or the Borrower, including any person executing this Initial Bond Purchase Agreement, shall not bear any liability as a result of any failure of the Issuer, the Purchaser or the Borrower to perform the obligations of each, respectively, set forth in this Initial Bond Purchase Agreement.

Section 20. Compliance with Texas Government Code. The Purchaser hereby verifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Initial Bond Purchase Agreement is a contract for goods or services, will not boycott Israel during the term of this Initial Bond Purchase Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Purchaser understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Purchaser and exists to make a profit.

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

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

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

[Signatures start on next page]

If the foregoing is in accordance with your understanding of this Initial Bond Purchase Agreement please sign and return to us the enclosed duplicate copies hereof, whereupon it will become a binding agreement among the Issuer, the Borrower and the Purchaser in accordance with its terms.

Very truly yours,

JPMORGAN CHASE BANK, N.A.,
as Purchaser

By: _____
Ken Overshiner
Executive Director

[Signatures continued on next page]

[Issuer's Signature Page to Initial Bond Purchase Agreement]

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
James B. "Beau" Eccles
Secretary to Board

[Signatures continued on next page]

[Borrower's Signature Page to Initial Bond Purchase Agreement]

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT DEVELOPMENT
CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

SCHEDULE I
TERMS OF BONDS

Dated Date	Initial Mandatory Redemption Date	Outside Mandatory Redemption Date	Principal Amount	Interest Rate
June ____, 2020	July 1, 2021	_____, 1, 20__	\$20,000,000	____%

APPENDIX A

**FORM OF APPROVING OPINION OF
BOND COUNSEL**

May __, 2020

Texas Department of Housing and
Community Affairs
Austin, Texas

Wilmington Trust, National Association, as
Trustee
Dallas, Texas

JPMorgan Chase Bank, N.A.
Washington, D.C.

\$20,000,000
Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020

Ladies and Gentlemen:

We have represented the Texas Department of Housing and Community Affairs (the “Issuer”) in connection with the issuance by the Issuer of its \$20,000,000 Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “Bonds”) pursuant to a resolution adopted by the Governing Board of the Issuer on May 21, 2020 (the “Bond Resolution”) and a Trust Indenture dated as of June 1, 2020 (the “Indenture”), by and between the Issuer and Wilmington Trust, National Association, as trustee (the “Trustee”). The Bonds bear interest, mature on the date, and are subject to redemption prior to maturity as provided in the Indenture. Capitalized terms used herein and not otherwise defined are used with the meanings assigned to such terms in the Indenture, in the Loan Agreement dated as of June 1, 2020 (the “Loan Agreement”) among the Issuer, The Walzem Apartments, LLC, a Kansas limited liability company (the “Borrower”), and JPMorgan Chase Bank, N.A., as purchaser (the “Purchaser”), or in the Regulatory and Land Use Restriction Agreement dated as of June 1, 2020 (the “Regulatory Agreement”), among the Issuer, the Trustee, the Borrower and Bexar Management and Development Corporation, as fee owner.

The Bonds are being issued for the purpose of obtaining funds to make a mortgage loan to the Borrower to provide financing for the acquisition, equipping and rehabilitation of a multifamily residential rental development located within San Antonio, Bexar County, Texas (the “Development”), to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Issuer, all as required by the Act, and to be occupied at least partially (at least forty percent of the Units) by Low-Income Tenants.

We have assumed with your permission and without independent verification (i) the genuineness of certificates, records and other documents (collectively, “documents”) submitted to us and the accuracy and completeness of the statements contained therein; (ii) the due authorization, execution and delivery of the Indenture by the parties thereto, and the validity and binding effect of the Indenture on such parties; (iii) that all documents submitted to us as originals are accurate and complete; (iv) that all documents submitted to us as copies are true and correct copies of the originals thereof; and (v) that all information submitted to us and on which we have relied was accurate and complete.

The scope of our representation extends solely to an examination of the facts and law incident to rendering an opinion with respect to the legality and validity of the Bonds and the security therefor and with respect to the excludability of interest on the Bonds from gross income for federal income tax purposes. We have not been engaged or undertaken to review the accuracy, completeness or any offering material relating to the Bonds and we express no opinion relating thereto (excepting only the matters set forth as our supplemental opinion of Bond Counsel of even date herewith). We have not assumed any responsibility with respect to the financial condition or capability of the Issuer or the Borrower, or the disclosure thereof. We have participated in the preparation of and have examined a transcript of certain materials pertaining to the Bonds, including certain certified proceedings of the Issuer, the State of Texas, the Trustee and the Borrower, and customary certificates, opinions, affidavits and other documents executed by officers, agents and representatives of the Issuer, the State of Texas, the Trustee, the Borrower and others. We also have analyzed such laws, regulations, guidance, documents and other materials as we have deemed necessary to render the opinions herein. We have also examined the Initial Bond registered by the Comptroller.

In providing the opinions set forth herein, we have relied on representations and certifications of the Issuer, the Borrower, the Purchaser and other parties involved with the issuance of the Bonds with respect to matters solely within the knowledge of the Issuer and such parties, which we have not independently verified. In addition, we have assumed for purposes of this opinion continuing compliance with the covenants in the Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, including, but not limited to, covenants relating to the tax-exempt status of the Bonds.

Based on said examination, and subject to the assumptions, qualifications and limitations set forth herein, it is our opinion that, under existing law:

1. The Issuer has duly authorized the issuance, execution and delivery of the Bonds. The Bonds constitute legal, valid and binding special limited obligations of the Issuer and are entitled to the benefit and security of the Indenture.

2. Interest on the Bonds is excludable from gross income for federal income tax purposes under section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), except with respect to the interest on any Bond for any period during which such Bond is held by a "substantial user" of the Development or a "related person" of such a "substantial user," as those terms are defined for purposes of Section 147(a) of the Code.

3. Interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income for purposes of determining a taxpayer's alternative minimum tax liability.

Except as stated above, we express no opinion as to the amount of interest on the Bonds or any federal, state or local tax consequences resulting from the receipt or accrual of interest on, or the acquisition, ownership or disposition of, the Bonds. Further, in the event that the representations of the Issuer, the Borrower, or other parties are determined to be inaccurate or incomplete or the Issuer or the Borrower fail to comply with the covenants of the Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement pertaining to those sections of the Code that affect the tax-exempt status of the Bonds, interest on the Bonds could become includable in gross income for federal income tax purposes from the date of the original delivery of the Bonds, regardless of the date on which the event causing such inclusion occurs.

We express no opinion as to the priority or perfection of the security interest granted by the Issuer in the Trust Estate.

The enforceability of certain provisions of the Bonds may be limited by sovereign immunity, bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors. Furthermore, availability of equitable remedies under the Bonds may be limited by general principles of equity that permit the exercise of judicial discretion.

The opinions set forth above speak only as of their date and only in connection with the Bonds and may not be applied to any other transaction. Such opinions are specifically limited to the laws of the State of Texas and, to the extent applicable, the laws of the United States of America.

Our opinions are based on existing law and our knowledge of facts as of the date hereof and may be affected by certain actions that may be taken or omitted on a later date. We assume no duty to update or supplement our opinions, and this opinion letter may not be relied upon in connection with any changes to the law or facts, or actions taken or omitted, after the date hereof. This letter is delivered to the addressees hereof in connection with the issuance and delivery of the Bonds, and no other party is entitled to rely hereon without our written permission.

Very truly yours,

APPENDIX B

**FORM OF SUPPLEMENTAL OPINION OF
BOND COUNSEL**

June __, 2020

Texas Department of Housing and
Community Affairs
Austin, Texas

Wilmington Trust, National Association,
as Trustee
Dallas, Texas

JPMorgan Chase Bank, N.A.
Washington, D.C.

\$20,000,000
Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020

Ladies and Gentlemen:

We have represented the Texas Department of Housing and Community Affairs (the “Issuer”) in connection with the issuance by the Issuer of its \$20,000,000 Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “Bonds”) pursuant to a resolution adopted by the Governing Board of the Issuer on May 21, 2020 and a Trust Indenture dated as of June 1, 2020 (the “Indenture”), by and between the Issuer and Wilmington Trust, National Association, as trustee (the “Trustee”). The Bonds bear interest, mature on the date, and are subject to redemption prior to maturity as provided in the Indenture. Capitalized terms used herein and not otherwise defined are used with the meanings assigned to such terms in the Indenture, in the Loan Agreement dated as of June 1, 2020 (the “Loan Agreement”) among the Issuer, The Walzem Apartments, LLC, a Kansas limited liability company (the “Borrower”), and JPMorgan Chase Bank, N.A., as purchaser (the “Purchaser”), or in the Regulatory and Land Use Restriction Agreement dated as of June 1, 2020 (the “Regulatory Agreement”), by and among the Issuer, the Trustee, the Borrower and Bexar Management and Development Corporation, as fee owner.

This opinion is rendered pursuant to Section 8(b) of the Initial Bond Purchase Agreement dated June __, 2020 (the “Initial Bond Purchase Agreement”) among the Issuer, the Borrower and the Purchaser. In connection therewith, we have examined and are familiar with (i) certified or original executed counterparts of the documents referred to in our opinion of even date herewith relating to the Bonds and (ii) such other documents, instruments, certificates and opinions as we have deemed necessary to enable us to render this opinion.

You have authorized us to assume without independent verification (i) the genuineness of certificates, records and other documents (collectively, “documents”) submitted to us and the accuracy and completeness of the statements contained therein; (ii) the due authorization, execution and delivery of the documents described above by the parties thereto other than the Issuer; (iii) that all documents submitted to us as originals are accurate and complete; (iv) that all documents submitted to us as copies are true and correct copies of the originals thereof; and (v) that all information submitted to us and on which we have relied was accurate and complete.

Based on said examination, and subject to the assumptions, qualifications and limitations set forth herein, it is our opinion that, under existing laws, the Bonds may be offered and sold without registration under the Securities Act of 1933, as amended, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

In rendering this opinion, we have relied upon the opinions and certificates delivered pursuant to the Bond Purchase Agreement.

The opinions expressed above are expressed only insofar as the laws of the State of Texas and the United States of America may be applicable. This opinion speaks only as of its date and only in connection with the Bonds and may not be applied to any other transaction. The opinions set forth above are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement these opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in law that may hereafter occur or become effective. Further, this opinion is furnished by us solely to the addressees, and is solely for your benefit, and no one else is entitled to rely upon this opinion.

Very truly yours,

APPENDIX C

FORM OF OPINION OF BORROWER'S COUNSEL

June __, 2020

JPMorgan Chase Bank, N.A.
Washington, D.C.

Texas Department of Housing and Community Affairs
Austin, Texas

Re: \$20,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Walzem) Series 2020

Ladies and Gentlemen:

We have acted as counsel to The Walzem Apartments, LLC, a Kansas limited liability company (the "Borrower"), in connection with the issuance of the above-captioned bonds (the "Bonds") by the Texas Department of Housing and Community Affairs (the "Issuer").

Capitalized terms used but not defined herein have the meanings assigned to them in the Indenture or the Initial Bond Purchase Agreement.

In our capacity as such counsel, in rendering the opinions set forth below, we have examined, among other things, originals or copies, certified or otherwise identified to our satisfaction, of the following documents: (i) the Regulatory and Land Use Restriction Agreement, by and among the Issuer, Wilmington Trust, National Association, as trustee (the "Trustee"), the Borrower and the Fee Owner, dated as of June 1, 2020; (ii) the Loan Agreement, dated as of June 1, 2020, among the Issuer, the Borrower and the Purchaser; (iii) the Initial Bond Purchase Agreement, dated June __, 2020, among the Issuer, the Purchaser named therein and the Borrower (the "Initial Bond Purchase Agreement"); (iv) the Continuing Disclosure Agreement, dated as of June 1, 2020, between the Borrower and the Dissemination Agent named therein; (v) the promissory note, dated the Closing Date, executed by the Borrower; (vi) the Tax Exemption Agreement, dated as of June 1, 2020, among the Issuer, the Trustee and the Borrower; and (vii) such other documents, certificates and instruments as we have deemed necessary for the purposes of reaching the opinion expressed herein. We have also relied as to matters of fact upon a certificate of the Borrower and examined certain other certificates and documents.

In such examination, we have assumed the genuineness of all signatures (other than those relating to the Borrower), the authenticity of all documents submitted to us as originals, and the conformity to the original document of all documents submitted to us as photostatic or certified copies. We have assumed due authorization, execution and delivery of all documents referenced herein by the parties thereto other than the Borrower and that each of such parties has full power, authority and legal right to execute and deliver each such instrument.

Based upon and subject to the foregoing, we are of the opinion that, as of the date hereof:

(i) The Borrower is (a) a limited liability company validly existing under the laws of the State of Kansas, (b) is in good standing and duly qualified to transact business in the State of Texas (the "State"),

and (c) has with full power and authority to execute and deliver the documents listed above numbered (ii) through (vi) (the “Financing Documents”) and to perform its obligations under each respective agreement.

(ii) The Financing Documents have each been duly authorized, executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization and similar laws (including fraudulent conveyance laws) affecting the enforcement of creditors’ rights and remedies generally in effect from time to time, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) The execution and delivery of the Financing Documents and the performance by the Borrower of the terms of the respective agreements do not conflict with or violate any other document, instrument, decree, indenture or agreement by which the Borrower is bound.

(iv) No approval, authorization or other action by, or filing with, the State or any agency thereof, is required in connection with the execution and delivery by the Borrower of the Initial Bond Purchase Agreement.

(v) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before any court or public body pending or, to the best of our knowledge, threatened, to challenge the right, power or authority of the Borrower to acquire, own and operate the Project or to perform its obligations under the Initial Bond Purchase Agreement or the other Financing Documents.

We express no opinion as to any matter whatsoever, relating to the accuracy or completeness of any financial accounting or projection information furnished to any party, the accuracy or completeness of any representation made by our clients, the financial status of our clients, the ability of our clients to meet their obligations under any of the above-referenced agreements or any other related document.

Very truly yours,

APPENDIX D

FORM OF OPINION OF COUNSEL TO THE TRUSTEE

June __, 2020

Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711

JPMorgan Chase Bank, N.A.
[Community Development Banking
601 Pennsylvania Avenue NW, 6th Floor
Washington, DC 20004]

Wilmington Trust, National Association
15950 North Dallas Parkway, Suite 550
Dallas, TX 75248

\$20,000,000
Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(The Walzem)
Series 2020

Ladies and Gentlemen:

We have acted as special counsel for Wilmington Trust, National Association, a national banking association, duly organized and existing under the laws of the United States and authorized to transact the business of banking and exercise fiduciary powers (the "Trustee"), in connection with its role as trustee under, and in accordance with the Trust Indenture dated as of June 1, 2020 (the "Indenture"), between the Texas Department of Housing and Community Affairs (the "Issuer") and the Trustee, pertaining to the above-captioned bonds (the "Bonds"). All capitalized terms used herein and not otherwise defined shall have the meanings as set forth in the Indenture.

In that connection, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Indenture, (ii) the Loan Agreement dated as of June 1, 2020 (the "Loan Agreement") by and among the Issuer, The Walzem Apartments, LLC, a Kansas limited liability company (the "Borrower"), and JPMorgan Chase Bank, N.A., (iii) the Regulatory and Land Use Restriction Agreement dated as of June 1, 2020, by and among the Issuer, the Trustee, the Borrower and the Fee Owner (the "Regulatory Agreement"), and (iv) such other instruments and matters of law as we have deemed relevant and necessary in rendering the opinions expressed herein. The Indenture, the Loan Agreement and the Regulatory Agreement shall be together referred to as the "Trustee Documents."

In rendering the opinions expressed herein, we have assumed in good faith the genuineness of the signatures of all persons executing instruments or documents examined or relied upon by us and the conformity with the original documents of all documents submitted to us as copies. In addition, we have relied in good faith upon certificates of public officials as to matters contained therein and upon certificates of representatives of the Trustee as to matters of fact, including the Certificate of Corporate Existence and Certificate of Fiduciary Powers, certifying that the Trustee is duly organized and existing under the laws of

the United States and authorized thereunder to transact the business of banking and exercise fiduciary powers upon representations made to us by representatives of the Trustee as to matters of fact.

Based upon and subject to the foregoing, and further subject to the qualifications as set forth below, it is our opinion that:

1. The Trustee, based solely on the [Certificate of Corporate Existence and Certificate of Fiduciary Powers], respectively, is a national banking association, duly organized and existing under the laws of the United States and authorized thereunder to transact the business of banking and exercise fiduciary powers.

2. With respect to the Bonds, the Trustee has the corporate power and capacity to accept and execute the trust created under the Indenture and to carry out the duties and obligations of the Trustee under the Indenture.

3. The execution, delivery and performance by the Trustee of the Trustee Documents have been duly authorized by all necessary corporate action on the part of the Trustee.

4. The Trustee Documents have been duly executed and delivered by the Trustee, and assuming that the Trustee Documents constitute legal, valid and binding obligations of the other parties thereto, the Trustee Documents constitute legal, valid and binding obligations of the Trustee enforceable against the Trustee in accordance with their terms, except that the enforcement of the Trustee Documents may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and except that such enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

This opinion is given as of the date hereof and we undertake no obligation to advise you of any change with respect to any matter herein set forth.

This opinion is solely for the benefit of the addressees and this opinion may not be relied upon in any manner, or used, by any other persons or entities. Delivery of this opinion to a non-client does not create an attorney-client relationship. The opinions or statements expressed above are based solely on the laws of the United States of America and the laws of the State of Texas. Accordingly, we express no opinion nor make any statement regarding the effect or application of the laws of any other state or jurisdiction.

Very truly yours,

PROMISSORY NOTE

\$20,000,000

[_____]

FOR VALUE RECEIVED, THE WALZEM APARTMENTS, LLC, a Kansas limited liability company (the “Borrower”), promises to pay to the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Issuer”), or its order, the principal sum of TWENTY MILLION DOLLARS (\$20,000,000) (the “Loan”) or so much of that sum as may be advanced by the Issuer under the Loan Agreement of even date herewith executed between the Borrower and the Issuer (the “Loan Agreement”) with interest payable as set forth below. Capitalized, undefined terms used herein shall have the same meanings as used in Loan Agreement or in the Indenture (as defined herein).

Borrower promises to pay to the Issuer the principal sum of this Note, together with interest and all assessments, taxes and premiums as follows:

The Borrower shall pay to the Issuer interest on the outstanding principal balance of the Loan at the Index Interest Rate. The Borrower shall make or cause to be made interest payments at least one business day preceding each Interest Payment Date on the Bonds, which Interest Payment Date shall be (1) during the Cash-Collateralized Mode, (a) the first (1st) day of each month commencing on the first (1st) day of the first (1st) month following the Closing Date, and (b) each Redemption Date; (2) the Mandatory Tender Date, if any; and (3) during the Permanent Mode, commencing on the ninth (9th) day of the second month following the Conversion Date and on the ninth (9th) day of each calendar month thereafter.

(a) The entire principal balance of the Note, plus any accrued but unpaid interest to and including the Maturity Date, shall be due and payable one business day preceding the Maturity Date.

(b) Payments made by Wilmington Trust, National Association (the “Trustee”), as trustee for the Issuer’s Multifamily Housing Revenue Bonds (The Walzem) Series 2020 (the “Bonds”) to the holders of the Bonds, from funds available under the Trust Indenture for the Bonds dated as of [June 1], 2020 (the “Indenture”), will be credited against the Borrower’s obligation to pay interest and principal under this Note. The Borrower shall be obligated to pay any deficiency between amounts due under this Note and amounts paid to bondholders by the Trustee pursuant to the Indenture.

(c) [If any installment of interest, principal, or any other payment due under this Note is not paid within five (5) days from receiving notice that such installment or payment is due, the Borrower promises to pay to the Issuer a “late charge” equal to 5% of the aggregate monthly payment required by this Note.]

(d) This Note is secured by the proceeds of the Bonds deposited into the Bond Fund, Project Fund, and Collateral Fund created pursuant to Section 4.01 of the Indenture, and (ii) the Trust Estate (as defined in the Indenture).

(e) Upon a Default, as defined in the Indenture, the unpaid principal, together with all accrued interest thereon, and all other sums due and payable shall, at the option of the holder of this Note, become immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise this option in the event of any subsequent default.

(f) As to this Note and any other documents or instruments evidencing or securing the Loan (the "Loan Documents"), the Borrower and all guarantors, if any, severally waive all applicable exemption rights, whether under any state constitution, homestead laws or otherwise, and also severally waive valuation and appraisal, presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and expressly agree that the maturity of this Note, or any payment under this Note, may be extended from time to time without in any way affecting the liability of the Borrower and all guarantors.

(g) All payments due under this Note shall be made during regular business hours at the Designated Office (as defined in the Indenture) of the Trustee or at any other place that the Issuer may designate in writing, and shall be made in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public or private debts.

(h) The Borrower represents and warrants that it is a limited liability company within the meaning set forth in the Kansas revised limited liability company act, as amended (the "State Code") and further represents and warrants that the Loan evidenced by this Note was made and transacted solely for the purpose of carrying on or acquiring a business or commercial enterprise within the meaning of the State Code.

(i) Neither the Borrower nor any direct or indirect partner, member, shareholder, officer, director, employee, agent or any of their respective affiliates of the Borrower shall have any personal liability for principal or interest payments or any other payments due under this Note, except as provided in Section 9.3 of the Loan Agreement.

(j) The Borrower hereby acknowledges that, pursuant to the Indenture, the Issuer is assigning to the Trustee all of the Issuer's right, title, and interest in and to this Note, the Indenture, the Loan Agreement and the Bond Mortgage, exclusive of the Reserved Rights of the Issuer, to be held under the Indenture as part of the Trust Estate. Such assignment is being made as security for the payment of the Bonds of the Issuer. All of the terms, conditions and provisions of the Indenture are, by this reference thereto, incorporated herein as part of this Note.

Notwithstanding any other provision contained in this Note, it is agreed that the execution of this Note shall impose no personal liability on the maker hereof for payment of the indebtedness evidenced hereby and in the event of a default, the holder of this Note will not seek or obtain any deficiency or personal judgment against the maker hereof except such judgment or decree as may be necessary to foreclose and bar its interest in the property.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered on its behalf on the date first written above.

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: The Walzem Apartments Manager, LLC
a Kansas limited liability company,
its managing member

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT
DEVELOPMENT CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

ENDORSEMENT

Pay to the order of Wilmington Trust, National Association., without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: James B. "Beau" Eccles
Title: Secretary to Board

Dated: _____, 20__

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SUBORDINATE
MULTIFAMILY LEASEHOLD DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING

from

THE WALZEM APARTMENTS, LLC,
Grantor,

to

[_____] ,
Trustee,

for the benefit of
WILMINGTON TRUST, NATIONAL ASSOCIATION

and

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,
together, Grantee

Dated as of [June 1], 2020

Relating to:

\$20,000,000
Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds (The Walzem)
Series 2020

THIS SECURITY INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF GRANTOR AS "DEBTOR" AND GRANTEE AS "SECURED PARTY." THIS INSTRUMENT SHALL ALSO BE EFFECTIVE FROM THE DATE OF ITS RECORDING AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING PART OF THE PROPERTY WHICH ARE OR ARE TO BECOME FIXTURES

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**SUBORDINATE
MULTIFAMILY LEASEHOLD DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING**

This SUBORDINATE MULTIFAMILY LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING, dated as of [June 1], 2020 (as the same may be amended, modified or supplemented from time to time, this “**Deed of Trust**”), by THE WALZEM APARTMENTS, LLC, a Kansas limited liability company (together with its successors and assigns, “**Grantor**”), having its principal office at 8500 Shawnee Mission Parkway, Suite 150, Merriam, Kansas 66202, to [_____] and his successors and assigns (the “**Trustee**”), for the benefit of WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “**Bond Trustee**”), a national banking association organized and existing under the laws of the United States of America, having offices at 15950 North Dallas Parkway, Suite 550, Dallas, Texas 75248 and TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “**Issuer**” and, together with the Bond Trustee, the “**Grantee**”), a public and official agency of the State of Texas having offices at 221 East 11th Street, Austin, Texas 78701.

W I T N E S S E T H:

WHEREAS, the Issuer is authorized by the provisions of Chapter 2306, Texas Government Code, as amended (the “**Act**”), to issue one or more series of its revenue bonds and loan the proceeds thereof to finance residential rental housing facilities for individuals and families of low, very low and extremely low income and families of moderate income; and

WHEREAS, by proceedings adopted pursuant to and in accordance with the provisions of the Act, the Issuer has authorized the issuance of its Multifamily Housing Revenue Bonds (The Walzem) Series 2020, in the original aggregate principal amount of \$20,000,000 (the “**Bonds**”) pursuant to an Indenture of Trust between the Issuer and the Bond Trustee dated as of the date hereof (and any indenture supplemental thereto, the “**Indenture**”); and

WHEREAS, Grantor proposes to borrow an amount equal to the aggregate principal amount of the Bonds (the “**Loan Amount**”) from the Issuer pursuant to that certain Loan Agreement dated as of [June 1], 2020 by and among the Issuer, JPMorgan Chase Bank, N.A., as purchaser and the Grantor (as the same may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture, the “**Loan Agreement**”); and

WHEREAS, Grantor has executed and delivered to the Issuer, and the Issuer has assigned to the Bond Trustee that certain promissory note dated the Closing Date (as the same may be amended, modified or supplemented from time to time, the “**Borrower Note**”), which evidences the portion of the Loan Amount corresponding to the aggregate principal amount of the Bonds (the “**Loan**”) being \$20,000,000 and being made pursuant to the Loan Agreement; and

WHEREAS, the proceeds of the Loan will be utilized by Grantor to pay the costs of acquiring a leasehold interest in, constructing and equipping a multifamily rental housing development known as The Walzem (the “**Development**”); and

WHEREAS, the Borrower Note provides that the Loan matures on the final maturity date of the Bonds, being 20,000,000 1, 20[_____] (the “**Maturity Date**”), upon which date all of the outstanding and unpaid principal and interest under the Borrower Note will be due and payable; and

WHEREAS, the Issuer requires that this Deed of Trust be executed and delivered as a condition to making the Loan and as security for the Grantor’s obligations under the Loan Agreement pursuant to Section 4.1 and Section 4.2 of the Loan Agreement (the “**Borrower Note Payments**”).

GRANTING CLAUSES

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, in order to secure the payment of the Indebtedness (as hereinafter defined), and any other sums payable under the Financing Documents (as hereinafter defined); and to secure the performance and observance of all other provisions of the Financing Documents, Grantor hereby grants, bargains, sells, warrants, conveys, assigns, sets over and confirms to Trustee, in trust for the benefit of Grantee, with power of sale, and grants to Grantee a security interest and lien in, all of the following (all of which is hereinafter collectively referred to as the “**Mortgaged Property**”):

I. The leasehold interest of Grantor in those certain tract(s) or parcel(s) of land (the “**Land**”), pursuant to that certain Ground Lease, dated as of _____, by and between the Bexar Management Development Corporation, a Texas nonprofit public facility corporation (the “**Fee Owner**”), as landlord, and the Grantor, as tenant (the “**Ground Lease**”), being situated in Bexar County, Texas, being more fully described as set forth in Exhibit A attached hereto and hereby referred to and incorporated herein for all purposes, together with all right, title and interest of the Grantor, including any after-acquired right, title or reversion, in and to the beds of the ways, streets, avenues and alleys adjoining the Land subject to the Permitted Encumbrances, and all Improvements;

II. The fee simple interest of Grantor in all (i) buildings and other improvements and additions thereto now erected or hereafter constructed or placed upon the Land or any part thereof (the “**Improvements**”); (ii) the name or names, if any, as may now or hereafter be used for each Improvement or otherwise in connection with the Land, and the books and records and good will associated therewith, and all licenses, permits, and approvals in connection with the construction and operation of the Improvements; and (iii) refrigerators, dishwashers, air conditioners, microwave ovens, washers, dryers, exercise equipment, lawn care equipment, pool equipment and furniture, devices, apparatus, interior improvements, appurtenances, heating, electrical, mechanical, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment and systems, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, fittings, fixtures, equipment and building materials of every kind and nature whatsoever now or hereafter attached to or placed in or upon the Land or the Improvements, or any part thereof, or used or procured for use in connection with the operation of the Land or the Improvements or any business conducted thereon (except for

fixtures and personal property that are at any time the property of Space Tenants, as hereinafter defined), all of the foregoing items set forth in this clause (iii), except as aforesaid, hereinafter collectively called the “**Equipment**”;

III. All screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture, furnishings, decorations, chattels and other personal property now or hereafter in, on or at said Land (except for trade fixtures, furniture and furnishings that are at any time the property of Space Tenants), all of the foregoing, except as aforesaid, hereinafter collectively called the “**Furnishings**”;

IV. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained, or caused to be obtained, by Grantor and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property or any part thereof into cash or liquidated claims, including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on the Land, the Improvements, the Equipment or the Furnishings or any part of any thereof (collectively, “**Proceeds**”) and all awards and other compensation (collectively “**Awards**”) heretofore and hereafter made to the present and all subsequent owners of the Land, the Improvements, the Equipment or the Furnishings or any part of any thereof by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part thereof or any easement or other right therein, including Awards for any change of grade of streets, all of which Proceeds and Awards are hereby assigned to Grantee;

V. If applicable pursuant to Section 4.1 hereof, all of the rents, issues, income, receipts, revenues, benefits and profits of the Mortgaged Property (collectively, the “**Rents**”), including all leases, subleases, occupancy agreements, licenses, franchises and appurtenances now or hereafter entered into covering any part of the Mortgaged Property, including all interest of Grantor as landlord in and to any of the same, including, without limitation, the interest of Grantor in and to all cash, promissory notes and securities deposited thereunder and the right to receive and collect the Rents and any other sums payable thereunder, all of which are hereby assigned to Grantee;

VI. All rights under any easement or related agreements and all royalties and rights appertaining to the use and enjoyment of the Land, including, without limitation, alley, vault, drainage, mineral, ditch, reservoir, water, oil and gas rights, if any, together with any and all other rights, privileges and interests appurtenant thereto or used in connection with the Land or the Improvements, whether existing now or hereafter acquired;

VII. All construction contracts, subcontracts, architectural agreements, labor, material and payment bonds, guarantees and warranties, plans and specifications, and permits and approvals relating to the construction of the Improvements, whether now or hereafter existing;

VIII. All books, records and good will associated with the Land and the Improvements, all logos, trademarks and tradenames used in connection with the Land and Improvements, all management contracts now in effect or hereafter entered into, and all extensions, renewals and replacements thereof, and all permits, licenses and approvals for the operation of the Improvements;

IX. Upon foreclosure under this Deed of Trust, all tax credits or abatement certificates under Federal, State or local law arising out of or related to the Mortgaged Property and all of the Grantor's title and interest in and to any instrument, document or agreement relating thereto, including, without limitation, any regulatory agreement relating to the leasing of individual units comprising the Mortgaged Property; and

X. All extensions, improvements, betterments, substitutions and replacements of, and all additions and appurtenances to, the Land, the Improvements, the Equipment and the Furnishings, hereafter acquired by or released to Grantor or constructed, assembled or placed on the Land, and all conversions of the security constituted thereby immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein.

TO HAVE AND TO HOLD the Mortgaged Property, together with all rights, hereditaments and appurtenances in any wise appertaining or belonging thereto, unto Trustee, its substitutes or its successors and assigns, forever for the uses set forth herein, and Grantor hereby binds itself and its successors and assigns to warrant and forever defend the Mortgaged Property unto Trustee, its substitutes or successors and assigns, against the claim or claims of all Persons claiming or to claim the same or any part thereof.

ARTICLE I

CERTAIN DEFINITIONS

In addition to other definitions contained herein, the following terms shall have the meanings set forth below, unless the context of this Deed of Trust otherwise requires. All other capitalized terms used herein which are defined in either the Indenture or the Loan Agreement, and not defined herein, shall have the respective meanings ascribed thereto in the Indenture or Loan Agreement, unless otherwise expressly provided or unless the context otherwise requires.

- (a) "Construction Loan" shall have the meaning set forth in the Indenture.
- (b) "Default Rate" shall mean a per annum rate of interest equal to the lower of (a) 12% per annum, or (b) the Maximum Amount.
- (c) "Development" shall have the meaning ascribed to such term in the recitals to this Deed of Trust.
- (d) "Due and Payable" shall mean (i) when used with reference to the Indebtedness, or when referring to any and all other sums secured by this Deed of Trust, due and payable, whether at the monthly or other date of payment as specified in the Loan Agreement or other Financing Documents, and (ii) when used with reference to Impositions, the last day upon which any such charge may be paid without penalty or interest and without becoming a lien upon the Mortgaged Property.

(e) “Environmental Laws” shall mean and include each and every federal, state or local statute, regulation or ordinance or any judicial or administrative decree, policy, guidance or decision, whether now existing or hereafter enacted, promulgated or issued, governing or relating to the protection of the environment, natural resources and human health and safety, with respect to any Hazardous Substances (as hereinafter defined), Environmentally Sensitive Areas (as hereinafter defined), drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, wells or radon.

(f) “Environmentally Sensitive Area” shall mean (i) a wetland or other “water of the United States” for purposes of the Clean Water Act or other similar area regulated under any State Environmental Law, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable State Environmental Law, (iii) a portion of the coastal zone for purposes of the Federal Coastal Zone Management Act, or (iv) any other area, development of which is specifically restricted under applicable Environmental Laws by reason of its physical characteristics or prior use.

(g) “Event of Default” shall mean each of the events and circumstances described as such in Section 6.1 hereof.

(h) “Financing Documents” shall mean this Deed of Trust, the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement.

(i) “Governmental Authority” means any federal, state, county, municipal or local government or any department, commission, board, legislature or office thereof, having or claiming jurisdiction over the Mortgaged Property.

(j) “Hazardous Substances” shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law, including, without limitation, asbestos, asbestos-containing materials, poly-chlorinated biphenyls, urea foam formaldehyde insulation, radon and lead-based paint.

(k) “Impositions” shall mean all duties, taxes, water and sewer rents, rates and charges, assessments (including, but not limited to, all assessments for public improvement or benefit), charges for public utilities, excises, levies, licenses and permit fees and other charges, ordinary or extraordinary, whether foreseen or unforeseen, of any kind and nature, whatsoever, which prior to or during the term of this Deed of Trust will have been or may be laid, levied, assessed or imposed upon or become due and payable out of or in respect of, or become a lien on, the Mortgaged Property or any part thereof or appurtenances thereto, or which are levied or assessed against the rent and income received by Grantor from the Space Leases (as hereinafter defined) by virtue of any present or future law, order or ordinance of the United States of America or of any state, county or local government or of any department, office of bureau thereof or of any other Governmental Authority.

(l) “Indebtedness” shall mean and include all payments, sums, charges, obligations and liabilities of Grantor due or to become due at any time under the Loan Agreement, and all

other sums, charges, obligations and liabilities of Grantor due or to become due at any time to Grantee under this Deed of Trust, or any other Financing Document.

(m) “Land” shall mean that certain parcel of land more particularly described in Exhibit A annexed hereto and incorporated herein, including all and singular, the easements, rights, privileges, tenements, hereditaments and appurtenances (including air rights) thereunto belonging or in any way appertaining thereto, and the reversion and the remainder thereof; and all of the estate, right, title, interest, claim or demand of Grantor therein and in and to any land lying in the bed of any street, road or avenue, open or proposed, thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired and in all strips and gores therein or adjoining thereto, the air space and right to use said air space thereinabove and all rights of ingress and egress by motor vehicles to parking facilities thereon or therein.

(n) “Maximum Amount” shall mean the maximum amount permitted to be charged under applicable usury laws or other applicable laws relating to the payment of interest from time to time in effect including, without limitation, Chapter 1204 of the Texas Government Code.

(o) “Permitted Encumbrances” shall mean, collectively, the mortgage on the Development securing the Construction Loan (the “**First Mortgage**”), the Regulatory Agreement, those liens, easements, rights of way, covenants, restrictions, encumbrances and other matters affecting title to the Mortgaged Property set forth in Schedule B of the mortgagee policy of title insurance insuring this Deed of Trust (or commitment to issue such policy in existence as of the date of this Deed of Trust) and any other liens, easements, rights of way, covenants, restrictions, encumbrances and other matters affecting title to the Mortgaged Property approved in writing by the Grantee.

(p) “Person” shall mean any natural person, firm, partnership, association, corporation, trust, or public body.

(q) “Regulatory Agreement” shall mean the Regulatory and Land Use Restriction Agreement, dated as of the date hereof, by and among the Issuer, the Bond Trustee, the Fee Owner and the Grantor, as amended or supplemented from time to time.

(r) “Space Lease” shall mean any lease, sublease, license, concession agreement or any other form of agreement, however denominated, granting the right to use and occupy the Mortgaged Property, or any portion thereof, and all renewals, extensions, modifications, amendments and other agreements affecting the same.

(s) “Space Tenant” shall mean the tenant or other user or occupant of part or all of the Mortgaged Property under any Space Lease.

(t) “Spill” shall mean any release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, or discarding, burying, abandoning, or disposing into the environment.

(u) “State” shall mean the state in which the Land is located.

(v) "Threat of Spill" shall mean a substantial likelihood of a Spill which requires action to prevent or mitigate damage to the environment which may result from such Spill.

ARTICLE II

PARTICULAR COVENANTS OF GRANTOR

Grantor covenants and agrees as follows:

SECTION 2.1. Payment of Indebtedness. Grantor shall duly and punctually pay to Issuer and/or to Bond Trustee, as applicable, as and when Due and Payable, the Indebtedness.

SECTION 2.2. Warranty of Title. Grantor warrants that (a) it is the lawful owner of a leasehold interest in the Land pursuant to the Ground Lease and is the fee title owner of the rest of the Mortgaged Property; (b) the Mortgaged Property is free and clear of all deeds of trust, deeds to secure debt, mortgages, liens, charges and encumbrances whatsoever except for the Permitted Encumbrances; (c) except as provided in Section 4.1 hereof, Grantor has not heretofore assigned the Rents; (d) it will maintain and preserve the lien and priority of this Deed of Trust until the Indebtedness has been paid in full and all other obligations owing to Grantee by Grantor in connection with the Loan have been satisfied; (e) it has good right and lawful authority to mortgage and assign the Mortgaged Property as provided in and by this Deed of Trust; and (f) except for the Permitted Encumbrances, it will warrant and defend the same against any and all claims and demands whatsoever.

SECTION 2.3. No Defaults. Grantor represents and warrants that no Event of Default or event which, with the giving of notice or passage of time, would constitute an Event of Default exists under the provisions of this Deed of Trust or the other Financing Documents or in the performance of any of the terms, covenants, conditions or warranties hereof or thereof on the part of Grantor to be performed or observed.

SECTION 2.4. To Pay Impositions. Grantor will pay or cause to be paid as and when due and payable all Impositions levied upon the Mortgaged Property or any part thereof and, within fifteen (15) days after the payment thereof, will deliver to Grantee receipts evidencing the payment or bonding of all such Impositions. Notwithstanding the foregoing, if by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Grantor shall have the right, provided that no Event of Default shall then exist under this Deed of Trust or any other of the Financing Documents, to exercise such option and to cause to be paid or to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments, as they fall due, and before any fine, penalty, further interest or cost may be added thereto.

SECTION 2.5. To Maintain Priority of Lien. Grantor will maintain this Deed of Trust as a valid lien on the Mortgaged Property, and Grantor will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Mortgaged Property or any portion thereof, or against the Rents therefrom and will promptly discharge, any lien or charge whatsoever other than the Permitted Encumbrances, whether prior to, upon a parity with, or junior to the lien of this Deed of Trust; provided, however, that nothing herein contained shall require Grantor to pay

or cause to be paid any Imposition prior to the time the same shall become due and payable. Grantor will keep and maintain the Mortgaged Property, and every part thereof, free from all liens of Persons supplying labor and materials in connection with the construction, alteration, repair, improvement or replacement of the Improvements, the Equipment or the Furnishings. If any such liens shall be filed against the Mortgaged Property, or any part thereof, Grantor shall immediately release or discharge the same of record, by payment, bonding or otherwise, or otherwise provide security satisfactory to Grantee in Grantee's sole discretion, within fifteen (15) days after the filing thereof. In the event that Grantor fails to make payment of or bond over, such liens, Grantee may make payment thereof, and any amounts paid by Grantee as a result thereof, together with interest thereon at the Default Rate from the date of payment by Grantee, shall be immediately due and payable by Grantor to Grantee and until paid, shall be added to and become a part of the Indebtedness, and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust. Grantor shall deliver to Grantee, upon request, all receipts or other satisfactory evidence of the payment of taxes, assessments, charges, claims, liens or any other item which, if unpaid, may cause any such lien to be filed against the Mortgaged Property.

SECTION 2.6. To Pay Recording Fees, Taxes and Other Charges. Grantor will pay all filing, registration or recording fees, and all costs and expenses of Grantee, including without limitation, reasonable attorneys' fees actually incurred and disbursements, title insurance premiums, search fees and survey costs, incident to or in connection with the preparation, execution, delivery or acknowledgment of this Deed of Trust, any supplement hereto, any security instrument with respect to any collateral relating to the Loan and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Borrower Note, this Deed of Trust, any supplement hereto, any security instrument with respect to any collateral relating to the Loan, the other Financing Documents, or any instrument of further assurance.

SECTION 2.7. Maintenance of Mortgaged Property; Covenants Against Waste; Inspection by Grantee. Grantor will not commit or permit waste on the Mortgaged Property and will keep and maintain at its own expense the Improvements, the Equipment and the Furnishings in a condition and state of repair such that each of the same shall meet or surpass the requirements of any applicable Governmental Authority and customary standards in the general area set by buildings of similar type, age and function for attractiveness of appearance, cleanliness and general soundness of condition, but in any event consistent with multifamily housing projects of a similar type and purpose. Grantor shall do all such further maintenance and repair work as may be required under the Space Leases and applicable law. Grantor will neither do nor permit to be done anything to the Mortgaged Property that may impair the value thereof or which may violate any covenant, condition or restriction affecting the same, or any part thereof, or permit any change therein or in the condition or use thereof which could increase the danger of fire or other hazard arising out of the construction or operation thereof. The Improvements shall not be removed or demolished (except for tenant improvements), without the prior written consent of Grantee. The Equipment and Furnishings shall not be removed without the prior written consent of the Grantee, except where appropriate replacements free of superior title, liens or claims are immediately made having a value at least equal to the value of the items

removed. Grantee and its authorized employees and agents, may enter and inspect the Mortgaged Property at any time upon advance notice during usual business hours, and Grantor shall, within fifteen (15) business days after demand by Grantee (or immediately upon demand in case of emergency), commence such repairs, replacements, renewals or additions, or perform such items of maintenance, to the Mortgaged Property as the Grantee may, in its sole reasonable discretion, require in order to cause the Mortgaged Property to comply with the above standards, shall diligently make the same and shall complete the same as promptly as practicable.

SECTION 2.8. After-Acquired Property. All right, title and interest of Grantor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property hereafter acquired, constructed, assembled or placed by Grantor on the Land, and all conversions of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the Granting Clauses hereof, but at any time and at all times Grantor, on demand, will execute, acknowledge and deliver to Grantee any and all such further assurances, mortgages, conveyances or assignments thereof as Grantee may require in its sole discretion for the purpose of expressly and specifically subjecting the same to the liens and security interests of this Deed of Trust.

SECTION 2.9. Further Assurances. Grantor shall, at its sole cost and without expense to Grantee, on demand, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Grantee shall from time to time require in its sole discretion for better assuring, conveying, assigning, transferring, confirming and perfecting unto Grantee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey, mortgage or assign to Grantee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering or recording this Deed of Trust.

SECTION 2.10. Status of Grantor. Grantor shall not without the prior written consent of Grantee: (a) change its name; (b) change its state of organization through dissolution, merger, transfer of assets or otherwise; or (c) change its type of organization through conversion, reorganization or otherwise.

SECTION 2.11. Recorded Instruments. Grantor will promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property. Grantor shall do or cause to be done all things required to preserve intact and unimpaired and to renew any and all rights-of-way, easements, grants, appurtenances, privileges, licenses, franchises and other interests and rights in favor of or constituting any portion of the Mortgaged Property. Other than Permitted Encumbrances, Grantor will not, without the prior written consent of the Grantee, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property other than the Extended Low-Income Housing Commitment described in Section 8.6 hereof. Grantor shall, however, and shall cause all Space Tenants to, comply with all

lawful restrictive covenants and zoning ordinances and other public or private restrictions affecting the Mortgaged Property and other laws and ordinances of any Governmental Authority affecting the Mortgaged Property.

SECTION 2.12. Environmental Provisions. Grantor hereby represents, warrants and covenants that:

2.12.1. (a) To Grantor's knowledge, no condition, activity or conduct exists on or in connection with the Mortgaged Property which constitutes a violation of any Environmental Laws; (b) to Grantor's knowledge, there has been no Spill or Threat of Spill of any Hazardous Substances on, upon, into or from the Mortgaged Property nor, to Grantor's knowledge, a Spill which, through soil or groundwater migration, could reasonably be expected to come to be located on the Mortgaged Property; (c) there are no existing or closed underground or aboveground storage tanks on the Mortgaged Property; (d) there are no existing or closed sanitary landfills, solid waste disposal sites, or hazardous waste treatment, storage or disposal facilities on or affecting the Land; (e) no notice has been issued to Grantor by any agency, authority, or unit of government that Grantor has been identified as a potentially responsible party under any Environmental Laws; (f) no portion of the Mortgaged Property constitutes an Environmentally Sensitive Area; (g) there exists no investigation, action, proceeding, or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanction, or judgment under any Environmental Laws with respect to any condition, use or operation of the Mortgaged Property; (h) there has been no claim by any party that any use, operation, or condition of the Mortgaged Property has caused any nuisance or any other liability or adverse condition on any other property; and (i) Grantor need not obtain any permit or approval for any part of the Development and need not notify any federal, state or local governmental authority having jurisdiction of the Development regarding any part of the Development pursuant to any Environmental Laws.

2.12.2. Grantor shall: (a) comply with and cause all activities at the Mortgaged Property to comply with all Environmental Laws; (b) not store or dispose of (except in compliance with all Environmental Laws pertaining thereto), nor Spill or allow the Spill of any Hazardous Substances on the Property; (c) neither directly nor indirectly transport or arrange for the transport of any Hazardous Substances (except in compliance with all Environmental Laws pertaining thereto); (d) neither install nor permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground except after obtaining written permission from the Grantee to do so and in compliance with Environmental Laws; and (e) comply with all terms and conditions of all permits, authorizations, approvals, waivers, judgments or decrees or notices from Governmental Authorities issued or sent pursuant to Environmental Laws.

2.12.3. Grantor, promptly upon the written request of Grantee from time to time (but no more frequently than once per calendar year) shall provide Grantee, at Grantor's sole cost and expense, with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content reasonably satisfactory to the Grantee.

2.12.4. In the event of any Spill or Threat of Spill affecting the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any contiguous real estate, or if Grantor or the Mortgaged Property otherwise shall fail to comply with any of the requirements of Environmental Laws, Grantee may at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Mortgaged Property and take any and all other actions as Grantee shall reasonably deem necessary or advisable in order to remedy said Spill or the conditions constituting a Threat of Spill or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by Grantee, shall be immediately due and payable by Grantor to Grantee and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust.

2.12.5. Grantor covenants and agrees to conduct representative radon sampling in the Improvements on the Land following construction and/or rehabilitation of the Development to determine whether indoor radon levels are below the United States Environmental Protection Agency's recommended threshold of 4.0pCi/L. In the event that said radon sampling results reveal indoor radon levels in excess of 4.0pCi/L, Grantor covenants and agrees to implement radon mitigation techniques to reduce or prevent the build-up or migration of radon in the Improvements on the Land. In the event that radon mitigation is required to be implemented, Grantor further covenants and agrees to conduct radon sampling in the Improvements on the Land following such implementation to confirm that the radon mitigation techniques have succeeded in reducing or preventing the build-up of radon in the Improvements on the Land to below the United States Environmental Protection Agency's recommended threshold of 4.0pCi/L. In the event that such radon sampling results reveal that levels of radon in the Improvements on the Land are still in excess of the above-referenced United States Environmental Protection Agency threshold, Grantor covenants and agrees to undertake any additional measures necessary to reduce radon levels in the Improvements on the Land and bring the Mortgaged Property into compliance with applicable Environmental Laws.

2.12.6. The Grantor shall comply with the Environmental Laws and regulations with respect to on-site wetlands, including, but not limited to obtaining, complying with and maintaining any wetland permits, wetland permit requirements, development restrictions, setback and/buffers, habitat protection and mitigation requirements.

2.12.7. The Grantor shall handle any subsurface contamination encountered at the Land during the course of rehabilitation in accordance with a site-specific Health and Safety Plan developed in accordance with Environmental Laws and other applicable federal, state and local laws, rules and regulations, and any such contamination shall be remediated and disposed of in accordance with Environmental Laws and other applicable federal, state and local laws, rules and regulations.

SECTION 2.13. Mold Coverage. In the event that Grantor is covered by a commercial general liability insurance policy which contains an exclusion for loss or damage caused by mold, dangerous fungi, bacterial or microbial matter, contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells (collectively, "**Mold**") or a

property insurance policy which contains an exclusion for loss or damage caused by Mold, in connection with another covered peril (e.g., Mold in connection with water damage caused by a storm or fire), Grantor shall demonstrate to the satisfaction of Grantee that such insurance without the aforementioned exclusions is not available at ordinary and customary insurance rates and either: (i) Grantor shall demonstrate to the satisfaction of Grantee that the potential risk for loss or damage caused by Mold, fungus, moisture, microbial contamination or pathogenic organisms at the Mortgaged Property is minimal because of precautionary measures or techniques to be utilized in the construction or rehabilitation of the Improvements, including without limitation, the use of vapor barriers or other liners to limit the growth and reproduction of Mold; or (ii) Grantor shall implement a moisture management and control program (the “**Moisture Management Program**”) for the Improvements at the Mortgaged Property to prevent the occurrence of Mold, at, on or under the Mortgaged Property, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Mortgaged Property for Mold, (b) removing or cleaning up any Mold in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by Grantee, and (c) in the event that the Mold identified at the Improvements at the Mortgaged Property cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Mortgaged Property, all in accordance with the procedures set forth in the United States Environmental Protection Agency’s (“**EPA**”) guide entitled “Mold Remediation in Schools and Commercial Buildings”, EPA No. 402-K-01-001, dated March 2001, and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by Grantee. Grantor further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of Grantor hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Mortgaged Property shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

SECTION 2.14. Preservation of Grantor’s Leasehold Interest under Ground Lease.

(a) Grantor will promptly pay (before they become delinquent) all rents, charges and other sums or amounts required to be paid by Grantor under the Ground Lease, and will further keep and perform all of the covenants, terms and provisions of the Ground Lease that impose any obligations on Grantor under the Ground Lease, and will do all other things necessary to preserve and keep unimpaired the rights of Grantor under the Ground Lease.

(b) Grantor will promptly send to the Grantee a true copy of any notice of default served on the Grantor under the Ground Lease, and Grantor will promptly, if known, notify the Grantee in writing of the occurrence of any event, which, with or without any notice or lapse of time or both, would constitute a default on the part of Grantor under the Ground Lease.

(c) Grantor will not surrender the Ground Lease or its leasehold estate thereunder, nor terminate or cancel the Ground Lease, nor assign any of its rights or obligations under the Ground Lease without first obtaining the prior written consent of

the Grantee. Nor will Grantor make or consent to any modification, change, supplement, amendment or alteration of any terms of the Ground Lease without first obtaining the prior written consent of the Grantee. Grantor hereby assigns to the Grantee all rights, which it may have now or in the future to terminate, cancel, modify, change, supplement, amend or alter the Ground Lease.

(d) Grantor agrees to exercise any option to renew or extend the Ground Lease if at the time that option becomes exercisable any indebtedness secured by this Deed of Trust has not been fully paid. Grantor will confirm exercise of that option to the Grantee in writing within ten (10) days after the date on which that option first becomes exercisable. Grantor hereby irrevocably appoints the Grantee as its attorney-in-fact, with full power of substitution, to exercise any such option on behalf of Grantor if Grantor for any reason fails or refuses to exercise that option at least twenty (20) days prior to the expiration of the period of time for its exercise.

(e) Grantor will, within twenty (20) days after written request by the Grantee and at no cost to the Grantee, obtain and deliver to the Grantee from the Grantor under the Ground Lease any Grantor's estoppel certificate provided for in the Ground Lease.

(f) Upon the Grantee's request, Grantor will submit satisfactory evidence of payment of all of its monetary obligations under the Ground Lease (including but not limited to ground rent, taxes, assessments, insurance premiums and operating expenses).

(g) If at any time Grantor fails to comply fully with any of its obligations under the Ground Lease, and that failure in any manner threatens to impair the Grantee's security under this Deed of Trust, or if the Grantee or the Trustee is given the right to cure any of Grantor's defaults under the terms of the Ground Lease, then the Grantee and/or the Trustee may, but is not obligated to, perform any of those obligations on behalf of Grantor or cure any of Grantor's defaults. The Grantee and/or the Trustee may take such action with notice to but without demand upon Grantor and without releasing Grantor from any obligation under this Deed of Trust. Any and all costs and expenses (including but not limited to legal fees and disbursements) incurred by the Grantee or the Trustee in connection with any such actions will be immediately due and payable by Grantor on demand and will bear interest, at the higher of ten percent (10%) per annum or the interest rate set forth in the Notes, from the time of advancement by the Grantee or the Trustee until repaid.

The Grantee and/or the Trustee will have the right to appear in and participate in all proceedings, including any arbitration proceedings, which would affect the Grantee's security in the leasehold interest of Grantor under the Ground Lease. Grantor agrees to pay promptly upon demand all reasonable costs and expenses of the Grantee and the Trustee (including but not limited to legal fees and disbursements) incurred in any such proceedings.

ARTICLE III

CASUALTY AND CONDEMNATION

SECTION 3.1. Net Proceeds.

3.1.1. If any of the Improvements, Equipment or Furnishings shall be damaged or destroyed, in whole or part, by fire or other casualty, Grantor shall give prompt notice thereof to Grantee. The Grantee are hereby authorized and empowered by Grantor, to settle, adjust or compromise in a commercially reasonable manner any and all claims for loss, damage or destruction under any policy of insurance.

3.1.2. Subject to the provisions of the Construction Loan Documents, any Proceeds received as payment for any loss under any insurance policies required to be maintained by Grantor in accordance with this Section shall be paid over to the Bond Trustee for deposit into the appropriate fund under the Indenture. For the purposes of this Deed of Trust, “**Net Proceeds**” shall mean any Proceeds actually received by the Bond Trustee as payment for any loss, less all costs and expenses, including, without limitation, all reasonable architects’, attorneys’, engineers’ and other consultants’ and professionals’ fees actually incurred and disbursements incurred by Grantee or Grantor in connection with the casualty in question. Subject to the conditions set forth in Section 3.3 hereof, Grantee shall cause such Net Proceeds either to be (a) applied to the redemption of the Bonds, (b) applied to the costs to repair, rebuild or replace the damaged Improvements, Equipment or Furnishings that were subject to the applicable casualty upon such terms and conditions as the Grantee shall determine in its sole discretion, or (c) released to Grantor upon such terms and conditions as the Grantee may determine in its sole discretion and accompanied by an opinion of Bond Counsel to the effect that such release does not affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is not in contravention of State law.

3.1.3. In the event of the happening of any casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtainable), resulting in damage to or destruction of the Mortgaged Property or any part thereof, if Grantee elects to apply any Net Proceeds received by it in connection with such casualty towards the restoration of the Mortgaged Property (as provided in Section 3.3 hereof), Grantor shall promptly, whether or not the Net Proceeds, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

SECTION 3.2. Net Awards.

3.2.1. Grantor shall promptly notify Grantee if Grantor shall become aware of the threat or institution of any proceeding or negotiations for the taking of the Mortgaged Property, or any part thereof, whether for permanent or temporary use and occupancy in condemnation or by the exercise of the power of eminent domain or by agreement of interested parties in lieu of such condemnation (all the foregoing herein called a “**taking**”); and shall keep Grantee currently advised, in detail, as to the status of such proceedings or negotiations and will

promptly give to Grantee copies of all notices, pleadings, judgments, determinations and other papers received or delivered by Grantor therein. Grantee shall have the right to appear and participate therein and may be represented by counsel of its choice. Grantor will not, without the Grantee's prior written consent, enter into any agreement for the taking of the Mortgaged Property, or any part thereof, with anyone authorized to acquire the same by eminent domain or in condemnation.

3.2.2. In the event of any such taking and subject to the terms of the Construction Loan Documents, the awards payable in connection therewith are hereby assigned to Grantee and shall be paid to Bond Trustee for deposit into the appropriate fund under the Indenture. For the purposes of this Deed of Trust, "**Net Awards**" shall mean any awards actually received by Bond Trustee less all costs and expenses, including, without limitation, all reasonable architects', attorneys', engineers' and other consultants' and professionals' fees actually incurred and disbursements incurred by Grantee or Grantor in connection with the taking in question. Subject to the conditions set forth in Section 3.3, Grantee shall cause such Net Awards either to be (a) applied to the redemption of the Bonds, (b) applied to the costs to repair, rebuild or replace the Improvements, Equipment or Furnishings that were subject to the taking, upon such terms and conditions as the Grantee shall determine in its sole discretion, or (c) released to Grantor upon such terms and conditions as the Grantee may determine in its sole reasonable discretion and accompanied by an opinion of Bond Counsel to the effect that such release does not affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is not in contravention of State law.

3.2.3. In the event of the happening of any permanent taking, provided that Grantee elects to apply any Net Awards received by it in connection with such taking towards the restoration of the Mortgaged Property (as provided in Section 3.3 hereof), Grantor shall promptly, whether or not the Net Awards, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the portion of the Mortgaged Property not subject to the taking as nearly as possible to its value, condition and character immediately prior to such taking.

SECTION 3.3. Application of Net Proceeds and Net Awards. Notwithstanding any provision hereof to the contrary, in the event the Improvements, Equipment or Furnishings are damaged or destroyed by fire or other casualty or in the event of a temporary or partial taking in condemnation of a portion of the Land or Improvements, then the Grantee shall make the Net Awards or Net Proceeds, as the case may be, payable in connection therewith available, at intervals and in amounts in accordance with the provisions of the Indenture and the Loan Agreement, to pay for or to reimburse Grantor for costs and expenses actually incurred by Grantor in the repair and restoration of the Mortgaged Property or to be released to Grantor, provided each of the following conditions is fully satisfied:

- (a) the Net Awards or Net Proceeds, as the case may be, are paid to Grantee and deposited into the appropriate fund under the Indenture;
- (b) if restoration is contemplated, any plans, specifications, construction contracts, architect's agreements and all other material agreements relating to the restoration shall be approved by the Grantee in writing;

(c) if restoration is contemplated, the Net Awards or Net Proceeds, as the case may be, are in the judgment of the Grantee sufficient to complete the restoration, or, in the event of an insufficiency, Grantor deposits into the appropriate account under the Indenture cash in an amount equal to the insufficiency;

(d) no Event of Default under the Bonds, the Indenture or the Financing Documents shall have occurred and be continuing;

(e) if restoration is contemplated, the Grantee determines, in its sole reasonable discretion, that the Improvements, Equipment and Furnishings are capable of being fully restored by the earlier of (i) the date which is 12 months from the occurrence of the loss or damage and (ii) the Maturity Date;

(f) if restoration is contemplated a release of lien with respect to all restoration work theretofore performed is delivered to Grantee from all contractors and materialmen;

(g) Grantee shall receive an official search or a certificate of title from a title insurance company acceptable to it showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other lien affecting the Mortgaged Property which has not been bonded or satisfied and discharged of record, except such as will be discharged upon payment of the amount then requested to be disbursed;

(h) upon completion of restoration or upon release of Net Proceeds or Net Awards, the Development will be in compliance with the Regulatory Agreement; and

(i) Grantor shall deliver to Grantee, an Opinion of Bond Counsel (as defined in the Indenture) to the effect that restoration of the Development with the Net Awards or Net Proceeds or the release of Net Awards or Net Proceeds to Grantor, as the case may be, will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

Upon completion of the restoration, as certified by an inspecting engineer selected by the Grantee, any excess Net Awards or Net Proceeds, as the case may be, and accrued interest thereon (if any) shall be, at the option of the Grantee, (a) disbursed to Grantor or (b) applied to the redemption of Bonds; provided, however, that any excess Net Awards or Net Proceeds shall be applied to the redemption of Bonds unless Grantor shall deliver to Grantee an Opinion of Bond Counsel (as defined in the Indenture) to the effect that the alternative proposed application of such Net Proceeds or Net Awards will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

ARTICLE IV

ASSIGNMENT OF SPACE LEASES AND RENT

SECTION 4.1. Assignment of Space Leases and Rents. Contemporaneously with the execution of this Deed of Trust, Grantor has assigned its interests in the Space Leases and Rents to the Lender in the First Mortgage to secure the payment of the Construction Loan. In the event

of the payment of the Construction Loan and release of the First Mortgage without the release of this Deed of Trust, Grantor hereby grants, conveys, assigns, transfers and sets over to Grantee to be effective as of the date of the release of the First Mortgage, the Space Leases now or hereafter entered into by Grantor with respect to all or any part of the Mortgaged Property, and all renewals, extensions, subleases or assignments thereof and all other occupancy agreements (written or oral), by concession, license or otherwise, together with all of the Rents and proceeds arising therefrom and from the Mortgaged Property pursuant to and in accordance with the provisions of Chapter 64 of the Texas Property Code.

ARTICLE V

SECURITY AGREEMENT UNDER UNIFORM COMMERCIAL CODE

SECTION 5.1. Security Agreement. It is the intent of the parties hereto that this Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State (the “UCC”) with respect to so much of the Mortgaged Property as is considered or as shall be determined to be of the type in which a security interest can be created under Article 9 of the UCC, together with all replacements thereof, substitutions therefor or additions thereto (the “**Collateral**”), and that a security interest shall attach thereto for the benefit of Grantee to secure the Indebtedness and all other sums and charges which may become due hereunder or under the Financing Documents. Grantor hereby authorizes Grantee to file financing and continuation statements and amendments thereto with respect to the Collateral without the signature of Grantor, if same is lawful; otherwise Grantor agrees to execute such financing and continuation statements and amendments thereto as Grantee may request. If there shall exist an Event of Default under this Deed of Trust, Grantee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding as to both real and personal property in accordance with its rights to both real and personal property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event Grantee shall elect to proceed with respect to the Collateral separately from the real property, unless a greater period shall then be mandated by the UCC, five (5) days’ notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by Grantee shall be assessed against Grantor and shall include, but shall not be limited to, reasonable attorneys’ fees, disbursements and other legal expenses incurred by Grantee. Grantor agrees that it will not remove or permit to be removed from the Mortgaged Property any of the Collateral without the prior written consent of Grantee, unless appropriate replacements free of superior title, liens or claims are immediately made having a value at least equal to the value of the items removed. All replacements, renewals and additions to the Collateral shall be and become immediately subject to the security interest of this Deed of Trust and the provisions of this Article. Grantor warrants and represents that all Collateral now is, and that replacements thereof, substitutions therefor or additions thereto, unless Grantee otherwise consents in writing, shall be free and clear of liens, encumbrances or security interests of others created after the date hereof other than Permitted Encumbrances.

From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Collateral which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

A. Name and Address of Debtor:

The Walzem Apartments, LLC
c/o Cohen-Esrey
8500 Shawnee Mission Parkway, Suite 150
Merriam, Kansas 66202
Attention: Jeanette Jayne
Telephone: 913-671-3347

B. Name and Address of Secured Party:

Wilmington Trust, National Association
15950 North Dallas Parkway, Suite 550
Dallas, Texas 75248
Attn: Dayna Smith

Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Attn: Director of Multifamily Bonds

C. This document covers goods which are or are to become fixtures.

D. State of Debtor's Organization and Organizational Identification No.:
State: Kansas
I.D. No.: 9435926

E. This filing is made in connection with a public finance transaction as described in Sections 9.515(b) and 9.102(a)(68) of the UCC.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.1. Events of Default Defined. The entire amount of the Indebtedness shall become due, at the option of Grantee, subject to any prepayment premium or penalty provided for in the Loan Agreement, if any, upon the happening of any of the following events (each, individually, an "**Event of Default**" and collectively, "**Events of Default**"):

6.1.1. if Grantor shall fail or neglect to comply with or otherwise perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Deed of Trust that is required to be complied with or otherwise performed, kept or observed by Grantor beyond any notice, grace or cure period expressly provided in this Deed of Trust; or

6.1.2. if an "Event of Default" as defined in any of the Financing Documents shall have occurred and shall remain uncured beyond any applicable cure periods.

[Grantee hereby agrees that any cure of a default or an Event of Default hereunder or under any of the other Financing Documents made or tendered by the Investor Sponsor shall be deemed to be a cure by the Grantor, and shall be accepted or rejected by the Grantee on the same basis as if made or tendered by the Grantor.]

SECTION 6.2. Remedies. Upon the occurrence of any Event of Default hereunder, Grantee may, without notice, presentment, demand or protest, notice of intent to accelerate, or notice of acceleration, all of which are hereby expressly waived by Grantor to the extent permitted by applicable law, take such action as Grantee deems advisable, to protect and enforce its rights in and to the Mortgaged Property, including, but without limiting the generality of the foregoing, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Grantee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Grantee hereunder, under the other Financing Documents, or at law or in equity:

6.2.1. declare the entire amount of the Indebtedness, together with all accrued and unpaid interest thereon, to be immediately due and payable, and upon such declaration such amounts shall become and be immediately due and payable, anything in this Deed of Trust or the other Financing Documents to the contrary notwithstanding;

6.2.2. after such proceedings as may be required by any applicable law or ordinance and subject to the provisions of Section 8.7 hereof regarding the subordination of this Deed of Trust to the First Mortgage, either in person, or by its agents or attorneys, or by a court-appointed receiver, enter into and upon all or any part of the Mortgaged Property and each and every part thereof and exclude Grantor, its agents and servants wholly therefrom; and having and holding the same, use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or the receiver; and upon every such entry, Grantee, at the expense of the Mortgaged Property, from time to time, either by purchase repairs or construction, may maintain and restore the Mortgaged Property and, likewise, may make all necessary or proper repairs, renewals and replacements and such alterations, betterments, additions and improvement thereto and thereon as it may deem advisable; and in every such case Grantee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Grantor as Grantor's attorney-in-fact, or otherwise as it shall deem best; and Grantee shall be entitled to collect and receive all Rents and after deducting the expenses of conducting the business thereof and all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for Impositions, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Grantee and for all attorneys, counsel, agents, clerks, servants and other employees or professionals engaged or employed by it, Grantee shall apply the moneys arising as aforesaid, first to the payment of the Indebtedness, whether or not then matured; next, to the payment of any other sums required to be paid by Grantor under this Deed of Trust; and the balance, if any, shall be turned over to Grantor or such other Person as may be lawfully entitled thereto; or

6.2.3. with or without entry, personally or by its agents or attorneys insofar as applicable:

(a) foreclose this Deed of Trust in accordance with the laws of the State and the provisions hereof, for the entire Indebtedness or for any portion of the Indebtedness or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Indebtedness not then due, and for such purposes Grantor grants to Trustee for the benefit of Grantee a continuing power of sale of the Mortgaged Property; or

(b) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in this Deed of Trust or any other Financing Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Grantee shall elect.

SECTION 6.3. Foreclosure; No Marshaling of Assets; One Tract; Appointment of Receiver.

6.3.1. Grantee may foreclose this Deed of Trust either by judicial action or by non-judicial foreclosure through the Trustee. In the case of a foreclosure sale, all of the Mortgaged Property may be sold in one parcel, notwithstanding that the proceeds of such sale exceed or may exceed the Indebtedness. Moreover, Grantee shall not be required to proceed hereunder before proceeding against any other security, shall not be required to proceed against other security before proceeding hereunder, and shall not be precluded from proceeding against any or all of any security in any order or at the same time. In the event that this Deed of Trust is foreclosed, Grantor hereby waives and releases any right to have the Mortgaged Property or any part thereof marshaled, and Grantor and Grantee have jointly agreed that the Mortgaged Property is one project and one tract for all purposes legal, economic and all other. Grantor for itself, its successors and assigns irrevocably waives any right it may have in the event of foreclosure to request that the Mortgaged Property be sold as separate tracts pursuant to any applicable law or statute.

6.3.2. Grantee, in any action to foreclose this Deed of Trust or otherwise upon the occurrence and during the continuance of an Event of Default, shall be entitled (and, to the extent permitted under the laws of the State, without notice, without regard to the adequacy of any security for the Indebtedness and without regard to the solvency of any Person liable for the payment thereof) to the appointment of a receiver of the Mortgaged Property and the Rents, if the assignment of Rents pursuant to Section 4.1 hereof is then effective.

6.3.3. Grantor agrees, to the full extent that it may lawfully do so, that in any foreclosure or other action brought by Grantee hereunder, it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Deed of Trust or any right or remedies Grantee may have hereunder or by law.

6.3.4. If Grantor shall default hereunder and Grantee shall elect to accelerate the Indebtedness, Grantor, within five (5) days after demand, will pay over to Grantee, or any receiver appointed in connection with the foreclosure of this Deed of Trust, any and all amounts then held as security deposits under all Space Leases if the assignment of Space Leases pursuant to Section 4.1 hereof is then effective.

6.3.5. Upon the acceleration of the Indebtedness or upon an Event of Default under the Borrower Note or Event of Default hereunder, and in addition to all other rights of Grantee provided herein or by law, Grantor shall, on demand of Grantee, surrender possession of the Mortgaged Property to Grantee; and Grantor hereby consents that Grantee may exercise any or all of the rights specified herein. Grantor hereby irrevocably appoints Grantee attorney-in-fact, which appointment shall be coupled with an interest, of Grantor for such purposes. In the event that Grantor is an occupant of the Mortgaged Property, it agrees to vacate and surrender the possession of that portion of the Mortgaged Property which it occupies to Grantee immediately upon the acceleration of the Indebtedness or any Event of Default hereunder; and if Grantor remains in possession, such possession shall be as tenant of Grantee, and Grantor shall pay monthly, in advance, to Grantee or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Grantor, and upon the failure of Grantor to make any such payment, Grantor may be evicted by summary proceedings or otherwise. In case of the appointment of a receiver of the Rents, the covenants of this subsection may be enforced by such receiver.

6.3.6. GRANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY.

SECTION 6.4. Remedies Cumulative; No Waiver; Etc.

6.4.1. No remedy herein conferred upon or reserved to Grantee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Grantee to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Deed of Trust to Grantee may be exercised from time to time as often as may be deemed expedient by Grantee. Nothing in this Deed of Trust or in any other Financing Document shall affect the obligation of Grantor to perform its obligations under the Financing Documents.

6.4.2. A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof, of any Financing Document shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Deed of Trust and of the other Financing Documents shall survive and continue to remain in full force and effect; and no waiver shall be effective unless in writing, dated and signed by Grantee.

6.4.3. Grantor hereby waives and renounces all homestead and similar exemption rights with respect to the Mortgaged Property provided for by the Constitution and the laws of the United States and the State as against the collection of the Indebtedness, or any part

thereof, or the Financing Documents; and Grantor agrees that where, by the terms of this Deed of Trust or the other Financing Documents secured hereby, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the day and time stated enters into the consideration and is of the essence of the whole agreement between Grantor and Grantee.

SECTION 6.5. No Merger. It is the intention of the parties hereto that if Grantee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, then and until the Indebtedness has been paid in full, the interest of Grantee hereunder and the lien of this Deed of Trust shall not merge or become merged in or with the estate and interest of Grantee as the holder and owner of title to all or any portion of the Mortgaged Property and that, until such payment, the estate of Grantee in the Mortgaged Property and the lien of this Deed of Trust and the interest of Grantee hereunder shall continue in full force and effect to the same extent as if Grantee had not acquired title to all or any portion of the Mortgaged Property. If, however, Grantee shall consent in writing to such merger or such merger shall nevertheless occur without its consent, then this Deed of Trust shall attach to and cover and be a lien upon the fee title or any other estate, title or interest in the premises demised under the leasehold estate acquired by the fee owner and the same shall be considered as granted, released, assigned, transferred, pledged, and set over to Grantee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, set over and spread.

ARTICLE VII

PROVISIONS OF GENERAL APPLICATION

SECTION 7.1. Modifications. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing, dated and signed by the party against whom such change, amendment, modification, cancellation or discharge is sought to be enforced.

SECTION 7.2. Notices. Except for notices of foreclosure that shall be sent as required by law, all notices, demands, requests, consents, approvals, certificates or other communications hereunder (hereinafter collectively called the “**Notices**”) shall be sufficiently given if given in accordance with the provisions of Section 9.2 of the Loan Agreement.

SECTION 7.3. Grantee’s Rights to Perform Grantor’s Covenants. If Grantor shall fail to pay or cause payment to be made to Grantee in accordance with the terms of this Deed of Trust, or to perform or observe any other term, covenant, condition or obligation required to be performed or observed by Grantor under this Deed of Trust or any other Financing Document, without limiting any other provision of this Deed of Trust, and without waiving or releasing Grantor from any obligation or default hereunder, without notice to Grantor, Grantee (or any receiver of the Mortgaged Property) shall have the right, but not the obligation, to make any such payment, or to perform any other act or take any appropriate action, including, without limitation, entry on the Mortgaged Property and performance of work thereat, as it, in its sole discretion, may deem necessary to cause such other term, covenant, condition or obligation to be performed or observed on behalf of Grantor or to protect the security of this Deed of Trust. All

monies expended by Grantee in exercising its rights under this Section (including, but not limited to, legal expenses and disbursements), together with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Grantor to Grantee forthwith upon demand by Grantee, secured by this Deed of Trust and added to and deemed part of the Indebtedness with the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust.

If Grantor fails to maintain any insurance which is required by any of the Financing Documents, Grantee may obtain the same, but must secure the insurance only in its own name and may insure only its interest in the Mortgaged Property, and in connection with Grantee securing any such insurance, the following notice is given and delivered pursuant to §307.052 of the Texas Finance Code:

NOTICE:

(A) GRANTOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT EQUAL TO GRANTOR'S INDEBTEDNESS TO GRANTEE; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME THE GRANTEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS, SUBJECT TO THE FIRST MORTGAGE;

(B) GRANTOR MUST, IF REQUIRED BY GRANTEE, DELIVER TO GRANTEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF THE PREMIUMS; AND

(C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (A) OR (B) ABOVE, GRANTEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.

SECTION 7.4. Additional Sums Payable by Grantor. All sums which, by the terms of this Deed of Trust or the other Financing Documents secured hereby, or by the instruments executed and delivered by Grantor to Grantee as additional security for this Deed of Trust and the other Financing Documents, are payable by Grantor to Grantee shall, together with the interest thereon provided for herein or in the other Financing Documents, be secured by this Deed of Trust and added to and deemed part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust, whether or not the provision which obligates Grantor to make any such payment to Grantee specifically so states.

SECTION 7.5. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of this Deed of Trust or the construction of any provision hereof.

SECTION 7.6. Successors and Assigns. The covenants and agreements contained in this Deed of Trust shall run with the land and bind Grantor, the heirs, executors, administrators, principals, legal representatives, successors and assigns of Grantor and each Person constituting Grantor and all subsequent owners, encumbrancers and Space Tenants of the Mortgaged Property, or any part thereof, and shall inure to the benefit of Grantee, its successors and assigns and all subsequent beneficial owners of this Deed of Trust.

SECTION 7.7. Gender and Number. Wherever the context of this Deed of Trust so requires, the neuter gender includes the masculine or feminine gender and the singular number includes the plural.

SECTION 7.8. Severability. In case any one or more of the provisions contained in this instrument shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been included.

SECTION 7.9. Subrogation. Should the proceeds of the Loan be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Grantee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same.

SECTION 7.10. Incorporation of the Financing Documents. This Deed of Trust has been executed and delivered to secure the Indebtedness pursuant to the Financing Documents, the provisions of which, including, but not limited to, any usury saving provisions in the Loan Agreement, as the same may be amended, modified or supplemented from time to time, are incorporated herein by reference with the same force and effect as if herein fully set forth.

SECTION 7.11. Controlling Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

ARTICLE VIII

SPECIAL PROVISIONS

SECTION 8.1. Foreclosure—Power of Sale. Grantee may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

8.1.1. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Grantee, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Chapter 51 of the Texas Property Code, as amended, or, if and to the extent the statutes within said Chapter 51 are not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the

sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under powers of sale conferred by deeds of trust.

8.1.2. Subject to any applicable requirements at the time of sale governing sales of Texas real property under the powers of sale conferred by deeds of trust, at any time during the bidding, the Trustee may require a bidding party (A) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "**Questioned Bidder**") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Trustee deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (1) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may determine that a credit bid is in the best interest of Grantor and Grantee, and elect to sell the Mortgaged Property for credit or for a combination of cash and credit; provided, however, (i) the Trustee shall have no obligation to accept any bid except an all cash bid and (ii) the Trustee shall be required to accept the highest bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced provided that it is recommenced within the time frame set forth in the Notice of Sale given pursuant to Section 51.002 of the Texas Property Code, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

8.1.3. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if an Event of Default shall have occurred hereunder, Grantee may at once or at any time thereafter while an Event of Default is continuing, without declaring the entire Indebtedness to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Mortgaged Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without acceleration of the unmatured balance of the Indebtedness may be made hereunder whenever an Event of Default shall have occurred and be continuing hereunder, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

8.1.4. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid in full. It is intended

by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Grantee, sell not only the Land and the Improvements, but also the Equipment and Furnishings and other interests constituting a part of the Mortgaged Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Mortgaged Property separately from the remainder of the Mortgaged Property. It shall not be necessary to have present or to exhibit at any sale any of the Mortgaged Property.

8.1.5. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Grantor, conveying the Mortgaged Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Grantee, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute Trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Grantee or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

8.1.6. The following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (ii) and/or (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years' experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

SECTION 8.2. Non-Recourse. The monetary obligations of the Grantor under this Deed of Trust shall be non-recourse to the Grantor to the extent provided in Section 9.3 of the Loan Agreement.

SECTION 8.3. Concerning the Trustee.

8.3.1. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested so to do by a written instrument signed by Grantee and unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom and if such request is made and such security and indemnity is tendered, the Trustee shall act in accordance with Grantee's request. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Financing Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Grantee.

8.3.2. With the approval of Grantee, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Grantee) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Financing Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys in fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney in fact, if selected with reasonable care and approved by the Grantee, or for any error of judgment or act done by Trustee in good faith and in accordance with the terms hereof, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith or failure to act in accordance with the terms hereof, and (iv) any and all other lawful action as Grantee may instruct Trustee to take to protect or enforce Grantee's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, out-of-pocket expenses reasonably incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

8.3.3. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be

segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

8.3.4. Trustee may resign by the giving of notice of such resignation in writing or verbally to Grantee. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Grantee shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforementioned Trustee, Grantee shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed (and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Grantee, and if such Grantee be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Trustees, whenever any action or undertaking of such substitute Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

8.3.5. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

8.3.6. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Grantee or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

8.3.7. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Grantee pursuant to the Financing Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Grantee shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or

approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Grantee.

SECTION 8.4. Indemnity. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS GRANTEE AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST AND DOES HEREBY RELEASE GRANTEE AND TRUSTEE FROM ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED WHETHER OR NOT AS THE RESULT OF (I) IN THE CASE OF THE ISSUER, NEGLIGENCE OR GROSS NEGLIGENCE AND (II) IN THE CASE OF THE BOND TRUSTEE AND TRUSTEE, NEGLIGENCE (BUT, IN EITHER CASE, NOT THE WILLFUL MISCONDUCT, FRAUD OR BAD FAITH) OF SUCH PARTY SO INDEMNIFIED, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:

(i) ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER FINANCING DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR OR GRANTEE THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR OR GRANTEE, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT;

(ii) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE BORROWER NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF GRANTOR IF GRANTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF GRANTOR IF GRANTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF GRANTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(iii) ANY ACTION TAKEN OR NOT TAKEN BY GRANTEE OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER FINANCING DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE FINANCING DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER FINANCING DOCUMENTS;

(iv) ANY ACTION BROUGHT BY GRANTEE OR TRUSTEE AGAINST GRANTOR UNDER THIS DEED OF TRUST OR THE OTHER FINANCING DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT; AND

(v) ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF A HAZARDOUS SUBSTANCE ON, IN, UNDER OR ABOUT THE MORTGAGED PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF, INCLUDING WITHOUT LIMITATION (A) ALL FORESEEABLE CONSEQUENTIAL DAMAGES OF ANY SUCH USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE, AND (B) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE MORTGAGED PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS.

GRANTEE AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER FINANCING DOCUMENTS, AND TO ADVISE AND DEFEND GRANTEE AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE GRANTEE AND/OR TRUSTEE FOR THEIR RESPECTIVE REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY GRANTEE AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 8.4 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY GRANTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY GRANTEE OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE OTHER FINANCING DOCUMENTS.

SECTION 8.5. Purpose of Loan. This Deed of Trust is given pursuant to the Financing Documents and secures Grantor's obligations to pay the Indebtedness as described herein and as advanced under the Financing Documents, to pay the costs of acquiring, constructing, improving and equipping the Development, among other purposes set forth in the Financing Documents.

SECTION 8.6. Extended Low-Income Housing Commitment. The Grantor and Grantee agree that the lien of this Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "**Extended Use Agreement**") recorded against the Mortgaged Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure or comparable conversion of the Loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The Grantor acknowledges and agrees that any default, Event of Default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an Event of Default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees, incurred by the Grantee as a result of an Event of Default by the Grantor and any amounts paid to cure any default under the Extended Use Agreement, shall be an obligation of the Grantor and become a part of the Indebtedness secured by this Deed of Trust.

SECTION 8.7. Subordination. The liens and security interests hereby granted and conveyed by Grantor to Grantee against the Mortgaged Property are subordinate to the First Mortgage and shall remain subordinate to the First Mortgage regardless of the frequency or manner of renewal, extension, change or alteration of the First Mortgage or the Construction Loan secured by the First Mortgage. By its acceptance of this Deed of Trust, the Grantee agrees to the subordination of this Deed of Trust to the First Mortgage and to the foregoing provisions.

SECTION 8.8. Entire Agreement. THIS INSTRUMENT, AND THE OTHER FINANCING DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS INSTRUMENT, AND THE OTHER FINANCING DOCUMENTS MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMOUNT THE PARTIES HERETO.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has duly executed this Deed of Trust as of the day and year first above written.

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: The Walzem Apartments Manager, LLC
a Kansas limited liability company,
its managing member

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT
DEVELOPMENT CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

On this the _____ day of _____, 2020 personally appeared Tammye Trevino, Secretary/Treasurer of the Bexar Management Development Corporation a Texas nonprofit public facility corporation, the sole member of BMDC Walzem, LLC, a Texas limited liability company, the managing member of The Walzem Apartments Manager, LLC, a Kansas limited liability company, the managing member of The Walzem Apartments, LLC, a Kansas limited liability company, who acknowledged that she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

Notary Public Signature

My Commission expires: _____

(Personalized Seal)

EXHIBIT A

LEGAL DESCRIPTION

BEING a 7.043 acre tract of land situated in the Josefa Leal Survey No. 39, Abstract No. 420, County Block 5080, in the City of San Antonio, Bexar County, Texas, being out of the remaining portion of a called 9.549 acre tract of land, as conveyed to Walzem Partners, Ltd., and recorded in Volume 6640, Page 919, of the Official Public Records of Bexar County, Texas, and said 7.043 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Southwesterly Right-of-Way (R.O.W.) line of Walzem Road (a 120' wide R.O.W.), being the most Easterly corner of Lot 20, Block 2, County Block 5080, Ventura Subdivision Unit 3, as recorded in Volume 9500, Page 148, of the Deed and Plat Records of Bexar County, Texas, and being the most Northerly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE with the Southwesterly R.O.W. line of said Walzem Road, same being the Northeasterly line of the remaining portion of said 9.549 acre tract of land, S 30° 54' 11" E, a distance of 703.66 feet to a ½" iron pin with cap found in the Southwesterly R.O.W. line of said Walzem Road, being the most Northerly corner of Lot 1, Block 24, County Block 5080, Randolph Brooks Federal Credit Union Subdivision, as recorded in Volume 9540, Page 169, of the Deed and Plat Records of Bexar County, Texas, and being an Easterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE departing the Southwesterly R.O.W. line of said Walzem Road, and with the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, S 59° 10' 28" W, a distance of 215.40 feet to a ½" iron pin with cap found for the most Westerly corner of said Lot 1, and being a Southeasterly interior corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE continuing with the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, S 30° 48' 36" E, a distance of 70.50 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Southwesterly line of said Lot 1, being in a Southeasterly line of the remaining portion of said 9.549 acre tract of land, and being a Southeasterly corner of this herein described tract of land;

THENCE departing the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, and across and through the remaining portion of said 9.549 acre tract of land, S 59° 10' 28" W, a distance of 191.48 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Northeasterly R.O.W. line of Gulf Shore boulevard (a 50' wide R.O.W.), being in the southwesterly line of the remaining portion of said 9.549 acre tract of land, and being the most Southerly southwest corner of this herein described tract of land;

THENCE with the Northeasterly R.O.W. line of said Gulf Shore Boulevard, and with the Southwesterly line of the remaining portion of said 9.549 acre tract of land, the following courses:

N 40° 48' 42" W, a distance of 55.58 feet to a ½" iron pin with cap stamped "MBC" found for a Southwesterly corner, and being at the beginning of a curve to the right;

With said curve to the right, having an arc length of 43.72 feet, a radius of 250.00 feet, a delta angle of 10° 01' 14", a tangent length of 21.92 feet, and a chord bearing said distance of N 35° 46' 20" W, 43.67 feet to a ½" iron pin with cap stamped "MBC" found for a Southwesterly corner:

THENCE continuing with the Northeasterly R.O.W. line of said Gulf Shore Boulevard, and with the Southwesterly line of the remaining portion of said 9.549 acre tract of land, N 30° 50' 43" W, a distance of 654.63 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Northeasterly R.O.W. line of said Gulf Shore Boulevard, being the most Southerly corner of a 22' wide Drain R.O.W., Block 2, C.B. 5080, of said Ventura Subdivision Unit 3, and being the most Westerly Northwest corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE departing the Northeasterly R.O.W. line of said gulf Shore boulevard, and with the common line between said 22' wide Drain R.O.W. and the remaining portion of said 9.549 acre tract of land, N 59° 18' 51" E, a distance of 120.00 feet to a ½" iron pin with cap stamped "MBC" found for the most Easterly corner of said 22' wide Drain R.O.W., and being a Northwesterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE continuing with the common line between said 22' wide Drain R.O.W. and the remaining portion of said 9.549 acre tract of land, N 31° 57' 50" W, a distance of 21.12 feet to a ½' iron pin found in concrete for the most Northeasterly corner of said 22' wide Drain R.O.W., same being the most Easterly corner of Lot 1, Box 2, County Block 5080, of said Ventura Subdivision Unit 3, being the most Southerly corner of Lot 18, Block 2, County Block 5080, of said Ventura Subdivision Unit 3, and being a Northwesterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE with the Southeasterly lines of Lots 18, 19, and 20, Block 2, County Block 5080, of said Ventura Subdivision Unit 3, and with the Northwest line of the remaining portion of said 9.549 acre tract of land, N 59° 05' 10" E, a distance of 300.00 feet to the POINT OF BEGINNING, and containing 7.043 acres of land, more or less.

Bearings based on the Texas State Plane Coordinate System, Texas South Central Zone (4204), North American Datum 1983.

ASSIGNMENT OF DEED OF TRUST AND LOAN DOCUMENTS

This Assignment of Deed of Trust and Loan Documents (“Assignment”) is dated as of [June 1], 2020 from the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (the “Assignor”), to WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee (the “Assignee”) under the Indenture of Trust (the “Indenture”) dated as of [June 1], 2020, between the Assignor as Issuer and the Assignee as Trustee.

RECITALS

THE WALZEM APARTMENTS, LLC LP, a Kansas limited partnership (the “Owner”), as Borrower, has:

(i) entered into with the Assignor a Loan Agreement dated as of [June 1], 2020 (said Loan Agreement with all further supplements and amendments thereto is herein referred to as the “Loan Agreement”), evidencing indebtedness in the aggregate principal amount of \$20,000,000 (the “Loan”);

(ii) executed and delivered to the Assignor the Promissory Note dated [June 1], 2020 (said Note together with all further supplements and amendments thereto is herein referred to as the “Note”) in the principal amount of \$20,000,000 and made to the order of the Assignor as Payee, further evidencing the Loan; and

(iii) executed and delivered to the Assignor the Subordinate Multifamily Leasehold Deed of Trust, Security Agreement and Fixture Filing dated as of [June 1], 2020 made to a mortgage trustee for the benefit of the Assignor and the Assignee, securing the Note, and to be recorded in the Deed Records of Bexar County, Texas, and relating to the real estate described in Exhibit A hereto.

The documents identified in (i), (ii) and (iii) above, together with all financing and continuation statements to perfect the liens and security interests granted thereby, are collectively referred to herein as the “Deed of Trust Documents.”

The Assignor desires to assign and transfer to the Assignee all its right, title and interest in and to the Deed of Trust Documents, excluding the Reserved Rights, and the Assignee desires to acquire Assignor’s right, title and interest as aforesaid under the Deed of Trust Documents in accordance with the terms hereof. The Assignee is joining in the execution of this Assignment in order to evidence its acceptance hereof.

The Owner is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the Deed of Trust Documents shall be effective to secure the obligations of the Owner to the Assignee as more fully set forth therein and herein.

AGREEMENT

For and in consideration of the premises, the sum of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Definitions. All words and phrases defined in the Indenture have the same meanings in this Assignment, which definitions are incorporated herein by reference, unless a different definition is set forth in this Assignment.

Section 2. Assignment. The Assignor sells, assigns and sets over and transfers to the Assignee all the right, title and interest of the Assignor in, to and under the Deed of Trust Documents, excluding any Reserved Rights, and Assignee accepts such assignment and assumes Assignor's obligations under the Deed of Trust Documents. This Assignment is made and shall be without recourse, warranty or representation of the Assignor.

Section 3. Miscellaneous. In case any one or more of the provisions contained in this Assignment are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument.

It is the intention of the parties hereto that this Assignment and the rights and obligations of the parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of Texas, without reference to the conflicts of laws principles of the State of Texas.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Deed of Trust Documents as of the date first above written.

ASSIGNOR:

TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS, as Issuer

By: _____
Name: James B. "Beau" Eccles
Title: Secretary to Board

Address: P.O. Box 13941
Austin, Texas 78711-3941
Attention: Director of Multifamily Bonds

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me this ____ day of May, 2020, by James B. "Beau" Eccles, Secretary to Board of Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, on behalf of said agency.

Notary Public's Signature

(PERSONALIZED SEAL)

ASSIGNEE:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Name: Dayna Smith
Title: Vice President

Address: 15950 North Dallas Parkway, Suite 550
Dallas, Texas 7524
Attention: Dayna Smith

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Dayna Smith, a Vice President of Wilmington Trust, National Association, a national banking association, on behalf of said association.

Notary Public's Signature

(PERSONALIZED SEAL)

[Signature Page for Assignment of Deed of Trust Documents]

The undersigned, being the Owner referred to in the foregoing Assignment of Deed of Trust Documents, hereby acknowledges receipt and acceptance thereof and consents and agrees to the assignment made therein and to the terms and provisions thereof.

THE WALZEM APARTMENTS, LLC,
a Kansas limited liability company

By: THE WALZEM APARTMENTS
MANAGER, LLC
a Kansas limited liability company,
its managing member

By: BMDC WALZEM, LLC,
a Texas limited liability company,
its managing member

By: BEXAR MANAGEMENT DEVELOPMENT
CORPORATION,
a Texas nonprofit public facility corporation,
its sole member

By: _____
Tammye Trevino
Secretary/Treasurer

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

On this the _____ day of _____, 2020 personally appeared Tammye Trevino, Secretary/Treasurer of the Bexar Management Development Corporation a Texas nonprofit public facility corporation, the sole member of BMDC Walzem, LLC, a Texas limited liability company, the managing member of The Walzem Apartments Manager, LLC, a Kansas limited liability company, the managing member of The Walzem Apartments, LLC, a Kansas limited liability company, who acknowledged that she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

Notary Public Signature
My Commission expires: _____

(Personalized Seal)

EXHIBIT "A"

BEING a 7.043 acre tract of land situated in the Josefa Leal Survey No. 39, Abstract No. 420, County Block 5080, in the City of San Antonio, Bexar County, Texas, being out of the remaining portion of a called 9.549 acre tract of land, as conveyed to Walzem Partners, Ltd., and recorded in Volume 6640, Page 919, of the Official Public Records of Bexar County, Texas, and said 7.043 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Southwesterly Right-of-Way (R.O.W.) line of Walzem Road (a 120' wide R.O.W.), being the most Easterly corner of Lot 20, Block 2, County Block 5080, Ventura Subdivision Unit 3, as recorded in Volume 9500, Page 148, of the Deed and Plat Records of Bexar County, Texas, and being the most Northerly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE with the Southwesterly R.O.W. line of said Walzem Road, same being the Northeasterly line of the remaining portion of said 9.549 acre tract of land, S 30° 54' 11" E, a distance of 703.66 feet to a ½" iron pin with cap found in the Southwesterly R.O.W. line of said Walzem Road, being the most Northerly corner of Lot 1, Block 24, County Block 5080, Randolph Brooks Federal Credit Union Subdivision, as recorded in Volume 9540, Page 169, of the Deed and Plat Records of Bexar County, Texas, and being an Easterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE departing the Southwesterly R.O.W. line of said Walzem Road, and with the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, S 59° 10' 28" W, a distance of 215.40 feet to a ½" iron pin with cap found for the most Westerly corner of said Lot 1, and being a Southeasterly interior corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE continuing with the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, S 30° 48' 36" E, a distance of 70.50 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Southwesterly line of said Lot 1, being in a Southeasterly line of the remaining portion of said 9.549 acre tract of land, and being a Southeasterly corner of this herein described tract of land;

THENCE departing the common line between said Lot 1 and the remaining portion of said 9.549 acre tract of land, and across and through the remaining portion of said 9.549 acre tract of land, S 59° 10' 28" W, a distance of 191.48 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Northeasterly R.O.W. line of gulf Shore boulevard (a 50' wide R.O.W.), being in the southwesterly line of the remaining portion of said 9.549 acre tract of land, and being the most Southerly southwest corner of this herein described tract of land;

THENCE with the Northeasterly R.O.W. line of said Gulf Shore Boulevard, and with the Southwesterly line of the remaining portion of said 9.549 acre tract of land, the following courses:

N 40° 48' 42" W, a distance of 55.58 feet to a ½" iron pin with cap stamped "MBC" found for a Southwesterly corner, and being at the beginning of a curve to the right;

With said curve to the right, having an arc length of 43.72 feet, a radius of 250.00 feet, a delta angle of 10° 01' 14", a tangent length of 21.92 feet, and a chord bearing said distance of N 35° 46' 20" W, 43.67 feet to a ½" iron pin with cap stamped "MBC" found for a Southwesterly corner:

THENCE continuing with the Northeasterly R.O.W. line of said Gulf Shore Boulevard, and with the Southwesterly line of the remaining portion of said 9.549 acre tract of land, N 30° 50' 43" W, a distance of 654.63 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." set in the Northeasterly R.O.W. line of said Gulf Shore Boulevard, being the most Southerly corner of a 22' wide Drain R.O.W., Block 2, C.B. 5080, of said Ventura Subdivision Unit 3, and being the most Westerly Northwest corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE departing the Northeasterly R.O.W. line of said gulf Shore boulevard, and with the common line between said 22' wide Drain R.O.W. and the remaining portion of said 9.549 acre tract of land, N 59° 18' 51" E, a distance of 120.00 feet to a ½" iron pin with cap stamped "MBC" found for the most Easterly corner of said 22' wide Drain R.O.W., and being a Northwesterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE continuing with the common line between said 22' wide Drain R.O.W. and the remaining portion of said 9.549 acre tract of land, N 31° 57' 50" W, a distance of 21.12 feet to a ½' iron pin found in concrete for the most Northeasterly corner of said 22' wide Drain R.O.W., same being the most Easterly corner of Lot 1, Box 2, County Block 5080, of said Ventura Subdivision Unit 3, being the most Southerly corner of Lot 18, Block 2, County Block 5080, of said Ventura Subdivision Unit 3, and being a Northwesterly corner of the remaining portion of said 9.549 acre tract of land and this herein described tract of land;

THENCE with the Southeasterly lines of Lots 18, 19, and 20, Block 2, County Block 5080, of said Ventura Subdivision Unit 3, and with the Northwest line of the remaining portion of said 9.549 acre tract of land, N 59° 05' 10" E, a distance of 300.00 feet to the POINT OF BEGINNING, and containing 7.043 acres of land, more or less.

Bearings based on the Texas State Plane Coordinate System, Texas South Central Zone (4204), North American Datum 1983.