

JACKSONVILLE HOUSING FINANCE AUTHORITY



Jacksonville Housing Finance Authority Board of Directors Meeting

May 3, 2019

Noon

214 North Hogan Street, 8<sup>th</sup> Floor

**- AGENDA -**

Call Meeting to Order

Chair

Approval of Minutes of February 20, 2019 Meeting

JHFA Board

**I. Public Comments**

A. Public Comments

Public

**II. REPORTS**

A. "To-Do" List Earlier Meetings

Mark Hendrickson

B. Staff and Financial Report

Laura Stagner

- Financial Statement

- Procurement

C. Financial Advisor Memo

Mark Hendrickson

**IV. ACTION ITEMS**

A. Board Members Declare Conflicts, if any

Board

B. Consider Final Approvals for Monaco Arms

Hendrickson & Bond-Collins

C. Consider Approval of Revised Inducement for The Waves

Mark Hendrickson

**V. NEW BUSINESS**

**VI. OLD BUSINESS**

A. Update on Single Family Program

Mark Hendrickson

B. Update on Existing Rental Properties

Mark Hendrickson

- Recent JHFA Activities/Developments

- Occupancy Report

C. Update on 2019 Legislative Session

Mark Hendrickson

**VII. ADJOURN JHFA MEETING**

Chair

JACKSONVILLE HOUSING FINANCE AUTHORITY



**JACKSONVILLE HOUSING FINANCE AUTHORITY**

**Board of Directors Meeting**

**MINUTES**

**OF**

**REGULAR MEETING**

**February 20, 2019**

## **February 20, 2019: JHFA Board Meeting**

**Noon**

**214 North Hogan Street, 8th Floor**

The JHFA Board met at 9 AM for a Strategic Planning session. Present were Board members Bumbarger, Carswell, Citrano, Rosen and Scofield, along with professional staff. The meeting adjourned at 11:45 AM. No actions were taken.

### **BOARD MEETING:**

Present at the meeting were:

### **BOARD MEMBERS**

Tripp Gulliford, Chair  
Spencer Cummings, Vice-Chair  
Dee Bumbarger, Secretary  
Nadine Carswell, Member  
Jim Citrano, Member  
Jeffrey Rosen, Member  
Jane Scofield, Member

### **PROFESSIONAL STAFF:**

Mark Hendrickson, The Hendrickson Company, Financial Advisor  
Susan Leigh, The Community Concepts Group, Financial Advisor  
Helen Feinberg, RBC Capital Markets, Investment Banker  
Rhonda Bond-Collins, Bryant Miller Olive, Bond Counsel  
Emerson Lotzia, City of Jacksonville Office of General Counsel  
Tricia Heintz, Bank of New York Mellon, Trustee

### **CITY STAFF:**

Laura Stagner  
Jane Bouda  
Dr. Johnny Gafney, Mayor's Office

### **PUBLIC:**

Kevin Troup, Vestcor  
Brianne Heffner, Southport  
Michael Molinari, Southport  
Chuck Shealy, LISC

### **BOARD MEETING**

Chairman Gulliford called the meeting to order at 12:00 pm, with a quorum present.

### **Public Comments**

None.

### **"To-Do" List**

Mr. Hendrickson updated the Board on outstanding "to-do" items.

### **Staff Report and Financial Report**

Ms. Stagner updated the Board on JHFA financials. She also updated the Board on the delays in the Professional Services procurement process (Investment Banker, Bond Counsel, Trustee, and Financial Advisor). After discussion, Ms. Scofield moved, with a second by Ms. Carswell, that the Board **extend the professional services contracts until June 30, 2019**. The motion passed 7-0.

### **Board Member Conflicts**

Chairman Gulliford and Mr. Citrano disclosed that they had a voting conflict related to matters that involved Vestcor.

### **Bond Allocation**

Ms. Bond-Collins updated the Board on the 2019 bond allocation and procedures related thereto. After discussion, Mr. Cummings moved, with a second by Ms. Scofield, that the Board **approve the Resolution prepared by bond counsel authorizing a single family TEFRA hearing and related requests for bond allocation and approval by the City for a bond allocation not to exceed \$50 million**. The motion passed 7-0.

### **Single Family**

Mr. Hendrickson updated the Board on the single-family program, including the analysis of available funds and a proposed increase in the DPA amount. After discussion, Ms. Carswell moved, with a second by Mr. Cummings, that the Board **approve an increase in the DPA amount to \$7,500 per loan, effective March 1, 2019, and increase the total allocation for DPA loans by \$100,000**. The motion passed 7-0.

### **Local Government Area of Opportunity Funding**

Mr. Hendrickson updated the Board on the FHFC selection process, which resulted in the City's preference development (Lofts at Brooklyn) be awarded 9% Housing Credits by FHFC. Mr. Troup advised that construction on the development was scheduled to begin in August.

### **Multi-Family Updates**

Mr. Hendrickson presented the Financial Advisor's analysis of the Monaco Arms I & II bond application. After discussion, Mr. Cummings moved, with a second by Ms. Scofield, that the Board **approve the Inducement Resolution for Monaco Arms I & II as prepared by bond counsel**. The motion passed 7-0.

Mr. Hendrickson reported on the status of The Waves bond development, noting that delays caused by HUD had pushed the timing of the financing into mid-2019. After discussion, Mr. Rosen moved, with a second by Mr. Cummings, that the Board **approve an extension of the Preliminary Commitment for The Waves until December 31, 2019**. The motion passed 5-0, with Chairman Gulliford and Mr. Citrano abstaining. Mr. Rosen moved, with a second by Mr. Cummings, that the Board **approve a change in the bedroom mix of The Waves, increasing the one-bedroom units by four, and decreasing the three-bedroom units by four (new mix eighteen 1-1, forty-six 2-2, forty-six 3-2 and seventeen 4-2)**. The motion passed 5-0, with Chairman Gulliford and Mr. Citrano abstaining.

### **New Business**

Mr. Hendrickson reported on the 2019 Florida ALHFA Conference to be held in Atlantic Beach. After discussion, Ms. Scofield moved, with a second by Mr. Citrano, that the Board **authorize conference sponsorship at the Host (\$5,000) level**. The motion passed 7-0.

Ms. Stagner reported on a request by the City for the JHFA to sponsor the National Community Development Foundation conference which is being held this **year in Jacksonville. After discussion, Ms. Scofield moved, with a second by Mr. Citrano, that the Board authorize conference sponsorship at the Silver (\$5,000) level and \$500 for a full-page advertisement.** The motion passed 7-0.

#### **2019 Legislative Update**

Mr. Hendrickson reported on the actions of the Sadowski Education Effort related to the 2019 legislative session.

#### **Existing Rental Properties**

Mr. Hendrickson updated the Board on occupancy of existing developments and the financings that the JHFA had completed over the past four years.

#### **Adjournment**

Chairman Gulliford adjourned the meeting at 12:47 PM.

**JHFA Direction to Team**  
**From September 17, 2015, & September 24, 2018 Meetings**

Board Direction	Staff	Status
<b>September 17, 2015</b>		
Board withdrew approval of earlier MOU for staffing services with City, and directed that new agreement be brought back to them for review and approval of document and staffing commitments.		Waiting for City.

## THE HENDRICKSON COMPANY & COMMUNITY CONCEPTS GROUP

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To: Board of Directors, Jacksonville Housing Finance Authority

From: Mark Hendrickson & Susan Leigh, Financial Advisors

Subject: May 3, 2019 JHFA Board Meeting

Date: April 24, 2019

### **I. 2019 Bond Allocation—Informational**

Year	Single Family Amount	Multifamily Amount	Unallocated	Expiration
2019			\$48,897,471	
2018	\$100,000,000	\$ 17,500,000		December 30, 2021
2017	\$ 50,000,000	\$156,500,000		December 31, 2020
2016		\$ 3,800,000		December 31, 2019
<b>TOTAL</b>	<b>\$150,000,000</b>	<b>\$177,800,000</b>	<b>\$48,897,471</b>	

1. The 2019 allocation is \$48,897,471 an increase of \$742,277 (1.5%) over 2018. In order to preserve the 2019 bond allocation a single family TEFRA approval is required—and a hearing was held on March 20. After City Council approval, a request for \$50 million of allocation will be submitted.
2. **Recommendation:** None.

### **II. 2013 Single Family Loan Program—Informational**

1. The **current program guidelines:**
  - 1<sup>st</sup> mortgage: 5.125 1% origination fee, FHA, VA, RD, 5.375% for Freddie Mac loans
  - First time homebuyers.
  - Income and Sales Price limits identical to bond issue.
  - Minimum credit score of 640
  - Interest rate set by the HFA of Hillsborough County, with rate set at level that is anticipated to generate a premium when sold.
  - Loans purchased by the master servicer (US Bank) and converted into MBS.
  - MBS are purchased by the HFA of Hillsborough County, on behalf of all HFA's
  - MBS are sold, with each HFA keeping its pro rata share of any net premium or loss realized from the sale of the MBS.
  - Down payment assistance: \$7,500 second mortgage, due on sale of property, or maturity of first mortgage
  - Mortgage Credit Certificates providing homebuyers a credit in the amount of 50% of mortgage interest paid annually (up to a \$2,000 annually).
2. **DPA Analysis:** The DPA amount was increased to \$7,500 effective March 1, 2019. Because FHFC has a \$15,000 DPA program available, JHFA loan activity will be very low until the FHFC funds are used.

DPA AUTHORIZED	
Date	Amount
2012	\$ 250,000
May-15	\$ 200,000
Jun-15	\$ 400,000
Sep-17	\$ 703,000
Jun-18	\$ 250,000
Jun-18	\$ 315,443
Feb-19	\$ 100,000
<b>TOTAL AUTHORIZED</b>	<b>\$ 2,218,443</b>

<b>LOAN VOLUME</b>	<b>\$ 2,231,010</b>
Adjustments	
FHFC	\$ 88,796
Repayments	\$ 65,000
	\$ 153,796
<b>NET VOLUME</b>	<b>\$ 2,077,214</b>
<b>AVAILABLE</b>	<b>\$ 141,229</b>

3. **Rate Change:** The interest rates were increased by 0.125% in October 2018.

4. **Program Demographics:**

Sales Price/ # Loans	Loan Amount	Borrower Income	Borrower Age/ Gender	Borrower Family Size	Housing Type	Borrower Ethnicity	MCC Amount
\$138,889 453 loans +2 loans	\$132,918	\$47,130	37.0  47% female	2.3	SF Detached 93% Condo: 2% Townhouse: 6%  Existing: 97% New: 3%	Black: 27% White: 40% Hispanic: 20% Mixed: 1% Asian: 8% Other: 5%	\$22,112,145 \$63,723.76 avg. 347 buyers

5. **Lender Originations:** Academy (126), SWBC (112), Prime (53), Bank of England (51), Fairway (52), Pacific Union (23), CMG (13), Network Funding (6), Open (5), DHI (4), Ameris Bank (3), Paramount (2), Resource Financial (1), Guild (1) & GSF (1).
6. **MCC's:** The HFA converted \$200.25 million of bond authority into \$50,063,000 of MCC's. Tranche 1 (\$5.25 million) expired at the end of 2015 with \$1,109,274 not utilized. Tranche 2 (\$10.0 million) expired at the end of 2016, with \$9,668,903 not utilized. Tranche 3 (\$14.75 million) expired at the end of 2018, with \$446,149 not used. Tranche 4 (\$20,062,500) expires December 31, 2020.
7. **MCC Program: What Does it Mean to Home Buyer:** With the HFA's average loan of \$132,000 and a 5.125%/30-year mortgage, interest payments in Year 1 = \$6,765. With the 50% MCC rate that the HFA has chosen, **the homebuyer would be able to claim a tax credit of the full \$2,000 per year maximum allowed by federal law** (slightly declining after year 18 as more of monthly payment is principal) until the home buyers sells or moves from the property. The \$2,000 of tax savings lowers the "functional" mortgage rate for the program from 5.125% to approximately 3.0%.
8. **MBS Sales:** The HFA has executed 129 sales, with net revenues of \$1,435,557 (net meaning after payments to RBC and counsel) coming to JHFA.



9. **Hedges & Exposure:** Hillsborough County has 4 hedges totaling \$5.23 million in place. With full delivery, the projected net revenues are estimated at \$147,204 (shared pro rata with counties based upon originations). The unhedged pipeline as of April 23 is \$873,265 (changes daily).
10. **Size of Program:** The initial legislation wherein City Council authorized the program limited it to no more than \$1.5 million of loans in pipeline at any time. In June, the Board changed the authorization to \$1.5 million of unhedged loans. Loans originated or in progress are \$60.2 million.
11. **Recommendation:** None.

### III. Local Government Area of Opportunity Funding (Preference)—Informational

1. The JHFA selected **Lofts at Brooklyn** as the LGAOF deal for FHFC RFA 2018-112, which was given a preliminary award of 9% Housing Credits by FHFC.
2. The JHFA offered the three other applicants a local government contribution to be used in conjunction with applications to FHFC for SAIL, SAIL Workforce, CDBG-DR, or other gap-financing RFA, and in conjunction with JHFA bonds. **Ashley Square** was awarded SAIL funds and is moving forward as a bond transaction.
3. **Recommendation:** None.

### IV. New Rental Financings—Action

1. The 2019 Bond Application is now “open”, meaning applications will be evaluated on a first-come first-evaluated basis.
2. **Monaco Arms** is scheduled to close in May 2019. The developer has requested issuance of bonds in an amount not to exceed \$16,830,000. The credit underwriting is complete, and the deal is ready for Board action. Bond counsel has prepared and distributed a resolution that gives final approvals necessary to sell and close bonds, including [summary only, please read resolution for full description]:
  - Approval of substantially final forms of bond and loan documents Funding Loan Agreement, Borrower Loan Agreement (Borrower Notes attached as an Exhibit), LURA, Compliance Monitoring Agreement, Construction Loan and Mortgage Servicing Agreement, Financial Monitoring Agreement, and Assignment of Mortgage and Loan Documents;
  - Approval of the estimated Cost of Issuance;
  - Approval of the final Credit Underwriting Report;
  - Authorization of the issuance of the Bonds (subject to the parameters in the Resolution) and sale to the Underwriter;
  - Official Appointment of RBC Capital Markets LLC as Placement Agent in connection with the sale of the Bonds;
  - Official appointment of Seltzer Management Group, Inc. as compliance monitor, financial monitor and construction/loan servicer;
  - Official appointment of The Bank of New York Mellon Trust Company as Trustee; and

- Authorization of appropriate Board members and members of the Issuer to execute documents and take all other actions necessary not inconsistent with the terms of the Resolution.
3. **The Waves** is experiencing delays due to HUD processing (required on deals that replace existing public housing units), and will not close before June 2019. A new TEFRA hearing has been held and TEFRA approval by City Council is pending. Because of some minor changes to the sites (scattered site developments) a new Inducement Resolution is required.
  4. **Ashley Square** applied for the Local Preference, and when not selected, accepted an offer from the JHFA for the local contribution required for a SAIL application. **They were awarded SAIL funds by FHFC and will be moving forward with bond financing.**
  5. **Recommendations:**
    - **Monaco Arms:** Adopt Resolution prepared by bond counsel giving final approvals for bond sale
    - **The Waves:** Adopt Inducement Resolution prepared by bond counsel.

	The Waves	Ashley Square	Monaco Arms I & II
<b>Developer/ Location</b>	Jacksonville Housing Authority & Vestcor Jacksonville, FL	Blue Sky Communities Tampa, FL	Lincoln Avenue Capital Santa Monica, CA
<b>Development Location</b>	Nine scattered JHA public housing sites in Jacksonville Beach	127 E. Ashley St. & 116 E. Beaver St. Cathedral District	10414 & 10525 Monaco Drive Northside
<b>City Council District</b>	Bill Gulliford	Reggie Gaffney	Ju'Coby Pittman
<b>Type</b>	New Construction Garden	New Construction Mid-Rise	Acquisition & Rehabilitation
<b>Demographic</b>	Family	Elderly	Family
<b>Bond Request</b>	\$17,750,000 \$139,764/unit	\$16,500,000 \$137,500/unit	\$16,830,000 \$107,885/unit
<b>TEFRA Hearing</b>	2-28-18/3-20-19	2-1-19	2-1-19
<b>TEFRA Approval</b>	4-24-18	3-26-19	3-26-19
<b>Preliminary Agreement</b>	12-31-19	6-20-20	12-31-19
<b>Expiration</b>			
<b>Credit Enhancement</b>	Private Placement to SunTrust Bank	TBD	Private Placement to Citibank
<b>Credit Underwriter</b>	First Housing	First Housing	Seltzer
<b>Closing Date</b>	Fall 2019	Early 2020	Spring 2019
<b>Units</b>	127	120	156
<b>Permanent 1<sup>st</sup> Mortgage Estimate</b>	\$6,600,000	\$5,000,000	\$12,410,000
<b>SAIL, ELI, NHTF (FHFC)</b>	\$7,600,000	\$8,243,000	\$0
<b>JHFA Loan</b>	\$115,000	\$110,000	\$0
<b>Housing Credits</b>	Wells Fargo Bank \$7,799,289 \$61,416/unit	TBD \$9,267,790 \$77,232/unit	Boston Financial \$6,754,983 \$43,301/unit
<b>TDC</b>	\$23,377,628	\$25,867,655	\$20,794,248
<b>TDC per unit</b>	\$184,076	\$215,564	\$133,296
<b>Land Cost</b>	\$0 \$1 per year lease	\$1,500,000 \$12,500/unit	\$1,100,000 \$7,051/unit
<b>Acquisition of Building</b>	NA	NA	\$8,710,000 \$55,833/unit
<b>Hard Construction or Rehabilitation Cost</b>	\$15,068,550 \$118,650/unit	\$16,590,420 \$138,253/unit	\$4,702,500 \$30,144/unit
<b>Set Aside Period</b>	50 years	Perpetuity	50 years
<b>Set Aside Levels</b>	90%<60% AMI 10%<33% AMI	85.0%<60% AMI 100%<33% AMI 5.0%<22% AMI	19.9% (31 units)<40% AMI 60.2% (94 units)<60% AMI 19.9% (31 units)<80% AMI

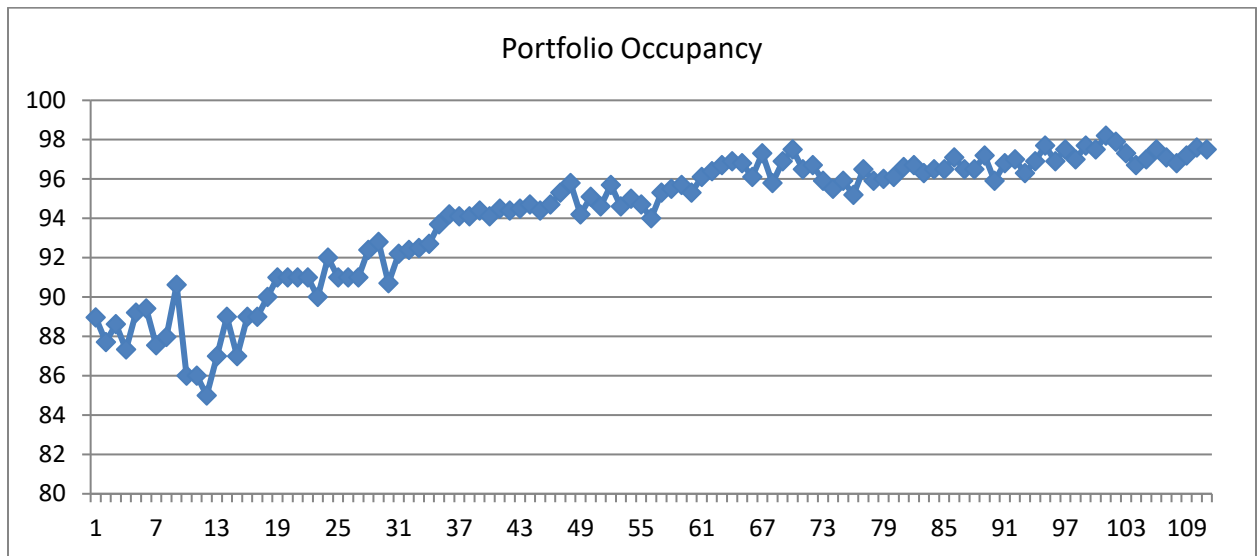
## **V. Update on Existing Rental Properties—Informational**

1. JHFA marketed its bonds, JHFA loans, and JHFA local government contributions to developers. As a result, the following has been accomplished in the last three years:  
:

Development	Location	Building Type Demographic	Units	TDC	JHFA Loan
Caroline Oaks 4-22-15	North Main, east side just south of E. 43 <sup>rd</sup> Street	3-Story Elevator NC Elderly	82	\$14,146,603	\$5.6 million bonds \$2.2 million JHFA loan
Cathedral Terrace 1-21-16	701 N. Ocean St.	High Rise Rehab Elderly	240	\$25,604,057	\$12.5 million bonds \$1.0 million JHFA loan
Peyton Ridge 4-7-16	1800 Corporate Square Blvd	3-Story Elevator NC Elderly	120	\$16,894,456	\$115,000
Mt. Carmel Gardens 8-19-16	5746 Mt. Carmel Terrace	High Rise Rehab Elderly	207	\$21,631,853	\$9.75 million bonds
Mary Eaves 8-19-16	East of intersection of Myrtle Ave. N. & West 16 <sup>th</sup> St.	Mid-Rise NC Elderly	80	\$13,325,568	\$300,000
Lofts at LaVilla 10-12-16	906 West Bay Street	Mid-Rise NC Family	130	\$23,382,885	\$265,000
Timberwood Trace 2-1-17	12250 Atlantic Boulevard	Garden Rehab Family	224	\$31,238,140	\$16.0 million bonds
Oakwood Villa 6-30-17	8201 Kona Avenue	Garden Rehab Family	200	\$23,092,183	\$12.7 million bonds
Lofts at LaVilla on Monroe 9-29-17	1000 West Monroe Street	Mid-Rise NC Family	108	\$20,245,500	\$303,750
Houston Street Manor	615 Houston Street	Mid-Rise NC Elderly	72	\$21,465,333	\$115,000
Caroline Arms 7-3-18	6457 Fort Caroline Road	Garden Rehab Family	204	\$22,630,922	\$12.5 million bonds
Lofts at Jefferson Station 10-3-18	799 Water Street	Mid-Rise NC Family	98	\$20,943,699	\$225,750
Millennia Portfolio 10-24-18	Valencia (Eureka Gardens) 1214 Labelle Street The Weldon (Moncrief Village) 1650 Moncrief Village Drive N. Palmetto Glen (Southside) 2301 Westmont St. Calloway Cove (Washington Heights) 4229 Moncrief Rd. West	Garden Rehab Family	768	\$129,590,169	\$81.6 million bonds
Desert Winds/Silver Creek 12-28-18	300 Silver Creek Trace	Garden Rehab Family	304	\$38,294,751	\$22.0 million bonds
<b>TOTAL</b>			<b>2,837</b>	<b>\$422,786,119</b>	<b>\$172.65 million bonds \$4.525 million JHFA loans</b>

2. **Occupancy:** The current portfolio occupancy using a weighted average is 97.5% (-0.1%).

3. **Recommendation:** None.



## VI. 2019 Legislative Session—Informational

1. The 2019 legislative session began March 5, and is scheduled to end May 3.
2. The latest (March 2019) revenue estimate for doc stamp distributions into the Housing Trust Funds for FY 19-20 is \$331.96 million. Also available are monies in the trust fund that were neither swept nor appropriated, and some interest earning, bringing the total available for appropriation in FY 19-20 to approximately \$353 million.
3. Governor DeSantis released his proposed budget February 1 and including full funding for housing—using every penny in the trust funds for housing programs and sweeping no monies. The Senate also proposed full funding; however, the House proposed sweeping over 60% of the funds to General Revenue.
4. The SHIP distributions—at full funding—have been calculated for FY 19-20. With all monies in the housing trust funds appropriated for housing, Jacksonville would receive \$11,446,821. The legislator one-pagers are complete and in the Board Packet. **Under the House proposal, Jacksonville would receive \$0 for both SHIP and SAIL. It appears that an \$8 million appropriation for Jacksonville Urban Core Workforce Housing may be funded.**
5. Other housing bills have been filed or are in the works. Some may have good aspects, and some are simply bad concepts. We will be monitoring and working with legislators to move forward any good policy changes.
6. **Recommendations:** Meet with your legislators and ask Senators to hold strong to the Senate budget position of full funding and ask House members to accept the Senate budget on housing.

	GOVERNOR	SENATE	HOUSE	FINAL BUDGET
FHFC: SAIL Line 2315	\$ 85,448,000	\$ 61,775,600	<b>\$0</b>	
FHFC: SAIL Workforce Keys Line 2315	\$ 20,000,000	\$0	\$0	
SHIP Line 2316	\$246,930,000	\$170,102,400	<b>\$0</b>	
Hurricane Housing Recovery Program (SHIP-like program for Hurricane Michael disaster counties only) Line 2316 House Line 2316 A Senate	\$0	\$ 90,000,000	\$ 49,450,000	
Rental Recovery Loan Program (SAIL-like program (for Hurricane Michael disaster counties only) Line 2315 House Line 2316 A Senate	\$0	\$ 10,000,000	\$ 74,180,000	
<b>TOTAL HOUSING</b>	<b>\$352,378,000</b>	<b>\$331,878,000</b>	<b>\$123,630,000</b>	
SHTF SWEEP	\$0	\$0	\$ 60,000,000	
LGHTF SWEEP	\$0	\$0	\$140,000,000	
<b>TOTAL SWEEP</b>	<b>\$0</b>	<b>\$0</b>	<b>\$200,000,000</b>	
Unallocated SHTF	\$0	\$ 600,000	\$ 7,358,000	
Unallocated LGHTF	\$0	\$15,610,000	\$17,100,000	

**Proviso/Back of the Bill for FHFC:**

**Governor**

20% of SAIL for persons with special needs or the elderly

SHIP to prioritize funding to assist with hurricane housing recovery before routine and customary use of funds

\$500,000 from SHIP for Catalyst Training

**Senate**

10% of SAIL for competitive grant for housing for persons with developmental disabilities

\$90 million HHRP to Hurricane Michael counties based on FEMA damage assessments

\$10 million RRLP for Hurricane Michael counties

\$500,000 from SHIP for Catalyst

\$200,000 from SHIP to FHFC for Homeless Training

\$8 million from SHIP for Jacksonville Urban Core Workforce Housing Program

**House**

HHRP for Hurricane Michael counties based on needs assessment

RRLP for Hurricane Michael counties with funds distributed by SAIL-like process

# OCCUPANCY LEVELS

2-28-19

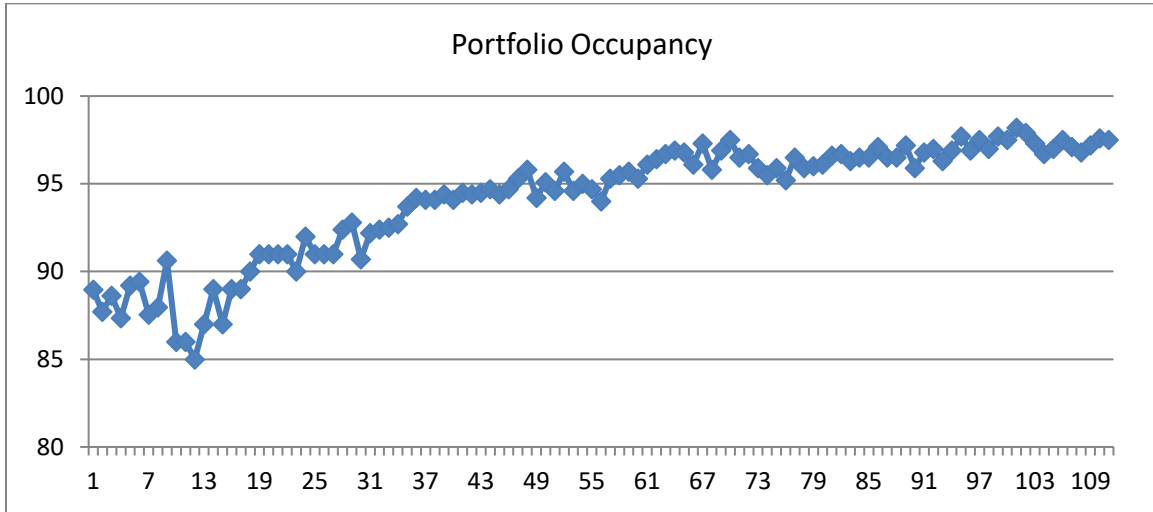
## Active Rental Developments—Financed by DCHFA or JHFA

Development & Address	Developer	Original Bonds & Issue Date	Units & Occupancy
Bennett Creek 3585 Salisbury Drive 32216	Richman	\$21,600,000 12-21-10	264 97% (-0%)
Brookwood Forest Apartments 1251 Fromage Way 32225	CED	\$10,000,000 2005	168 96% (-0%)
Camri Green Apartments 3820 Losco Road 32257	Vestcor	\$9,200,000 2003	184 97% (-1%)
Caroline Arms 6457 Fort Caroline Road 32277	Southport	\$12,500,000 7-3-18	204 100% (+1%)
Caroline Oaks 5175 Main Street N. 32208	Vestcor	\$5,600,000 4-22-15	82 100% (+1%)
Cathedral Terrace 701 N. Ocean St. 32202	Blue Sky	\$12,500,000 1-21-16	200 99% (+0%)
Christine Cove 3730 Soutel Dr 32208	Carlisle	\$6,000,000 2006	96 98% (+1%)
Desert Winds/Silver Creek 233 Sahara Ct. & 300 Silver Creek Trace 32216	LEDIC	\$22,000,000 12-28-18	304 99% (+0%) Rolling Rehab
Hartwood (AKA Hampton Ridge) 11501 Harts Road 32218	Southport	\$5,840,000 2006	110 89% (+0%)
Lofts at LaVilla 995 Water Street 32204	Vestcor	Housing Credits \$265,000 JHFA loan 10-12-16	130 98% (-2%)
Lofts at Monroe 906 W. Monroe Street 32204	Vestcor	Housing Credits \$303,750 JHFA Loan 9-29-17	108 100% (+0%)
Lofts at Jefferson 799 Water Street 32204	Vestcor	Housing Credits \$225,750 JHFA Loan 10-3-18	98
Millennia Portfolio Calloway Cove Palmetto Glen The Weldon Valencia Way	Millennia	\$81,600,000 10-24-18	768 Rolling Rehab 200/81% 74/81% 94/88% 400/86%
Mary Eaves 1250 16 <sup>th</sup> Street West 32209	Vestcor	FHFC bonds \$300,000 JHFA loan 8-19-16	80 100% (+2%)
Mt. Carmel Gardens 5846 Mt. Carmel Terrace 32216	BREC	\$9,750,000 8-19-16	207 98% (+2%)
Oakwood Villa 8201 Kona Avenue 32211	Southport	\$12,700,000 6-30-17	200 97% (-2%)
Peyton Ridge	Vestcor	Housing Credits \$115,000 JHFA loan 4-7-16	123 96% (-3%)
Timberwood Trace 12250 Atlantic Blvd. 32225	Southport	\$16,000,000 2-1-17	224 97% (+1%)
Timuquana Park Apartments 5615 Seaboard Ave. 32244	Southport	\$4,300,000 2004	100 96% (+1%)

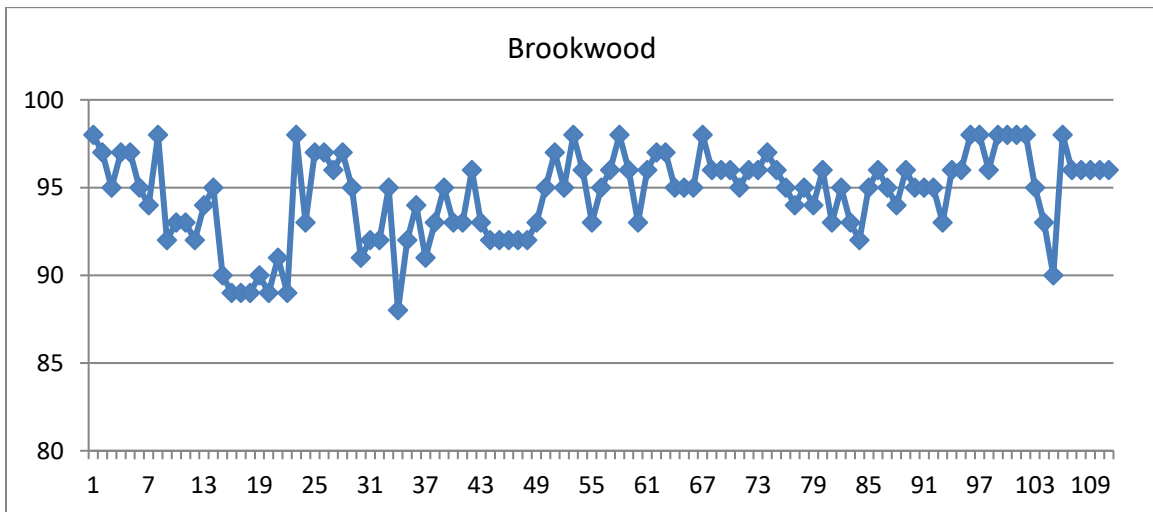
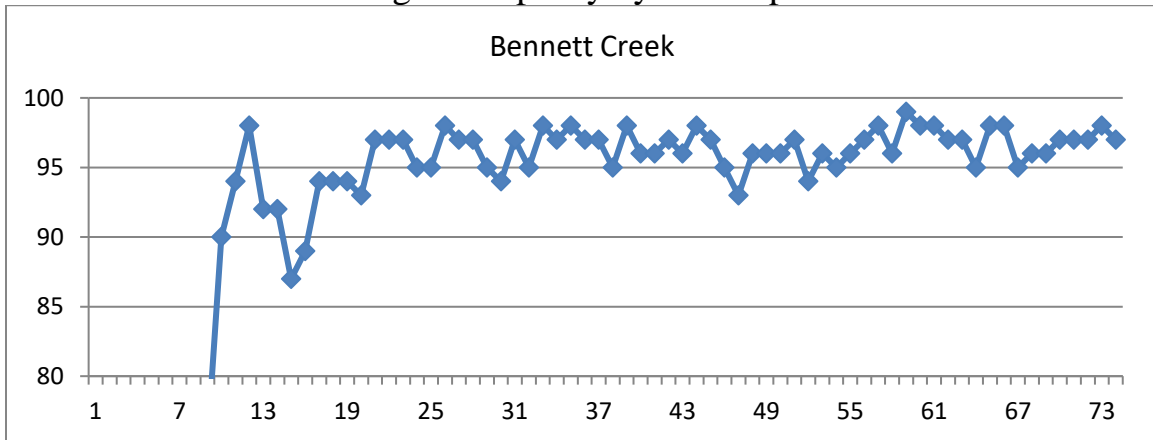
# OCCUPANCY LEVELS

2-28-19

## 111 Month Occupancy Levels—Entire Portfolio Average Occupancy



## Average Occupancy by Development

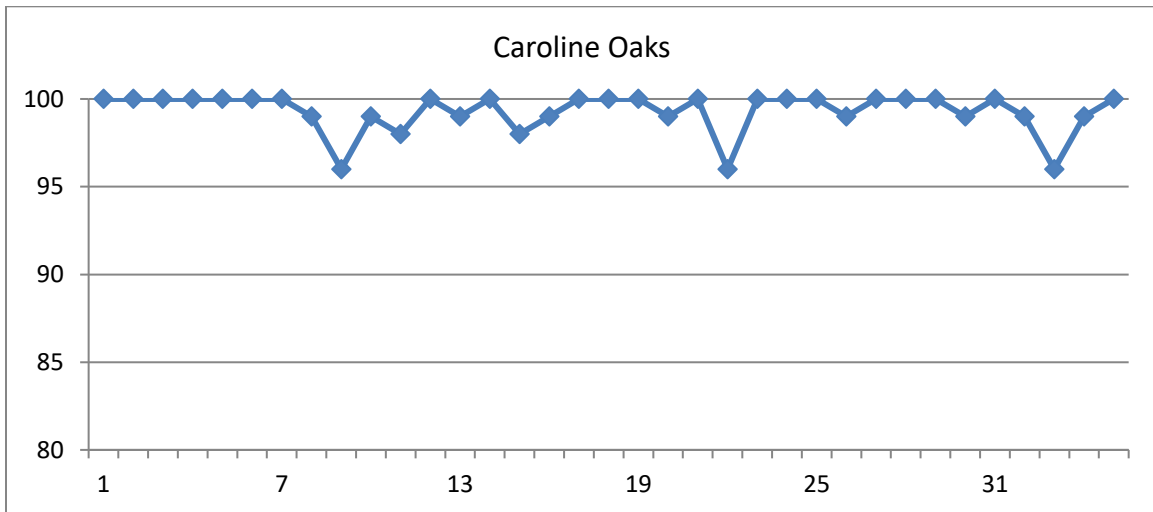
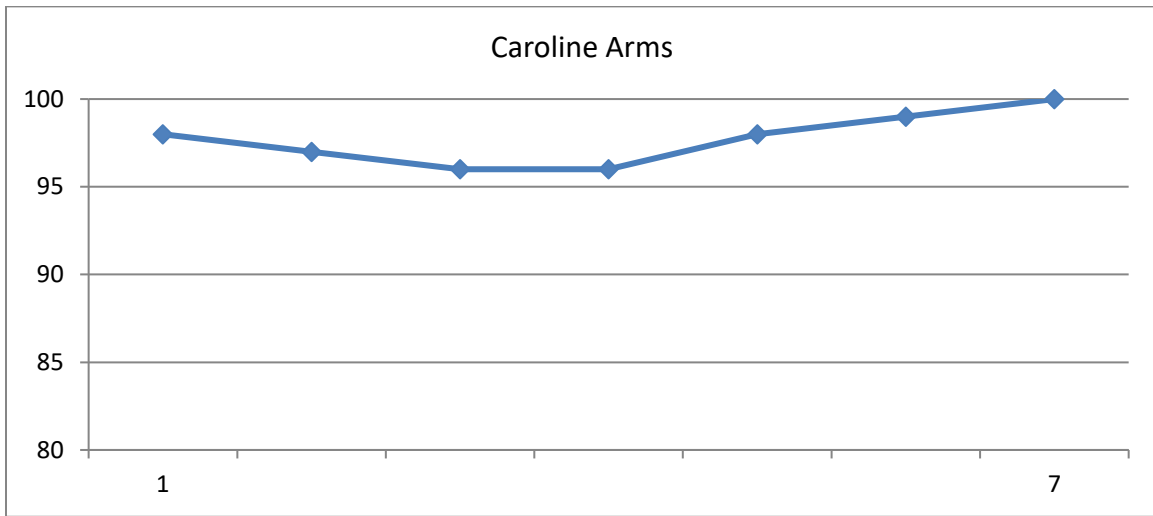
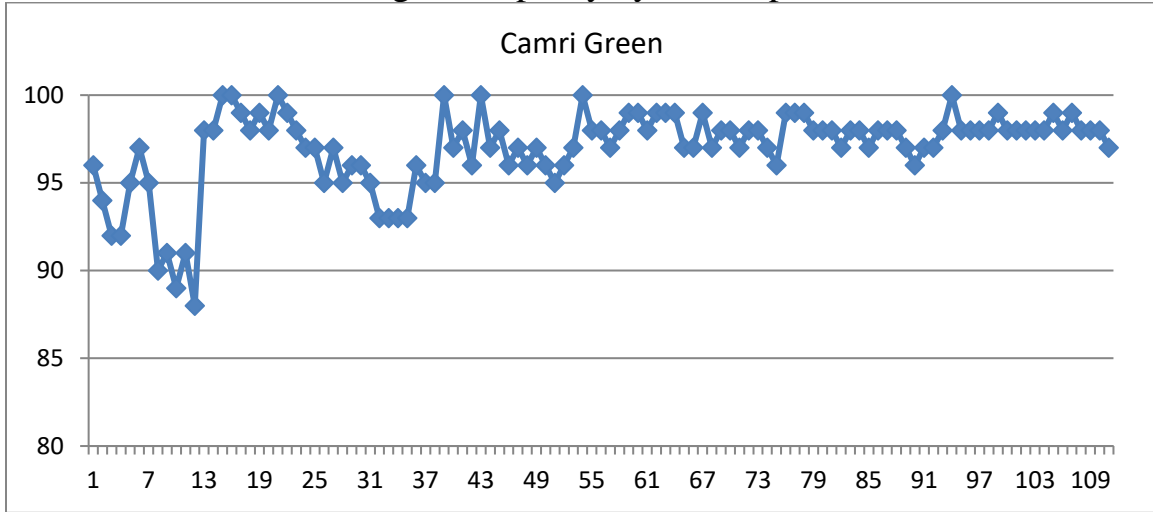




# OCCUPANCY LEVELS

2-28-19

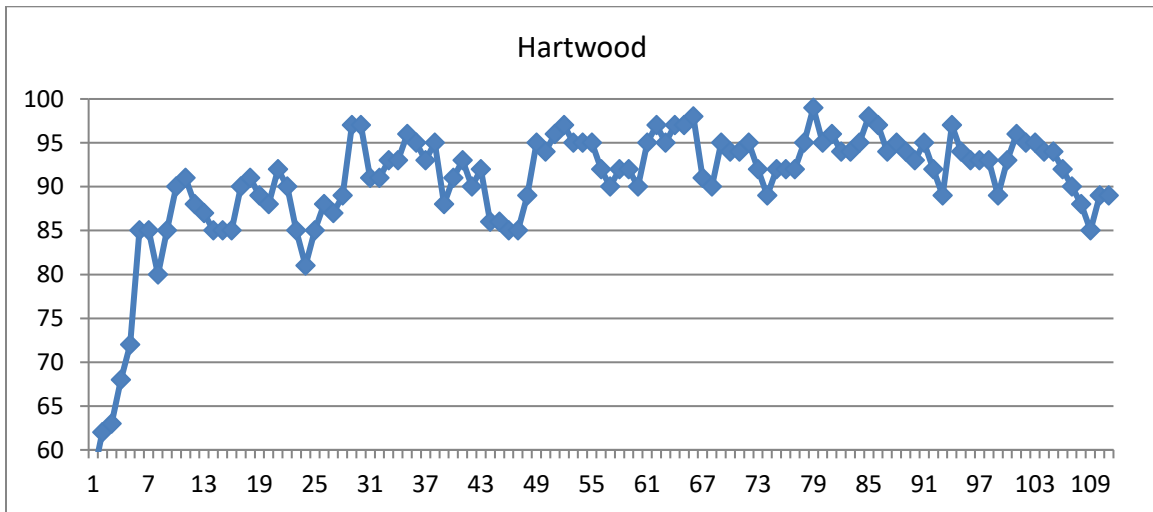
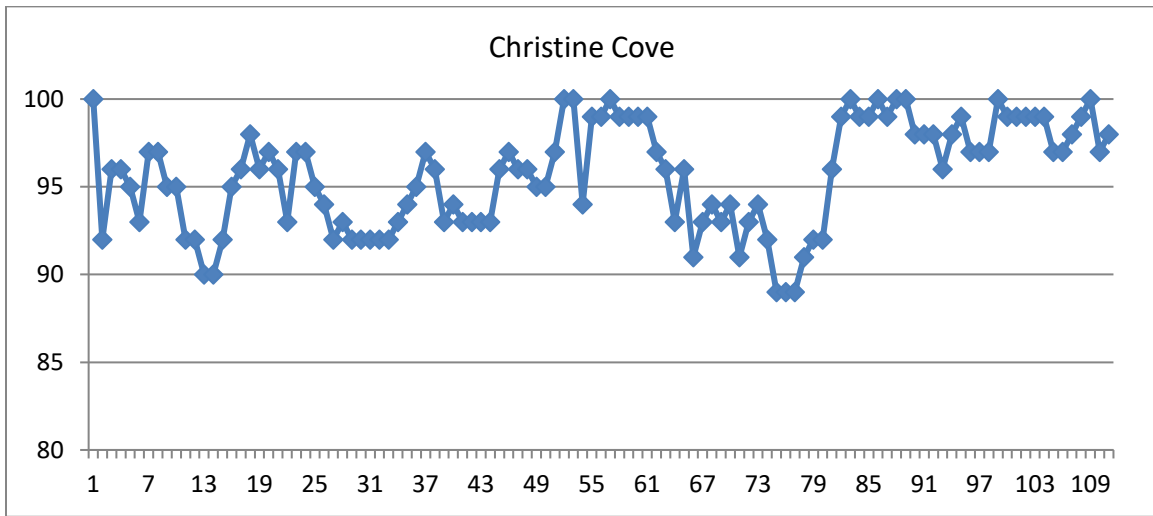
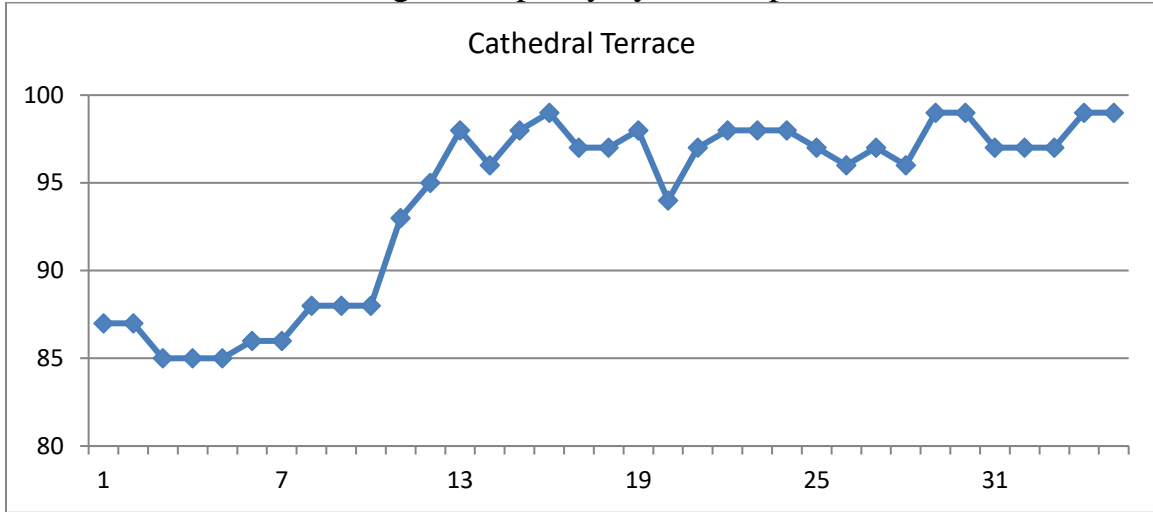
## Average Occupancy by Development



# OCCUPANCY LEVELS

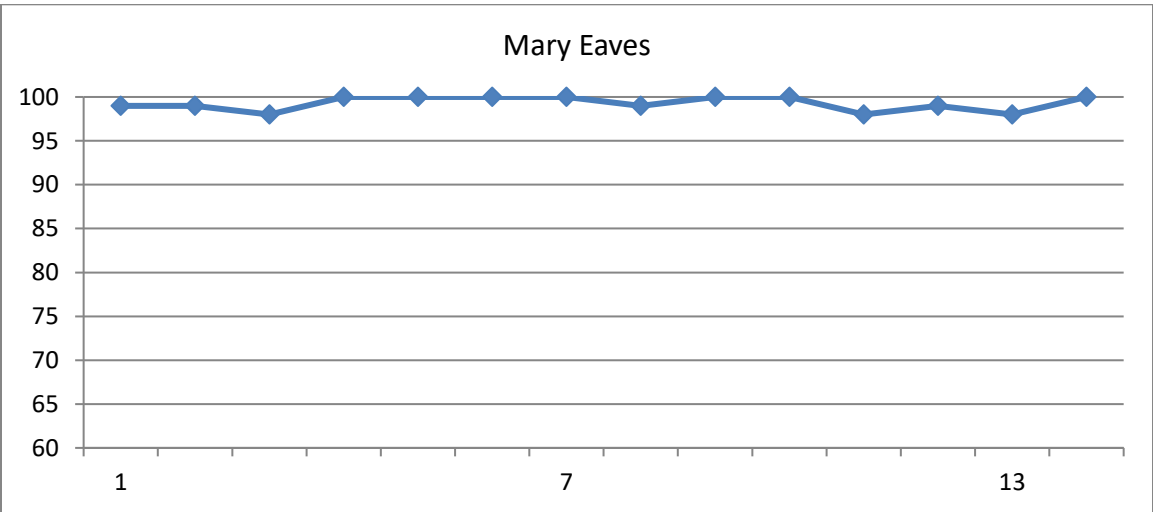
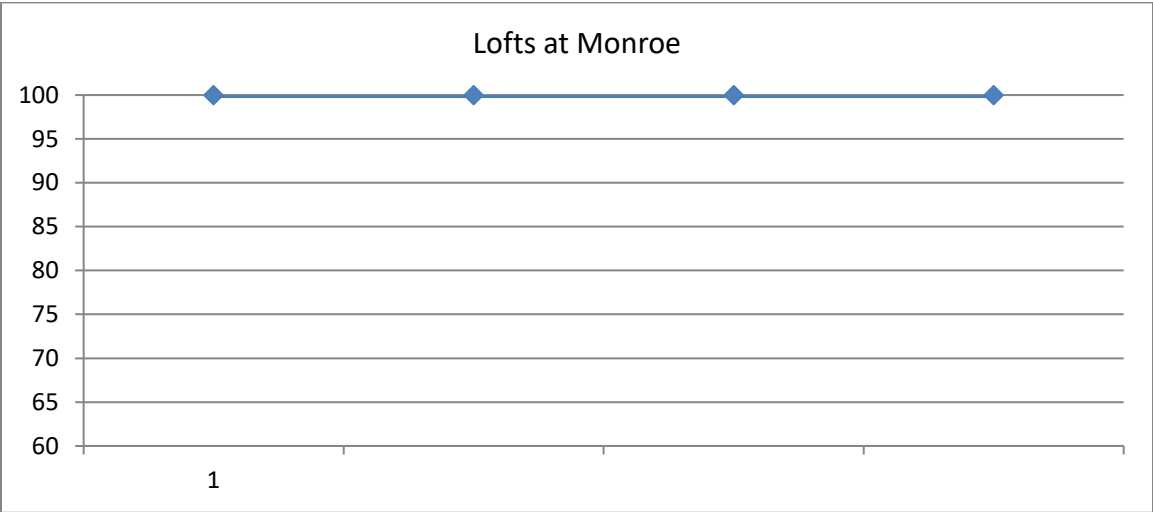
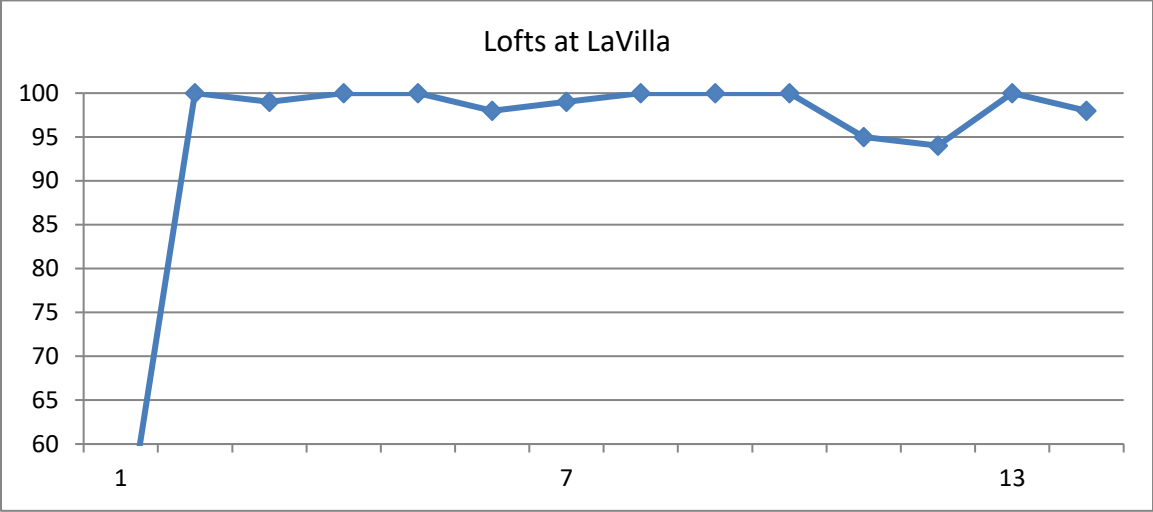
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## Average Occupancy by Development



OCCUPANCY LEVELS  
2-28-19

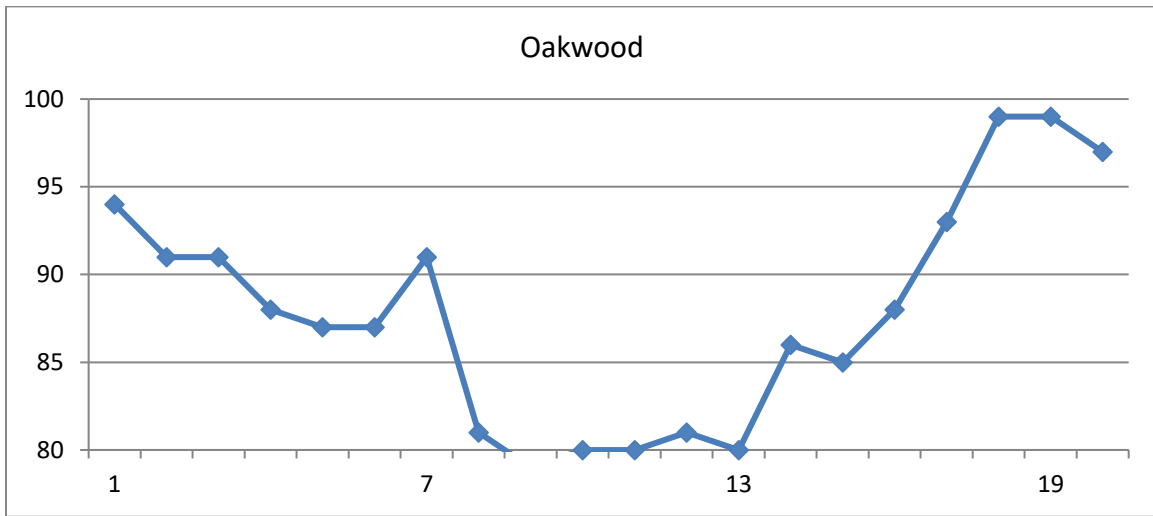
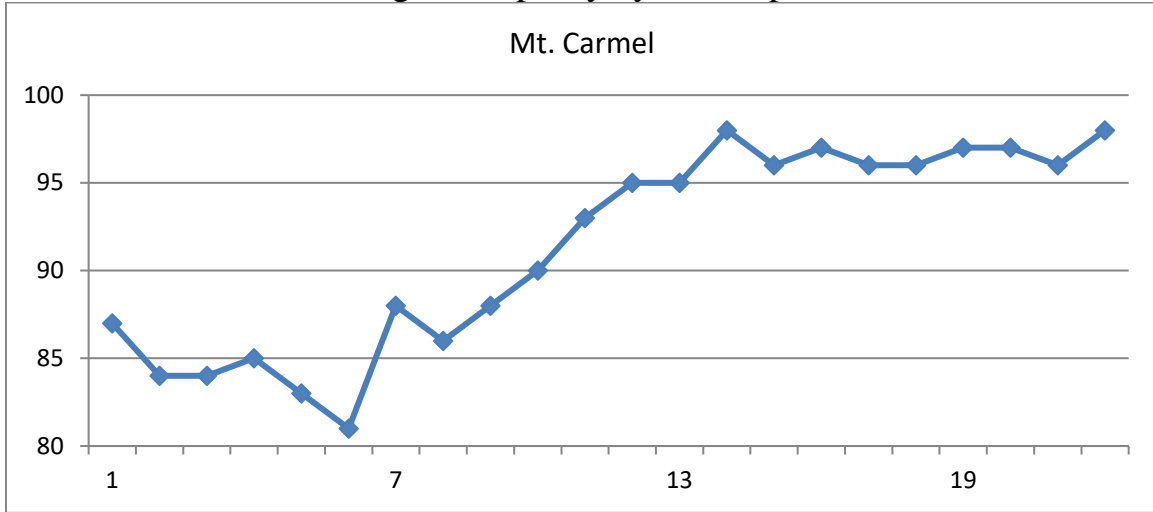
Average Occupancy by Development



# OCCUPANCY LEVELS

2-28-19

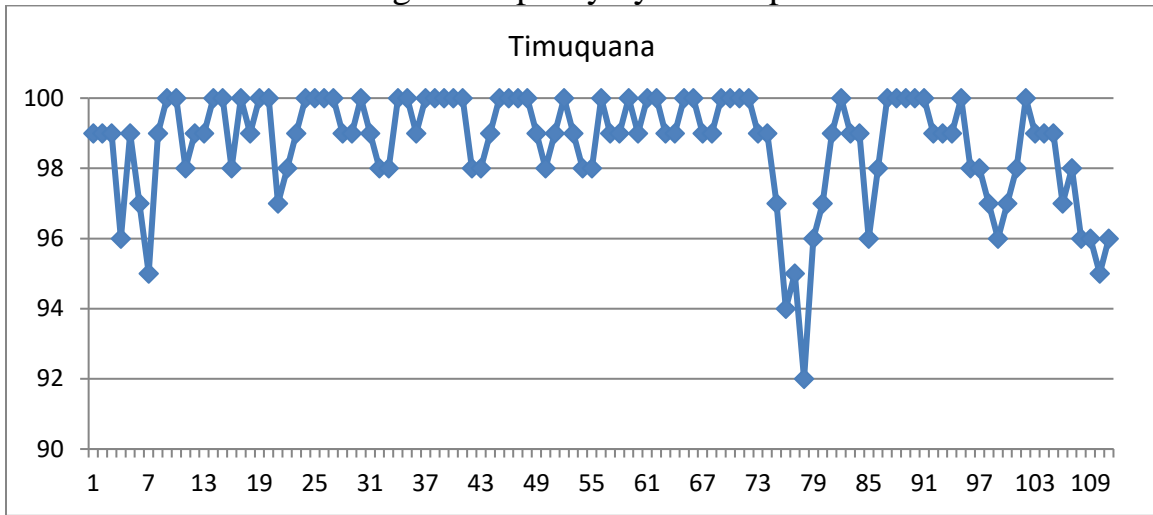
## Average Occupancy by Development



# OCCUPANCY LEVELS

2-28-19

Average Occupancy by Development



# **Jacksonville Housing Finance Authority**

*Credit Underwriting Report*

## **Monaco Arms I & II**

Tax Exempt Loan Program

Section A	Report Summary
Section B	Loan Conditions
Section C	Supporting Information and Schedules

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*Prepared by*

***Seltzer Management Group, Inc.***

*Draft Report*

*April 24, 2019*

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**MONACO ARMS I & II**

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**Section A**  
**Report Summary**



## Recommendation

Seltzer Management Group, Inc. ("SMG" or "Seltzer") recommends a Jacksonville Housing Finance Authority ("JHFA" or "Authority") multifamily tax-exempt Project Loan in the amount of **\$16,380,000** for Monaco Arms I & II ("Subject Development") for construction period financing with a reduction to \$13,770,000 at conversion to the permanent period.

### DEVELOPMENT & SET-ASIDES

Development Name: Monaco Arms I & II

RFA/Program Numbers: \_\_\_\_\_ / \_\_\_\_\_

Address: 10415 & 10525 Monaco Drive

City: Jacksonville Zip Code: 32218 County: Duval County Size: Large

Development Category: Acquisition/Rehab Development Type: Garden Apts (1-3 Stories)

Construction Type: Concrete/Masonry

Demographic Commitment:

Primary: Family for 100% of the Units

Secondary: \_\_\_\_\_ for \_\_\_\_\_ of the Units

Unit Composition:

# of ELI Units: 0 ELI Units Are Restricted to \_\_\_\_\_ AMI, or less. Total # of units with PBRA? 125

# of Link Units: 0 Are the Link Units Demographically Restricted? \_\_\_\_\_ # of NHTF Units: \_\_\_\_\_

Bed Rooms	Bath Rooms	Units	Square Feet	AMI%	Low HOME Rents	High HOME Rents	Gross HC Rent	Utility Allow.	Net Restricted Rents	PBRA Contr Rents	Applicant Rents	Appraiser Rents	CU Rents	Annual Rental Income
1	1.0	31	650	40%			\$525	\$123	\$402	\$870	\$870	\$870	\$870	\$323,640
1	1.0	5	650	60%			\$787	\$123	\$664	\$870	\$870	\$870	\$870	\$52,200
1	1.0	12	650	80%			\$1,050	\$123	\$927		\$870	\$870	\$870	\$125,280
2	1.0	89	850	60%			\$945	\$150	\$795	\$995	\$995	\$995	\$995	\$1,062,660
2	1.0	19	850	80%			\$1,260	\$150	\$1,110		\$995	\$995	\$995	\$226,860
		156	123,000											\$1,790,640

Buildings: Residential - 15 Non-Residential - 2

Parking: Parking Spaces - 275 Accessible Spaces - 15

Set Asides:

Program	% of Units	# of Units	% AMI	Term (Years)
MMRB	40%	31	40%	50
MMRB	60%	94	60%	50
MMRB	20%	31	80%	50
HC	20%	31	40%	30
HC	60%	94	60%	30
HC	20%	31	80%	30

## MMRB AND HC CREDIT UNDERWRITING REPORT

SMG

Occupancy Rate at Stabilization: Physical Occupancy 96.00% Economic Occupancy 95.00%  
 Occupancy Comments Development stabilized at completion of renovations

DDA: No QCT: Yes Multi-Phase Boost: \_\_\_\_\_ QAP Boost: \_\_\_\_\_  
 Site Acreage: 9.07 Density: 17.1996 Flood Zone Designation: X  
 Zoning: RMD-D, Residential Medium Density Flood Insurance Required?: No

DEVELOPMENT TEAM		
Applicant/Borrower:	Monaco Arms Preservation, LTD	% Ownership
General Partner	Monaco Arms GP, LLC ("GP")	0.010%
Limited Partner	Boston Financial Investment Management, LP ("Boston Financial") or affiliate	99.99%
Special LP	Boston Financial or affiliate	
Construction Completion Guarantor(s):		
CC Guarantor 1:	Borrower	
CC Guarantor 2:	GP	
CC Guarantor 3:	Lincoln Avenue Capital LLC ("LAC")	
CC Guarantor 4:	SJB Management LLC	
CC Guarantor 5:	Jeremy S. Bronfman	
CC Guarantor 6:	Red Rocks 88, LLC	
CC Guarantor 7:	Jonathan A. Gruskin	
CC Guarantor 8:	Monaco Arms Developer LLC ("Developer")	
Operating Deficit Guarantor(s):		
OD Guarantor 1:	Borrower	
OD Guarantor 2:	GP	
OD Guarantor 3:	LAC	
OD Guarantor 4:	SJB Management LLC	
OD Guarantor 5:	Jeremy S. Bronfman	
OD Guarantor 6:	Red Rocks 88, LLC	
OD Guarantor 7:	Jonathan A. Gruskin	
OD Guarantor 8:	Developer	
Bond Purchaser	N/A	
Developer:	Monaco Arms Developer LLC	
General Contractor 1:	Pyramid ETC Companies LLC ("ETC")	
Management Company:	McCormack Baron Management, Inc. ("MBM")	
Const. Credit Enhancer:	Citibank N.A. ("Citi") Tax Exempt Funding Loan provider	
Perm. Credit Enhancer:	Citi	
Syndicator:	Boston Financial or affiliate	
Bond Issuer:	Jacksonville Housing Finance Authority	
Architect:	Gallo Herbert Architects	
Market Study Provider:	Walter Duke and Partners ("Duke")	
Appraiser:	Duke	

PERMANENT FINANCING INFORMATION						
	1st Source	2nd Source	3rd Source	4th Source	5th Source	Other
Lien Position						
Lender/Grantor	Citi					
Amount	\$13,770,000					
Underwritten Interest Rate	4.92%					
All In Interest Rate	4.92%					
Loan Term	30.0					
Amortization	35.0					
Market Rate/Market Financing LTV	86.1%					
Restricted Favorable Financing LTV	90.0%					
Loan to Cost - Cumulative	67.3%					
Debt Service Coverage	1.161					
Operating Deficit & Debt Service Reserves	\$786,284.00					
# of Months covered by the Reserves	12.2					

Deferred Developer Fee	\$729,937
As-Is Land Value	Not Provided
As-Is Value (Land & Building)	\$12,170,000
Market Rent/Market Financing Stabilized Value	\$16,000,000
Rent Restricted Favorable Financing Stabilized Value	\$15,300,000
Projected Net Operating Income (NOI) - Year 1	\$958,354
Projected Net Operating Income (NOI) - 15 Year	\$1,124,671
Year 15 Pro Forma Income Escalation Rate	2.00%
Year 15 Pro Forma Expense Escalation Rate	3.00%
Bond Structure	Tax-Exempt Construction to Permanent Note
Housing Credit (HC) Syndication Price	\$0.941
HC Annual Allocation - Initial Award	N/A
HC Annual Allocation - Qualified in CUR	\$664,763
HC Annual Allocation - Equity Letter of Interest	\$633,140

CONSTRUCTION/PERMANENT SOURCES:				
Source	Lender	Construction	Permanent	Perm Loan/Unit
First Mortgage - A	Citi	\$13,770,000	\$13,770,000	\$88,269
First Mortgage - B	Citi	\$2,610,000	\$0	\$0
HC Equity	Boston Financial	\$894,000	\$5,960,000	\$38,205
Additional Equity	General Partner	\$100	\$100	\$1
Deferred Developer Fee	Developer	\$2,399,653	\$729,937	\$4,679
Delayed Reserve	Boston Financial	\$786,284	\$0	\$0
<b>TOTAL</b>		\$20,460,037	\$20,460,037	\$131,154

Applicant submitted a Multifamily Revenue Bond Program Application to the JHFA; however, this transaction will not involve the issuance of JHFA Tax-Exempt Bonds. Citi, through its Tax-Exempt “Back to Back” Loan Program, will loan **\$16,380,000** to the JHFA through a tax-exempt Funding Loan. SMG understands that the Funding Loan will be secured by a single mortgage but will have two notes which are identified as Tranches A and B. The proceeds of the Funding Loan will be utilized by the JHFA to provide funding to the Applicant through a Project Loan with matching economic terms.

Tranche A will be funded first and will provide construction to permanent phase financing. Tranche B will be for additional construction phase only financing.

Changes from the Application:

COMPARISON CRITERIA	YES	NO
Does the level of experience of the current team equal or exceed that of the team described in the application?	X	
Are all funding sources the same as shown in the Application?		1
Are all local government recommendations/contributions still in place at the level described in the Application?	X	
Is the Development feasible with all amenities/features listed in the Application?		2
Do the site plans/architectural drawings account for all amenities/features listed in the Application?	X	
Does the Applicant have site control at or above the level indicated in the Application?	X	
Does the Applicant have adequate zoning as indicated in the Application?	X	
Has the Development been evaluated for feasibility using the total length of set-aside committed to in the Application?	X	
Have the Development costs remained equal to or less than those listed in the Application?	X	
Is the Development feasible using the set-asides committed to in the Application?	X	
If the Development has committed to serve a special target group (e.g. elderly, large family, etc.), do the development and operating plans contain specific provisions for implementation?	X	
HOME ONLY: If points were given for match funds, is the match percentage the same as or greater than that indicated in the Application?	N/A	
HC ONLY: Is the rate of syndication the same as or greater than that shown in the Application?	N/A	1
Is the Development in all other material respects the same as presented in the Application?	X	

The following are explanations of each item checked "No" in the table above:

1. The Application indicated a total equity contribution of \$6,754,883. However, the Equity Placement Proposal ("Proposal"), dated November 30, 2018, provided by Boston Financial and contained within the Application, indicated a total equity contribution of \$6,693,803, based on an anticipated annual Housing Credit ("HC") allocation of \$697,341 and syndication rate of \$0.96. The Proposal was updated on March 6, 2019, and most recently via a draft Limited Partnership Agreement ("LPA"), circulated on April 18, 2019, which indicated a total equity contribution of \$5,960,000, based on an anticipated annual HC allocation of \$633,140 and syndication rate of \$0.941. This reduction is

primarily attributable to a lower than previously estimated eligible basis and the reduction in the syndication rate.

2. See Waivers Request Section below.

These changes have no substantial material impact to the MMRB recommendations for this Development.

Does the Development Team have any FHFC Financed Developments on the Past Due/Noncompliance Report?

Florida Housing's Past Due Report, dated April 8, 2019, reflects the following past due item(s): None

The Asset Management Noncompliance, dated March 11, 2019, reflects the following noncompliance items(s): None

This recommendation is subject to satisfactory resolution (as determined by FHFC) of any outstanding past due and/or noncompliance issues prior to loan closing.

Strengths:

1. As discussed below, concurrent with the closing the HUD Project-based Section 8 Housing Assistance Payments Basic Renewal Contracts ("HAP Contract") will be extended for 20-years providing an extremely stable revenue stream for over 80% of the Subject Development's units.
2. Historical occupancy for the Subject Development has averaged approximately 97% with vacancies due only to tenant turnover and a waiting list of qualified tenants was reported.
3. Although the Borrower, General Partner ("GP"), Limited Partner and Developer are newly formed, the principals of the GP, Developer, contractor, and the management company have sufficient experience and financial resources to develop, construct and operate the proposed Development.

Other Considerations: None

Waiver Requests/Special Conditions:

1. As indicated in the JHFA Application, the Applicant requested waivers from certain Mandatory Features and Optional Green Features that were not physically possible or cost prohibited due to the design or physical lay-out of the Subject Development and limited rehabilitation budget. SMG has consulted with provider of the Capital Needs Assessment and the Authority's Financial Advisor and concurs with the Applicant's assertions and recommends approval. A complete list of required Features and Amenities and Resident Programs are included as Exhibit 2.

Additional Information:

1. The Subject Development currently encumbered by two HUD Project-based Section 8 HAP Contracts totaling 125 units. In connection with the sale of the Subject Development, the HAP contracts will be assigned to the Applicant, modified to reflect a rental increase (effective as of the closing date), and extended for twenty years from the closing date. The increased rents have been utilized for purposes of determining pro forma net operating income ("NOI"). In addition, these rents were utilized by the Appraiser for purposes of providing appraised values. The remaining 31 units have recently been encumbered by two Section 236 Agreements which both recently expired.

2. All 156 units will be income restricted by the HC program but will continue to operate under the assigned HAP contracts. The remaining 31 non-HAP unit's rents can increase up to the 80% of the area median income ("AMI") limit with the implementation of income averaging. Therefore, for each non-HAP unit that will charge rents at 80% of the AMI, a corresponding HAP unit will target tenants at or below 40% of the AMI.

Issues and Concerns: None

Mitigating Factors: None

Recommendation:

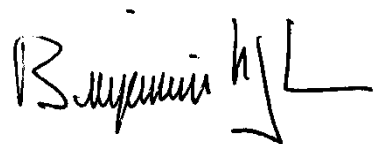
SMG recommends JHFA issue the Project Loan in the amount of \$16,380,000 to the Subject Development for construction period financing with a reduction to \$13,770,000 at conversion to the permanent period.

This recommendation is based upon the assumptions detailed in the Report Summary (Section A) and Supporting Information and Schedules (Section C). In addition, this recommendation is subject to the Loan Conditions (Section B). The reader is cautioned to refer to these sections for complete information.

This recommendation is only valid for six months from the date of the report.

Prepared by:

Reviewed by:



Benjamin S. Johnson  
President



Cindy Highsmith  
Credit Underwriting Manager

## Overview

### Construction Financing Sources

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Construction Debt Service
First Mortgage - A	Citi	\$12,410,000	\$13,770,000	\$13,770,000	4.92%	N/A
First Mortgage - B	Citi	\$4,420,000	\$2,610,000	\$2,610,000	5.28%	\$78,551
HC Equity	Boston Financial	\$2,334,883	\$862,500	\$894,000		
Additional Equity	General Partner	\$100	\$100	\$100		
Deferred Developer Fee	Developer	\$1,629,265	\$2,413,121	\$2,399,653		
Delayed Reserve Funding	Boston Financial	\$0	\$786,284	\$786,284		
<b>Total</b>		<b>\$20,794,248</b>	<b>\$20,442,005</b>	<b>\$20,460,037</b>		<b>\$78,551</b>

#### First Mortgage Loan:

Per an April 1, 2019 Term Sheet, Citi will arrange a Funding Loan to the JHFA in the amount of **\$16,380,000** for construction period financing. The Funding Loan will have two tranches: Tranche A (\$13,770,000) which will provide construction to permanent phase financing. Tranche B (\$2,610,000) will be for construction phase financing only. Funding of both tranches will be made on a “draw down” basis. The proceeds of Tranche A will be drawn down first.

Terms of Tranche A will include a fixed interest rate, committed to prior to or concurrent with the closing, based on the 17-year London Interbank Offered Rate (“LIBOR”) swap index (currently 2.72%), plus a spread of 1.90%. Seltzer has added a 20 basis points (0.200%) issuer fee, estimated six basis points (0.060%) servicer fee (servicing and compliance) and four basis point (0.040%) fiscal agent fee. Based on current rates SMG estimates the “all-in” interest rate at 4.920%. Principal and interest payment will begin at closing based on a 35-year amortization schedule with a term of 30 years. At the end of the 17<sup>th</sup> year following the closing date, Citi, in its sole discretion, can require repayment of the loan in full (upon not less than six (6) months prior written notice).

It is anticipated that the Subject will maintain stabilized operations through the rehabilitation (currently 97% occupied). Principal and interest will be paid from net rental income derived from the operations of the Subject Development. Accordingly, no Construction Debt Service is presented above.

The Tranche B interest rate will be based on the one month LIBOR (currently 2.48%), plus a spread of 2.50%. Seltzer has added the same issuer, servicing and fiscal agent fees detailed above which equates to an “all-in” interest rate of 5.28%. The term is up to 24 months with one 6-month extension.

Seltzer’s calculation is based on a 12-month construction/stabilization period and an average outstanding loan balance of 57% of the total loan amount during construction.

#### GP Capital Contribution:

The General Partner shall make a capital contribution of \$100 at partnership closing.

#### Other Construction Sources of Funds:



Additional sources of funds for this Development during construction are HC Equity of \$894,000, Delayed Reserve Funding (from last equity installment) of \$786,284, and Deferred Developer Fees in the amount of \$2,399,653. See the Permanent Financing section below for details.

**Permanent Financing Sources**

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Amort. Yrs.	Term Yrs.	Annual Debt
First Mortgage	Citi	\$12,410,000	\$13,770,000	\$13,770,000	4.92%	35	30	\$825,534
HC Equity	Boston Financial	\$6,754,883	\$5,920,000	\$5,960,000				
Additional Equity	General Partner	\$100	\$100	\$100				
Deferred Developer Fee	Developer	\$1,629,265	\$751,908	\$729,937				
<b>Total</b>		<b>\$20,794,248</b>	<b>\$20,442,008</b>	<b>\$20,460,037</b>				<b>\$825,534</b>

**Proposed First Mortgage Loan**

Terms of the Tranche A component are discussed in the previous section.

Conversion requirements include completion of construction and 90% physical occupancy of the Subject Development for three consecutive calendar months, a minimum 1.15 to 1.00 debt service coverage ("DSC") ratio, and 90% of market value, based on restricted rents and inclusive of the value of permanent below market financing (if applicable), assuming development rents on 80% or more of the units are discounted to a level at least 10% below market; otherwise, 85%.

**Housing Credits Equity Investment:**

The Borrower has applied to Florida Housing to receive 4% HC directly from the United States Treasury in conjunction with tax-exempt financing. An HC calculation is contained in Exhibit 4 of this credit underwriting report.

Based upon a letter of intent ("LOI"), dated March 6, 2019, and updated based on the most recent draft of the LPA, Boston Financial or an affiliate will purchase a 99.99% interest in the Applicant and provide HC equity as follows:

Capital Contributions	Amount	Percent of Total	When Due
1st Installment	\$894,000	15.00%	Closing
2nd Installment	\$2,086,000	35.00%	8609 Submission
3rd Installment	\$1,668,800	28.00%	Stabilization
4th Installment	\$1,311,200	22.00%	Receipt of 8609
<b>Total</b>	<b>\$5,960,000</b>	<b>100.00%</b>	

Annual Tax Credits per Syndication Agreement:	\$633,140
Total HC Available to Syndicator (10 years):	\$6,330,768
Syndication Percentage (limited partner interest):	99.99%
Calculated HC Exchange Rate (per dollar):	\$0.941
Proceeds Available During Construction:	\$894,000

Sufficient equity proceeds will be disbursed at closing to meet regulatory requirements.

**GP Capital Contribution:**

The General Partner shall make a capital contribution of \$100 at partnership closing.

Other Permanent Sources of Funds:

In order to balance the sources and uses of funds after all loan proceeds and capital contributions payable under the Boston Financial proposal have been received, the developer will have to defer \$729,937 of developer fees.

## Uses of Funds

CONSTRUCTION COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Recreational Amenities				\$0	
Rehab of Existing Common Areas				\$0	
Rehab of Existing Rental Units	\$3,750,000	\$4,200,728	\$4,200,728	\$26,928	
Site Work				\$0	
Swimming Pool				\$0	
Furniture, Fixture, & Equipment				\$0	
Hard Cost Contingency - in Constr. Cont.				\$0	
Constr. Contr. Costs subject to GC Fee	\$3,750,000	\$4,200,728	\$4,200,728	\$26,928	\$0
General Conditions	\$225,000	\$252,043	\$252,043	\$1,616	
Overhead	\$75,000	\$84,014	\$84,014	\$539	
Profit	\$225,000	\$252,043	\$252,043	\$1,616	
Builder's Risk Insurance				\$0	
General Liability Insurance				\$0	
Payment and Performance Bonds				\$0	
Contract Costs not subject to GC Fee		\$218,400	\$218,400	\$1,400	
Total Construction Contract/Costs	\$4,275,000	\$5,007,228	\$5,007,228	\$32,098	\$0
Hard Cost Contingency	\$527,500	\$500,723	\$500,723	\$3,210	
PnP Bond paid outside Constr. Contr.		\$40,000	\$40,000	\$256	
Fees for LOC used as Constr. Surety				\$0	
Demolition paid outside Constr. Contr.				\$0	
FF&E paid outside Constr. Contr.				\$0	
Other:				\$0	
<b>Total Construction Costs:</b>	<b>\$4,802,500</b>	<b>\$5,547,951</b>	<b>\$5,547,951</b>	<b>\$35,564</b>	<b>\$0</b>

### Notes to the Construction Costs:

- The Applicant has provided an executed construction contract, dated April 15, 2019, between the Owner and ETC where the basis for payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price in the amount of \$5,007,228. The date of commencement is expected to be within 30 days after the closing date. The General Contractor shall achieve substantial completion no later than 365 days from the date of commencement. If the General Contractor has not achieved substantial completion within the 365 days, there will be a \$1,500 per day liquidated damages fee payable to the Owner. Retainage shall be limited to 10% of the contract amount and may be reduced to 5% at 90% substantial completion upon approval from the Owner. Final payment will be made when the contract has been fully performed, the General Contractor has submitted final accounting for the Cost of the Work and a final Certificate for Payment has been issued by the Architect. The Owner's final payment to the Contractor shall be made no later than 30 days after the Architect's final Certificate for Payment.

General Contractor fees as stated are within the 14% maximum per the Rule. General liability insurance will be covered by the general contractor under General Conditions. Cost of the payment and performance bond will be paid by the Applicant.

Contract Costs not subject to GC fee include the purchase of an appliance package.

- A 10% hard cost contingency is supported by the Plan and Cost Analysis ("PCA") and is within the limits of the Rule.

3. SMG engaged and received a PCA from Partner Engineering and Sciences, Inc. ("Partner"). Complete results are set forth in Section C of this credit underwriting report.

GENERAL DEVELOPMENT COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Accounting Fees	\$15,000	\$15,000	\$15,000	\$96	\$15,000
Appraisal	\$15,500	\$10,000	\$10,000	\$64	
Architect's and Planning Fees	\$85,000	\$102,000	\$102,000	\$654	
Architect's Fee - Green Initiative				\$0	
Architect's Fee - Landscape				\$0	
Architect's Fee - Site/Building Design				\$0	
Architect's Fee - Supervision	\$25,000			\$0	
Building Permits	\$35,000	\$35,000	\$35,000	\$224	
Builder's Risk Insurance				\$0	
Capital Needs Assessment/Rehab	\$11,700	\$2,500	\$2,500	\$16	
Engineering Fees	\$17,500			\$0	
Environmental Report	\$9,900	\$9,900	\$9,900	\$63	
Federal Labor Standards Monitoring				\$0	
FHFC Administrative Fees	\$63,333	\$58,696	\$59,829	\$384	\$59,829
FHFC Application Fee	\$2,340	\$2,340	\$3,000	\$19	\$3,000
FHFC Credit Underwriting Fee	\$9,516	\$9,516	\$12,705	\$81	\$12,705
FHFC Compliance Fee	\$48,516	\$126,692	\$126,692	\$812	\$126,692
FHFC Other Processing Fee(s)				\$0	
Impact Fee				\$0	
Lender Inspection Fees / Const Admin		\$25,000	\$25,000	\$160	
Green Building Cert. (LEED, FGBC, NAHB)				\$0	
Home Energy Rating System (HERS)				\$0	
Insurance	\$75,000	\$75,000	\$75,000	\$481	
Legal Fees - Organizational Costs	\$240,000	\$165,000	\$165,000	\$1,058	\$82,500
Local Subsidy Underwriting Fee				\$0	
Market Study		\$11,000	\$11,000	\$71	\$11,000
Marketing and Advertising				\$0	
Plan and Cost Review Analysis		\$7,950	\$7,950	\$51	
Property Taxes				\$0	
Soil Test				\$0	
Survey	\$10,000	\$10,000	\$10,000	\$64	\$5,000
Tenant Relocation Costs		\$25,000	\$25,000	\$160	\$25,000
Title Insurance and Recording Fees	\$122,436	\$122,436	\$122,436	\$785	\$61,218
Traffic Study				\$0	
Utility Connection Fees				\$0	
Soft Cost Contingency		\$40,000	\$40,000	\$256	
Other: Other	\$65,000			\$0	
Other: Utility Allowance Study		\$10,000	\$10,000	\$64	
Other: 2530 Fee		\$1,000	\$1,000	\$6	
Other: Zoning Report		\$2,000	\$2,000	\$13	
Other:				\$0	
<b>Total General Development Costs:</b>	<b>\$850,741</b>	<b>\$866,030</b>	<b>\$871,012</b>	<b>\$5,583</b>	<b>\$401,944</b>

Notes to the General Development Costs:

1. Architect's Fees for Site/Building Design and Supervision reflect the fees as stipulated in the Architect Contract, dated October 12, 2018, between the Applicant and Gallo Herbert Architects for the Subject Development.
2. Builders Risk insurance will be added to the existing Applicant's hazard policy and paid for from property operations.
3. The FHFC Administrative Fee is based on 9% of the recommended annual allocation of HC. The FHFC Application Fee is reflective of the application fee for 4% HC.
4. The FHFC Credit Underwriting fee is for the FHFC HC fee. The JHFA MMRN Underwriting fee is included in Local HFA Cost of Issuance in Financial Cost below.
5. The FHFC Compliance Fee is based upon Florida Housing's Compliance Fee Calculation Model based on 156 rent restricted units set aside for 30 years.
6. Soft cost contingency is within 5% of General Development Costs (exclusive of the contingency) as limited by Rule.
7. Other General Development Costs are based on the Borrower's estimates, which appear reasonable.

FINANCIAL COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Construction Loan Application Fee				\$0	
Construction Loan Underwriting Fee				\$0	
Construction Loan Origination Fee	\$292,500			\$0	
Construction Loan Commitment Fee				\$0	
Construction Loan Closing Costs				\$0	
Construction Loan Interest	\$1,503,109			\$0	
Construction Loan Servicing Fees				\$0	
Permanent Loan Application Fee		\$25,000	\$25,000	\$160	\$25,000
Permanent Loan Underwriting Fee				\$0	
Permanent Loan Subsidy Layering Rev.				\$0	
Permanent Loan Commitment Fee				\$0	
Permanent Loan Origination Fee	\$134,640	\$163,800	\$163,800	\$1,050	\$163,800
Permanent Loan Closing Costs		\$75,250	\$75,250	\$482	\$75,250
Permanent Loan Interest				\$0	
Permanent Loan Servicing Fee				\$0	
Local HFA Bond Cost of Issuance		\$227,170	\$227,170	\$1,456	\$227,170
Other: Local Issuer Fee at Redemption		\$6,525	\$19,575	\$125	\$19,575
Other: Investor Counsel		\$35,000	\$35,000	\$224	\$35,000
<b>Total Financial Costs:</b>	<b>\$1,930,249</b>	<b>\$532,745</b>	<b>\$545,795</b>	<b>\$3,499</b>	<b>\$545,795</b>
<b>Dev. Costs before Acq., Dev. Fee &amp; Reserves</b>	<b>\$7,583,490</b>	<b>\$6,946,726</b>	<b>\$6,964,758</b>	<b>\$44,646</b>	<b>\$947,739</b>

*Notes to the Financial Costs:*

1. Principal and interest payments will be paid from property operations and no construction loan interest will be escrowed at closing.
2. Permanent Loan Application Fee is consistent with the Citi Term Sheet.
3. Permanent Loan Origination Fee is consistent with the Citi Term Sheet.
4. Local Bond HFA Cost of Issuance amount is based on an estimate provided by RBC and includes the following: fees and expenses of the Issuer, RBC Underwriter fee, Real Estate Counsel, Bond Counsel, Disclosure Counsel and other fees.
5. Local Issuer Fee at Redemption is equal to 75 basis points of Tranche B (\$2,610,000) in the amount of **\$19,575**.
6. Other Financial Costs are based on the Applicant's estimates, which appear reasonable.

NON-LAND ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Building Acquisition Cost	\$8,710,000	\$8,562,875	\$8,562,875	\$54,890	
Developer Fee on Non-Land Acq. Costs		\$1,541,317	\$1,541,318	\$9,880	
Other:				\$0	
<b>Total Non-Land Acquisition Costs:</b>	<b>\$8,710,000</b>	<b>\$10,104,192</b>	<b>\$10,104,193</b>	<b>\$64,770</b>	<b>\$0</b>

*Notes to the Non-Land Acquisition Costs:*

1. Applicant presented a December 19, 2018 Purchase and Sale Agreement ("PSA") between Lincoln Avenue Acquisition, LLC ("Buyer") and PNC ARHPF Monaco Arms Apts, LLC ("Seller") reflecting a purchase price of \$9,810,000. As evidenced by an Assignment and Assumption of Purchase and Sale Agreement, dated January 3, 2019, Buyer has conveyed and assigned to Applicant all of Buyers'

right, title and interest in the PSA to the Borrower. The closing date is the later of 1) 30-days following the expiration of the Feasibility Period which has been eclipsed or 2) 10-days from receipt of HUD approval. The Agreement provides for various cash deposits to be held in escrow; however, the deposits are applied to the purchase price. One 30-day extension is available subject to an additional deposit.

- The “As-Is” appraised value of the Subject is \$12,170,000. Total acquisition costs are limited to the lesser of the appraised value or the purchase price, or in this instance the purchase price of \$9,810,000 . Building Acquisition Cost is calculated as the difference between the purchase price and the portion attributable to land as described below.

- Maximum Developer Fee on Non-Land Acquisition Costs is 18% of that amount.

DEVELOPER FEE ON NON-ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Developer Fee - Unapportioned	\$2,932,828	\$1,250,411	\$1,250,411	\$8,015	
DF to Excess Land Costs				\$0	
DF to Excess Bldg Acquisition Costs				\$0	
Other:				\$0	
<b>Total Other Development Costs:</b>	<b>\$2,932,828</b>	<b>\$1,250,411</b>	<b>\$1,250,411</b>	<b>\$8,015</b>	<b>\$0</b>

*Notes to Developer Fee on Non-Acquisition Costs*

- Developer Fee – Unapportioned is 18% of Development Costs, exclusive of Non-Land Acquisition Costs, Land Acquisition Costs and Reserves.

LAND ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Land Acquisition Cost	\$1,100,000	\$1,247,125	\$1,247,125	\$7,994	\$1,247,125
Land Carrying Costs				\$0	
Other:				\$0	
<b>Total Acquisition Costs:</b>	<b>\$1,100,000</b>	<b>\$1,247,125</b>	<b>\$1,247,125</b>	<b>\$7,994</b>	<b>\$1,247,125</b>

*Notes to the Land Acquisition Costs:*

- The Duval County Property Appraiser’s website indicates a Land Value of \$1,247,125.
- The “As-is” Fee Simple Land Value was not provided and assumed to be higher than the property appraiser’s value.
- Based upon FHFC’s Land Allocation criteria, SMG has utilized the lower of the two values discussed above.

RESERVE ACCOUNTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Operating Deficit Reserve (Lender)	\$360,663	\$786,284	\$786,284	\$5,040	\$786,284
Operating Deficit Reserve (Syndicator)				\$0	
Replacement Reserves (Lender)				\$0	
Other: Real Estate Tax/Insurance Escrow	\$107,267	\$107,267	\$107,267	\$688	\$107,267
Other:				\$0	
<b>Total Reserve Accounts:</b>	<b>\$467,930</b>	<b>\$893,551</b>	<b>\$893,551</b>	<b>\$5,728</b>	<b>\$893,551</b>



*Notes to Reserve Accounts:*

1. Reserves – Operating Deficit is the Operating Deficit Reserve (“ODR”) required by Boston Financial.

TOTAL DEVELOPMENT COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
<b>TOTAL DEVELOPMENT COSTS:</b>	\$20,794,248	\$20,442,005	\$20,460,037	\$131,154	\$3,088,415

*Notes to the Total Development Costs:*

1. Total Development Costs have decreased by [\\$334,211](#) since the time of the Application, due primarily to lower than estimated rehabilitation costs, but was somewhat offset by increases in the general development and financial costs.

## Operating Pro forma

OPERATING PRO FORMA				ANNUAL	PER UNIT
INCOME	Gross Potential Rental Income			\$1,790,640	\$11,478
	Rent Subsidy (ODR)			\$0	\$0
	Other Income:				
	Miscellaneous			\$31,200	\$200
	Washer/Dryer Rentals			\$0	\$0
	Cable/Satellite Income			\$0	\$0
	Gross Potential Income			\$1,821,840	\$11,678
	Less:				
	Physical Vacancy Loss - Percentage:	4.0%	(\$72,874)	(\$467)	
	Collection Loss - Percentage:	1.00%	(\$18,218)	(\$117)	
Total Effective Gross Revenue				\$1,730,748	\$11,095
EXPENSES	Fixed:				
	Ground Lease			\$0	\$0
	Sub-Ground Lease			\$0	\$0
	Real Estate Taxes			\$130,950	\$839
	Insurance			\$81,900	\$525
	Other			\$0	\$0
	Variable:				
	Management Fee - Percentage:	3.5%	\$60,576	\$388	
	General and Administrative			\$39,000	\$250
	Payroll Expenses			\$187,200	\$1,200
	Utilities			\$99,100	\$635
	Marketing and Advertising			\$1,600	\$10
	Maintenance and Repairs			\$124,800	\$800
	Grounds Maintenance and Landscaping			\$0	\$0
	Resident Programs			\$0	\$0
	Contract Services			\$0	\$0
	Security			\$0	\$0
	Other-Pest Control			\$0	\$0
	Reserve for Replacements			\$47,268	\$303
Total Expenses				\$772,394	\$4,951
Net Operating Income				\$958,354	\$6,143
Debt Service Payments					
DEBT SERVICE	First Mortgage - Citi			\$825,534	\$5,292
	Second Mortgage-			\$0	\$0
	All Other Mortgages Fees -			\$0	\$0
Total Debt Service Payments				\$825,534	\$5,292
Cash Flow After Debt Service				\$132,820	\$851

Debt Service Coverage Ratios			
	DSC - First Mortgage plus Fees		1.161
	DSC - All Mortgages and Fees		1.161
Financial Ratios			
	Operating Expense Ratio		44.6%
	Break-Even Ratio		87.9%

*Notes to the Operating Pro forma and Ratios:*

1. The Subject Development is currently encumbered by two HUD Project-based Section 8 HAP Contracts totaling 125 units. In connection with the sale of the Subject Development, the HAP Contracts will be assigned to the Applicant, modified to reflect a rental increase (effective as of the closing date), and extended for twenty years from the closing date. The increased rents are reflected below. The remaining 31 units have recently been encumbered by two Section 236 Agreements which both recently expired.
2. All 156 units will be income restricted by the HC program but will continue to be operated under the assigned HAP contracts. The remaining 31 non-HAP units can increase up to 80% of the area median income ("AMI") with the implementation of income averaging. Therefore, for each non-HAP unit that will charge rents at 80% of AMI, a corresponding HAP unit will target tenants at or below 40% of AMI.
3. Seltzer has utilized utility allowances based on HUD Rent Schedules, dated June 1, 2018, for Low Rent Housing specific to the Subject Development. Residents pay for electricity and gas. Applicant pays for water, sewer, trash disposal and pest control.

A rent roll for the Subject Development is illustrated in the following table:

MSA/County: Jacksonville/Duval County

Bed Rooms	Bath Rooms	Units	Square Feet	AMI%	Low HOME Rents	High HOME Rents	Gross HC Rent	Utility Allow.	Net Restricted Rents	PBRA Contr Rents	Applicant Rents	Appraiser Rents	CU Rents	Annual Rental Income
1	1.0	31	650	40%			\$525	\$123	\$402	\$870	\$870	\$870	\$870	\$323,640
1	1.0	5	650	60%			\$787	\$123	\$664	\$870	\$870	\$870	\$870	\$52,200
1	1.0	12	650	80%			\$1,050	\$123	\$927		\$870	\$870	\$870	\$125,280
2	1.0	89	850	60%			\$945	\$150	\$795	\$995	\$995	\$995	\$995	\$1,062,660
2	1.0	19	850	80%			\$1,260	\$150	\$1,110		\$995	\$995	\$995	\$226,860
		156	123,000											\$1,790,640

4. Miscellaneous income is based on historical income collected at the Subject from pet fees, application fees, damages, and late fees.
5. The Appraiser estimates a stabilized physical vacancy rate of 4% and collection loss of 1% for an economic occupancy of 95% and a physical occupancy rate of 96%. These assumptions are supported by the historical occupancy rates of the Subject Development.
6. Real estate tax expense is based on the Appraiser's estimate and is not reflective of any anticipated tax abatement associated with Florida House Bill number 7109.
7. Insurance expense is based on the Appraiser's estimate and is within the historical and comparable range.
8. The Applicant has provided an unexecuted Management agreement between Borrower and MBM with compensation set at the lesser of 5% of rental income or \$31.50 per unit per month, which equates to 3.4% of rental income. Comparable management compensation typically ranges between 3.5% and 6%. SMG has utilized a management fee of 3.5% which is consistent with the appraiser's assumption.

9. Other operating expense estimates are based on either market comparables or historical operations at the Subject and are supported by the appraisal.
10. Annual deposit to replacement reserve is equal to the First Mortgage lenders and Florida Housing's minimum requirement and is somewhat greater than the amount concluded in the Physical Needs Assessment.
11. A 15-year income and expense projection shows increasing DSC through year fifteen (15). This projection is attached to this report as Exhibit 1.

**Section B**

**Loan Conditions**

Special Conditions

These recommendations are contingent upon the review and approval of the following items by SMG and JHFA at least 30 days prior to real estate loan closing. Failure to receive approval of these items within this time frame may result in postponement of the loan closing.

1. Receipt and satisfactory review of fully executed Management Agreement with terms not substantially different from those underwritten herein.
2. Receipt and satisfactory review updated financial statements for the principal Guarantors.

General Conditions

This recommendation is contingent upon the review and approval of the following items by SMG and JHFA at least 30 days prior to real estate loan closing. Failure to receive approval of these items within this time frame may result in postponement of the loan closing.

1. Borrower to comply with any and all recommendations noted in the Capital Needs Assessment and in the Plan and Cost Review.
2. Signed and sealed survey, dated within 90 days of closing, unless otherwise approved by JHFA, and its legal counsel, based upon the particular circumstances of the transaction. The Survey shall be certified to JHFA and its legal counsel, as well as the title insurance company, and shall indicate the legal description, exact boundaries of the Development, easements, utilities, roads, and means of access to public streets, total acreage and flood hazard area, and any other requirements of JHFA.
3. Building permits and any other necessary approvals and permits (e.g., final site plan approval, water management district, Department of Environmental Protection, Army Corps of Engineers, Department of Transportation, etc.). Acceptable alternatives to this requirement are receipt and satisfactory review of a letter from the local permitting and approval authority that the above referenced permits and approvals will be issued upon receipt of applicable fees (with no other conditions), or evidence of 100% lien-free completion, if applicable. If a letter is provided, copies of all permits will be required as a condition of the first post-closing draw.
4. Final sources and uses of funds itemized by source and line item, in a format and in amounts approved by the Servicer. A detailed calculation of the construction interest based on the final draw schedule (see below), documentation of the closing costs, and draft loan closing statement must also be provided. The sources and uses of funds schedule will be attached to the Loan Agreement as the approved Development budget.
5. A final construction draw schedule showing itemized sources and uses of funds for each monthly draw. The closing draw shall include appropriate backup and ACH wiring instructions.
6. The developer is only allowed to draw a maximum of 50% of the total developer fee during construction, but in no case more than the payable developer fee, which is determined to be "developer's overhead". No more than 35% of "developer's overhead" during construction will be allowed to be disbursed at closing. The remainder of the "developer's overhead" will be disbursed during construction on a pro rata basis, based on the percentage of completion of the Development, as approved and reviewed by FHFC and Servicer. The remaining unpaid developer fee shall be considered attributable to "developer's profit" and may not be funded until the Development has

achieved 100% lien free completion, and retainage has been released.

7. Evidence of general liability, flood (if applicable), builder's risk and replacement cost hazard insurance (as certificates of occupancy are received) reflecting JHFA as Loss Payee/Mortgagee, with coverages, deductibles and amounts satisfactory to JHFA and, as applicable, the FHFC Insurance Guide.
8. 100% Payment and Performance ("P&P") Bonds or a Letter of Credit ("LOC") in an amount not less than 25% of the construction contract is required in order to secure the construction contract between the general contractor and the Borrower. In either case, JHFA must be listed as co-obligee. The P&P bonds must be from a company rated at least "A-" by A.M. Best & Co. with a financial size category of at least FSC VI. JHFA and/or legal counsel must approve the source, amount(s) and all terms of the P&P bonds or LOC. If the LOC option is utilized, the LOC must contain "evergreen" language and be in a form satisfactory to the Servicer, JHFA, and its Legal Counsel.
9. Architect, Construction Consultant, and Borrower certifications on forms provided by JHFA will be required for both design and as-built with respect to Section 504 of the Rehabilitation Act, the Americans with Disabilities Act ("ADA"), and Federal Fair Housing Act requirements, as applicable.
10. A copy of an Amended and Restated Operating Agreement reflecting purchase of the HC under terms consistent with the assumptions contained within this Credit Underwriting Report. The Amended and Restated Operating Agreement shall be in a form and of financial substance satisfactory to Servicer and to JHFA and its Legal Counsel.
11. At all times there will be undisbursed loan funds (collectively held by JHFA, the first lender and any other source) sufficient to complete the Development. If at any time there are not sufficient funds to complete the Development, the Borrower will be required to expend additional equity on Development costs or to deposit additional equity with JHFA which is sufficient (in the Authority's judgment) to complete the Development before additional loan funds are disbursed. This condition specifically includes escrowing at closing all equity necessary to complete construction or another alternative acceptable to JHFA in its sole discretion.
12. Final "as permitted" (signed and sealed) site plans, building plans and specifications. The geotechnical report, if any, must be bound within the final plans and specifications.

This recommendation is contingent upon the review and approval of the following items by JHFA and its legal counsel at least 30 days prior to real estate loan closing. Failure to receive approval of these items within this time frame may result in postponement of the loan closing.

1. Documentation of the legal formation and current authority to transact business in Florida for the Borrower, the general partner/member(s)/principal(s)/manager(s) of the Borrower, the guarantors, and any limited partners/members of the Borrower.
2. Signed and sealed survey, dated within 90 days of closing, unless otherwise approved by JHFA, and its legal counsel, based upon the particular circumstances of the transaction. The Survey shall be certified to JHFA and its legal counsel, as well as the title insurance company, and shall indicate the legal description, exact boundaries of the Development, easements, utilities, roads, and means of access to public streets, total acreage and flood hazard area, and any other requirements of JHFA.
3. An acceptable updated Environmental Audit Report, together with a reliance letter to JHFA,

prepared within 90 days of MMRB closing, unless otherwise approved by JHFA, and legal counsel, based upon the particular circumstances of the transaction. Borrower to comply with any and all recommendations noted in the Environmental Assessment(s) and Update and the Environmental Review, if applicable.

4. Title insurance pro-forma or commitment for title insurance with copies of all Schedule B exceptions, in the amount of the MMRB naming JHFC as the insured. All endorsements required by JHFA shall be provided.
5. JHFA and its legal counsel shall review and approve all other lenders closing documents and the Operating Agreement or other applicable agreement. JHFA shall be satisfied in its sole discretion that all legal and program requirements for the Loans have been satisfied.
6. Evidence of insurance coverage pursuant to the MMRB governing this proposed transaction and, as applicable, the FHFC Insurance Guide.
7. Receipt of a legal opinion from the Borrower's legal counsel acceptable to JHFA addressing the following matters:
  - a. The legal existence and good standing of the Borrower and of any partnership or limited liability company that is the general partner of the Borrower (the "GP") and of any corporation or partnership that is the managing general partner of the GP, of any corporate guarantor and any manager;
  - b. Authorization, execution, and delivery by the Borrower and the guarantors, of all Loan documents;
  - c. The Loan documents being in full force and effect and enforceable in accordance with their terms, subject to bankruptcy and equitable principles only;
  - d. The Borrower's and the guarantor's execution, delivery and performance of the loan documents shall not result in a violation of, or conflict with, any judgments, orders, contracts, mortgages, security agreements or leases to which the Borrower is a party or to which the Development is subject to the Borrower's Partnership/Operating Agreement and;
  - e. Such other matters as JHFA or its legal counsel may require.
8. Evidence of compliance with local concurrency laws, as applicable.
9. UCC Searches for the Borrower, its partnerships, as requested by legal counsel.
10. Such other assignments, affidavits, certificates, financial statements, closing statements, and other documents as may be reasonably requested by JHFA or its legal counsel in form and substance acceptable to JHFA and its legal counsel, in connection with the loan(s).
11. Any other reasonable conditions established by JHFA and its legal counsel.

#### Additional Conditions

This recommendation is also contingent upon the following additional conditions:

1. Compliance with all provisions of Sections 420.507 and 420.509, Florida Statutes, Rule Chapter 67-21, F. A. C., Sections 420.507(22) and 420.5087, Florida Statutes, Rule Chapters 67-53, and 67-60, F.A.C., , Section 42 I.R.C., and any other State and Federal requirements.



2. Acceptance by the Borrower and execution of all documents evidencing and securing the MMRB Loan and First Mortgage Loan in form and substance satisfactory to JHFA and its legal counsel, including, but not limited to, the Promissory Note(s), the Loan Agreement(s), the Mortgage and Security Agreement(s), the Land Use Restriction Agreement(s), and Extended Low Income Housing Agreement(s).
3. Acceptance by the Borrower and execution of all documents evidencing and securing MMRB in form and substance satisfactory to JHFA and its legal counsel, including, but not limited to, the Promissory Note(s), the Loan Agreement(s), the Mortgage and Security Agreement(s), the Land Use Restriction Agreement(s), and Extended Low Income Housing Agreement(s).
4. If MMRB funds are used for construction or rehabilitation, all amounts necessary to complete construction must be deposited with the Trustee prior to Loan Closing, or any phased HC Equity pay-in of amount necessary to complete construction shall be contingent upon an unconditional obligation, through a Joint Funding Agreement or other mechanism acceptable to JHFA, of the entity providing HC Equity payments (and evidence that 100% of such amount is on deposit with such entity at Loan Closing) to pay, regardless of any default under any documents relating to the HC as long as the First Mortgage continues to be funded.
5. If applicable, receipt and satisfactory review of Financial Statements from all Guarantors dated within 90 days of Real Estate Closing.
6. Guarantors are to provide the standard JHFA Construction Completion Guarante, to be released upon lien free completion as approved by the Servicer.
7. Guarantors for the MMRB Loan are to provide the standard JHFA Operating Deficit Guarantee. If requested in writing by the Applicant, Servicer will consider a recommendation to release the Operating Deficit Guarante if all conditions are met, including achievement of a 1.15 DSC on the First Mortgage, 90% Occupancy and 90% of Gross Potential Rental Income net of utility allowances, if applicable, for a period equal to twelve (12) consecutive months, all certified by an independent Certified Public Accountant ("CPA"). The calculation of the debt service coverage ratio shall be made by JHFA or the Servicer. Notwithstanding the above, the Operating Deficit Guarante shall not terminate earlier than three (3) years following the final certificate of occupancy.
8. Guarantors are to provide the standard JHFA Environmental Indemnity Guaranty.
9. Guarantors are to provide the standard JHFA Guaranty of Recourse Obligations.
10. A mortgagee title insurance lender's policy naming JHFA as the insured first, second and third mortgage holder in the amount of the Loans is to be issued at closing. Any exceptions to the title insurance policy must be acceptable to JHFA or its legal counsel. All endorsements that are required by JHFA are to be issued and the form of the title policy must be approved prior to closing.
11. Property tax and hazard insurance escrows are to be established and maintained by the First Lender or the Servicer. In the event the reserve account is held by JHFA's loan servicing agent, the release of funds shall be at JHFA's sole discretion.
12. Replacement Reserves in the minimum amount of \$303 per unit per year are required to be deposited on a monthly basis into a designated escrow account, to be maintained by the First Mortgagee/Credit Enhancer, the Trustee, or JHFA's loan servicing agent. However, Applicant has

the option to prepay Replacement Reserves as allowed per the Rule, in the amount of \$46,800 (one-half the required Replacement Reserve for Years 1 and 2), in order to meet the applicable DSC loan requirements. Applicant can waive this election, if at closing of the loan(s) the required DSC is met without the need to exercise the option. It is currently estimated that Replacement Reserves will be funded from Operations in the amount of \$300 per unit per year for years 1 and 2, followed by \$300 per unit per year thereafter. The initial Replacement Reserve will have limitations on the ability to be drawn. Preservation or Rehabilitation Developments (with or without acquisition) shall not be allowed to draw until the start of the scheduled replacement activities as outlined in the pre-construction Capital Needs Assessment report ("CNA") subject to the activities completed in the scope of rehabilitation, but not sooner than the third year.

The amount established as a Replacement Reserve shall be adjusted based on a CNA to be received by the JHFA or its servicers, prepared by an independent third party and acceptable to the JHFA and its servicers at the time the CNA is required, beginning no later than the 10<sup>th</sup> year after the first residential building in the Development receives a certificate of occupancy, a temporary certificate of occupancy, or is placed in service, whichever is earlier ("Initial Replacement Reserve Date"). A subsequent CNA is required no later than the 15<sup>th</sup> year after the Initial Replacement Reserve Date and subsequently every five (5) years thereafter.

13. Partner, or other construction inspector acceptable for JHFA, is to act as JHFA's inspector during the construction period.
14. Under the Monaco Arms I & II construction contract, a minimum of 10% retainage holdback on all construction draws is required until the Development is 90% complete, at which time it may be reduced to 5% upon approval from the Owner. JHFA requires a minimum of 10% retainage holdback on all construction draws until the Development is 50% complete, at which time no retainage will be withheld. Retainage will not be released until successful lien free completion of construction and issuance of all certificates of occupancy, which satisfies the Authority's minimum requirement.
15. Satisfactory completion of a pre-loan closing compliance audit conducted by JHFA or its Servicer, if applicable.
16. Closing of the MMRB first mortgage prior to or simultaneous with all other funding sources.
17. Any other reasonable requirements of the Servicer, JHFA or its legal counsel.

**Section C**

**Supporting Information and Schedules**

**Additional Development and Third Party Supplemental Information**

Appraised Value:	<p>The appraised value is \$16,000,000, as if completed and stabilized, based on market rents and market financing, as reported in the full narrative appraisal, dated March 26, 2019, with an effective date of January 4, 2019, performed by Duke of Fort Lauderdale, Florida. Walter Duke III, MAI, CCIM, principal owner of Duke, is a State Certified General Real Estate Appraiser, Florida License No. RZ375. The appraisal was engaged by Citi. SMG is named as an intended user. Based on the market value of the property, the loan-to-value ratio for the first mortgage debt is 86.1%.</p> <p>The appraised value, as if completed and stabilized and based on HAP and HC restricted rents and favorable terms, is estimated at \$15,300,000. The loan-to-value ratio for the first mortgage debt based on this value is 90.0%.</p> <p>An “as if vacant” value for the land was not provided.</p>
Market Study:	<p>A Market Study was prepared for the Subject Development by Duke, dated January 4, 2019. Duke indicated the current unit mix for the 156 unit garden-style apartment community will remain in place with set-asides of 31 units at 40% of the AMI, 94 units at 60% AMI and 31 units at 80% AMI. In addition, Duke found the development site to be convenient to neighborhood shopping, employment, educational and medical facilities and stated all necessary utilities and services were available to the site to support the current development plan. Overall, access and exposure are considered good for multifamily purposes. Based on Duke’s investigations, the subject property’s highest and best use is considered to be suitable for multifamily development.</p> <p>The target market area for the subject property is generally considered to be within a five-mile radius of the subject property. Within this primary market area (“PMA”), the population is projected to increase slightly over the next five years by about 5,615 persons, or about 4.93%. The number of households in the property’s PMA is projected to increase similarly by about 4.73%. The property’s competitive market area (“CMA”) is defined as the Highlands submarket. There has historically been consistent demand for low-income housing and the impact of new development on existing properties is minimal. There are six existing Family HC apartment projects located within the property’s submarket, reflecting a current weighted occupancy rate of 98.3%, well exceeding that of market rate apartments. Additionally, there are no HC developments currently under construction. Duke indicated they were unaware of any Guarantee Fund Developments within the PMA of the subject.</p>

The Market Study confirms that although the property is not located within a Difficult Development Area (“DDA”) but it is within a Qualified Census Tract (“QCT”). According to HUD.gov, the property is located within Census Tract 0104.02 which is part of the QCT.

Duke projects the Subject Development will achieve 2018 Maximum Allowable HC Rents on all HC units. Based upon the Subject Development’s unit mix, the Appraiser concluded that estimated Market Rental Rates exceed estimated Restricted Rental Rates by 54% at 40% Area Median Income (“AMI”), 24% at 60% AMI and will be equal to Market Rents at 80%. This meets the 10% minimum required by FHFC Rule.

The subject property represents an existing property that will remain stable during the renovation process without the need for a lease-up period. Therefore, an absorption rate for the property is not warranted.

Environmental Report:

Partner performed a Phase I Environmental Site Assessment (“ESA”) in accordance with ASTM Standard E-1527-13 and Fannie Mae Guidelines. The ESA indicates an inspection date of December 7, 2018 and a report issue date of December 21, 2018.

Partner’s findings are summarized below:

A recognized environmental condition (“REC”) refers to the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: due to release to the environment; under conditions indicative of a release to the environment; or under conditions that pose a material threat of a future release to the environment:

- Partner did not identify any recognized environmental conditions during the course of this assessment.

A controlled recognized environmental condition refers to a REC resulting from a past release of hazardous substances or petroleum products that has been addressed to the satisfaction of the applicable regulatory authority, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls. The following was identified during the course of this assessment:

- Partner did not identify any controlled recognized environmental conditions during the course of this assessment.

A historical recognized environmental condition refers to a past release of any hazardous substances or petroleum products that has occurred in

connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the property to any required controls. The following was identified during the course of this assessment:

- Partner did not identify any historical recognized environmental conditions during the course of this assessment.

An environmental issue refers to environmental concerns identified by Partner, which do not qualify as RECs; however, warranted further discussion. The following was identified during the course of this assessment:

- Due to the age of the subject property buildings (1972-1973), there is a potential that asbestos containing materials and/or lead based paint are present. Overall, suspect ACMs and painted surfaces were observed in good condition and do not pose a health and safety concern to the occupants of the subject property at this time.

Should these materials be replaced, the identified ACM and suspect ACMs would need to be sampled to confirm the presence or absence of asbestos prior to any renovation or demolition activities to prevent potential exposure to workers and/or building occupants.

Partner's Conclusions, Opinions and Recommendations are as follows:

Partner has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E1527-13 and the Freddie Mac Guidance Document of 10415 and 10525 Monaco Drive in the City of Jacksonville, Duval County, Florida (the "subject property"). Any exceptions to, or deletions from, are described in Section 1.5 of this report.

This assessment has revealed no evidence of recognized environmental conditions in connection with the subject property; however, environmental issues were identified. Based on the conclusions of this assessment, Partner recommends the following:

- Operations and Maintenance ("O&M") Programs should be implemented in order to safely manage the suspect ACM and LBP located at the subject property.
- Partner conducted interviews with management and a visual and olfactory survey for mold at the subject property.

Management did not indicate tenant complaints pertaining to mold and Partner did not identify any visual or olfactory evidence of mold or water damage at the subject property; however, based on the Freddie Mac Guidance Document, a Mold, Moisture & Minimization Plan should be implemented at the subject property.

Seltzer's recommendation is conditioned upon adherence to the recommendations outlined above.

Soil Test Report:

The subject is an existing purchase/rehabilitation. There are no new structures being built as part of the planned rehabilitation; therefore, no soils test or borings are required.

Capital Needs Assessment:

SMG received and reviewed a Capital Needs Assessment ("CNA") from Partner, dated December 21, 2018. The CNA was performed in general conformance with the scope and limitations as set forth by ASTM E 2018-15 "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process" and the Freddie Mac Engineering and Property Condition Report Requirements. The purpose of this assessment is to provide sufficient information to evaluate the condition of the real property in order to facilitate completion of due diligence as a secured lender. The CNA included a site assessment, limited interviews with resident personnel, inquiries to the local building department, planning department and fire marshal's office, and visual observations of the following system components: site development, building structure, building exterior and interior areas, mechanical, electrical, and plumbing systems, conveyance systems, and life safety/fire protection. Partner observed all common areas and 10% of the dwelling units in order to formulate an accurate estimate of repair, replacement and major maintenance needs. Overall, Partner states that the subject property appeared to be in good condition. This evaluation is based on observation of the building systems and components and the apparent level of maintenance activities which appear to be good with proactive repair and replacement.

Critical repairs are defined as repairs that may be identified during the survey that are typically limited to life, safety, health, building code violation, or building or property stabilization issues observed at a subject property. No critical repairs were noted.

Partner considers the Developer's proposed rehabilitation work together with their CNA repair recommendations to be adequate in scope and depth to meet the physical needs of the subject property. Additionally, they find the costs associated with the work to be reasonable.

A twelve (12) year replacement reserve analysis was also included in the CNA. Replacement reserve costs are typically defined as predictable and in some instances recurring within a specified future period. Items anticipated to be less than approximately \$3,000 to repair or replace are generally considered to be part of routine maintenance and are omitted. Unless specifically required, these costs are not intended to represent enhancements or upgrades to the existing property. Based on a 12-year Replacement Reserve Projection, the development will need to fund reserves in an amount equal to \$303 per unit per year in inflated dollars (1.50% per year inflation factor). The opinions of costs presented are for the repair/replacement of readily visible materials and building system defects identified that might significantly affect the value of the property during the evaluation period. These opinions are based on approximate quantities and values. They do not constitute a warranty that all items, which may require repair or replacement, are included. Estimated cost opinions presented in the CNA are from a combination of sources. The primary sources are: Marshall & Swift, R.S. Means as well as Partner's past experience with construction projects.

Pre-Construction Analysis:

SMG has received a PCA from Partner, dated April 17, 2019.

The PCA report states that the plans and specifications (architectural and mechanical) provided appear to be generally complete, presenting adequate information for review and coordination / regulatory review / pricing under the proposed contract model (negotiated Cost Plus a Fee with a Guaranteed Maximum Price). Overall, the drawings and specifications are sufficiently organized and depict a reasonable approach to the development of the project and provide an adequate amount of information for the Construction Phase. General compliance, code compliance, zoning and ADA regulations appear to have been met. The Agreement for Services conforms to general industry standards.

The PCA concludes that features and amenities committed by the Applicant in its application to JHFA are included in the plans and specifications.

The project scope consists of interior and exterior renovations to the existing residential buildings, community building, leasing office building, and laundry building, including accessibility upgrades and limited site improvements. The scope of interior renovations will generally include replacement of existing kitchen appliances, cabinetry, countertops, and bathroom vanities and fixtures, replacement of flooring throughout, new light fixtures, new HVAC equipment, and new painted gypsum board walls and ceilings. The scope of exterior building improvements will generally include replacement of existing roofing, gutters and downspouts. The scope of site work improvements will



generally include repairs to existing sidewalks and curbs, resurfacing and striping of the parking areas, accessibility/path of travel upgrades, erosion control / landscaping, and jet cleaning of storm water piping / sewer line repair.

The scope of work also includes accessibility upgrades related to the existing laundry building, and the conversion of 8 existing dwelling units to mobility-impaired units per UFAS requirements, and the conversion of 4 units to hearing/vision-impaired units per UFAS requirements.

The total construction cost provided equals \$5,507,951 (including a 10% hard cost contingency), or \$43.50 per square foot of gross building (126,625 gross square feet) and \$35,307 per apartment (156 apartments). Partner's estimated costs are \$5,634,536, or \$44.50 per square foot of gross building and \$36,119 per apartment, a variance of approximately -2.3%, which is within an acceptable range when performing conceptual cost analysis reports.

Following a review of the scope of work, the construction schedule is of 334 days or approximately 11 months which appears reasonable.

Site Inspection:

Ben Johnson of Seltzer Management Group, Inc. conducted a site visit on March 30, 2019 for the Subject Development. The Subject Development is an existing, two phases, affordable housing development comprised of 15 two story buildings with 156 one and two bedroom units. Existing amenities include clubhouse/leasing office, stand alone laundry facility, two playgrounds, splash park and swimming pool. The property is located along Monaco Drive, approximately six miles north of downtown Jacksonville, just west of Interstate 95. The neighborhood is generally defined as Dunn Avenue to the north, the Trout River to the south, Lem Turner Road to the north and Interstate 95 to the east.

The immediately surrounding properties consist of an apartment community to the north; single family residential homes and a church to the south; a water treatment plant to the east; and single-family residential homes and a food mart to the west.

Commercial development is primarily located at the intersection of Dunn Avenue and Interstate 95, just to the north of the property, which includes a variety of anchored (Publix) shopping centers, big box (Sam's Club) and free standing retail centers, gas stations and convenience stores, small strip centers, and scattered offices.

There does not appear to be any apparent adverse conditions that would negatively affect this development nor impair the property's ability to attract tenants.

Features, Amenities, and

Resident Programs: Borrower committed to provide certain features and amenities and certain resident programs in the JHFA Application. These commitments are set forth in the attached Exhibit 2.

**Borrower Information**

Borrower Name: Monaco Arms Preservation, Ltd. ("Borrower")

Borrower Type: Florida Limited Partnership

Ownership Structure: Borrower is a Florida Limited Partnership registered with the State of Florida on November 16, 2018. A copy of the Limited Partnership Agreement was provided for the Borrower. The current Certificate of Status was verified with the Secretary of State.

The general partner of Borrower is Monaco Arms GP, LLC ("GP"), a Delaware Limited Liability Company registered with the State of Florida on November 15, 2018, as a Foreign Limited Liability Company with 0.01% ownership interest. Jeremy S. Bronfman is the Manager of GP. Members of the GP include 13 Hazeltine LLC - 5% ownership, SJB Management LLC ("SJB") - 36% ownership, ENB Family LLC - 24% ownership, Mathew Bronfman Family EMBT ("EMBT") - 19% ownership and Red Rocks 88, LLC ("Red Rocks") - 16% ownership. The sole member of SJB is Jeremy S. Bronfman. The sole member of Red Rocks is Jonathan A. Gruskin.

Mr. Gruskin is the current Limited Partner. Based upon a HC equity investment letter of intent, dated March 6, 2019, an affiliate of Boston Financial will purchase a 99.99% limited partner interest concurrent with or prior to closing.

Mr. Bronfman and Mr. Gruskin are affiliated with Lincoln Avenue Capital, LLC ("LAC"). LAC is a Delaware Limited Liability Company registered with the State of Florida on May 31, 2016. Copies of the Certification of Formation and Operating Agreement have been provided for LAC. The managers of LAC are Jeremy Bronfman and Eli Bronfman. LAC is comprised of Class A and Class B members, with Class A owning 80% of LAC and Class B owning the remaining 20%. LAC's Class A members include: JSB Family Capital LLC ("JSB") holding 45% ownership, Eli Bronfman holding 30%, and EMBT holding 25%. Jonathan Gruskin is a 100% owner of a Class B member. JSB, a Delaware limited liability company, was formed June 9, 2016, whose sole member is 1989 Trust. Jeremy Bronfman is a Trustee and beneficiary of the 1989 Trust. EMBT is a Delaware Trust for the benefit of Matthew Bronfman and his children. The original trust from which the EMBT succeeds, was created during World War II by Samuel Bronfman, the patriarch of the Bronfman Family. Current Trustees for the Trust are: Adam R. Bronfman, Edgar Bronfman Jr., Matthew Bronfman, Mayo Shattuck III, and Almog Geva.

Monaco Arms Developer, LLC ("Developer") is the development entity which has the same ownership structure as the Borrower.

Copies of the Articles of Incorporation and/or Organization and Certificates of Status have been provided on each of the pertinent ownership structure entities listed above.

Contact Information: Jonathan ("Yoni") A. Gruskin

212-554-2319 (telephone)

E-Mail: yoni@lincolnavecap.com

Address: 201 Santa Monica Boulevard, Suite 550  
Santa Monica, CA 90401

Federal Employer ID: 83-3099293

Experience: Borrower and GP: The Borrower and GP were formed to acquire, own, and operate the subject property, and have no development experience.

LAC: LAC was created by the Bronfman Family as a dedicated real estate operation with a particular focus on affordable housing in the United States. LAC has recent experience as General Partner and Developer for 30 properties including 20 in Florida totaling approximately 4,000 units.

SJB and Red Rocks: SJB and Red Rocks were created to act as investment vehicles for Jeremy Bronfman and Jonathon Gruskin.

Jeremy S. Bronfman: Jeremy Bronfman is the manager of the Bronfman family office. In this capacity, Jeremy oversees all aspects of operations and investment as well as direct oversight of Sixty Capital, an internal Hedge Fund. Before returning to his family business, Jeremy was CEO of Enigma Technologies Inc., a fast growing Big Data software company. Prior to Enigma he was an investment associate at both Island Capital (the parent entity of CIII Capital Partners) and JANA Partners. Jeremy began his career and became a partner at Iroquois Capital, where he identified opportunities in PIPE investments in small cap public companies.

Jonathan A. Gruskin: Jonathan Gruskin is a managing director at LAC. Prior to joining LAC, Mr. Gruskin worked at The Related Companies, where he focused on strategically positioning affordable properties in the company's legacy portfolio to maximize long-term wealth creation through tax credit re-syndications, refinancing's and dispositions. In his role he managed all aspects of tax credit transactions, including financial structuring, lender and syndicator selection, document negotiations, managing regulatory and local government issues, HAP contract renewals, and project management during the renovation phase. Before his tenure at Related, Mr. Gruskin worked for Citigroup Global Markets as an investment banking analyst in the public infrastructure group,

	where he focused on structuring, marketing and underwriting project finance tax exempt bonds.																
Credit Evaluation:	<p>Borrower, GP and Developer are newly formed entities that have no operating or credit history.</p> <p>A comprehensive credit report for LAC, dated March 25, 2019, reported no significant adversities.</p> <p>A comprehensive credit report for Jeremy Bronfman, dated March 25, 2019, reported no significant adversities.</p> <p>A comprehensive credit report for Jonathan Gruskin, dated March 25, 2019, reported no significant adversities.</p>																
Bank References:	<p>Borrower, GP and Developer are newly formed entities that have no business references.</p> <p>Bank references for LAC, Jeremy Bronfman and Jonathan Gruskin reported satisfactory depository and payment relationships.</p> <p>SMG has received December 31, 2018 bank statements and/or investment statements for LAC, Jeremy Bronfman and Jonathan Gruskin evidencing cash and equivalents as stated in the most currently submitted financial statements.</p>																
Financial Statements:	<p>Borrower, GP and Developer are newly formed entities that have no financial statements.</p> <p><u>LAC:</u></p> <table> <tr> <td>Cash and Cash Equivalents</td><td>\$ 3,278,872</td></tr> <tr> <td>Total Assets:</td><td>\$ 52,565,267</td></tr> <tr> <td>Total Liabilities:</td><td>\$ 21,980,378</td></tr> <tr> <td>Member Equity:</td><td>\$ 30,584,889</td></tr> </table> <p>The financial information is based upon certified internally prepared financial statements for the period ending December 31, 2018. Assets are primarily real estate, interests in mezzanine debt, developer fees receivable, pre development costs, and various accounts, notes, and member receivables. Seltzer reviewed the 2016 and 2017 U.S. Income Tax Returns, which were satisfactory.</p> <p><u>Jonathan Gruskin:</u></p> <table> <tr> <td>Cash and Cash Equivalents:</td><td>\$ 140,651</td></tr> <tr> <td>Total Assets:</td><td>\$9,394,482</td></tr> <tr> <td>Total Liabilities:</td><td>\$ 177,990</td></tr> <tr> <td>Net Worth:</td><td>\$9,216,492</td></tr> </table> <p>The financial information presented herein is based upon certified internally prepared financial statements as of December 31, 2018.</p>	Cash and Cash Equivalents	\$ 3,278,872	Total Assets:	\$ 52,565,267	Total Liabilities:	\$ 21,980,378	Member Equity:	\$ 30,584,889	Cash and Cash Equivalents:	\$ 140,651	Total Assets:	\$9,394,482	Total Liabilities:	\$ 177,990	Net Worth:	\$9,216,492
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Total Assets:	\$9,394,482																
Total Liabilities:	\$ 177,990																
Net Worth:	\$9,216,492																

Assets primarily consist of investments in securities and retirement accounts. Liabilities consist primarily of notes payable. Seltzer reviewed the 2016 and 2017 U.S. Income Tax Returns, which were satisfactory.

Jeremy S. Bronfman:

Cash and Cash Equivalents:	\$ 1,562,426
Total Assets:	\$ 40,073,868
Total Liabilities:	\$ 1,532,084
Net Worth:	\$ 38,541,784

The financial information is based upon internally prepared financial statements for the period ending December 31, 2018. Assets primarily consist of investments and loans receivable. Seltzer reviewed the 2016 and 2017 U.S. Income Tax Returns, which were satisfactory.

Contingent Liabilities:

Borrower, GP and Developer are newly formed entities that have no contingent liabilities.

LAC reports Construction Completion for one development and Operating Deficit Guarantees at five developments. Statement of Financial and Credit Affairs reports no pending legal actions, bankruptcies, foreclosures or unsatisfied judgments.

Jeremy Bronfman reports Operating Deficit Guarantees at five developments and various recapture, payment and repayment of unpaid developer fee guarantees primarily related to the five developments referenced above. A Statement of Financial and Credit Affairs reports no pending legal actions, bankruptcies, foreclosures or unsatisfied judgments.

Jonathan Gruskin reports Construction Completion and Operating Deficit Guarantees at four developments and a long term lease guarantee. A Statement of Financial and Credit Affairs for each report no pending legal actions, bankruptcies, foreclosures or unsatisfied judgments.

Summary:

Based upon the information provided, GP, LAC, Jonathan Gruskin, and Jeremy S. Bronfman, individually and through various corporate and partnership entities, appear to have the requisite experience and financial resources to develop and operate the Subject Development.

**Guarantor Information**

Guarantor Name:	Borrower, GP, LAC, SJB, Red Rocks and Developer; Jeremy Bronfman and Jonathan Gruskin, individually.
Guarantor Address:	201 Santa Monica Boulevard, Suite 550 Santa Monica, CA 90401
Contact Information:	Jonathan A. Gruskin <a href="mailto:yonil@lincolnavecap.com">yonil@lincolnavecap.com</a> Telephone (212) 554-2319
Guarantor Description:	The Borrower was formed expressly to own and operate the Subject Development. Principal owners of the GP appear to have the experience to purchase and rehabilitate the subject property. All named entities will provide guarantees.
Nature of the Guarantee:	<p>The Guarantors will sign standard JHFA Construction Completion, Environmental Indemnity, Recourse Obligation and Operating Deficit Guarantees. The Construction Completion Guarantee will be released upon 100% lien-free completion as approved by the Loan Servicer.</p> <p>For the MMRB Loan, Guarantors are to provide the standard JHFA Operating Deficit Guarantee. If requested in writing by Applicant, the Loan Servicer will consider a recommendation to release the Operating Deficit Guarantee if all conditions are met, including achievement of a 1.15x Debt Service Coverage ("DSC") Ratio on the MMRB Loan, as determined by the JHFA or its agent and 90% occupancy and 90% of the Gross Potential Rental Income, net of Utility Allowances, if applicable, for a period of 12 consecutive months, all certified by an independent Certified Public Accountant ("CPA"). The calculation of the DSC Ratio shall be made by JHFA or the Loan Servicer. Notwithstanding the above, the Operating deficit Guarantee shall not terminate earlier than three (3) years following the final Certificate of Occupancy ("C/O").</p>
Credit Evaluation:	Please refer to the Borrower Information section of this report.
Banking References:	Please refer to the Borrower Information section of this report.
Financial Statements:	Please refer to the Borrower Information section of this report.
Contingent Liabilities:	Please refer to the Borrower Information section of this report.
Summary:	Based upon the financial information provided, the Guarantors appear to have adequate financial strength to serve as the guarantors for the Subject Development.

**Syndicator Information**

Syndicator Name: Boston Financial Investment Management, LP ("Boston Financial")

Contact Person: Roy Faerber  
Senior Vice President, Equity Production

Telephone: (310) 860-4550  
E-Mail: [roy.fauber@bfim.com](mailto:roy.fauber@bfim.com)

Headquarter Address: 101 Arch Street  
Boston, MA 02110

Experience: Boston Financial has been a leader in real estate investment management for over 45 years. The company began in 1969 as a private partnership established to connect individual investors to affordable housing real estate investments. Over the following 17 years, Boston Financial was able to raise over \$700 million and invested in 62,000 apartments units nationwide. In 1986, after the enactment of the LIHTC program, Boston Financial was able to acquire low-income housing tax credits from developers by investing equity in their developments. Boston Financial was the first firm to introduce a public tax credit fund on Wall Street and the first for-profit to offer an institutional tax credit fund. They have over \$10 billion in equity invested in more than 2,000 properties since 1986. Boston Financial has since established a real estate valuation team, Market Advantage REVAC, and Corporate Intelligence Group, LLC, an in-house investigative group that assists with a variety of fact-finding specialties.

Financial Statements: Boston Financial is a 100% owned subsidiary of Orix USA which is a subsidiary of Orix Corporation. The Applicant provided Securities and Exchange Commission Form 6-K for the month of February 2019 which reflect significant liquidity and net worth.

Summary: Boston Financial has demonstrated that it has the experience and financial strength to serve as the syndicator for this Development.



**General Contractor Information**

General Contractor Name: Pyramid ETC Companies, LLC ("ETC")

Type: A New Jersey Limited Liability Company registered to do business in Florida

Contact Person: Michael Moroz  
Telephone (201) 825-8255

Address: 275 North Franklin Turnpike  
Ramsey, NJ 07446

Experience: ETC was founded in 2003 with focused efforts on the rehabilitation and new construction of large multifamily affordable housing complexes. ETC Companies, LLC is an alternate name according to the New Jersey Department of the Treasury Registration of Alternate Name, Limited Liability Company form executed as of November 14, 2003. ETC Companies has renovated or constructed over 11,228 units in 58 developments located in Massachusetts, New Jersey, New York, Connecticut, Florida, Maryland and Virginia.

License: ETC submitted the license of Robert S. Butwin, who is a Florida Certified General Contractor with license number CGC1511385. His contractor license was originally issued in Florida on June 7, 2006 and is valid through August 31, 2020.

Credit Evaluation: An April 19, 2019 Experian Business Profile Report for ETC reflects satisfactory credit data, no judgments, no liens, no UCC filings and one collection item that was in error. ETC submitted a letter addressing the collection item associated with a separate company.

Business References: Business references for ETC are satisfactory.

Financial Statements: ETC:

Cash and Cash Equivalents	\$23,701,733
Total Assets:	\$44,718,704
Total Liabilities:	\$10,657,617
Net Worth:	\$34,061,087

The financial information is based upon financial statements that were audited by Citrin Cooperman & Company LLP for the period ended December 31, 2017. Assets consist primarily of Cash and Equivalents and Contracts Receivable in the amounts of \$23.7 million and \$15.6 million, respectively. Liabilities consist primarily of Accounts Payable and Billings in Excess of Costs and Earnings in the amounts of \$3.7 million and \$6.3 million, respectively.

**Summary:**

ETC has the requisite experience and financial capacity to complete the proposed rehabilitation of the Development. A 100% payment and performance bond between the Applicant and ETC shall secure the general construction contract. ETC provided a Surety Letter from Wharton Surety dated May 24, 2018 stating that Zurich American Insurance Company is prepared to favorably consider requests for surety bonding falling within a \$100 Million single project and \$200 Million aggregate program in favor of ETC. Zurich American Insurance Company has an A.M. Best Rating of A+ XV.

SMG recommends that ETC be accepted as the general contractor subject to the conditions, if any, listed in the Recommendations section of this report.

**Property Manager Information**

Property Manager Name:	McCormack Baron Management, Inc. ("MBM")
Type:	A Missouri Corporation
Contact Information:	Shaun Gibbs, Area Manager 205-447-7685 (telephone)
Address:	720 Olive Street, Suite 2500 St. Louis, MO 63101
Experience:	MBM is an affiliate of McCormack Baron Salazar. MBM was founded in 1973 and is currently one of the largest real estate service companies in the United States. Their activities include property management, asset management, acquisition, development and operation of low-income affordable housing. This is accomplished with partnerships with local governments, housing authorities, non-profit, and government agencies. MBM manages conventional, mixed- income and affordable housing communities with a current portfolio that includes over 32,000 units under management in 25 states, Puerto Rico and the Virgin Islands.
Management Agreement:	Applicant submitted a draft Management Agreement between Applicant and MBM. The agreement shall be in effect for a period of one year, beginning on the commencement date and ending twelve calendar months thereafter. The term will be automatically renewed at the end of the original term and subsequent terms for additional 30 day terms, unless terminated in accordance with the terms of the agreement. A management fee equal to at the lesser of 5% of rental income or \$31.50 per unit per month, which equates to 3.4% of rental income. The management fee is subject to annual increases of the greater of three percent (3.00%) or the Urban Wage CPI adjustment factor based on September 30th of the prior year and the trailing 12 months prior. This adjustment amount will be imposed on January 1st of each year.
Management Plan:	Applicant submitted a Management Plan with MBM that appears satisfactory.
Summary:	The selection of MBM as a management company has previously been approved by the Asset Management Department of FHFC. The Asset Management Department of FHFC will need to approve the selection of MBM for the Subject Development prior to the commencement of lease-up activity. Continued approval will be contingent upon ongoing

satisfactory performance. Receipt and satisfactory review of a fully executed Management Agreement is a closing condition of this Report.

**Exhibit 1**  
**Monaco Arms II**  
**15 Year Income and Expense Projection**

FINANCIAL COSTS:		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
INCOME	OPERATING PRO FORMA															
	Gross Potential Rental Income	\$1,790,640	\$1,826,453	\$1,862,982	\$1,900,241	\$1,938,246	\$1,977,011	\$2,016,551	\$2,056,883	\$2,098,020	\$2,139,981	\$2,182,780	\$2,226,436	\$2,270,964	\$2,316,384	\$2,362,711
	Rent Subsidy (ODR)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Other Income:															
	Ancillary Income-Parking	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Miscellaneous	\$31,200	\$31,824	\$32,460	\$33,110	\$33,772	\$34,447	\$35,136	\$35,839	\$36,556	\$37,287	\$38,033	\$38,793	\$39,569	\$40,361	\$41,168
	Washer/Dryer Rentals	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Cable/Satellite Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Rent Concessions	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Alarm Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Gross Potential Income	\$1,821,840	\$1,858,277	\$1,895,442	\$1,933,351	\$1,972,018	\$2,011,459	\$2,051,688	\$2,092,721	\$2,134,576	\$2,177,267	\$2,220,813	\$2,265,229	\$2,310,534	\$2,356,744	\$2,403,879
	Less:															
	Economic Loss - Percentage:															
	Physical Vacancy Loss - Percentage: 4.0%	(\$72,874)	(\$74,331)	(\$75,818)	(\$77,334)	(\$78,881)	(\$80,458)	(\$82,068)	(\$83,709)	(\$85,383)	(\$87,091)	(\$88,833)	(\$90,609)	(\$92,421)	(\$94,270)	(\$96,155)
	Collection Loss - Percentage: 1.00%	(\$18,218)	(\$18,583)	(\$18,954)	(\$19,334)	(\$19,720)	(\$20,115)	(\$20,517)	(\$20,927)	(\$21,346)	(\$21,773)	(\$22,208)	(\$22,652)	(\$23,105)	(\$23,567)	(\$24,039)
Total Effective Gross Revenue		\$1,730,748	\$1,765,363	\$1,800,670	\$1,836,684	\$1,873,417	\$1,910,886	\$1,949,103	\$1,988,085	\$2,027,847	\$2,068,404	\$2,109,772	\$2,151,968	\$2,195,007	\$2,238,907	\$2,283,685
EXPENSES	Fixed:															
	Ground Lease	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Sub-Ground Lease	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Real Estate Taxes	\$130,950	\$134,879	\$138,925	\$143,093	\$147,385	\$151,807	\$156,361	\$161,052	\$165,884	\$170,860	\$175,986	\$181,265	\$186,703	\$192,304	\$198,074
	Insurance	\$81,900	\$84,357	\$86,888	\$89,494	\$92,179	\$94,945	\$97,793	\$100,727	\$103,748	\$106,861	\$110,067	\$113,369	\$116,770	\$120,273	\$123,881
	Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Variable:															
	Management Fee - Percentage: 3.5%	\$60,576	\$63,641	\$66,914	\$66,212	\$67,536	\$68,887	\$70,265	\$71,670	\$73,103	\$74,565	\$76,057	\$77,578	\$79,130	\$80,712	\$82,326
	General and Administrative	\$39,000	\$40,170	\$41,375	\$42,616	\$43,895	\$45,212	\$46,568	\$47,965	\$49,404	\$50,886	\$52,413	\$53,985	\$55,605	\$57,273	\$58,991
	Payroll Expenses	\$187,200	\$192,816	\$198,600	\$204,558	\$210,695	\$217,016	\$223,527	\$230,232	\$237,139	\$244,254	\$251,581	\$259,129	\$266,902	\$274,910	\$283,157
	Utilities	\$99,100	\$102,073	\$105,135	\$108,289	\$111,538	\$114,884	\$118,331	\$121,881	\$125,537	\$129,303	\$133,182	\$137,178	\$141,293	\$145,532	\$149,898
	Marketing and Advertising	\$1,600	\$1,648	\$1,697	\$1,748	\$1,801	\$1,855	\$1,910	\$1,968	\$2,027	\$2,088	\$2,150	\$2,215	\$2,281	\$2,350	\$2,420
	Maintenance and Repairs	\$124,800	\$128,544	\$132,400	\$136,372	\$140,463	\$144,677	\$149,018	\$153,488	\$158,093	\$162,836	\$167,721	\$172,752	\$177,935	\$183,273	\$188,771
	Grounds Maintenance and Landscaping	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Resident Programs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Contract Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Other-Pest Control	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Reserve for Replacements	\$47,268	\$48,686	\$50,147	\$51,651	\$53,201	\$54,797	\$56,440	\$58,134	\$59,878	\$61,674	\$63,524	\$65,430	\$67,393	\$69,415	\$71,497
Total Expenses		\$772,394	\$796,814	\$820,082	\$844,035	\$868,693	\$894,079	\$920,213	\$947,116	\$974,813	\$1,003,326	\$1,032,681	\$1,062,901	\$1,094,012	\$1,126,041	\$1,159,015
Net Operating Income		\$958,354	\$968,549	\$980,589	\$992,649	\$1,004,724	\$1,016,806	\$1,028,890	\$1,040,969	\$1,053,034	\$1,065,078	\$1,077,091	\$1,089,067	\$1,100,995	\$1,112,866	\$1,124,671
DEBT SERVICE	Debt Service Payments															
	First Mortgage - Citi	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534
	Second Mortgage	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Third Mortgage	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Fourth Mortgage	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Fifth Mortgage	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	All Other Mortgages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	First Mortgage Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Second Mortgage Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Third Mortgage Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Fourth Mortgage Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Fifth Mortgage Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	All Other Mortgages Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service Payments		\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534	\$825,534
Cash Flow After Debt Service		\$132,820	\$143,015	\$155,054	\$167,115	\$179,190	\$191,272	\$203,356	\$215,435	\$227,500	\$239,544	\$251,557	\$263,533	\$275,461	\$287,332	\$299,136
Debt Service Coverage Ratios																
DSC - First Mortgage plus Fees		1.161	1.173	1.188	1.202	1.217	1.232	1.246	1.261	1.276	1.290	1.305	1.319	1.334	1.348	1.362
DSC - Second Mortgage plus Fees		1.161	1.173	1.188	1.202	1.217	1.232	1.246	1.261	1.276	1.290	1.305	1.319	1.334	1.348	1.362
DSC - Third Mortgage plus Fees		1.161	1.173	1.188	1.202	1.217	1.232	1.246	1.261	1.276	1.290	1.305	1.319	1.334	1.348	1.362
DSC - Fourth Mortgage plus Fees		1.161	1.173	1.188	1.202	1.217	1.232	1.246	1.261	1.276	1.290	1.305	1.319	1.334	1.348	1.362
DSC - Fifth Mortgage plus Fees		1.161	1.173	1.188	1.202	1.217	1.232	1.246	1.261	1.276	1.290	1.305	1.319	1.334	1.348	1.362
DSC - All Mortgages and Fees		1.161	1.173	1.188	1.202	1.217	1.232	1.246	1.261	1.276	1.290	1.305	1.319	1.334	1.348	1.362
Financial Ratios																
Operating Expense Ratio		44.6%	45.1%	45.5%	46.0%	46.4%	46.8%	47.2%	47.6%	48.1%	48.5%	48.9%	49.4%	49.8%	50.3%	50.8%
Break-Even Ratio		87.9%	87.4%	86.9%	86.4%	86.0%	85.6%	85.2%	84.8%	84.4%	84.1%	83.7%	83.4%	83.2%	82.9%	82.6%

## COMPLETENESS AND ISSUES CHECKLIST

DEVELOPMENT NAME: Monaco Arms I & IIDATE: April 24, 2019

In accordance with applicable Program Rule(s), the Borrower is required to submit the information required to evaluate, complete, and determine its sufficiency in satisfying the requirements for Credit Underwriting to the Credit Underwriter in accordance with the schedule established by the Florida Housing Finance Corporation ("Florida Housing" or "FHFC"). The following items must be satisfactorily addressed. "Satisfactorily" means that the Credit Underwriter has received assurances from third parties unrelated to the Borrower that the transaction can close within the allotted time frame. Unsatisfactory items, if any, are noted below and in the "Issues and Concerns" section of the Executive Summary.

CREDIT UNDERWRITING REQUIRED ITEMS:	STATUS	NOTE
	Satis. /Unsatis.	
1. The Development's final "as submitted for permitting" plans and specifications. Note: Final "signed, sealed, and approved for construction" plans and specifications will be required thirty days before closing.	Satis.	
2. Final site plan and/or status of site plan approval.	Satis.	
3. Permit Status.	Satis.	
4. Pre-construction analysis ("PCA").	Satis.	
5. Survey.	Satis.	
6. Complete, thorough soil test reports.	Satis.	
7. Full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice.	Satis.	
8. Market Study separate from the Appraisal.	Satis.	
9. Environmental Site Assessment – Phase I and/or Phase II if applicable (If Phase I and/or II disclosed environmental problems requiring remediation, a plan, including time frame and cost, for the remediation is required). If the report is not dated within one year of the application date, an update from the assessor must be provided indicating the current environmental status.	Satis.	
10. Audited financial statements for the most recent fiscal year ended or acceptable alternative as stated in the Rule for credit enhancers, Borrower, general partner, principals, guarantors and general contractor.	Satis.	1
11. Resumes and experience of Borrower, general contractor and management	Satis.	

agent.		
12. Credit authorizations; verifications of deposits and mortgage loans.	Satis.	
13. Management Agreement and Management Plan.	Satis.	2
14. Firm commitment from the credit enhancer or private placement purchaser, if any.	N/A	
15. Firm commitment letter from the syndicator, if any.	Satis.	
16. Firm commitment letter(s) for any other financing sources.	Satis.	
17. Updated sources and uses of funds.	Satis.	
18. Draft construction draw schedule showing sources of funds during each month of the construction and lease-up period.	Satis.	
19. Fifteen-year income, expense, and occupancy projection.	Satis.	
20. Executed general construction contract with "not to exceed" costs.	Satis.	
21. HC ONLY: 15% of the total equity to be provided prior to or simultaneously with the closing of the construction financing.	Satis.	
22. Any additional items required by the credit underwriter.	Satis.	

**NOTES AND APPLICANT'S RESPONSES:**

1. Receipt and satisfactory review updated financial statements for the principal Guarantors.
2. Receipt and Satisfactory review of fully executed Management Agreement with terms not substantially different from those underwritten herein.

## HC Allocation Calculation

Section I: Qualified Basis Calculation	
Development Cost	\$20,460,037
Less Land Cost	(\$1,247,125)
Less Federal Funds	\$0
Less Other Ineligible Cost	(\$1,841,290)
Less Disproportionate Standard	\$0
Acquisition Eligible Basis	\$10,104,193
Rehabilitation Eligible Basis	\$7,267,430
Total Eligible Basis	\$17,371,622
Applicable Fraction	100.00%
DDA/QCT Basis Credit	130.00%
Acquisition HC Percentage	3.40%
Rehabilitation HC Percentage	3.40%
Annual HC on Acquisition	\$343,543
Annual HC on Rehabilitation	\$321,220
Annual Housing Credit Allocation	\$664,763

### Notes to the Qualified Basis Calculation:

1. Other Ineligible Costs primarily include a portion of Accounting fees, FHFC administrative, application and HC compliance fees, legal fees, Market Study, permanent loan origination and commitment fees and closing costs, bond cost of issuance and reserves required by the syndicator.
2. The Borrower committed to a set aside of 100%. Therefore, SMG has utilized an Applicable Fraction of 100%.
3. Per the Application, this Development is not located in a Difficult to Development Area ("DDA") but is in a Qualified Census Tract ("QCT"), 0104.02. As such, the Subject Development is eligible to use the 130% multiplier for the DDA/QCT Basis Credit.
4. A Housing Credit Percentage of 3.40% is used based on a rate of 3.25% plus 15 basis points.



Section II: Gap Calculation	
Total Development Cost (Including Land and Ineligible Costs)	\$20,460,037
Less Mortgages	(\$13,770,000)
Less Grants	\$0
Equity Gap	\$6,690,037
Percentage to Investment Partnership	99.990%
HC Syndication Pricing	\$0.9410
HC Required to Meet Gap	\$7,110,208
Annual HC Required	\$711,021

*Notes to the Gap Calculation:*

1. Mortgages include the First Mortgage provided by Citi.
2. HC Syndication Pricing and Percentage to Investment Partnership are based upon the draft LPA.

Section III: Tax-Exempt Bond 50% Test	
Total Depreciable Cost	\$17,371,622
Plus Land Cost	\$1,247,125
Aggregate Basis	\$18,618,747
Tax-Exempt Bond Amount	\$16,380,000
Less Debt Service Reserve	\$0
Less Proceeds Used for Costs of Issuance	\$0
Plus Tax-exempt GIC earnings	\$0
Tax-Exempt Proceeds Used for Building and Land	\$16,380,000
Proceeds Divided by Aggregate Basis	87.98%

*Notes to 50% Test:*

1. SMG estimates the Tax-Exempt Bond amount to be 87.98% of Depreciable Development Costs plus Land Acquisition Costs. If, at the time of Final Cost Certification, the Tax-Exempt Bond Amount is less than 50%, developer fees will have to be reduced by an amount to ensure compliance with the 50% Test. That may, in turn, result in a reduction to HC Equity.

Section IV: Summary	
HC per Qualified Basis	\$664,763
HC per Gap Calculation	\$711,021
Annual HC Recommended	\$664,763

*Notes to the Summary:*

1. The Annual HC Recommended is based on the Qualified Basis Calculation.

**A RESOLUTION OF THE JACKSONVILLE HOUSING FINANCE AUTHORITY APPROVING AND AUTHORIZING THE ISSUANCE OF JACKSONVILLE HOUSING FINANCE AUTHORITY MULTIFAMILY MORTGAGE REVENUE NOTE (MONACO ARMS APARTMENTS), SERIES 2019A, AND ITS MULTIFAMILY MORTGAGE REVENUE NOTE (MONACO ARMS APARTMENTS), SERIES 2019B, IN ONE OR MORE SERIES, IN A TOTAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$16,830,000 FOR THE BENEFIT OF MONACO ARMS PRESERVATION, LTD., A FLORIDA LIMITED PARTNERSHIP, TO PROVIDE FINANCING FOR THE ACQUISITION, REHABILITATION AND EQUIPPING OF A MULTIFAMILY RESIDENTIAL HOUSING PROJECT LOCATED IN THE CITY OF JACKSONVILLE, FLORIDA, COMMONLY KNOWN AS "MONACO ARMS APARTMENTS"; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE FUNDING LOAN AGREEMENT, THE BORROWER LOAN AGREEMENT, THE LAND USE RESTRICTION AGREEMENT, THE GOVERNMENTAL LENDER NOTES, THE ASSIGNMENT OF MORTGAGE AND LOAN DOCUMENTS AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE AND DELIVERY OF THE GOVERNMENTAL LENDER NOTES; AUTHORIZING THE NEGOTIATED SALE AND PRIVATE PLACEMENT OF THE GOVERNMENTAL LENDER NOTES; AUTHORIZING THE APPOINTMENT OF A FISCAL AGENT; DESIGNATING SELTZER MANAGEMENT GROUP, INC. AS THE INITIAL ISSUER SERVICER, COMPLIANCE AGENT, FINANCIAL MONITOR AND APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF A COMPLIANCE MONITORING AGREEMENT, CONSTRUCTION LOAN AND MORTGAGE SERVICING AGREEMENT AND FINANCIAL MONITORING AGREEMENT; APPROVING A CREDIT UNDERWRITING REPORT; AUTHORIZING ALL OTHER NECESSARY ACTIONS, AGREEMENTS, CERTIFICATES OR INSTRUMENTS REQUIRED TO ISSUE AND DELIVER THE GOVERNMENTAL LENDER NOTES; AND PROVIDE AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida (the "State") has enacted the Florida Housing Finance Authority Law, Sections 159.601 through 159.623 Part IV, Florida Statutes, as amended (the "Act"), pursuant to which the State has empowered each county in the State to create by ordinance a separate public body corporate and politic to be known as a housing finance authority of the county for the purpose of alleviating a shortage of housing and creating capital for investment in housing in the area of operation of such housing finance authority; and

**WHEREAS**, the Jacksonville Housing Finance Authority (the "Issuer") is empowered to issue its revenue bonds, notes or other evidences of indebtedness to finance the acquisition, construction and development of multifamily rental housing for persons of low, middle or moderate income at prices or rentals they can afford; and

**WHEREAS**, the Issuer has the power to issue revenue bonds for the purposes described in the Act, including, without limitation, to refund outstanding obligations of the Issuer, to finance the purchase of mortgage loans originated to persons of low and moderate income and to stimulate the acquisition, construction and rehabilitation of housing within Duval County, Florida (the “County”) and

**WHEREAS**, the Issuer has determined that there exists a shortage of safe and sanitary housing for persons and families of moderate middle and lesser income within the County; and

**WHEREAS**, pursuant to the Act, and the Funding Loan Agreement by and among the Issuer, Citibank N.A as Funding Lender (the “Funding Lender”) and The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent (the “Fiscal Agent”), dated as of May 1, 2019 (the “Funding Loan Agreement”), Monaco Arms Preservation, Ltd. (the “Borrower”) has requested that the Issuer issue its Jacksonville Housing Finance Authority Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A and its Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (collectively, the “Governmental Lender Notes”); and

**WHEREAS**, the Issuer has determined to issue, sell, and deliver the Governmental Lender Notes in an amount not to exceed \$16,830,000 for the purpose of funding the loan (the “Loan”); and

**WHEREAS**, to secure payment of the Governmental Lender Notes, the Issuer, and the Fiscal Agent will enter into the Funding Loan Agreement to provide for, among other things, the security for the Governmental Lender Notes; and

**WHEREAS**, the Issuer and the Borrower will enter into the hereinafter described Borrower Loan Agreement (the “Borrower Loan Agreement”) with respect to the Governmental Lender Notes, pursuant to which a loan to the Borrower in the amount of the Loan for the Project will be made and secured; and

**WHEREAS**, as a condition to making the Loan, the Borrower will enter into that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of May 1, 2019 (the “Security Agreement”) in favor of the Issuer;

**WHEREAS**, the Security Agreement along with certain other documents described herein will be assigned by the Issuer to the Fiscal Agent and the Funding Lender pursuant to that certain Assignment of Mortgage and Loan Documents (the “Assignment”); and

**WHEREAS**, as a condition of facilitating the Loan and in connection with the issuance of the Governmental Lender Notes, the Issuer, the Fiscal Agent and the Borrower will enter into the hereinafter described Land Use Restriction Agreement in order to preserve the tax-exempt status of the Governmental Lender Notes; and

**WHEREAS**, the Loan shall be evidenced by two promissory notes delivered by the Borrower to the Issuer and assigned to the Funding Lender and the Fiscal Agent (collectively, the "Notes"); and

**WHEREAS**, the Issuer has determined that a negotiated sale and private placement of the Governmental Lender Notes to the Funding Lender is in the best interest of the Issuer; and

**WHEREAS**, the Funding Lender has expressed its intention to purchase the Governmental Lender Notes authorized hereby in whole, and the Issuer finds that the public interest and necessity require that the Issuer at this time make arrangements for the sale of such Governmental Lender Notes; and

**WHEREAS**, in order to further secure payment of the Governmental Lender Notes, certain guaranties (the "Guaranties") will be provided by the Borrower, the General Partner, SJB Management LLC, Red Rocks 88, LLC, and Monaco Arms Developer, LLC and Jeremy S. Bronfman and Jonathan A. Gruskin, individually, in favor of the Issuer and assigned to the Fiscal Agent; and

**WHEREAS**, the Issuer desires to appoint The Bank of New York Mellon Trust Company, N.A. as Fiscal Agent; and

**WHEREAS**, Seltzer Management Group, Inc., a Florida corporation ("Seltzer") will initially be the issuer servicer, compliance monitoring agent and financial monitor with respect to the Governmental Lender Notes; and

**WHEREAS**, the Issuer desires to approve the Credit Underwriting Report prepared by Seltzer for the Issuer dated the date thereof (the "Credit Underwriting Report"); and

**WHEREAS**, the Issuer desires to grant to its appropriate officers the authority to do and perform and execute all other documents and instruments, not mentioned herein, necessary to issue the Governmental Lender Notes; and

**NOW, THEREFORE, BE IT RESOLVED BY THE JACKSONVILLE HOUSING FINANCE AUTHORITY:**

**Section 1. Findings and Determinations.** The Issuer hereby finds and determines that:

(a) All statements and provisions of the foregoing recitals are incorporated herein as findings and determinations of the Issuer.

(b) A negotiated sale and private placement of the Governmental Lender Notes is in the best interest of the Issuer in light of the prevailing unsettled condition of the bond market, and the necessity of complying with provisions of the Internal Revenue Code of 1986, as

amended, which make it essential that the Issuer have maximum flexibility in structuring the Governmental Lender Notes, which flexibility would not be possible in competitive bidding.

(c) Based upon such findings, the Issuer approves the negotiated sale and private placement of the Governmental Lender Notes to the Funding Lender.

(d) Prior to executing and delivering the Funding Loan Agreement, the Issuer shall have received disclosure statements from the Funding Lender setting forth the information required by Section 218.385, Florida Statutes, as amended.

(e) In addition to the words and terms defined or described herein, and unless the context otherwise requires, the terms defined in the documents identified and described in the foregoing recitals and in this Resolution shall have the meanings herein that are ascribed to them in the Funding Loan Agreement and/or the Borrower Loan Agreement.

**Section 2. Authorization and Details of the Governmental Lender Notes.** In accordance with the Act and the Funding Loan Agreement, the Issuer hereby authorizes the issuance of not to exceed \$16,830,000 total aggregate principal amount of the Governmental Lender Notes to be designated as "Jacksonville Housing Finance Authority Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A" and "Jacksonville Housing Finance Authority Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B" or such other name or series designation as may be determined by the Issuer. The Governmental Lender Notes shall bear interest payable at such times and in such manner, and shall have maturity dates not to exceed 40 years from the date of issuance of the Governmental Lender Notes and shall be subject to redemption, all as described in the Funding Loan Agreement. The Governmental Lender Notes are issuable as provided in the Funding Loan Agreement.

**Section 3. Approval of Funding Loan Agreement.** The Issuer hereby approves the form and content of the Funding Loan Agreement among the Issuer, the Funding Lender and the Fiscal Agent attached hereto as **EXHIBIT A**. The Chair, Vice Chair or any member of the Issuer is hereby authorized to execute and deliver the Funding Loan Agreement on behalf of the Issuer in substantially the form attached hereto as **EXHIBIT A**, with such changes, modifications, insertions and deletions as the Chair, Vice Chair or any member of the Issuer, with the advice of Bond Counsel and the Office of the General Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Issuer.

**Section 4. Approval of Borrower Loan Agreement.** The Issuer hereby approves the form and content of the Borrower Loan Agreement, including the form of the Notes attached thereto (the "Borrower Loan Agreement"), by and between the Issuer and the Borrower attached hereto as **EXHIBIT B**. The Chair, Vice Chair or any member of the Issuer is hereby authorized to execute and deliver the Borrower Loan Agreement on behalf of the Issuer in substantially the form attached hereto as **EXHIBIT B**, with such changes, modifications, insertions and deletions as the Chair, Vice Chair or any member of the Issuer, with the advice of Bond Counsel and the

Office of the General Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Issuer.

**Section 5. Approval of Land Use Restriction Agreement.** The Issuer hereby approves the form and content of the Land Use Restriction Agreement by and among the Issuer, the Borrower and the Fiscal Agent attached hereto as **EXHIBIT C** (the "Land Use Restriction Agreement"). The Chair, Vice Chair or any member of the Issuer is hereby authorized to execute and deliver the Land Use Restriction Agreement on behalf of the Issuer in substantially the form attached hereto as **EXHIBIT C**, with such changes, modifications, insertions and deletions as the Chair, Vice Chair or any member of the Issuer, with the advice of Bond Counsel and the Office of the General Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Issuer.

**Section 6. Approval of Compliance Monitoring Agreement, Construction Loan and Mortgage Servicing Agreement and Credit Underwriting Report.** Seltzer is hereby appointed to perform the duties of compliance monitoring agent pursuant to the Compliance Monitoring Agreement by and among the Issuer, the Borrower, the Fiscal Agent and Seltzer (the "Compliance Monitoring Agreement"), the duties of Issuer Servicer under the Construction Loan and Mortgage Servicing Agreement by and among the Issuer, the Borrower, the Fiscal Agent and Seltzer (the "Servicing Agreement") and the duties of the financial monitor under the Financial Monitoring Agreement by and among the Issuer, the Borrower, the Fiscal Agent and Seltzer (the "Financial Monitoring Agreement"). The forms of the Compliance Monitoring Agreement, the Servicing Agreement and the Financial Monitoring Agreement attached hereto as **EXHIBITS D, E and F** respectively, are hereby approved. The Chair, Vice Chair or any member of the Issuer is hereby authorized to execute and deliver the Compliance Monitoring Agreement, the Servicing Agreement and the Financial Monitoring Agreement on behalf of the Issuer in substantially the forms attached hereto as **EXHIBITS D, E and F**, with such changes, modifications, insertions and deletions as the Chair, Vice Chair or any member of the Issuer, with the advice of Bond Counsel and the Office of the General Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Issuer. The Issuer hereby approves the Credit Underwriting Report prepared by Seltzer in connection with the Project and delivered to the Issuer.

**Section 7. Approval of Assignment.** The Issuer hereby approves the form of the Assignment attached hereto as **EXHIBIT G**. The Chair, Vice Chair or any member of the Issuer is hereby authorized to execute and deliver the Assignment on behalf of the Issuer, and the Assistant Secretary of the Issuer is authorized to attest thereto, in substantially the form attached hereto as **EXHIBIT G**, with such changes, modifications, insertions and deletions as the Chair, Vice Chair or any member of the Issuer, with the advice of Bond Counsel and the Office of the General Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Issuer.

**Section 8. Execution of Governmental Lender Notes.** The Chair, Vice Chair or any member of the Issuer and Secretary or Assistant Secretary of the Issuer are hereby authorized and directed to execute, by manual or facsimile signature, the Governmental Lender Notes in definitive form. The Governmental Lender Notes shall be in substantially the form set forth in the Funding Loan Agreement, with such changes, modifications, insertions and deletions as the Chair, Vice Chair or any member of the Issuer, with the advice of Bond Counsel and the Office of the General Counsel may deem necessary and appropriate. The execution and delivery of the Governmental Lender Notes by the aforementioned persons shall be conclusive evidence of the Issuer's approval and authorization thereof.

**Section 9. Authentication and Delivery of Governmental Lender Notes.** Upon their execution in the form and manner set forth in the Funding Loan Agreement, the Issuer shall deliver the Governmental Lender Notes to the Fiscal Agent for authentication, and the Fiscal Agent is hereby authorized and directed to authenticate and to deliver said Governmental Lender Notes to the Funding Lender in accordance with the Funding Loan Agreement upon receipt of the purchase price therefor.

**Section 10. Appointment of Fiscal Agent and Placement Agent.** RBC Capital Markets, LLC is hereby appointed as Placement Agent in connection with the issuance of the Governmental Lender Notes and The Bank of New York Mellon Trust Company, N.A. is hereby appointed as Fiscal Agent.

**Section 11. Authorizations and Further Actions.** The Chair, Vice Chair or other member of the Issuer, the Finance Director and such other officers and employees or agents of the Issuer as may be designated by the Chair, are each designated as agents of the Issuer in connection with the issuance and delivery of the Governmental Lender Notes and are authorized and empowered, collectively or individually, to take all actions and steps, to approve, execute and deliver, if appropriate, all contracts, agreements and such other instruments, to approve the form of and approve such changes and complete all omissions and blank spaces in such instruments, documents and contracts, including the exhibits thereto, and to take such other and further actions as they may deem necessary or desirable to accomplish the intent thereof, including the sale, issuance and delivery of the Governmental Lender Notes, including, but not limited to, in consultation with the Issuer's Financial Advisors, Bond Counsel and the Office of the General Counsel, executing and delivering certain additional documents as may be necessary; provided, however, that such terms and conditions set forth in such additional documents shall not be inconsistent with the provisions of this Resolution or the Credit Underwriting Report.

**Section 12. Severability.** If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.



**Section 13. Repealing Clause.** All resolutions or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**Section 14. Effective Date.** This Resolution shall take effect immediately upon its adoption.

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**APPROVED AND ADOPTED** by the Jacksonville Housing Finance Authority this 3rd day of May, 2019.

[SEAL]

**JACKSONVILLE HOUSING  
FINANCE AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
William I. Gulliford, III, Chair

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

**APPROVED AS TO LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Office of the General Counsel

## **EXHIBIT LIST**

EXHIBIT A	FORM OF FUNDING LOAN AGREEMENT
EXHIBIT B	FORM OF BORROWER LOAN AGREEMENT
EXHIBIT C	FORM OF LAND USE RESTRICTION AGREEMENT
EXHIBIT D	FORM OF COMPLIANCE MONITORING AGREEMENT
EXHIBIT E	FORM OF CONSTRUCTION AND LOAN SERVICING AGREEMENT
EXHIBIT F	FORM OF FINANCIAL MONITORING AGREEMENT
EXHIBIT G	FORM OF ASSIGNMENT OF MORTGAGE AND LOAN DOCUMENTS

**EXHIBIT A**  
**FORM OF FUNDING LOAN AGREEMENT**

**FUNDING LOAN AGREEMENT**

Among

**CITIBANK, N.A.,**  
as Funding Lender

and

**JACKSONVILLE HOUSING FINANCE AUTHORITY**  
as Governmental Lender

and

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

Dated as of May 1, 2019

**Relating to:**

**[\$\_\_\_\_\_]  
Jacksonville Housing Finance Authority  
Multifamily Mortgage Revenue Note  
(Monaco Arms Apartments), Series 2019A**

and

**[\$\_\_\_\_\_]  
Jacksonville Housing Finance Authority  
Multifamily Mortgage Revenue Note  
(Monaco Arms Apartments), Series 2019B**

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## **FUNDING LOAN AGREEMENT**

This Funding Loan Agreement, dated as of May 1, 2019 (this "Funding Loan Agreement"), is entered into by CITIBANK, N.A. (together with any successor hereunder, the "Funding Lender"), the JACKSONVILLE HOUSING FINANCE AUTHORITY, a public body corporate and politic organized and existing under the laws of the State of Florida (together with its successors and assigns, the "Governmental Lender"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as fiscal agent (together with any successor fiscal agent hereunder, the "Fiscal Agent").

### **RECITALS**

WHEREAS, in accordance with the Florida Housing Finance Authority Law, Part IV, Chapter 159, Florida Statutes, as amended and supplemented from time to time, Chapter 52 Ordinance Code of the City of Jacksonville (the "City"), as amended, Ordinance 2014-185-E of the City, Resolution No. [\_\_\_\_\_] of the City adopted on [\_\_\_\_], 2019, a Resolution of the Governmental Lender adopted on February 20, 2019 and a Resolution of the Governmental Lender adopted on April [\_\_\_], 2019 (collectively, the "Act") and other applicable provisions of law, the Governmental Lender is empowered to issue its revenue bonds, notes or other evidences of indebtedness to finance the acquisition, rehabilitation and development of multifamily rental housing for persons of low, moderate and middle income at prices or rentals they can afford; and

WHEREAS, the Act authorizes the Governmental Lender: (a) to make loans to provide financing for multifamily residential housing located within the jurisdiction of the Governmental Lender; (b) to issue its revenue bonds, notes or other evidence of indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans in order to secure the payment of the principal or prepayment amount of and interest on such bonds, debentures, notes or other evidence of indebtedness; and

WHEREAS, Monaco Arms Preservation, Ltd., a Florida limited partnership (together with its successors and assigns, the "Borrower"), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender will (i) advance funds (the "Funding Loan") to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a loan (the "Borrower Loan") to the Borrower to finance the acquisition and rehabilitation of multifamily residential housing facilities to be located at 10415, Jacksonville, Duval County, Florida 32218, to be commonly known as Monaco Arms Apartments (the "Project"); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Borrower Loan Agreement dated as of May 1, 2019 (as it may be supplemented or amended, the "Borrower Loan Agreement"), whereby

the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Borrower Construction/Permanent Note and its Borrower Construction Note (as defined in the Borrower Loan Agreement, each a "Borrower Note" and, together, the "Borrower Notes") and the obligations of the Borrower under the Borrower Notes will be secured by a lien on and security interest in the Project pursuant to a Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time, the "Security Instrument"), encumbering the Project, made by the Borrower in favor of the Governmental Lender and assigned to the Funding Lender and the Fiscal Agent to secure the performance by the Governmental Lender of its obligations under this Funding Loan Agreement; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A (the "Governmental Lender Construction/Permanent Note") and its Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (the "Governmental Lender Construction Note"), each dated the Closing Date, with respect to funds advanced and to be advanced under the Funding Loan Agreement, evidencing its limited obligation to make the payments due to the Funding Lender as provided in this Funding Loan Agreement; and

WHEREAS, all things necessary to make this Funding Loan Agreement, the valid, binding and legal limited obligations of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Notes, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS FUNDING LOAN AGREEMENT WITNESSETH:

It is hereby covenanted and declared that in consideration of the premises and the mutual representations, covenants and agreements herein contained, (i) the Governmental Lender Notes are to be delivered to evidence the payment obligations of the Governmental Lender pursuant to this Funding Loan Agreement and (ii) the collateral subject to this Funding Loan Agreement is to be held and applied by the Funding Lender or Fiscal Agent, as applicable, subject to the covenants, conditions and trusts hereinafter set forth, and the Governmental Lender does hereby covenant and agree to and with the Funding Lender and the Fiscal Agent, for the benefit (except as otherwise expressly provided herein) of the Funding Lender, as follows:

**ARTICLE I**  
**DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Funding Loan Agreement, except as otherwise expressly provided or unless the context otherwise clearly requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

(b) The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

(c) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to “Approved Accounting Method” refer to such principles as they exist at the date of application thereof.

(e) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(g) References to the Governmental Lender Notes as “tax exempt” or to the “tax exempt status” of the Governmental Lender Notes are to the exclusion of interest on the Governmental Lender Notes (other than any portion of the Governmental Lender Notes held by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

(h) The following terms have the meanings set forth below:

“Act” shall have the meaning assigned to such term in the recitals above.

“Additional Borrower Payments” shall have the meaning given such term in the Borrower Loan Agreement.

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

“Approved Transferee” means (1) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (2) an affiliate of the Funding Lender or (3) a trust or custodial arrangement established by the Funding Lender or one of its affiliates, the beneficial interests in which will be owned only by QIBs.

“Authorized Amount” shall mean \$[\_\_\_\_\_], the aggregate maximum principal amount of the Funding Loan under this Funding Loan Agreement.

“Authorized Attesting Officer” means the Chair, Vice Chair, Secretary or Assistant Secretary of the Governmental Lender, or such other officer or official or member of the Governmental Lender, including but not limited to the Finance Director of the Governmental Lender who, in accordance with the law of the State, the bylaws or other governing documents of the Governmental Lender, or practice or custom, regularly attests or certifies official acts and records of the Governmental Lender, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

“Authorized Governmental Lender Representative” shall mean the Chair, Vice Chair, and any other, officer or employee of the Governmental Lender designated to perform a specified act, to sign a specified document or to act generally on behalf of the Governmental Lender as evidenced by a written certificate furnished to the Funding Lender, the Fiscal Agent, the Servicer (if any) and the Borrower containing the specimen signature of such person and signed on behalf of the Governmental Lender by the Chair or Vice Chair of the Governmental Lender. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Governmental Lender Representative.

“Borrower” shall mean Monaco Arms Preservation, Ltd., a Florida limited partnership, and its successors and assigns.

“Borrower Equity Account” shall mean the account by that name created and established in the Project Fund under this Funding Loan Agreement.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of the Borrower Loan Amount, as evidenced by the Borrower Notes.

“Borrower Loan Agreement” shall mean the Borrower Loan Agreement dated as of May 1, 2019, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

“Borrower Loan Agreement Default” shall mean any event of default set forth in 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall “exist” if a Borrower

Loan Agreement Default shall have occurred and be continuing beyond any applicable cure period.

“Borrower Loan Amount” shall mean the amount of \$[\_\_\_\_\_].

“Borrower Loan Documents” shall have the meaning given such term in the Borrower Loan Agreement.

“Borrower Note” or “Borrower Notes” shall mean the “Borrower Note” or the “Borrower Notes” as defined in the Borrower Loan Agreement.

“Business Day” shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which the offices of the Fiscal Agent in Jacksonville, Florida or federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

"City" means the City of Jacksonville, Florida.

“Closing Cost Account” shall mean the account by that name created and established in the Expense Fund under this Funding Loan Agreement.

“Closing Costs” shall mean the costs relating to the delivery of the Governmental Lender Notes.

“Closing Date” shall mean the date that initial Funding Loan proceeds are disbursed hereunder.

“Code” shall mean the Internal Revenue Code of 1986, as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Conditions to Conversion” shall have the meaning given such term in the Construction Funding Agreement.

“Construction Funding Agreement” means that certain Construction Funding Agreement dated as of May 1, 2019, between the Funding Lender, as agent for the Governmental Lender, and the Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during rehabilitation, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“Contingency Draw-Down Agreement” means that certain Contingency Draw-Down Agreement of even date herewith among the Funding Lender, the Borrower and the Fiscal Agent

relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.

“Control” shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

“County” shall mean Duval County, Florida.

“Default” shall mean the occurrence of an event, which, under any Funding Loan Document, would, but for the giving of notice or passage of time, or both, be an event of default under the applicable Funding Loan Document or a Borrower Loan Agreement Default.

“Draw-Down Notice” shall mean a notice described in Section 1.01 of the Contingency Draw-Down Agreement regarding the conversion of the Funding Loan from a draw down loan to a fully funded loan.

“Equity Investor” shall have the meaning ascribed thereto in the Borrower Loan Agreement.

“Event of Default” shall have the meaning ascribed thereto in Section 9.1 hereof.

“Expense Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

“Fiscal Agent” shall mean The Bank of New York Mellon Trust Company, N.A., a national banking association, as fiscal agent hereunder, and any successor fiscal agent or co-fiscal agent appointed under this Funding Loan Agreement.

“Fiscal Agent’s Fees” shall mean the Fiscal Agent’s initial acceptance fee and expenses of \$3,500 plus fees, costs and expenses of its counsel in conjunction with the delivery of the Governmental Lender Notes and the ongoing compensation and expenses payable to the Fiscal Agent as follows:

(i) the annual administration fees of the Fiscal Agent, for the ordinary services of the Fiscal Agent rendered under this Funding Loan Agreement during each twelve-month period and shall be \$4,250 per annum, payable in advance in semiannual installments of \$2,125 on the Closing Date and each [\_\_\_\_\_] 1 and [\_\_\_\_\_] 1 thereafter;

(ii) the reasonable fees and charges of the Fiscal Agent for necessary extraordinary services rendered by it and/or reimbursement for extraordinary expenses incurred by it under this Funding Loan Agreement as and when the same become due, including reasonable fees and expenses of legal counsel and internal default administrators (including fees prior to litigation, at trial or for appellate proceedings); provided, however, that the Fiscal Agent

shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Fiscal Agent shall have been made; and

(iii) for purposes of the Borrower Loan Agreement, indemnification of the Fiscal Agent by the Borrower; and

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

“Funding Lender” shall mean Citibank N.A., a national banking association, and any successor under this Funding Loan Agreement and the Borrower Loan Documents.

“Funding Loan Agreement” shall mean this Funding Loan Agreement dated as of May 1, 2019, by and among the Funding Lender, the Governmental Lender and the Fiscal Agent, as it may from time to time be supplemented, modified or amended by one or more instruments supplemental hereto entered into pursuant to the applicable provisions hereof.

“Funding Loan Documents” shall mean (i) this Funding Loan Agreement, (ii) the Borrower Loan Agreement, (iii) the Regulatory Agreement, (iv) the Tax Certificate, (v) the Borrower Loan Documents, (vi) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (vii) all amendments, modifications, renewals and substitutions of any of the foregoing.

“Funding Loan Payment Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

“Governmental Lender” shall mean the Jacksonville Housing Finance Authority.

“Governmental Lender Closing Costs” shall mean the fees, costs and expenses incurred in connection with the closing of the Funding Loan and delivery of the Governmental Lender Notes, including, without limitation, the Governmental Lender’s [one (1) time initial issuance fee] in the aggregate amount of \$\_\_\_\_\_.

“Governmental Lender Fee” means the annual fee of the Governmental Lender, payable by the Borrower to the Fiscal Agent in the amount of (A) 20 basis points (0.20%) of the outstanding principal amount of the Borrower Loan (calculated on the Business Day prior to any principal reduction of the Borrower Notes) payable in semiannual installments in arrears on each [\_\_\_\_\_] 1 and [\_\_\_\_\_] 1, commencing [\_\_\_\_\_] 1, 2019 so long as any portion of the Borrower Loan is outstanding.

“Governmental Lender Notes” shall mean the Governmental Lender Notes described in the recitals of this Funding Loan Agreement.

“Governmental Lender Servicer” shall mean the Governmental Lender Servicer contracted with or appointed by the Governmental Lender to service the Borrower Loan. Initially, the Governmental Lender Servicer shall be Seltzer Management Group, Inc., a Florida corporation.

“Governmental Lender Servicer Agreement” shall mean the Construction Loan and Mortgage Servicing Agreement dated as of May 1, 2019, among the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent and the Borrower.

“Highest Rating Category” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the highest rating given by that Rating Agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is “A 1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG 1” (for fixed rate) or “VMIG 1” (for variable rate) for three (3) months or less and “Aaa” for greater than three months. If at any time (i) both S&P and Moody’s rate a Permitted Investment and (ii) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that Rating Agency. For example, a Permitted Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that Rating Agency, then the Permitted Investment will not be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“Law” shall have the meaning assigned thereto in the recitals.

“Maturity Date” shall mean (i) with respect to the Governmental Lender Construction Note, December 1, 2021 and (ii) with respect to the Governmental Lender Construction/Permanent Note, December 1, 2051.

“Maximum Rate” shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Governmental Lender Notes under State law.

“Minimum Beneficial Ownership Amount” shall mean an amount not less than fifteen percent (15%) of the aggregate outstanding principal amount of the Funding Loan.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Negative Arbitrage Account” means the Negative Arbitrage Account of the Project Fund established under Section 7.3, as otherwise described in the Contingency Draw-Down Agreement.

“Negative Arbitrage Deposit” has the meaning set forth in the Contingency Draw-Down Agreement.



“Opinion of Counsel” shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required to address the exclusion of interest on the Governmental Lender Notes from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

“Permitted Investments” shall mean, to the extent authorized by law for investment of any moneys held under this Funding Loan Agreement:

(a) Direct obligations of the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America (“Government Obligations”).

(b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America, or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(c) Demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000 and maturing in less than 365 days; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/“A-1+” by Moody’s/S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency.

(d) Bonds (including tax-exempt bonds), bills, notes or other obligations of or secured by Fannie Mae, Freddie Mac, the Federal Home Loan Bank or the Federal Farm Credit Bank.

(e) Money market funds rated AAA by S&P which are registered with the Securities and Exchange Commission and which meet the requirements of Rule 2(a)(7) of the Investment Company Act of 1940, as amended, which may be administered by the Fiscal Agent or its affiliates.

(f) Collateralized Investment Agreements or Repurchase Agreements with financial institutions rated in the “A” category or higher without regard to qualifiers, by at least one Rating Agency. The agreement must be continually collateralized with obligations specified in paragraphs (a), (b) and/or (d) above, eligible for wire through the Federal Reserve Bank System or the DTC/PTC as applicable, and at a level of at least 103% of the amount on deposit and valued no less than daily. The collateral must be held by a third party custodian and be free and clear of all liens and claims of third parties. Securities must be valued daily, marked-to-market at current market price plus accrued interest. If the market value of the securities is found to be below the required level, the provider must restore the market value of the securities to the required level within one (1) business day. Permitted collateral must be delivered to and held in a segregated account by the Fiscal Agent or a custodian (the “Collateral Agent”), and the Collateral Agent

cannot be the provider. The collateral must be delivered to the Collateral Agent before/simultaneous with payment (perfection by possession of certificated securities). Acceptable collateral must be free and clear of all liens and claims of third parties and shall be registered in the name of the Collateral Agent for the benefit of the Governmental Lender and Fiscal Agent. The agreement shall state that the Collateral Agent has a valid and perfected first priority security interest in the securities, any substituted securities and all proceeds thereof.

(g) Any other investment authorized by the laws of the State, if such investment is approved in advance in writing by the Funding Lender in its sole discretion.

Permitted Investments shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment or any agreement with a maturity profile greater than the date(s) on which funds representing the corpus of the investment may be needed under the Funding Loan Documents. This exception (1) shall not apply to Permitted Investments listed in paragraph (g).

(2) Any obligation bearing interest at an inverse floating rate.

(3) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(4) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

“Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Pledged Revenues” shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Lender Notes, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by the Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Notes, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon (except any amounts on deposit in the Expense Fund and Rebate Fund).

“Prepayment Premium” shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of a Borrower Note (including any Prepayment Premium as set forth in such Borrower Note) and (ii) any premium payable on the related Governmental Lender Note pursuant to this Funding Loan Agreement.

“Project” shall have the meaning given to that term in the Borrower Loan Agreement.

“Rating Agency” shall mean any one and each of S&P and Moody’s then rating the Permitted Investments or any other nationally recognized statistical rating agency then rating the Permitted Investments, which has been approved by the Funding Lender.

“Rebate Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

“Record Date” shall mean the last day of each calendar month.

“Regulations” shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

“Regulatory Agreement” shall mean that certain Land Use Restriction Agreement dated as of the date hereof, by and among the Governmental Lender, the Borrower and the Fiscal Agent, as hereafter amended or modified.

“Remaining Funding Loan Proceeds Account” means the Remaining Funding Loan Proceeds Account of the Project Fund established under Section 7.3, as otherwise described in the Contingency Draw-Down Agreement.

“Required Transferee Representations” shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

“Resolution” shall mean collectively the resolutions of the Governmental Lender adopted on February 20, 2019 and May 3, 2019 authorizing the Funding Loan, as evidenced by the Governmental Lender Notes, and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

“Responsible Officer” shall mean any officer within the Corporate Trust Department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security” shall mean the security for the performance by the Governmental Lender of its obligations under the Governmental Lender Notes and this Funding Loan Agreement as more fully set forth in Article IV hereof.

“Security Instrument” shall mean the Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time), made by the Borrower in favor of the Governmental Lender and assigned to the Funding Lender and the Fiscal Agent to secure the performance by the Governmental Lender of its obligations with respect to the Funding Loan, as evidenced by the Governmental Lender Notes.

“Servicer” shall mean any Servicer appointed by the Funding Lender to perform certain servicing functions with respect to the Funding Loan and on the Borrower Loan pursuant to a separate servicing agreement to be entered into between the Funding Lender and the Servicer. Initially the Servicer shall be the Funding Lender pursuant to this Funding Loan Agreement.

“Servicing Agreement” shall mean any servicing agreement entered into between the Funding Lender and a Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

“Standard & Poor’s” or “S&P” shall mean S&P Global Ratings, a division of Standard & Poor’s Financial Services, Inc., and its successors.

“State” shall mean the State of Florida.

“Tax Certificate” shall mean, collectively, (i) the Certificate as to Arbitrage and Other Tax Matters dated the Closing Date and executed by the Governmental Lender and the Borrower, and (ii) the Borrower Proceeds Certificate dated the Closing Date and executed and delivered by the Borrower, and (iii) the Arbitrage Rebate Agreement by and among the Governmental Lender, the Borrower and the Fiscal Agent, in each case including all exhibits and other attachments thereto and in each case as may be amended from time to time.

“Tax Counsel” shall mean, Bryant Miller Olive P.A., or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

“Tax Counsel Approving Opinion” shall mean an opinion of Tax Counsel substantially to the effect that each of the Governmental Lender Notes constitutes a valid and binding obligation of the Governmental Lender and that, under existing statutes, regulations published rulings and judicial decisions, the interest on each of the Governmental Lender Notes is excludable from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Tax Counsel No Adverse Effect Opinion” shall mean an opinion of Tax Counsel to the effect that the taking of the action specified therein will not, in and of itself, impair the exclusion of interest on either of the Governmental Lender Notes from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Unassigned Rights” shall mean the Governmental Lender’s rights to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its rights of access under Section 5.18 thereof, its rights to indemnification under Section 5.16 thereof and under any of the other Funding Loan Documents, if such right exists, its rights to attorneys’ fees under Sections 5.12 and 5.15 thereof, its rights to receive notices, reports and other statements and its rights to consent to certain matters, as provided in this Funding Loan Agreement, the Borrower Loan Agreement and under any of the other Funding Loan Documents, if such right exists.

“Written Certificate,” “Written Certification,” “Written Consent,” “Written Direction,” “Written Notice,” “Written Order,” “Written Registration,” “Written Request,” and “Written Requisition” shall mean a written certificate, direction, notice, order or requisition signed by an Authorized Borrower Representative, an Authorized Governmental Lender Representative, a Responsible Officer of the Fiscal Agent or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Servicer, the Governmental Lender Servicer, the Fiscal Agent or such other Person as required under the Funding Loan Documents.

“Yield” shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

**Section 1.2. Effect of Headings and Table of Contents.** The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

**Section 1.3. Date of Funding Loan Agreement.** The date of this Funding Loan Agreement is intended as and for a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

**Section 1.4. Designation of Time for Performance.** Except as otherwise expressly provided herein, any reference in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

**Section 1.5. Interpretation.** The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the

drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.

## ARTICLE II TERMS; GOVERNMENTAL LENDER NOTE

### Section 2.1. Terms.

(a) Principal Amount. The aggregate principal amount of the Funding Loan and the Governmental Lender Notes evidencing such Funding Loan is hereby expressly limited to the Authorized Amount.

(b) Draw-Down Funding. The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Fiscal Agent (pursuant to the wiring instructions on Exhibit D attached hereto) for the account of the Governmental Lender for disbursement to or for the benefit of the Borrower as and when needed to make each advance in accordance with the provisions of Section 7.6 hereof and of the Borrower Loan Agreement, the Construction Funding Agreement and the Governmental Lender Servicer Agreement. Upon each advance of principal under the Borrower Loan Agreement, the Construction Funding Agreement and the Governmental Lender Servicer Agreement, a like amount of the Funding Loan shall be deemed concurrently and simultaneously advanced under this Funding Loan Agreement, including the initial advance of \$\_\_\_\_\_. Subject to the terms and conditions of the Borrower Loan Agreement, the Funding Lender agrees to advance, on behalf of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower under the Borrower Loan Agreement such initial advance on the Closing Date, and the Governmental Lender agrees that such advance shall be deemed an advance on the Funding Loan for the account of the Governmental Lender under this Funding Loan Agreement. Borrower Loan advances and Funding Loan advances shall be allocated, first, to the Borrower Construction/Permanent Note and the related Governmental Lender Construction/Permanent Note and, once such notes have been fully funded, then to the Borrower Construction Note and the related Governmental Lender Construction Note. No portion of the Funding Loan shall be advanced after the third anniversary of the Closing Date; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion. The Governmental Lender has reviewed and approved the form of Contingency Draw-Down Agreement and consents to the terms thereof and agrees to take all actions reasonably required of the Governmental Lender (but only at the expense of the Borrower) in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Funding Lender or the Borrower.

(c) Origination Date; Maturity. The Funding Loan shall be originated on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(d) Principal. The outstanding principal amount of each Governmental Lender Note and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances with respect to the related Borrower Note under the Borrower Loan Agreement and the Construction Funding Agreement as proceeds of the Borrower Loan, less any payments of principal of such Governmental Lender Note previously received from payments of corresponding principal amounts under the related Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of each Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (d) and in paragraphs (e) and (f) of this Section 2.1.

The Fiscal Agent shall keep a record of all principal advances and principal repayments made under each Governmental Lender Note and shall upon written request provide the Governmental Lender and the Funding Lender with a statement of the outstanding principal balance of the Governmental Lender Notes and the Funding Loan.

(e) Interest. Interest shall be paid on the outstanding principal amount of each Governmental Lender Note at the rate or rates set forth in the related Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(f) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on each Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the related Borrower Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on a Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the related Governmental Lender Note.

(g) Usury. The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Notes and all agreements made in the Governmental Lender Notes, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Governmental Lender Notes, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess

shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Notes, this Funding Loan Agreement and all other Funding Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the parties hereto intend and agree that (i) interest shall be computed upon the assumption that payments under the Borrower Loan Agreement and other Funding Loan Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, shall be spread over the actual term of the Funding Loan.

**Section 2.2. Form of Governmental Lender Notes.** As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Notes. The Governmental Lender Notes shall be substantially in the respective forms set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement or State law. In connection with Conversion, the Funding Lender shall have the right to exchange the then existing Governmental Lender Construction/Permanent Note on or after the Conversion Date for a new Governmental Lender Construction/Permanent Note with a dated date of the Conversion Date and in a stated principal amount equal to the then outstanding principal amount of the Governmental Lender Construction/Permanent Note, which amount will equal the Permanent Period Amount of the Borrower Loan.

**Section 2.3. Execution and Delivery of Governmental Lender Note.** The Governmental Lender Notes shall each be executed on behalf of the Governmental Lender by the manual or facsimile signature of an Authorized Governmental Lender Representative, and attested by the manual or facsimile signature of an Authorized Attesting Officer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed each of the Governmental Lender Notes. In case any officer of the Governmental Lender whose manual or facsimile signature shall appear on a Governmental Lender Note shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery, and also a Governmental Lender Note may bear the facsimile signatures of, or may be signed by, such persons as at the actual time of the execution thereof shall be the proper officers to sign such Governmental Lender Note although at the date of such Governmental Lender Note such persons may not have been such officers.

**Section 2.4. Authentication.** The Governmental Lender Notes shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on each Governmental Lender Note, substantially in the form set forth in Exhibit A hereto, shall have been manually executed by the Fiscal Agent. The Fiscal Agent shall authenticate each Governmental Lender Note by execution of the certificate of authentication on or attached to such Governmental Lender Note, and the



certificate of authentication so executed on or attached to each Governmental Lender Note shall be conclusive evidence that such Governmental Lender Note has been authenticated and delivered under this Funding Loan Agreement.

**Section 2.5. Registration and Transfer of Governmental Lender Note.**

(a) The Fiscal Agent acknowledges that the Funding Lender is the initial holder of the Governmental Lender Notes and shall remain the sole holder of the Governmental Lender Notes except as otherwise provided herein.

(b) The Fiscal Agent, on behalf of the Governmental Lender, shall provide for the registration of the Governmental Lender Notes or interests therein and the registration of transfers thereof. In that regard, the Fiscal Agent shall maintain a register which shall contain a record of every Governmental Lender Note at any time authenticated hereunder, together with the name and address of the holder thereof, the date of authentication, the date of transfer or payment, and such other matters as may be deemed appropriate by the Fiscal Agent or the Governmental Lender. The Governmental Lender, the Fiscal Agent and any agent of the Governmental Lender or the Fiscal Agent shall treat the person in whose name the Governmental Lender Notes are registered as of the Record Date as the owner of the Governmental Lender Notes for the purpose of receiving payment of the Governmental Lender Notes and for all other purposes whatsoever whether or not the Governmental Lender Note payments are overdue, and, to the extent permitted by law, neither the Governmental Lender, the Fiscal Agent nor any such agent shall be affected by notice to the contrary.

(c) The transfer of the Governmental Lender Notes is subject to registration by the holder thereof only upon compliance with the conditions for registration of transfer imposed on the holder under this Section 2.5 and under Section 2.6 hereof. Upon surrender of either Governmental Lender Note at the principal corporate trust office of the Fiscal Agent, the Governmental Lender shall execute (if necessary), and the Fiscal Agent shall authenticate and deliver, in the name of the designated transferee (but not registered in blank or to “bearer” or a similar designation), a new Governmental Lender Note of a like principal amount, and having the same stated maturity, tenor and interest rate.

(d) A Governmental Lender Note delivered in exchange for or upon transfer of either Governmental Lender Note shall be a valid limited obligation of the Governmental Lender evidencing the same debt, and entitled to the same benefits under this Funding Loan Agreement, as the Governmental Lender Note surrendered for such exchange or transfer. In connection with the conversion of the Funding Loan, the Funding Lender shall have the right to exchange the then existing Governmental Lender Construction/Permanent Note on or after the Conversion Date for a new Governmental Lender Construction/Permanent Note with a dated date of the Conversion Date and in a principal amount equal to the then outstanding principal amount of the Governmental Lender Construction/Permanent Note, which amount will equal the Permanent Period Amount of the Borrower Loan.

(e) Registration of the transfer of the Governmental Lender Notes may be made on the Fiscal Agent's register by the holder thereof by such holder's attorney duly authorized in writing; provided, that each Governmental Lender Note presented or surrendered for registration of transfer or exchange (i) is accompanied by evidence of compliance with the provisions of Section 2.6 hereof, (ii) is duly endorsed or be accompanied by a written instrument or instruments of transfer, in a form satisfactory to the Governmental Lender and the Fiscal Agent, duly executed by the holder thereof or his, her or its attorney duly authorized in writing and (iii) includes written instructions as to the details of the transfer of the Governmental Lender Note. The transferor shall also provide or cause to be provided to the Fiscal Agent all information necessary to allow the Fiscal Agent to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Fiscal Agent may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(f) No service charge shall be made to the registered holder of the Governmental Lender Notes for any registration, transfer or exchange, but the Fiscal Agent and the Governmental Lender may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of the Governmental Lender Notes, and any legal or unusual costs of transfers. Such sums shall be paid in every instance by the purchaser or assignee of the Funding Loan or portion thereof.

(g) The Governmental Lender Notes shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

**Section 2.6. Restrictions on Transfer.**

(a) The Funding Lender shall deliver to the Governmental Lender the Required Transferee Representations in substantially the form attached hereto as Exhibit B on the Closing Date.

(b) The Funding Lender shall have the right to sell (i) the Governmental Lender Notes and the Funding Loan in whole or (ii) a participation interest or other beneficial ownership interest in the Governmental Lender Notes and the Funding Loan to the extent permitted by Section 2.6(c) below, provided that such sale shall be only to Approved Transferees that execute and deliver to the Funding Lender, with a copy to the Governmental Lender and the Fiscal Agent, the Required Transferee Representations.

(c) Notwithstanding the other provisions of this Section 2.6, no beneficial ownership interest in the Governmental Lender Notes and Funding Loan shall be sold in an amount that is less than the Minimum Beneficial Ownership Amount.

(d) The parties agree that no rating shall be sought from a rating agency with respect to the Funding Loan or the Governmental Lender Notes.

The Fiscal Agent shall be entitled to rely, without any further inquiry, on any Required Transferee Representations delivered to it and shall be fully protected in registering any transfer or exchange of the Governmental Lender Notes in reliance on any such Required Transferee Representations which appear on their face to be correct and of which the Fiscal Agent has no actual knowledge otherwise. Any such holder desiring to effect such transfer shall agree to indemnify the Governmental Lender and the Fiscal Agent from and against any and all liability, cost or expense (including attorneys' fees, costs and expenses) that may result if the transfer is not exempt from registration under the Securities Act or is not made in accordance with such federal and state laws. Notwithstanding anything to the contrary herein, the holder shall not transfer or sell the Governmental Lender Notes or any interest therein to a party related to or affiliated with the Borrower, any general partner, limited partner or member of the Borrower without the prior written consent of the Governmental Lender.

### **ARTICLE III PREPAYMENT**

**Section 3.1. Prepayment of the Governmental Lender Notes from Prepayments Under the Borrower Notes.** The Governmental Lender Notes are subject to voluntary and mandatory prepayment as follows:

(a) The Governmental Lender Notes shall be subject to voluntary prepayment to the extent and in the manner and on any date that the Borrower Notes are subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the Borrower Notes to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under the Borrower Notes, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Notes, thereby causing the Governmental Lender Notes to be prepaid, except as specifically permitted in the Borrower Notes, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

(b) The Governmental Lender Notes shall be subject to mandatory prepayment in whole or in part upon prepayment of the Borrower Notes at the direction of the Funding Lender in accordance with the terms of the Borrower Notes at a prepayment price equal to the outstanding principal balance of the Borrower Notes prepaid, plus accrued interest plus any other amounts payable under the Borrower Notes or the Borrower Loan Agreement.

**Section 3.2. Notice of Prepayment.** Notice of prepayment of a Governmental Lender Note shall be deemed given to the extent that notice of prepayment of the related Borrower Note is timely and properly given to Funding Lender and Fiscal Agent in accordance with the terms of the related Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Note is required to be given.

## ARTICLE IV SECURITY

**Section 4.1. Security for the Funding Loan.** To secure the payment of the Funding Loan and the Governmental Lender Notes, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Notes are secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender and the Fiscal Agent for the benefit of the holder from time to time of the Governmental Lender Notes or any interests therein, a lien on and security interest in the following described property (excepting, however, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Notes, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments (except those related to the Unassigned Rights) derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding Loan Documents, and all other payments, revenues and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Funding Loan Documents;

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement (other than the Expense Fund and the Rebate Fund) and any amounts held at any time in the Remaining Funding Loan Proceeds Account, any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Fiscal Agent or the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Fiscal Agent or the Funding Lender is hereby authorized to receive any and all such property

as and for additional security for the Funding Loan and the Governmental Lender Notes and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Notes, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Notes by the Governmental Lender. The Security so pledged and then or thereafter received by the Fiscal Agent or the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

**Section 4.2. Delivery of Security.** In order to secure payment of the Funding Loan and the Governmental Lender Notes, the Governmental Lender has pledged and assigned its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Funding Lender the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

- (a) The Borrower Notes endorsed without recourse to the Funding Lender by the Governmental Lender;
- (b) The originally executed Borrower Loan Agreement and Regulatory Agreement;
- (c) The originally executed Security Instrument and all other Borrower Loan Documents existing at the time of delivery of the Borrower Notes and an assignment for security of the Security Instrument from the Governmental Lender to the Funding Lender, in recordable form;
- (d) UCC financing statements or other chattel security documents giving notice of the Funding Lender's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project, in form suitable for filing; and
- (e) UCC financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement.

The Governmental Lender shall, at the expense of the Borrower, deliver and deposit with the Fiscal Agent or the Funding Lender such additional documents, financing statements, and instruments as the Funding Lender may reasonably require and direct from time to time for the better perfecting and assuring to the Funding Lender of its lien and security interest in and to the Security including, at the request of the Funding Lender, without limitation any amounts held under the Contingency Draw-Down Agreement.

Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interest or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the UCC. The Fiscal Agent shall cause to be filed a continuation statement with respect to each UCC financing statement relating to the Governmental Lender Notes which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings were made, provided that a copy of the filed, original financing statement is timely delivered to the Fiscal Agent. In addition, unless the Fiscal Agent shall have been notified in writing by the Governmental Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in (i) relying on such initial filing and description in filing any financing or continuation statements or modifications thereto pursuant to this Section 4.2 and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all continuation statements hereunder.

## **ARTICLE V LIMITED LIABILITY**

**Section 5.1. Source of Payment of Funding Loan, the Governmental Lender Notes and Other Obligations.** The Governmental Lender Notes evidencing the Funding Loan are limited obligations of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned hereunder. None of the Governmental Lender, the City, the County, the State, or any political subdivision thereof nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Governmental Lender Notes and the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein, and none of the Funding Loan or the Governmental Lender Notes or any of the Governmental Lender's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. Neither the faith, revenues, credit nor taxing power of the Governmental Lender, the State or any other political corporation or subdivision or agency thereof shall be pledged to the payment of the principal of, premium (if any), or interest on the Governmental Lender Notes or this Funding Loan Agreement.

**Section 5.2. Exempt from Individual Liability.** No recourse under or upon any obligation, covenant, warranty or agreement contained in this Funding Loan Agreement or in the Governmental Lender Notes, or under any judgment obtained against the Governmental Lender, or the enforcement of any assessment, or any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of this

Funding Loan Agreement, shall be had against any of the members, officers, agents or employees of the Governmental Lender (past, present or future), either directly or through the Governmental Lender or otherwise, for the payment for or to the Governmental Lender or any receiver of the Governmental Lender, or for or to the owner of the Governmental Lender Notes, or otherwise, of any sum that may be due and unpaid by the Governmental Lender upon the Governmental Lender Notes. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, agent or employee, as such, by reason of any act of omission on his or her part or otherwise, for the payment for or to the owner of a Governmental Lender Note or otherwise of any sum that may remain due and unpaid upon a Governmental Lender Note secured by this Funding Loan Agreement or any of them is, by the acceptance of the Governmental Lender Notes, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Lender Notes. Anything in this Funding Loan Agreement to the contrary notwithstanding, it is expressly understood by the parties to this Funding Loan Agreement that (a) the Governmental Lender may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Servicer, the Borrower or the owner of the Governmental Lender Notes as to the existence of any fact or state of affairs, (b) the Governmental Lender shall not be under any obligation under this Funding Loan Agreement to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent or by the Servicer and its respective counsel, as applicable, and (c) none of the provisions of this Funding Loan Agreement shall require the Governmental Lender 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 Funding Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Governmental Lender Notes or for the satisfaction of any liability arising from, founded upon or existing by reason of the initial delivery, purchase or ownership of a Governmental Lender Note shall be had against any officer, member, agent or employee of the Governmental Lender, as such, all such liability being expressly released and waived as a condition of and as a part of the consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Lender Notes. No covenant, stipulation, obligation or agreement of the Governmental Lender contained in this Funding Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Governmental Lender in other than that person's official capacity. No member, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of the principal or redemption price of or interest on the Governmental Lender Notes or be subject to any personal liability or accountability by reason of the delivery of the Governmental Lender Notes.

It is recognized that notwithstanding any other provision of this Funding Loan Agreement, neither the Borrower, the Fiscal Agent nor any owner of the Governmental Lender Notes shall look to the Governmental Lender for damages suffered by the Borrower, the Fiscal

Agent or such owner as a result of the failure of the Governmental Lender to perform any covenant, undertaking or obligation under this Funding Loan Agreement, the Borrower Loan Agreement, the Governmental Lender Notes or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, or for any other reason. Although this Funding Loan Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Funding Loan Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to perform and the performance of which the Governmental Lender has not assigned to the Fiscal Agent or any other person.

**Section 5.3. Limited Obligation.** Notwithstanding any other provision of this Funding Loan Agreement to the contrary:

THE GOVERNMENTAL LENDER NOTES ARE ISSUED PURSUANT TO THE RESOLUTION AND IN ACCORDANCE WITH THE ACT, AND ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER. NEITHER THE GOVERNMENTAL LENDER NOR ANY OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL LENDER NOR ANY PERSON EXECUTING A GOVERNMENTAL LENDER NOTE SHALL BE LIABLE PERSONALLY ON SUCH GOVERNMENTAL LENDER NOTE OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE GOVERNMENTAL LENDER NOTES AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THIS FUNDING LOAN AGREEMENT. NEITHER THE GOVERNMENTAL LENDER, THE STATE NOR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THE GOVERNMENTAL LENDER NOTES OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF NOR THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE GOVERNMENTAL LENDER NOTES OR OTHER COSTS INCIDENT THERETO. THE GOVERNMENTAL LENDER NOTES ARE NOT A DEBT OF THE UNITED STATES OF AMERICA.

## ARTICLE VI CLOSING CONDITIONS; APPLICATION OF FUNDS

**Section 6.1. Conditions Precedent to Closing.** Closing of the Funding Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Funding Lender and the



Governmental Lender in their sole discretion of each of the conditions precedent to closing set forth in this Funding Loan Agreement, including but not limited to the following:

(a) Receipt by the Funding Lender of the original, executed Governmental Lender Notes dated the Closing Date, authenticated by the Fiscal Agent;

(b) Receipt by the Funding Lender of the original executed Borrower Notes, endorsed by the Governmental Lender to the Funding Lender, and receipt by the Fiscal Agent of an executed copy of the Borrower Notes;

(c) Receipt by the Funding Lender and the Fiscal Agent of executed counterpart copies of this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Funding Agreement, the Regulatory Agreement, the Tax Certificate and the Security Instrument, as well as copies of any UCC financing statement required under the Security Instrument;

(d) Receipt by the Funding Lender and the Fiscal Agent of a certified copy of the Resolution;

(e) Receipt by the Fiscal Agent of an executed Required Transferee Representations from the Funding Lender;

(f) Delivery into escrow or to the Fiscal Agent, as appropriate, of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan, and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, in accordance with Section 2.3(c)(ii) of the Borrower Loan Agreement, as set forth in the closing flow-of-funds memorandum executed and delivered by the Borrower and the Funding Lender on the Closing Date;

(g) Receipt by the Funding Lender and Fiscal Agent of a Tax Counsel Approving Opinion with respect to the Governmental Lender Notes dated the Closing Date;

(h) Receipt by the Funding Lender and the Fiscal Agent of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Notes are exempt from registration under the Securities Act, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(i) delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender, the Funding Lender and the Fiscal Agent to the effect that the Borrower Loan Documents and the Regulatory Agreement are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender; and

(j) Receipt by the Funding Lender and the Governmental Lender of any other documents or opinions that the Funding Lender, the Governmental Lender or Tax Counsel may require.

## ARTICLE VII FUNDS AND ACCOUNTS

**Section 7.1. Authorization to Create Funds and Accounts.** Except as provided in Section 7.3 hereof, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Fiscal Agent is authorized to establish and create from time to time such other funds and accounts or subaccounts as directed in writing by the Funding Lender or, if there is a Servicer, by the Servicer, as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

**Section 7.2. Investment of Funds.** Amounts held in any funds or accounts created by the Fiscal Agent under this Funding Loan Agreement shall be invested in Permitted Investments at the written direction of the Borrower. Such written direction of the Borrower may not violate the restrictions of Section 8.7 hereof or of the Tax Certificate.

The Fiscal Agent may conclusively rely upon the Borrower's written direction as to both the suitability and legality of any directed investments and that such written direction does not violate the restrictions of Section 8.7 hereof or of the Tax Certificate. The Fiscal Agent shall have no liability for any loss, expense or liability incurred as a result of any investment made in accordance with written directions of the Borrower.

Although the Governmental Lender and the Borrower each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Governmental Lender and the Borrower hereby agree that confirmations of permitted investments are not required to be issued by the Fiscal Agent for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

**Section 7.3. Establishment of Funds and Accounts.**

There are established with the Fiscal Agent the following funds and accounts:

- (a) The Funding Loan Payment Fund;
- (b) The Project Fund and within such fund, a Borrower Equity Account, a Note Proceeds Account, a Remaining Funding Loan Proceeds Account and a Negative Arbitrage Account;
- (c) The Rebate Fund; and
- (d) The Expense Fund and within such fund, a Closing Cost Account.

All money required to be deposited with or paid to the Fiscal Agent for the account of any of the funds or accounts created by this Funding Loan Agreement shall be held by the Fiscal Agent in trust for the benefit of the Funding Lender, and except for money held in the Expense Fund and Rebate Fund, shall, while held by the Fiscal Agent, constitute part of the Pledged Revenues and be subject to the lien hereof.

All money to be deposited with or paid to the Fiscal Agent shall be wired to the Fiscal Agent pursuant to the wiring instructions contained in Exhibit D attached hereto. The Fiscal Agent shall provide Written Notice of any change to such wiring instructions to the Funding Lender and the Borrower no less than five (5) Business Days prior to the next payment date for which such revised instructions will be applicable.

**Section 7.4. Funding Loan Payment Fund.** The Governmental Lender and the Borrower shall have no interest in the Funding Loan Payment Fund or the moneys therein, which shall always be maintained by the Fiscal Agent completely separate and segregated from all other moneys held hereunder and from any other moneys of the Governmental Lender and the Borrower.

The Fiscal Agent shall deposit into the Funding Loan Payment Fund any amounts received from the Borrower as payments of principal of, premium, if any, or interest on the Borrower Loan and any other amounts received by the Fiscal Agent that are subject to the lien and pledge of this Funding Loan Agreement, including any Pledged Revenues not required to be deposited to the Expense Fund or Rebate Fund or not otherwise specifically directed in writing to be deposited into other funds created by this Funding Loan Agreement.

The Fiscal Agent shall apply all amounts on deposit in the Funding Loan Payment Fund in the following order of priority:

First, to pay or provide for the payment of the interest then due on the Governmental Lender Notes;

Second, to pay or provide for the payment and premium, if any, or the prepayment of principal on the Governmental Lender Notes, provided moneys have been transferred or deposited into the Funding Loan Payment Fund for such purpose; and

Third, to pay or provide for the payment of the Governmental Lender Notes on the Maturity Date.

If the Fiscal Agent has not received, by 11:00 a.m. Eastern time on the date interest is due on the Governmental Lender Notes, an amount sufficient to pay such interest, the Fiscal Agent shall provide immediate telephonic or electronic notice to the Funding Lender of such deficiency. The Fiscal Agent may rely on the payment terms of the Governmental Lender Notes for purposes of payments described above.

**Section 7.5. Expense Fund.** The Fiscal Agent shall deposit in the Expense Fund the amounts required by the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent, as provided in this Section 7.5. Amounts on deposit in the Expense Fund shall be used to pay the fees and expenses of the Governmental Lender and the Fiscal Agent, as and when the same become due. In that regard, moneys in the Expense Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent to pay (a) on each [\_\_\_\_\_] 1 and [\_\_\_\_\_] 1, commencing on [\_\_\_\_\_] 1, 2019, the Governmental Lender Fee due and payable, (b) on each [\_\_\_\_\_] 1 and [\_\_\_\_\_] 1, commencing on the Closing Date, to the Fiscal Agent amounts due pursuant to subparts (i) and (ii) of the definition of "Fiscal Agent's Fees" herein, (c) upon receipt, to the Fiscal Agent, any amounts due to the Fiscal Agent which have not been paid, other than amounts paid in accordance with clause (b) above, and (d) upon receipt, to, or at the written direction of, the Governmental Lender, any amounts owing the Governmental Lender by the Borrower and then due and unpaid, other than amounts paid in accordance with clause (a) above. On the Closing Date, the Fiscal Agent shall deposit \$\_\_\_\_\_ of Borrower Equity and \$\_\_\_\_\_ of the proceeds of the Funding Loan into the Closing Cost Account and shall pay closing costs from the Closing Cost Account in accordance with the written direction of the Borrower and the Funding Lender.

On the date six (6) months after the Closing Date, the Fiscal Agent shall transfer any balance remaining in the Closing Cost Account to the Funding Loan Payment Fund and close the Closing Cost Account.

In addition, any additional fees and expenses of Tax Counsel shall be timely funded by additional deposits by the Borrower into the Expense Fund of moneys not derived from the proceeds of the Borrower Loan, and the Fiscal Agent shall use such amounts to pay such additional fees and expenses of Tax Counsel, as directed by the Borrower in writing.

In the event that the amounts on deposit in the Expense Fund or Closing Cost Account therein are not equal to the amounts payable from the Expense Fund as provided in the preceding paragraphs on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two Business Days to the Fiscal Agent of the amount of such deficiency.

Written notice of any insufficiency, which results in the Governmental Lender not receiving the Governmental Lender Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) not later than 10 days after the respective due date.

Upon payment by the Borrower to the Fiscal Agent of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

Notwithstanding anything herein to the contrary, the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit a written invoice to the Borrower for payment of the Governmental Lender Fee not later than 10 days prior to the due date for payment of such

the Governmental Lender Fee, and shall remit moneys received from the Borrower to the Governmental Lender for payment of such fee. Failure of the Fiscal Agent to prepare or submit such notice shall not excuse the Borrower from making the required payments.

**Section 7.6. Project Fund.**

(a) Proceeds of the Funding Loan provided by the Funding Lender shall be deposited into to the Note Proceeds Account of the Project Fund, and be disbursed as provided herein; provided, however, that any proceeds of the Funding Loan funded pursuant to the Contingency Draw-Down Agreement shall be deposited into the Remaining Funding Loan Proceeds Account of the Project Fund and be disbursed as provided herein. In addition, proceeds from Borrower Initial Equity in the amount of \$\_\_\_\_\_ shall be deposited into the Borrower Equity Account and Borrower Deferred Equity shall be deposited into the Borrower Equity Account, and be disbursed as provided herein. The Fiscal Agent shall disburse moneys in the Project Fund for the acquisition and rehabilitation of the Project, to pay other Qualified Project Costs and to pay other costs related to the Project as provided herein.

Not less than 95% of the proceeds of the Funding Loan deposited in and credited to the Project Fund, including Investment Income thereon, will be expended for Qualified Project Costs (the "95% Requirement"). The amounts on deposit in the Project Fund shall not be applied to the payment of Closing Costs.

Before any payment shall be made from the Project Fund, the Regulatory Agreement shall have been executed and submitted to a title company for recordation in the official records of the County and there shall be filed with the Fiscal Agent a Written Requisition of the Borrower substantially in the form attached hereto as Exhibit C and approved by (i) the Funding Lender pursuant to the terms, conditions and provisions of the Construction Funding Agreement and (ii) the Governmental Lender Servicer pursuant to the terms, conditions and provisions of the Governmental Lender Servicer Agreement. The Fiscal Agent shall be entitled to conclusively rely upon any Written Requisition in determining whether to disburse amounts from the Project Fund. Any funds remaining on deposit in the Borrower Equity Account of the Project Fund following the completion of the Project shall be applied as set forth in the written instructions of the Borrower and the Funding Lender. Any amounts remaining on deposit in the Borrower Equity Account of the Project Fund on the Conversion Date shall be paid by the Fiscal Agent to the Borrower.

In connection with a Written Requisition:

(i) [Only the signature of an authorized officer of the Funding Lender shall be required on a Written Requisition during any period in which a default by the Borrower has occurred and is then continuing under the Borrower Loan (notice of which default has been given in writing by an authorized officer of the Funding Lender to the Fiscal Agent, and the Fiscal Agent shall be entitled to conclusively rely on any such Written Notice as to the occurrence and continuation of such a default).]

(ii) [The Fiscal Agent shall disburse amounts in the Project Fund for the payment of interest due on the Governmental Lender Note upon receipt from the Funding Lender of a statement detailing the amount due (and without any need for a Written Requisition signed by the Funding Lender or any approval by an Authorized Representative of the Borrower or the Governmental Lender Servicer) so long as the amounts to be disbursed do not exceed \$\_\_\_\_\_ in the aggregate.]

(iii) The Fiscal Agent may conclusively rely on all Written Requisitions, the execution of the Written Requisitions by the Authorized Borrower Representative and the approval of all Written Requisitions by the Funding Lender and the Governmental Lender Servicer, as required by this Section, as conditions of payment from the Project Fund, which Written Requisitions constitute, as to the Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. These documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Funding Lender and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Project or the construction work or to make any independent investigation with respect to the matters set forth in any Written Requisition or other statements, orders, certifications and approvals received by the Fiscal Agent. The Fiscal Agent is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, construction, rehabilitation, equipping, improvement and installation of the Project.

(b) Upon receipt of each Written Requisition submitted by the Borrower and approved in writing by the Funding Lender and the Governmental Lender Servicer, the Fiscal Agent shall promptly, but in any case within three (3) Business Days, make payment from the appropriate account within the Project Fund in accordance with such Written Requisition. The Fiscal Agent shall have no duty to determine whether any requested disbursement from the Project Fund complies with the terms, conditions and provisions of the Funding Loan Documents, constitutes payment of Qualified Project Costs or complies with the 95% Requirement. The approval in writing of a Written Requisition by the Funding Lender and the written approval of a Written Requisition by the Governmental Lender Servicer shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Funding Loan Documents applicable to such disbursement have been fully satisfied or waived and the Written Requisition from the Borrower shall, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence that the costs described in the Written Requisition constitute Qualified Project Costs or other permitted Project costs.

The Fiscal Agent shall immediately provide Written Notice to the Borrower and the Funding Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the disbursements as and when required by this Section 7.6(b). Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer, either (i) directly to the person, firm or entity to be paid, (ii) to the Borrower and such person, firm or entity, or (iii) upon receipt by the Funding Lender of evidence that the Borrower has

previously paid such amount and Written Direction to the Fiscal Agent as to such as evidenced by the Governmental Lender Servicer's approval of the Written Requisition, to the Borrower. Upon the occurrence of an Event of Default of the Borrower of which the Fiscal Agent has knowledge as provided herein, which is continuing under the Funding Loan Documents, with the [Written Consent of the Funding Lender], the Fiscal Agent may apply amounts on deposit in the Project Fund to the payment of principal of and interest on the Governmental Lender Notes. Upon final disbursement of all amounts on deposit in the Project Fund and the accounts therein, the Fiscal Agent shall close the Project Fund.

(c) Moneys deposited to the Negative Arbitrage Account of the Project Fund pursuant to the Contingency Draw-Down Agreement, together with investment earnings thereon, which shall be retained therein, shall be transferred to the Funding Loan Payment Fund and applied pursuant to Section 7.4 on each Borrower Loan Payment Date to the extent necessary to enable the Fiscal Agent to pay interest due on the Funding Loan on such date. The transfer of moneys from the Negative Arbitrage Account of the Project Fund to the Funding Loan Payment Fund shall occur automatically without the need for a Written Requisition of the Borrower, or consent of the Funding Lender.

(d) Immediately prior to any mandatory prepayment of the Funding Loan pursuant hereto, any amounts then remaining in the Project Fund shall, at the written direction of the Funding Lender, be transferred to the Funding Loan Payment Fund to be applied to the prepayment of the Governmental Lender Notes pursuant hereto.

(e) Amounts on deposit in the Project Fund and the accounts therein shall be invested in Permitted Investments directed in writing by the Borrower. Investment Income earned on amounts on deposit in the Project Fund and the accounts therein shall be retained in and credited to and become a part of the amounts on deposit in the Project Fund and the accounts therein.

**Section 7.7. Rebate Fund.** All amounts in the Rebate Fund shall be held, invested and disbursed by the Fiscal Agent in accordance with the written instructions of the Borrower or the Rebate Analyst and the provisions of the Tax Certificate, the terms of which are incorporated herein by reference and made a part hereof as if fully set forth herein. The Borrower shall have the absolute obligation to deposit funds into the Rebate Fund in accordance with the provisions of the Tax Certificate. The Fiscal Agent shall make rebate payments to the United States Treasury in accordance with the applicable provisions of the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Borrower or the Rebate Analyst and shall not be required to take any actions under the Tax Certificate on behalf of the Borrower in the absence of written instructions from the Borrower or the Rebate Analyst.

## ARTICLE VIII REPRESENTATIONS AND COVENANTS

### **Section 8.1. General Representations.**

The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Governmental Lender is a public body corporate and politic under the Act, has the power and authority to (i) enter into the Funding Loan Documents to which it is a party and the transactions contemplated thereby, (ii) incur the indebtedness represented by the Governmental Lender Notes and the Funding Loan and apply the proceeds of such indebtedness to finance a portion of the costs of the Project and (iii) carry out its other obligations under this Funding Loan Agreement and the Governmental Lender Notes, and by proper action has duly authorized the Governmental Lender's execution and delivery of, and its performance under, such Funding Loan Documents and all other agreements and instruments relating thereto.

(b) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of, (i) the Act or the Resolution, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into the Funding Loan Agreement, executing and delivering the Governmental Lender Notes, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representations as to the necessity of registering the Borrower Notes pursuant to any securities laws or complying with any other requirements of securities laws).

(c) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender with respect to (i) the organization and existence of the Governmental Lender, (ii) its authority to execute or deliver the Funding Loan Documents to which it is a party, (iii) the validity or enforceability of any such Funding Loan Documents or the transactions contemplated thereby, (iv) the title of any officer of the Governmental Lender who executed such Funding Loan Documents or (v) any authority or proceedings relating to the execution and delivery of such Funding Loan Documents on behalf of the Governmental Lender, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

(d) The revenues and receipts to be derived from the Borrower Loan Agreement, the Borrower Notes and this Funding Loan Agreement have not been pledged previously by the Governmental Lender to secure any of its notes or bonds other than the Funding Loan, as evidenced by the Governmental Lender Notes.



(e) The Florida Division of Bond Finance has provided an allocation of a portion of the State's 2016 and 2017 private activity bond volume cap under section 146 of the Code to the Governmental Lender for the Governmental Lender Notes, and the Governmental Lender has timely made any required carry forward election with respect to such allocation. [The Governmental Lender hereby elects to apply the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Governmental Lender Notes; and, in connection therewith, has directed Tax Counsel to include the information on Form 8038 filed for the Governmental Lender Notes that is required by section 3.03 of said Notice.]

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

**Section 8.2. No Encumbrance on Security.** The Governmental Lender will not knowingly create or knowingly permit the creation of any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on a parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

**Section 8.3. Repayment of Funding Loan.** Solely from amounts pledged therefor, and subject to the provisions of Article V hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Lender Notes, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Notes and this Funding Loan Agreement.

**Section 8.4. Servicer.** The Funding Lender may appoint a Servicer to service and administer the Governmental Loan and/or the Borrower Loan on behalf of the Funding Lender and the Fiscal Agent, including without limitation the fulfillment of rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement.

**Section 8.5. Borrower Loan Agreement Performance.**

(a) The Funding Lender, the Fiscal Agent and the Servicer, if any, on behalf of the Governmental Lender, may (but shall not be required or obligated to) perform and observe any such agreement or covenant of the Governmental Lender under the Borrower Loan Agreement, all to the end that the Governmental Lender's rights under the Borrower Loan Agreement may be unimpaired and free from default.

(b) The Governmental Lender will promptly notify the Borrower, the Fiscal Agent, the Servicer, if any, and the Funding Lender in writing of the occurrence of any Borrower Loan

Agreement Default, provided that the Governmental Lender has received written notice or otherwise has knowledge of such event.

**Section 8.6. Maintenance of Records; Inspection of Records.**

(a) The Fiscal Agent shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Governmental Lender Notes and interests therein. The Fiscal Agent shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Governmental Lender Notes, subject to the inspection of the Funding Lender and the Governmental Lender and their representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender and the Funding Lender will at any and all times, upon the reasonable request of the Servicer, if any, the Governmental Lender Servicer, the Borrower, the Fiscal Agent, the Governmental Lender or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender or the Funding Lender, as appropriate, relating to the Project and the Funding Loan, if any, and to make copies thereof.

**Section 8.7. Tax Covenants.** The Governmental Lender covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will (subject to the limited liability provisions hereof):

(a) Enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after any such violation is first discovered;

(b) Not take or cause to be taken any other action or actions, or fail to take any action or actions, which would cause the interest payable on the Governmental Lender Notes to be includable in gross income for federal income tax purposes;

(c) At all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Governmental Lender Notes will be excluded from the gross income of the holders of the Governmental Lender Notes, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Notes or a portion thereof is a "substantial user" of the facilities financed with the Funding Loan or a "related person" within the meaning of Section 147(a) of the Code;

(d) Not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Lender Notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations; and

(e) Require the Borrower to agree, pursuant to the terms and provisions of the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of a Governmental Lender Note, or any other moneys which may be deemed to be proceeds of such Governmental Lender Note pursuant to the Code, which would cause such Governmental Lender Note to be an “arbitrage bond” within the meaning of Sections 103(b) and 148 the Code, and to comply with the requirements of the Code throughout the term of the Funding Loan; and

(f) Require the Borrower to take all steps necessary to compute and pay or cause to be paid pursuant to the provisions of Section 7.7 hereof any rebatable arbitrage in accordance with Section 148(f) of the Code in accordance with the applicable provisions of the Tax Certificate.

(g) In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full.

For purposes of this Section 8.7 the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s control and no acts, omissions or directions of the Borrower, the Fiscal Agent, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

**Section 8.8. Performance by the Borrower.** Without relieving the Governmental Lender from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, the Borrower, on behalf of the Governmental Lender, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Potential Default under the Borrower Loan Agreement exists.

**Section 8.9. Maintenance of Records.** The Funding Lender shall keep and maintain adequate records pertaining to funds and accounts relative to the Borrower Loan not established with the Fiscal Agent, if any, including all deposits to and disbursements from said funds and accounts and will provide information and records relating thereto to the Fiscal Agent or the Governmental Lender upon request.

## **ARTICLE IX DEFAULT; REMEDIES**

**Section 9.1. Events of Default.** Subject in all respects to Article V hereof, any one or more of the following shall constitute an event of default (an “Event of Default”) under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) A default in the payment of any interest upon the Governmental Lender Notes when such interest becomes due and payable; or

(b) A default in the payment of principal of, or premium on, the Governmental Lender Notes when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise; or

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender, the Fiscal Agent and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under this Funding Loan Agreement; provided that, so long as the Governmental Lender, or the Borrower or Equity Investor on behalf of the Governmental Lender, has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender, or the Borrower or Equity Investor on behalf of the Governmental Lender, is diligently pursuing such cure to the Funding Lender's satisfaction, with the Funding Lender's Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

(d) A default in the payment of any Additional Borrower Payments; or

(e) Any other "Default" or "Event of Default" under any of the other Funding Loan Documents (taking into account any applicable grace periods therein).

**Section 9.2. Acceleration of Maturity; Rescission and Annulment.**

(a) Subject to the provisions of Article V and Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender may declare the principal of the Funding Loan and the Governmental Lender Notes and the interest accrued to be immediately due and payable, by notice to the Fiscal Agent, the Governmental Lender and the Borrower and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Governmental Lender Notes shall become immediately due and payable.

(b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Fiscal Agent, the Borrower and the Governmental Lender, rescind and annul such declaration and its consequences if:

(i) The Borrower has deposited with the Fiscal Agent or the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Governmental Lender Notes, (2) the principal of and Prepayment Premium on the Governmental Lender Notes that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Governmental Lender Notes, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Governmental Lender Notes, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and

(ii) All Events of Default, other than the non-payment of the principal of the Governmental Lender Notes which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

(c) [Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.]

### **Section 9.3. Additional Remedies; Funding Lender Enforcement.**

(a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of Article V, this Section 9.3 and Section 9.9 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute. The Funding Lender acknowledges and agrees that the Governmental Lender shall not be responsible or liable for any fees and expenses incurred by the Funding Lender in connection with pursuing remedies under this Article IX.

(b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce its rights and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law:

(i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or part of the Security;

(ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the real estate records of the jurisdiction in which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

(iv) to 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 the Governmental Lender Notes, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect.

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Notes or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Governmental Lender Notes, and provided that the Governmental Lender may enforce specific performance with respect to the Unassigned Rights; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower, the Governmental Lender, the Fiscal Agent and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default, the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder; provided, however, that any forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.5, 5.15 or 5.16 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender shall have the right to exercise all its rights and remedies thereunder (subject to the last paragraph of Section 9.14 hereof).

**Section 9.4. Application of Money Collected.** Any money collected by the Funding Lender or the Fiscal Agent pursuant to this Article and any other sums then held by the Funding Lender as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

First: To the payment of any and all amounts due to the Fiscal Agent under the Funding Loan Documents;

Second: To the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to the Governmental Lender, the Funding Lender, the Servicer, the Governmental Lender Servicer and the Rebate Analyst;

Third: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Notes, then due and unpaid in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Governmental Lender Notes) on overdue principal of, and Prepayment Premium and overdue installments of interest on the Governmental Lender Notes; provided, however, that partial interests in any portion of the Funding Loan, as evidenced by the Governmental Lender Notes shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and

Fourth: The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

**Section 9.5. Remedies Vested in Funding Lender.** All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Notes may be prosecuted and enforced by the Funding Lender without the possession of the Governmental Lender Notes or the production thereof in any proceeding relating thereto.

**Section 9.6. Restoration of Positions.** If Funding Lender shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the

Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

**Section 9.7. Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 9.8. Delay or Omission Not Waiver.** No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

**Section 9.9. Waiver of Past Defaults.** Before any judgment or decree for payment of money due has been obtained by the Funding Lender against the Borrower, the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Fiscal Agent, the Governmental Lender and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**Section 9.10. Remedies Under Borrower Loan Agreement or Borrower Notes.** As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Notes, whether or not the Governmental Lender Notes have been accelerated or declared due and payable by reason of an Event of Default.

**Section 9.11. Waiver of Appraisal and Other Laws.**

(a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Governmental Lender, for itself and all who may claim under it,



waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof.

(b) If any law now in effect prohibiting the waiver referred to in Section 9.11(a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

**Section 9.12. Suits to Protect the Security.** The Funding Lender shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

**Section 9.13. Remedies Subject to Applicable Law.** All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

**Section 9.14. Assumption of Obligations.** In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Notes, the Regulatory Agreement and any other Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth in such Borrower Loan Documents or Funding Loan Documents and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents.

## ARTICLE X AMENDMENT; AMENDMENT OF FUNDING LOAN AGREEMENT AND OTHER DOCUMENTS

**Section 10.1. Amendment of Funding Loan Agreement.** Any of the terms of this Funding Loan Agreement and the Governmental Lender Notes may be amended or waived only

by an instrument signed by the Funding Lender, the Fiscal Agent and the Governmental Lender, provided, however, no such amendment which materially affects the rights, duties, obligations or other interests of the Borrower shall be made without the consent of the Borrower, and, provided further, that if the Borrower is in default under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender, the Fiscal Agent or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender and the Fiscal Agent.

**Section 10.2. Amendments Require Funding Lender Consent.** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender.

**Section 10.3. Consents and Opinions.** No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion and (ii) the Funding Lender, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## **ARTICLE XI THE FISCAL AGENT**

**Section 11.1. Appointment of Fiscal Agent; Acceptance.** The Governmental Lender hereby appoints The Bank of New York Mellon Trust Company, N.A. as Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

**Section 11.2. Certain Duties and Responsibilities of Fiscal Agent.**

(a) The Fiscal Agent undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations shall be read into this Funding Loan Agreement against the Fiscal Agent.

(b) If an event of default exists hereunder or under any Borrower Loan Document of which Fiscal Agent has been provided Written Notice, the Fiscal Agent shall exercise such of the rights and powers vested in it by this Funding Loan Agreement, and subject to Section 11.2(c)(iii) hereof, use the same degree of care and skill in its exercise, as a prudent corporate trust officer

would exercise or use under the circumstances in the conduct of corporate trust business. The Fiscal Agent, prior to the occurrence of an event of default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations should be read into this Funding Loan Agreement against the Fiscal Agent.

(c) The Fiscal Agent may consult with counsel, and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Fiscal Agent hereunder in good faith and in reliance thereon.

(d) The Fiscal Agent shall not be accountable for the use or application by the obligor of the Governmental Lender Notes or the proceeds thereof or for the use or application of any money paid over by the Fiscal Agent in accordance with the provisions of this Funding Loan Agreement or for the use and application of money received by any paying agent.

(e) The Fiscal Agent shall have no liability for any loss, expense or liability incurred as a result of any investment made in accordance with directions of the Borrower or the Governmental Lender, as applicable.

(f) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligence, or its own willful misconduct, in each case, as finally adjudicated by a court of law, except that:

(i) This subsection shall not be construed to limit the effect of subsection (a) of this Section;

(ii) The Fiscal Agent shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts;

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

(iv) No provision of this Funding Loan Agreement shall require the Fiscal Agent 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, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it in its sole discretion.

Subject to its rights to indemnification pursuant to Section 11.4 hereof, the Fiscal Agent is directed to enter into the Borrower Loan Documents to which it is a party and other related documents, solely in its capacity as Fiscal Agent.

(g) Whether or not therein expressly so provided, every provision of this Funding Loan Agreement and the other Funding Loan Documents relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section.

(h) The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Funding Loan Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Funding Loan Agreement.

(i) The permissive rights of the Fiscal Agent to do things enumerated in this Funding Loan Agreement shall not be construed as a duty.

(j) The rights of the Fiscal Agent and limitations of liability enumerated herein and in Section 11.4 shall extend to actions taken or omitted in its role as assignee of the Governmental Lender under the Borrower Loan Agreement and the other Funding Loan Documents.

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

**Section 11.3. Notice of Defaults.** Upon the occurrence of any default hereunder or under any Borrower Loan Document and provided that a Responsible Officer of the Fiscal Agent is aware of or has received Written Notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, the Equity Investor, the Servicer, if any, and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.1 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 11.4(g) hereof, unless such default shall have been cured or waived.

**Section 11.4. Certain Rights of Fiscal Agent.** Except as otherwise provided in Section 11.1 hereof:

(a) The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the purported proper party or parties;

(b) Any request or direction of the Governmental Lender mentioned herein shall be sufficiently evidenced by a certificate or order executed by an Authorized Governmental Lender Representative;

(c) Whenever in the administration of this Funding Loan Agreement or any Borrower Loan Document the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a Written Certificate of the Governmental Lender, the Funding Lender, the Servicer or the Borrower, as appropriate;

(d) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Funding Loan Agreement or any Borrower Loan Document at the request or direction of the Funding Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct, provided, that nothing contained in this subparagraph (d) shall be construed to require such security or indemnity for the performance by the Fiscal Agent of its obligations under Section 8.6 hereof;

(e) The Fiscal Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document but the Fiscal Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Fiscal Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Governmental Lender, if any, and of the Borrower, in either case personally or by agent or attorney after reasonable notice and during normal business hours;

(f) The Fiscal Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and pay reasonable compensation thereto and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. The Fiscal Agent may consult with counsel of its choice concerning all matters hereof, and the Fiscal Agent may rely on the advice of such counsel or any Opinion of Counsel in respect of any action taken, suffered or omitted by the Fiscal Agent hereunder in good faith and in reliance thereon. The Fiscal Agent shall not be responsible for any loss or damage resulting from any action or inaction taken in good faith reliance upon said advice; and

(g) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any Borrower Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or the Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Direction of such default by the Governmental Lender, the Servicer or the Funding Lender, and all notices or other instruments required by this Funding Loan Agreement or under any Borrower Loan Document to be delivered to the Fiscal Agent, must, in order to be effective, be delivered in writing to a Responsible Officer of the Fiscal Agent at the Office of the Fiscal Agent, and in the absence of such Written Notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid.

(h) Any term of this Funding Loan Agreement, the Borrower Loan Agreement, the Security Instrument or of any related document to the contrary notwithstanding, the Fiscal Agent shall have no responsibility, obligation or duty to enter upon, or otherwise take possession or control of, the Project, or take any other action which could constitute taking possession or control of the Project (i) if it will require the approval of a governmental regulator that cannot be obtained, (ii) until the Fiscal Agent shall be indemnified to its sole satisfaction and (iii) until the Fiscal Agent shall be satisfied, in its sole discretion and determination, that neither it nor the trusts created under the Funding Loan Agreement shall incur, by reason of such action, any personal liability under any federal, state or local law for hazardous wastes, hazardous materials or other environmental liabilities or any other liability. If the Fiscal Agent believes it prudent or appropriate prior to taking any action with respect to possession or control of the Project, the Fiscal Agent may, but shall not be obligated to, contract for, at the Borrower's expense or the expense of the trust created under the Funding Loan Agreement, in its sole discretion, an environmental inspection of the Project.

**Section 11.5. Not Responsible for Recitals, Offering Documents or Financial Condition.** The recitals contained herein and in the Governmental Lender Notes shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the Pledged Revenues, the Security or any part thereof, or as to the title of the Governmental Lender thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Funding Loan Agreement or of the Governmental Lender Notes.

The Fiscal Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the funding of the Funding Loan.

The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Project. The Fiscal Agent shall be under no obligation to analyze, review, verify the accuracy of or make any credit decisions with respect to any financial statements, reports, notices, certificates or documents received hereunder but shall hold such financial statements reports, notices, certificates and documents solely for the benefit of, and review by, the Funding Lender and such other parties to whom the Fiscal Agent may provide

such information pursuant to this Funding Loan Agreement. The Fiscal Agent shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

The Fiscal Agent makes no representations as to and shall have no responsibility for the sufficiency of the insurance required under any of the Borrower Loan Documents.

**Section 11.6. Fiscal Agent May Hold Governmental Lender Notes.** The Fiscal Agent in its individual or any other capacity may become the owner or pledgee of the Governmental Lender Notes and may otherwise deal with the Governmental Lender, the Funding Lender and the Borrower with the same rights it would have if it were not Fiscal Agent.

**Section 11.7. Moneys Held in Trust.** Moneys held by the Fiscal Agent in trust hereunder need not be segregated from other funds except to the extent required by law. The Fiscal Agent shall be under no liability for interest on any moneys received by it hereunder except as otherwise provided herein.

**Section 11.8. Compensation and Reimbursement.** Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct, both as finally adjudicated by a court of law.

When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

(a) The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered.

(b) As security for the performance of the obligations of the Borrower under this Section and for the payment of such compensation, expenses, reimbursements and indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Pledged Revenues.

(c) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

**Section 11.9. Fiscal Agent Required; Eligibility.** Any successor Fiscal Agent shall at all times be a trust company, a state banking corporation or a national banking association with the authority to accept trusts in the State approved in writing by the Governmental Lender and either

(a) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, (b) be a wholly owned subsidiary of a bank holding company, or a wholly owned subsidiary of a company that is a wholly owned subsidiary of a bank holding company, having a combined capital surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, have at least \$500,000,000 of trust assets under management and have a combined capital surplus of at least \$2,000,000 as set forth in its most recent published annual report of condition, or (c) be otherwise acceptable to the Funding Lender in its sole and absolute discretion.

**Section 11.10. Resignation and Removal; Appointment of Successor.**

(a) No resignation or removal of the Fiscal Agent hereunder and no appointment of a successor Fiscal Agent pursuant to this Article shall become effective until the written acceptance by the successor Fiscal Agent of such appointment.

(b) The Fiscal Agent may resign at any time by giving 60 days' Written Notice thereof to the Governmental Lender, the Borrower, the Servicer, if any, and the Funding Lender. If an instrument of acceptance by a successor Fiscal Agent shall not have been delivered to the Fiscal Agent within 30 days after the giving of such notice of resignation, the resigning Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(c) The Fiscal Agent may be removed at any time with 30 days' notice by (i) the Governmental Lender, with the Written Consent of the Funding Lender, (ii) the Borrower (unless the Borrower is in default under any of the Borrower Loan Documents), with the Written Consent of the Funding Lender and the Governmental Lender, or (iii) the Funding Lender by Written Notice delivered to the Fiscal Agent, the Governmental Lender and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the Office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within [30 days] after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any institution acceptable to the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental Lender, the Borrower, the Servicer, if any, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.



(e) The retiring Fiscal Agent shall cause Written Notice of each resignation and each removal of the Fiscal Agent and each appointment of a successor Fiscal Agent to be provided to the Funding Lender. Each notice shall include the name of the successor Fiscal Agent and the address of the office of the successor Fiscal Agent.

**Section 11.11. Acceptance of Appointment by Successor.**

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender and to the retiring Fiscal Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Fiscal Agent shall become effective and such successor Fiscal Agent, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Fiscal Agent; notwithstanding the foregoing, on request of the Governmental Lender or the successor Fiscal Agent, such retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Fiscal Agent upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Fiscal Agent, and shall duly assign, transfer and deliver to such successor Fiscal Agent all property and money held by such retiring Fiscal Agent hereunder. Upon request of any such successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Fiscal Agent all such estates, properties, rights, powers and trusts.

(b) No successor Fiscal Agent shall accept its appointment unless at the time of such acceptance such successor Fiscal Agent shall be qualified and eligible under this Article, to the extent operative.

**Section 11.12. Merger, Conversion, Consolidation or Succession to Business.** Any corporation or association into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause Written Notice of such succession to be delivered to the Funding Lender within 30 days of such succession.

**Section 11.13. Appointment of Co-Fiscal Agent.** It is the purpose of this Funding Loan Agreement that there shall be no violation of any laws of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of

any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent or hold title to the properties, in trust, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon Written Notice to the Governmental Lender, the Funding Lender and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreement or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co-fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-fiscal agent shall run to and be enforceable by either of them.

Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co-fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co Fiscal Agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co-fiscal agent.

**Section 11.14. Loan Servicing.** The Governmental Lender and the Fiscal Agent acknowledge that the Funding Lender shall have the right to appoint a Servicer to service and administer the Funding Loan and Borrower Loan, as set forth in a Servicing Agreement. The Funding Lender shall provide Written Notice to the Fiscal Agent of the appointment, termination or replacement of any Servicer. The Governmental Lender and the Fiscal Agent shall not be responsible for monitoring the performance of any Servicer or for any acts or omissions of such Servicer. The Funding Lender may, in its sole discretion, terminate or replace the Servicer.

**Section 11.15. No Recourse Against Officers or Employees of Fiscal Agent.** No recourse with respect to any claim related to any obligation, duty or agreement contained in this Funding Loan Agreement or any other Funding Loan Document shall be had against any officer or employee, as such, of the Fiscal Agent, it being expressly understood that the obligations, duties and agreements of the Fiscal Agent contained in this Funding Loan Agreement and the other Funding Loan Documents are solely corporate in nature.

**Section 11.16. USA Patriot Act Requirements of the Fiscal Agent.** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such person's formation and existence as a legal entity and the identity of the owners or controlling persons thereof. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such person or other relevant documentation.

## **ARTICLE XII MISCELLANEOUS**

**Section 12.1. Notices.** All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, e-mail, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows:

If to the Borrower:

Monaco Arms Preservation, Ltd.  
c/o Lincoln Avenue Capital, LLC  
201 Santa Monica Boulevard, Suite 550  
Santa Monica, California 90401  
Attention: Jonathan A. Gruskin  
Facsimile: \_\_\_\_\_

and a copy to:

Levitt & Boccio, LLP  
423 West 55<sup>th</sup> Street  
8<sup>th</sup> Floor  
New York, NY 10019  
Attention: **[David Boccio, Esq.]**  
Facsimile: \_\_\_\_\_

and a copy to:

Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
Museum Tower  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Attention: Brian McDonough, Esq.  
Facsimile: (305) 789-3395

and a copy to:	<p>             Boston Financial Institutional Tax Credit              LI, Limited Partnership              101 Arch Street              13th Floor              Boston, Massachusetts 02110              Attention: Asset Management – Monaco Arms           </p>
and a copy to:	<p>             Nixon Peabody LLP              Exchange Place              53 State Street              Boston, MA 02109              Attention: Thomas A. Giblin, Esq.              Facsimile: (617) 345-1300           </p>
If to the Governmental Lender:	<p>             Jacksonville Housing Finance Authority              214 N. Hogan Street, 7<sup>th</sup> Floor              Jacksonville, Florida 32202              Attention: Finance Director              Facsimile: (850) 488-9809           </p>
with a copy to:	<p>             Office of the General Counsel              117 West Duval Street, Suite 480              Jacksonville, Florida 32202              Attention: Emerson Lotzia, Esq.              Facsimile: (904) 630-1731           </p>
If to Funding Lender:	<p>             Citibank, N.A.              388 Greenwich Street, 8th Floor              New York, New York 10013              Attention : Transaction Management Group              Re: Monaco Arms Apartments ID# 25795              Facsimile: (212) 723-8209           </p>
with a copy to:	<p>             Citibank, N.A.              325 East Hillcrest Drive, Suite 160              Thousand Oaks, California 91360              Attention: Operations Manager/Asset Manager              Re: Monaco Arms Apartments ID# 25795              Facsimile: (805) 557-0924           </p>

Prior to the Conversion Date, with a copy to:	Citibank, N.A. 388 Greenwich Street, 8th Floor New York, New York 10013 Attention: Account Specialist Re: Monaco Arms Apartments ID# 25795 Facsimile: (212) 723-8209
Following the Conversion Date, with a copy to:	Citibank, N.A. c/o Berkadia Commercial Servicing Department 323 Norristown Road, Suite 300 Ambler, Pennsylvania 19002 Attention: Client Relations Manager Re: Monaco Arms Apartments ID# 25795 Facsimile: (215) 328-0305
And a copy of any notices of default sent to:	Citibank, N.A. 388 Greenwich Street New York, New York 10013 Attention: General Counsel's Office Re: Monaco Arms Apartments ID# 25795 Facsimile: (646) 291-5754
If to Fiscal Agent:	The Bank of New York Mellon Trust Company, N.A. 10161 Centurion Parkway N Jacksonville, FL 32256 Attention: Jacksonville HFA Relationship Manager Facsimile: (904) 645-1930

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (i) three Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, e-mail or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day. Any facsimile signature by a Person on a document, notice, demand, request or communication

required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

**Section 12.2. Term of Funding Loan Agreement.** This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Notes, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

**Section 12.3. Successors and Assigns.** All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

**Section 12.4. Legal Holidays.** In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such later payment or such act shall have the same force and effect as if made on the date of payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period after such date and prior to the date of payment.

**Section 12.5. Governing Law.** This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

**Section 12.6. Invalidity, Illegality or Unenforceability of Provisions.** If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Notes or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

**Section 12.7. Execution in Several Counterparts.** This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

**Section 12.8. Nonrecourse Obligation of the Borrower.** Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement pursuant to the provisions of the Borrower Loan Agreement are without recourse to

the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

**Section 12.9. Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS FUNDING LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**Section 12.10. Electronic Transactions.**

(a) The transactions described in this Funding Loan Agreement may be conducted and the related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

(b) The Fiscal Agent shall have the right to accept and act upon directions or instructions given pursuant to this Funding Loan Agreement and delivered using Electronic Means (defined below); provided, however, that Borrower, the Governmental Lender or such other party giving such direction or instruction, as the case may be, shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such directions or instructions (each an "Authorized Officer") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. For purposes of this subsection (b), "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder. If the Borrower, the Governmental Lender or such other party giving such direction or instruction elects to give the Fiscal Agent directions or instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such directions or instructions, the Fiscal Agent's understanding of such directions or instructions shall be deemed controlling. The Borrower, the Governmental Lender and any other party giving such direction or instruction understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such directions or instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Borrower, the Governmental Lender or such other party giving such instruction shall each be responsible for ensuring that only Authorized Officers transmit such directions or instructions to the Fiscal Agent and that only Authorized Officers transmit such directions or instructions to the Fiscal

Agent and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys as confidential and with extreme care. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such directions or instructions notwithstanding such directions or instructions conflict or are inconsistent with a subsequent written direction or written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions or instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized directions or instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions or instructions to the Fiscal Agent and that there may be more secure methods of transmitting directions or instructions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions or instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 12.11. Reference Date.** This Funding Loan Agreement is dated for reference purposes only as of the first day of May, 2019.

[The remainder of this page is intentionally left blank; signature pages follow.]



IN WITNESS WHEREOF, the Funding Lender, the Fiscal Agent and the Governmental Lender have caused this Funding Loan Agreement to be duly executed as of the date first written above.

**CITIBANK, N.A.**, as the Funding Lender

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

Name:

Title:

[Signature Page to Funding Loan Agreement – Monaco Arms Apartments]

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

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

[Signature Page to Funding Loan Agreement – Monaco Arms Apartments]

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY, as Governmental Lender**

(SEAL)

By: \_\_\_\_\_  
William I. Gulliford, III, Chair

\_\_\_\_\_

[Signature Page to Funding Loan Agreement – Monaco Arms Apartments]

## EXHIBIT A-1

### FORM OF GOVERNMENTAL LENDER CONSTRUCTION/PERMANENT NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS GOVERNMENTAL LENDER NOTE AGREES (A) THAT (I) IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) IT WILL NOT SELL OR OTHERWISE TRANSFER THIS GOVERNMENTAL LENDER NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS GOVERNMENTAL LENDER NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

JACKSONVILLE HOUSING FINANCE AUTHORITY  
MULTIFAMILY MORTGAGE REVENUE NOTE  
(MONACO ARMS APARTMENTS), SERIES 2019A

\$[\_\_\_\_\_]

Date of Issuance: May [\_\_\_], 2019

FOR VALUE RECEIVED, the undersigned Jacksonville Housing Finance Authority ("Obligor"), promises to pay to the order of CITIBANK, N.A. ("Holder") the maximum principal sum of \_\_\_\_\_ AND NO/100 DOLLARS (\$[\_\_\_\_\_]) on \_\_\_\_\_, 20\_\_\_\_, or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement dated as of May 1, 2019 (the "Funding Loan Agreement"), among Obligor, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as fiscal agent (the "Fiscal Agent"), and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of this Governmental Lender Note so paid. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

Obligor shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.

This Governmental Lender Note is a pass-through obligation relating to a portion of a construction and permanent loan (the "Borrower Loan") made by Obligor from a portion of the proceeds of the Funding Loan to Monaco Arms Preservation, Ltd., a Florida limited partnership, as borrower (the "Borrower"), under that certain Borrower Loan Agreement dated as of May 1, 2019 (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Obligor and the Borrower, evidenced by the Borrower Construction/Permanent Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Borrower Construction/Permanent Note for complete payment and prepayment terms of the Borrower Construction/Permanent Note, payments on which are passed-through under this Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned under the Funding Loan Agreement. THIS GOVERNMENTAL LENDER NOTE IS NOT A DEBT OR AN OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NEITHER THE FAITH, REVENUES, CREDIT NOR TAXING POWER OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY), OR INTEREST ON THIS GOVERNMENTAL LENDER NOTE. THIS GOVERNMENTAL LENDER NOTE IS PAYABLE, AS TO PRINCIPAL, PREMIUM (IF ANY), AND INTEREST, SOLELY OUT OF THE PLEDGED REVENUES AND THE SECURITY WHICH IS THE SOLE ASSET OF THE OBLIGOR PLEDGED THEREFOR, AND THEN ONLY TO THE EXTENT PROVIDED IN THE FUNDING LOAN AGREEMENT. NEITHER THE MEMBERS OF THE OBLIGOR NOR ANY PERSONS EXECUTING THIS GOVERNMENTAL LENDER NOTE SHALL BE LIABLE PERSONALLY ON THIS NOTE BY REASON OF THE ISSUANCE HEREOF. THE OBLIGOR HAS NO TAXING POWER.

THIS GOVERNMENTAL LENDER NOTE HAS BEEN ISSUED PURSUANT TO THE RESOLUTION AND IN ACCORDANCE WITH THE ACT.

NO MEMBER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE OBLIGOR, INCLUDING ANY INDIVIDUAL EXECUTING THE FUNDING LOAN AGREEMENT OR THIS NOTE, SHALL BE LIABLE PERSONALLY ON THIS GOVERNMENTAL LENDER NOTE OR FOR ANY REASON RELATING TO THE ISSUANCE OF THIS GOVERNMENTAL LENDER NOTE. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THIS GOVERNMENTAL LENDER NOTE, OR FOR ANY CLAIM BASED ON THIS GOVERNMENTAL LENDER NOTE, OR OTHERWISE IN RESPECT OF THIS GOVERNMENTAL LENDER NOTE, OR BASED ON OR IN RESPECT OF THE FUNDING LOAN AGREEMENT OR ANY SUPPLEMENT THERETO, AGAINST ANY MEMBER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE OBLIGOR OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS NOTE AND AS PART OF THE

CONSIDERATION FOR THE ISSUE OF THIS GOVERNMENTAL LENDER NOTE, EXPRESSLY WAIVED AND RELEASED.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such maximum rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such maximum rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Governmental Lender Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

The rights and remedies of the Holder hereof during the occurrence of a default are as set forth in the Funding Loan Agreement. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Lender Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Subject to the limits on liability set forth herein and in the Funding Loan Agreement, and solely from the collateral pledged therefor, Obligor shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

The transfer of this Governmental Lender Note is subject to certain restrictions as provided in the Funding Loan Agreement and described below and to registration by the holder in person or by the holder's attorney hereof upon surrender of this Governmental Lender Note at the principal corporate trust office of the Fiscal Agent, duly endorsed or accompanied by a written instrument or instruments of transfer in form satisfactory to the Fiscal Agent and the Governmental Lender and executed by the holder hereof or his, her or its attorney duly

authorized in writing, containing written instructions as to the details of the registration of the transfer of this Governmental Lender Note. Thereupon the Obligor shall execute (if necessary) and the Fiscal Agent shall authenticate and deliver in the name of the transferee or transferees (but not registered in blank or to "bearer" or a similar designation), a new Governmental Lender Note.

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Obligor which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note or caused this Governmental Lender Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

OBLIGOR:

JACKSONVILLE HOUSING FINANCE  
AUTHORITY

(SEAL)

By: \_\_\_\_\_  
Name: William I. Gulliford, III  
Title: Chair

Attest:

By: \_\_\_\_\_  
Name: Delilah Bumbarger  
Title: Secretary

## CERTIFICATE OF AUTHENTICATION

This Governmental Lender Note is the Governmental Lender Construction/Permanent Note described in the within mentioned Funding Loan Agreement.

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

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

\_\_\_\_\_  
Authorized Signatory



## EXHIBIT A-2

### FORM OF GOVERNMENTAL LENDER CONSTRUCTION NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS GOVERNMENTAL LENDER NOTE AGREES (A) THAT (I) IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) IT WILL NOT SELL OR OTHERWISE TRANSFER THIS GOVERNMENTAL LENDER NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS GOVERNMENTAL LENDER NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

JACKSONVILLE HOUSING FINANCE AUTHORITY  
MULTIFAMILY MORTGAGE REVENUE NOTE  
(MONACO ARMS APARTMENTS), SERIES 2019B

\$[\_\_\_\_\_]

Date of Issuance: May [\_\_\_], 2019

FOR VALUE RECEIVED, the undersigned Jacksonville Housing Finance Authority ("Obligor"), promises to pay to the order of CITIBANK, N.A. ("Holder") the maximum principal sum of \_\_\_\_\_ AND NO/100 DOLLARS (\$[\_\_\_\_\_]) on \_\_\_\_\_, 20\_\_\_\_, or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement dated as of May 1, 2019 (the "Funding Loan Agreement"), among Obligor, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as fiscal agent (the "Fiscal Agent"), and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of this Governmental Lender Note so paid. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

Obligor shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.

This Governmental Lender Note is a pass-through obligation relating to a portion of a construction and permanent loan (the "Borrower Loan") made by Obligor from a portion of the proceeds of the Funding Loan to Monaco Arms Preservation, Ltd., a Florida limited partnership, as borrower (the "Borrower"), under that certain Borrower Loan Agreement dated as of May 1, 2019 (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Obligor and the Borrower, evidenced by the Borrower Construction Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Borrower Construction Note for complete payment and prepayment terms of the Borrower Construction Note, payments on which are passed-through under this Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned under the Funding Loan Agreement. THIS GOVERNMENTAL LENDER NOTE IS NOT A DEBT OR AN OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NEITHER THE FAITH, REVENUES, CREDIT NOR TAXING POWER OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY), OR INTEREST ON THIS GOVERNMENTAL LENDER NOTE. THIS GOVERNMENTAL LENDER NOTE IS PAYABLE, AS TO PRINCIPAL, PREMIUM (IF ANY), AND INTEREST, SOLELY OUT OF THE PLEDGED REVENUES AND THE SECURITY WHICH IS THE SOLE ASSET OF THE OBLIGOR PLEDGED THEREFOR, AND THEN ONLY TO THE EXTENT PROVIDED IN THE FUNDING LOAN AGREEMENT. NEITHER THE MEMBERS OF THE OBLIGOR NOR ANY PERSONS EXECUTING THIS GOVERNMENTAL LENDER NOTE SHALL BE LIABLE PERSONALLY ON THIS NOTE BY REASON OF THE ISSUANCE HEREOF. THE OBLIGOR HAS NO TAXING POWER.

THIS GOVERNMENTAL LENDER NOTE HAS BEEN ISSUED PURSUANT TO THE RESOLUTION AND IN ACCORDANCE WITH THE ACT.

NO MEMBER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE OBLIGOR, INCLUDING ANY INDIVIDUAL EXECUTING THE FUNDING LOAN AGREEMENT OR THIS NOTE, SHALL BE LIABLE PERSONALLY ON THIS GOVERNMENTAL LENDER NOTE OR FOR ANY REASON RELATING TO THE ISSUANCE OF THIS GOVERNMENTAL LENDER NOTE. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THIS GOVERNMENTAL LENDER NOTE, OR FOR ANY CLAIM BASED ON THIS GOVERNMENTAL LENDER NOTE, OR OTHERWISE IN RESPECT OF THIS GOVERNMENTAL LENDER NOTE, OR BASED ON OR IN RESPECT OF THE FUNDING LOAN AGREEMENT OR ANY SUPPLEMENT THERETO, AGAINST ANY MEMBER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE OBLIGOR OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS NOTE AND AS PART OF THE

CONSIDERATION FOR THE ISSUE OF THIS GOVERNMENTAL LENDER NOTE, EXPRESSLY WAIVED AND RELEASED.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement.; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such maximum rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such maximum rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Governmental Lender Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

The rights and remedies of the Holder hereof during the occurrence of a default are as set forth in the Funding Loan Agreement. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Lender Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Subject to the limits on liability set forth herein and in the Funding Loan Agreement, and solely from the collateral pledged therefor, Obligor shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

The transfer of this Governmental Lender Note is subject to certain restrictions as provided in the Funding Loan Agreement and described below and to registration by the holder in person or by the holder's attorney hereof upon surrender of this Governmental Lender Note at the principal corporate trust office of the Fiscal Agent, duly endorsed or accompanied by a written instrument or instruments of transfer in form satisfactory to the Fiscal Agent and the Governmental Lender and executed by the holder hereof or his, her or its attorney duly

authorized in writing, containing written instructions as to the details of the registration of the transfer of this Governmental Lender Note. Thereupon the Obligor shall execute (if necessary) and the Fiscal Agent shall authenticate and deliver in the name of the transferee or transferees (but not registered in blank or to "bearer" or a similar designation), a new Governmental Lender Note.

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Obligor which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note or caused this Governmental Lender Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

OBLIGOR:

JACKSONVILLE HOUSING FINANCE  
AUTHORITY

(SEAL)

By: \_\_\_\_\_  
Name: William I. Gulliford, III  
Title: Chair

Attest:

By: \_\_\_\_\_  
Name: Delilah Bumbarger  
Title: Secretary

## **CERTIFICATE OF AUTHENTICATION**

This Governmental Lender Note is the Governmental Lender Construction Note described in the within mentioned Funding Loan Agreement.

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

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

\_\_\_\_\_  
Authorized Signatory

## EXHIBIT B

### FORM OF REQUIRED TRANSFEREE REPRESENTATIONS

[\_\_\_\_\_, 20\_\_]

The undersigned, as holder (the "Holder") of a loan (the "Funding Loan") in the Maximum Amount of \$[\_\_\_\_\_] from CITIBANK, N.A. (the "Funding Lender") to Jacksonville Housing Finance Authority (the "Governmental Lender") pursuant to a Funding Loan Agreement dated as of May 1, 2019 (the "Funding Loan Agreement"), among the Funding Lender, The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "Fiscal Agent"), and the Governmental Lender, evidenced by the Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A and the Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (collectively, the "Governmental Lender Notes"), or an interest therein, hereby represents that:

1. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the Project to be able to evaluate the risk and merits of the investment represented by the Governmental Lender Notes. We are able to bear the economic risks of such investment.

2. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project, the use of proceeds of the Governmental Lender Notes and the security therefor so that, as a reasonable investor, the Holder has been able to make its decision to [extend/purchase] the Governmental Lender Notes [or an interest therein]. In entering into this transaction, the Holder acknowledges that it has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences to the Funding Lender or other aspects of its making the Funding Loan and acquiring the Governmental Lender Note, nor has it looked to, nor expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transactions contemplated by the Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Funding Lender to secure repayment of the Governmental Lender Notes.

3. The Holder is an Approved Transferee.

4. The Holder acknowledges that it is purchasing [an interest in] the Governmental Lender Notes for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Governmental Lender Notes; provided, however, that the Holder may

sell or transfer the Governmental Lender Notes [or an interest therein] pursuant to the terms of Section 2.6 of the Funding Loan Agreement.

5. In the event any placement memorandum to be provided to any subsequent buyer or beneficial owner of such portion of the Funding Loan will disclose information with respect to the Governmental Lender other than its name, location and type of political subdivision and general information with respect to the Funding Loan and Borrower Loan and related documents, the Holder will provide the Governmental Lender with a draft of such placement memorandum, and the Governmental Lender shall have the right to approve any description of the Governmental Lender therein (which approval shall not be unreasonably withheld).

6. The Holder understands that the Governmental Lender Notes are limited obligations of the Governmental Lender; payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Governmental Lender Notes are expressly limited as set forth in the Funding Loan Agreement and related documents.

7. The Holder acknowledges that the Funding Loan is being made as a direct loan evidenced by the Governmental Lender Notes and not through the purchase of a municipal security and that the Governmental Lender will not make a filing with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access Repository. The Holder acknowledges that no CUSIP numbers or credit ratings have been obtained with respect to the Governmental Lender Note[s].

8. The Holder hereby indemnifies the Governmental Lender and the Fiscal Agent from and against any and all liability, cost or expense (including attorneys' fees) that may result if the Holder's purchase/transfer of the Governmental Lender Notes is not exempt from registration under the Securities Act or is not made in accordance with federal and state laws. Further, the Holder hereby affirms it shall not transfer or sell the Governmental Lender Notes or any interest therein to a party related to or affiliated with the Borrower, any general partner, limited partner or member of the Borrower without the prior written consent of the Governmental Lender.

9. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Funding Loan Agreement.

[Remainder of page intentionally left blank.]

[Signature Page to Required Transferee Representations]

[\_\_\_\_\_], as Holder

By

Name

Its



## EXHIBIT C

### FORM OF WRITTEN REQUISITION

(Project Fund)

Requisition# \_\_\_\_\_

Amount \$ \_\_\_\_\_

The Bank of New York Mellon Trust Company, N.A.  
10161 Centurion Parkway N.  
Jacksonville, FL 32256  
Attention: Jacksonville HFA Relationship Manager

Re: \$[\_\_\_\_\_] Jacksonville Housing Finance Authority Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A, and \$[\_\_\_\_\_] Jacksonville Housing Finance Authority Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B, each dated May [\_\_\_], 2019

This requisition is being delivered to you in accordance with the Funding Loan Agreement dated as of May 1, 2019 (the "Funding Loan Agreement") among Citibank, N.A. (the "Funding Lender"), the Jacksonville Housing Finance Authority and The Bank of New York Mellon Trust Company, N.A., as fiscal agent, pursuant to which the above-referenced notes were issued. Capitalized terms not defined herein shall have the meanings assigned thereto in the Funding Loan Agreement.

1. You are requested to disburse funds from the Project Fund pursuant to Section 7.6 of the Funding Loan Agreement from the account(s), in the amount(s) and to the person(s) as follows:

[Insert grid (see below) summarizing all funds, including amount, source and payee, which are being requisitioned from the Fiscal Agent pursuant to this requisition.]

Amount	Funding Source	Payable To

2. The undersigned certifies that:

(i) the obligation stated on this Requisition has been incurred in, or in relation to, the acquisition, rehabilitation, construction or equipping of the Project, each item is a proper charge against the Project Fund, and the obligation has not been the basis for a prior requisition that has been paid;

(ii) this Requisition contains no items representing any Closing Costs or any other amount constituting an issuance cost under Section 147(g) of the Code and payment of the costs referenced herein will not violate any representation, warranty or covenant of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement or the Tax Certificate;

(iii) not less than 95% of the sum of: (a) the proceeds of the Funding Loan requisitioned by this Requisition to be funded from the Project Fund plus (b) all proceeds of the Funding Loan previously disbursed from the Project Fund have been or will be applied by the Borrower to pay Qualified Project Costs;

(iv) the Borrower acknowledges that fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a "related person" (within the meaning of Section 144(a)(3) of the Code) are not deemed to be Qualified Project Costs; and

(v) as of the date hereof, no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement or under the Borrower Loan Agreement.

3. You hereby authorize Funding Lender to use the wire instructions contained in Exhibit D of the Funding Loan Agreement to wire the funds to, and Funding Lender may continue to rely on these instructions until it shall have received any written notice of modification or revocation from you.

Dated: \_\_\_\_\_, 20\_\_

MONACO ARMS PRESERVATION, LTD., a  
Florida limited partnership

By: Monaco Arms GP LLC, a foreign limited  
liability company, its general partner

By: \_\_\_\_\_  
Jonathan A Gruskin, Vice President

Approved by Funding Lender:

CITIBANK, N.A.

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

Approved by:

[SELTZER MANAGEMENT GROUP, INC.]

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

**EXHIBIT D**

**FISCAL AGENT WIRING INSTRUCTIONS**

Bank Name: \_\_\_\_\_  
Bank City and State: \_\_\_\_\_  
ABA Number: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
For Further Credit Account Name (if applicable): \_\_\_\_\_  
For Further Credit Account # (if applicable): \_\_\_\_\_  
Reference: \_\_\_\_\_

**EXHIBIT B**  
**FORM OF BORROWER LOAN AGREEMENT**

**BORROWER LOAN AGREEMENT**

**Between**

**JACKSONVILLE HOUSING FINANCE AUTHORITY,  
as Governmental Lender,**

**and**

**MONACO ARMS PRESERVATION, LTD.,  
as Borrower**

**Dated as of May 1, 2019**

**Relating to:**

**\$\_[\_\_\_\_\_]**

**Funding Loan originated by CITIBANK, N.A., as Funding Lender**

The interest of the Governmental Lender in this Borrower Loan Agreement (except for certain rights described herein) has been pledged and assigned to Citibank, N.A., as funding lender (the "**Funding Lender**"), and The Bank of New York Mellon Trust Company, N.A. as fiscal agent (the "Fiscal Agent") under that certain Funding Loan Agreement, of even date herewith, by and among the Jacksonville Housing Finance Authority (the "**Governmental Lender**") The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "**Fiscal Agent**"), and the Funding Lender, under which the Funding Lender is originating a loan to the Governmental Lender to fund the Borrower Loan made under this Borrower Loan Agreement.

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## BORROWER LOAN AGREEMENT

THIS BORROWER LOAN AGREEMENT (this “**Borrower Loan Agreement**”) is entered into as of the 1st day of May, 2019, by and between the JACKSONVILLE HOUSING FINANCE AUTHORITY, a public body corporate and politic of the State of Florida (together with its successors and assigns, the “**Governmental Lender**”) and MONACO ARMS PRESERVATION, LTD., a Florida limited partnership (together with its successors and assigns, the “**Borrower**”).

### WITNESSETH:

### RECITALS

WHEREAS, in accordance with the Florida Housing Finance Authority Law, Part IV, Chapter 159, Florida Statutes, as amended and supplemented from time to time, Chapter 52 Ordinance Code of the City of Jacksonville (the “City”), as amended, Ordinance 2014-185-E of the City, Resolution No. [\_\_\_\_\_] of the City adopted on [\_\_\_\_\_] 2019, a Resolution of the Governmental Lender adopted on February 20, 2019 and a Resolution of the Governmental Lender Adopted on [\_\_\_\_\_] 2019 (collectively, the “**Act**”), the Governmental Lender is empowered to issue its revenue bonds, notes or other evidences of indebtedness to finance the acquisition, rehabilitation and development of multifamily rental housing for persons of low, moderate and middle income at prices or rentals they can afford; and

WHEREAS, the Act authorizes the Governmental Lender: (a) to make loans to provide financing for multifamily residential housing located within the jurisdiction of the Governmental Lender and intended to be occupied in part by persons of low, moderate and middle income, as determined by the Governmental Lender; (b) to issue its revenue bonds, notes or other evidences of indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal or prepayment amount of and interest on such bonds, debentures, notes or other evidence of indebtedness; and

WHEREAS, the Borrower has applied to the Governmental Lender for a loan (the “**Borrower Loan**”), for the acquisition, rehabilitation, development and equipping of multifamily residential housing facilities to be located at 10415 Monaco Drive, in the City of Jacksonville, Duval County, Florida 32218, to be commonly known as Monaco Arms Apartments (the “**Project**”); and

WHEREAS, the Borrower’s repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Notes, as defined herein; and

WHEREAS, the Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, of even date herewith (the “**Funding Loan Agreement**”), by and among the Governmental Lender, The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the “**Fiscal Agent**”), and Citibank, N.A. (the “**Funding Lender**”), under which the Funding Lender will make a loan (the “**Funding Loan**”) to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance the acquisition, rehabilitation, development and equipping of the Project; and;

WHEREAS, the Governmental Lender’s sole obligation to fund the Borrower Loan is limited to the proceeds from the Funding Loan; and

WHEREAS, the Borrower Loan is secured by, among other things, a lien on and security interest in the Project pursuant to that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time, the “**Security Instrument**”), encumbering the Project, made by the Borrower in favor of the Governmental Lender and assigned to the Funding Lender and the Fiscal Agent to secure the performance by the Governmental Lender of its obligations under the Funding Loan Agreement, and the Borrower Loan will be advanced to the Borrower pursuant to this Borrower Loan Agreement, the Funding Loan Agreement and the Construction Funding Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

#### **Section 1.1    Specific Definitions.**

For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a)     Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Security Instrument or, if not defined in the Security Instrument, in the Funding Loan Agreement.

(b)     All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP.

(c)     All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(e) Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word “including” means “including but not limited to.”

## **Section 1.2 Definitions.**

The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

“**Act**” shall mean Chapter 159, Part IV, Florida Statutes, as amended and supplemented from time to time.

“**Act of Bankruptcy**” shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof.

“**ADA**” shall have the meaning set forth in Section 4.1.38 hereof.

“**Additional Borrower Payments**” shall mean the payments payable pursuant to Section 2.5 (Additional Borrower Payments), Section 2.6 (Overdue Payments; Payments in Default) and Section 5.15 (Expenses) of this Borrower Loan Agreement; Section 3.3.3 (Borrower Loan in Balance) of the Construction Funding Agreement; and Section 10 (Prepayments) of the Borrower Notes.

“**Agreement of Environmental Indemnification**” shall mean the Agreement of Environmental Indemnification, dated as of the date hereof, executed by the Borrower and the Guarantor for the benefit of the Beneficiary Parties (as defined therein) and any lawful holder, owner or pledgee of the Borrower Note from time to time.

“**Appraisal**” shall mean an appraisal of the Project and Improvements, which appraisal shall be (i) performed by a qualified appraiser licensed in the State selected by the Funding Lender, and (ii) satisfactory to the Funding Lender (including, without limitation, as adjusted pursuant to any internal review thereof by the Funding Lender) in all respects.

“**Approved Developer Fee Schedule**” shall have the meaning set forth in the Construction Funding Agreement.

**“Architect”** shall mean any licensed architect, space planner or design professional that the Borrower may engage from time to time, with the approval of the Funding Lender, to design any portion of the Improvements, including the preparation of the Plans and Specifications.

**“Architect’s Agreement”** means any agreement that the Borrower and any Architect from time to time may execute pursuant to which the Borrower engages such Architect to design any portion of the Improvements, including the preparation of the Plans and Specifications, as approved by the Funding Lender.

**“Authorized Borrower Representative”** shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

**“Bankruptcy Code”** shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

**“Bankruptcy Event”** shall have the meaning given to that term in the Security Instrument.

**“Bankruptcy Proceeding”** shall have the meaning set forth in Section 4.1.8 hereof.

**“Beneficiary Parties”** shall mean, collectively, the Fiscal Agent, the Governmental Lender and the Funding Lender.

**“Borrower”** shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

**“Borrower Affiliate”** shall mean, as to the Borrower, the General Partner or the Guarantor, (i) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of Borrower, the General Partner or the Guarantor, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Borrower, the General Partner or the Guarantor, (iii) any partner, shareholder or, if a limited liability company, member of Borrower, the General Partner or the Guarantor, or (iv) any other person that is related (to the third degree of consanguinity) by blood or marriage to the Borrower, the General Partner or the Guarantor (to the extent any of the Borrower, the General Partner or the Guarantor is a natural person).

**“Borrower Construction Note”** shall mean that certain Multifamily Note (Variable Rate) dated the Closing Date in the original maximum principal amount of \$[\_\_\_\_\_] made by Borrower and payable to the Governmental Lender, as endorsed and assigned to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

**“Borrower Construction/Permanent Note”** shall mean that certain Multifamily Note (Fixed Rate) dated the Closing Date in the original maximum principal amount of \$[\_\_\_\_\_] made by the Borrower and payable to Governmental Lender, as endorsed and assigned to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

**“Borrower Controlling Entity”** shall mean, if the Borrower is a partnership, any general partner or managing general partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower, or if the Borrower is a not-for-profit corporation, the members or directors thereof, as applicable.

**“Borrower Deferred Equity”** shall have the meaning set forth in the Construction Funding Agreement.

**“Borrower Initial Equity”** shall have the meaning set forth in the Construction Funding Agreement.

**“Borrower Loan”** shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement, in the maximum principal amount of the Borrower Loan Amount, as evidenced by the Borrower Notes.

**“Borrower Loan Agreement”** shall mean this Borrower Loan Agreement.

**“Borrower Loan Amount”** shall mean \$[\_\_\_\_\_] , the aggregate original maximum principal amount of the Borrower Notes.

**“Borrower Loan Documents”** shall mean this Borrower Loan Agreement, the Construction Funding Agreement, the Borrower Notes, the Security Instrument, the Agreement of Environmental Indemnification, the Guaranty, the Governmental Lender Guaranties, the Replacement Reserve Agreement, the Contingency Draw-Down Agreement and all other documents or agreements evidencing or relating to the Borrower Loan.

**“Borrower Loan Payment Date”** shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Notes, or (ii) any other date on which one or both of the Borrower Notes are prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

**“Borrower Loan Payments”** shall mean the monthly loan payments payable pursuant to the Borrower Notes.

**“Borrower Loan Proceeds”** shall mean proceeds of the Borrower Loan, to be disbursed in accordance with Section 2.10 of this Borrower Loan Agreement, Section 7.6 of the Funding Loan Agreement and the Construction Funding Agreement.

**“Borrower Notes”** shall mean, collectively, the Borrower Construction/Permanent Note and the Borrower Construction Note, and a **“Borrower Note”** shall mean one of such Notes, substantially in the respective forms in Exhibit B-1 and Exhibit B-2 attached hereto.

**“Borrower Payment Obligations”** shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

**“Business Day”** shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which the offices of the Fiscal Agent in Jacksonville, Florida, or federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

**“Calculation Period”** shall mean three (3) consecutive full Calendar Months occurring prior to the Conversion Date, as the same may be extended in accordance with Section 3.1 hereof.

**“Calendar Month”** shall mean each of the twelve (12) calendar months of the year.

**“CC&R’s”** shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project or the Mortgaged Property.

**“Closing Date”** means the date that the initial Funding Loan proceeds are delivered and the initial Borrower Loan Proceeds are disbursed hereunder.

**“Code”** shall mean the Internal Revenue Code of 1986, as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated (the **“Regulations”**), and applicable official public guidance published, under the Code.

**“Collateral”** shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which the Governmental Lender and/or the Funding Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Security Instrument, or (iii) any other Security Document, which Collateral shall include the Project, all of which collateral (exclusive of the Unassigned Rights) is pledged and assigned to Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

**“Completion”** shall have the meaning set forth in Section 5.26.

**“Completion Date”** shall have the meaning set forth in the Construction Funding Agreement.

**“Compliance Monitoring Fee”** means a compliance monitoring fee to be paid by the Borrower to the Fiscal Agent to pay to the Governmental Lender Servicer pursuant to the terms of the Compliance Monitoring Agreement.



**“Computation Date”** shall have the meaning ascribed thereto in Section 1.148-3(e) of the Regulations.

**“Condemnation”** shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Project, whether direct or indirect.

**“Conditions to Conversion”** shall have the meaning set forth in the Construction Funding Agreement.

**“Construction Consultant”** shall mean a third-party architect or engineer selected and retained by the Funding Lender, at the cost and expense of the Borrower, to monitor the progress of construction and/or rehabilitation of the Project and to inspect the Improvements to confirm compliance with this Borrower Loan Agreement.

**“Construction Contract”** shall mean any agreement that the Borrower and any Contractor from time to time may execute pursuant to which the Borrower engages the Contractor to construct any portion of the Improvements, as approved by the Funding Lender.

**“Construction Funding Agreement”** means that certain Construction Funding Agreement dated as of May 1, 2019, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the proceeds of the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf) to the Fiscal Agent, as agent of the Governmental Lender, for the benefit of the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during rehabilitation, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

**“Construction Schedule”** shall mean a schedule of construction or rehabilitation progress with the anticipated commencement and completion dates of each phase of construction or rehabilitation, as the case may be, and the anticipated date and amounts of each Disbursement for the same, as approved by Funding Lender, as assignee of the Governmental Lender.

**“Contingency Draw-Down Agreement”** means the Contingency Draw-Down Agreement of even date herewith, among the Funding Lender, the Fiscal Agent and the Borrower relating to possible conversion of the Funding Loan from a draw-down loan to a fully funded loan.

**“Continuing Disclosure Agreement”** shall mean that certain Continuing Disclosure Agreement dated as of May 1, 2019, by and between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the Project, the Borrower and the Funding Loan subsequent to the Closing Date, as amended, supplemented or restated from time to time.

**“Contractor”** shall mean any licensed general contractor or subcontractor that the Borrower may directly engage from time to time, with the approval of Funding Lender, to construct and/or rehabilitate any portion of the Improvements.

**“Contractual Obligation”** shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

**“Conversion”** shall mean the Funding Lender’s determination that the Conditions to Conversion have been satisfied in accordance with the provisions of this Borrower Loan Agreement and the Construction Funding Agreement.

**“Conversion Date”** shall mean the date to be designated by the Funding Lender once the Conditions to Conversion have been satisfied, the determination of the Permanent Period Amount has been made and any loan balancing payments in accordance with Section 3.3 hereof and the Construction Funding Agreement have been made. The Conversion Date must occur no later than the Outside Conversion Date.

**“Cost Breakdown”** shall mean the schedule of costs for the Improvements, as set forth in the Construction Funding Agreement, as the same may be amended from time to time with the Funding Lender’s consent.

**“Cost of Improvements”** shall mean the costs for the Improvements, as set forth on the Cost Breakdown.

**“Costs of Funding”** shall mean the Governmental Lender’s Closing Fee and the fees, costs, expenses and other charges incurred in connection with the funding of the Borrower Loan and the Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower Loan Documents and Funding Loan Documents and shall include, but shall not be limited to, the following: (i) counsel fees (including but not limited to Tax Counsel, counsel to the Governmental Lender, the Borrower’s counsel, Fiscal Agent’s counsel and Funding Lender’s counsel); (ii) financial advisor fee incurred in connection with the closing of the Borrower Loan and the Funding Loan; (iii) certifying and authenticating agent fees and expenses related to funding of the Funding Loan; (iv) any additional fees charged by the Governmental Lender or the Fiscal Agent; and (v) costs incurred in connection with the required public notices generally and costs of the public hearing.

**“Costs of Funding Deposit”** shall mean the amount required to be deposited by the Borrower with the Fiscal Agent (or a separate escrow company, if applicable) to pay Costs of Funding in connection with the closing of the Borrower Loan and the Funding Loan on the Closing Date pursuant to the closing memorandum executed by the Borrower and the Funding Lender.

**“County”** shall mean Duval County, Florida.

**“Date of Disbursement”** shall mean the date of a Disbursement.

**“Day”** or **“Days”** shall mean calendar days unless expressly stated to be Business Days.

**“Debt”** shall mean, as to any Person, any of such Person’s liabilities, including all indebtedness (whether recourse or nonrecourse, short term or long term, direct or contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

**“Default Rate”** shall have the meaning given to that term in the Borrower Notes.

**“Determination of Taxability”** shall mean (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the Governmental Lender Notes issued by the National Office of the Internal Revenue Service in which the Governmental Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Governmental Lender Notes is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Governmental Lender Notes, other than a holder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower), the Funding Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

**“Developer”** shall mean, Monaco Arms Developer LLC, and its respective successors and assigns.

**“Developer Fee”** shall have the meaning set forth in the Construction Funding Agreement.

**“Development Services Agreement”** shall mean the Development Services Agreement, dated the Closing Date, between the Borrower and Developer.

**“Disbursement”** means a disbursement of the Borrower Loan Proceeds and Other Borrower Moneys pursuant to this Borrower Loan Agreement, the Funding Loan Agreement and the Construction Funding Agreement.

**“Engineer”** shall mean any licensed civil, structural, mechanical, electrical, soils, environmental or other engineer that the Borrower may engage from time to time, with the

approval of the Funding Lender, to perform any engineering services with respect to any portion of the Improvements.

**“Engineer’s Contract”** shall mean any agreement that the Borrower and any Engineer from time to time may execute pursuant to which the Borrower engages such Engineer to perform any engineering services with respect to any portion of the Improvements, as approved by the Funding Lender.

**“Equipment”** shall have the meaning given to the term “Personalty” in the Security Instrument.

**“Equity Contributions”** shall mean the equity to be contributed by the Equity Investor to Borrower, in accordance with and subject to the terms of the Partnership Agreement.

**“Equity Investor”** shall mean Boston Financial Institutional Tax Credit LI, Limited Partnership, a Massachusetts limited partnership, its successors and assigns.

**“ERISA”** shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

**“ERISA Affiliate”** shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

**“Event of Default”** shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement. An Event of Default shall “exist” if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

**“Excess Revenues”** shall have the meaning ascribed thereto in Section 2.2(e) hereof.

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended.

**“Expenses of the Project”** shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents), a management fee (however characterized) not to exceed the Underwritten Management Fee, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation,

amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

**“Extended Outside Conversion Date”** shall have the meaning set forth in the Construction Funding Agreement.

**“Fair Market Value”** shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

**“Fiscal Agent”** shall mean the fiscal agent from time to time under and pursuant to the Funding Loan Agreement. Initially, the Fiscal Agent is The Bank of New York Mellon Trust Company, N.A.

**“Funding Lender”** shall mean Citibank, N.A., a national banking association, in its capacity as lender under the Funding Loan, and its successors and assigns.

**“Funding Loan”** means the Funding Loan in the original maximum principal amount of \$[\_\_\_\_\_] made by the Funding Lender to the Governmental Lender under the Funding Loan Agreement, the proceeds of which are used by the Governmental Lender to make the Borrower Loan.

**“Funding Loan Agreement”** means the Funding Loan Agreement, dated of even date herewith, by and among the Governmental Lender, the Fiscal Agent and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

**“Funding Loan Documents”** shall have the meaning given to that term in the Funding Loan Agreement.

**“GAAP”** shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

**“General Partner”** shall mean (i) Monaco Arms GP LLC, a Delaware limited liability company and/or (ii) any other Person that the partners of the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted with the Funding Lender’s approval pursuant to the Borrower Loan Documents), selected to be a general partner of the Borrower.

**“Governmental Authority”** shall mean (i) any governmental municipality or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence.

**“Governmental Lender”** shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

**“Governmental Lender Construction Note”** shall mean that certain Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B dated May [\_\_], 2019, in the original maximum principal amount of \$[\_\_\_\_], made by the Governmental Lender and payable to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

**“Governmental Lender Guarantees”** shall mean collectively, the Absolute and Unconditional Guaranty of Completion, the Absolute and Unconditional Guaranty of Recourse Obligations, and the Absolute and Unconditional Guaranty of Operating Deficits, each from the guarantors thereunder to the Governmental Lender and each dated as of May 1, 2019 and Environmental Indemnity among the guarantors thereunder, the Governmental Lender and the Fiscal Agent, dated as of May 1, 2019.

**“Governmental Lender Guarantors”** shall mean the Borrower, the General Partner, SJB Management LLC, Red Rocks 88, LLC, and Monaco Arms Developer, LLC and Jeremy S. Bronfman and Jonathan A. Gruskin, individually.

**“Governmental Lender Note”** shall mean that certain Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A dated May [\_\_], 2019, in the original maximum principal amount of \$[\_\_\_\_], made by the Governmental Lender and payable to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

**“Governmental Lender Notes”** shall mean, collectively, the Governmental Lender Construction/Permanent Note and the Governmental Lender Construction Note and “Governmental Lender Note” means one of such notes.

**“Governmental Lender’s Closing Fee”** shall mean \$[\_\_\_\_\_]. The Governmental Lender’s Closing Fee is payable to the Governmental Lender on the Closing Date pursuant to Section 2.3(c)(iii) hereof.

**“Governmental Lender Servicing Fees”** means the fees of the Governmental Lender Servicer pursuant to the terms of the Servicing Documents.

**“Gross Income”** shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of the Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by the Borrower in accordance with applicable law.

**“Gross Proceeds”** shall mean, without duplication, the aggregate of:

(a) the net amount (after payment of all expenses of originating the Funding Loan) of Funding Loan proceeds received by the Governmental Lender as a result of the origination of the Funding Loan;

(b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan proceeds;

(c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and

(d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

**“Guarantor”** shall mean Lincoln Avenue Capital LLC, a Delaware limited liability company and, with respect to the Governmental Lender Guarantees, the Borrower, Monaco Arms GP LLC, a Delaware limited liability company, Monaco Arms Developer LLC, a Florida Limited Liability Company, SJB Management LLC, Red Rocks 88, LLC, Jeremy S. Bronfman, individually, and Johnathan A. Gruskin, individually or any other person or entity which may hereafter become a guarantor of any of the Borrower’s obligations under the Borrower Loan, including the Governmental Lender Guarantees.

**“Guaranty”** shall mean, collectively, (i) the Completion and Repayment Guaranty, of even date herewith, by Guarantor for the benefit of the Beneficiary Parties (as defined therein), (ii) the Exceptions to Non-Recourse Guaranty, of even date herewith, by Guarantor for the benefit of the Beneficiary Parties (as defined therein) and (iii) the Governmental Lender Guarantees.

**“Improvements”** shall mean the approximately 156-unit multifamily residential rental project to be acquired and rehabilitated on the Land and known or to be known as Monaco Arms Apartments, and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property to be acquired, constructed, rehabilitated or installed at or on the Land in accordance with the Cost Breakdown and the Plans and Specifications.

**“Indemnified Party”** shall have the meaning set forth in Section 5.16 hereof.

**“Installment Computation Date”** shall mean any Computation Date other than the first Computation Date or the final Computation Date.

**“Interest Rate”** shall mean, with respect to a Borrower Note, the rate of interest accruing on such Borrower Note pursuant to the terms thereof.

**“Interim Phase Amount”** shall mean \$[\_\_\_\_\_], the aggregate original maximum principal amount of the Governmental Lender Construction/Permanent Note and the Governmental Lender Construction Note.

**“Land”** means the real property described on Exhibit A to the Security Instrument.

**“Late Charge”** shall mean the amount due and payable as a late charge on overdue payments under the Borrower Notes, as provided in Section 7 of each Borrower Note and Section 2.5(a)(v) hereof.

**“Legal Action”** shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

**“Legal Requirements”** shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any property (including the Project) or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in force affecting all or part of the Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the Project, or (ii) in any way limit the use and enjoyment thereof.

**“Liabilities”** shall have the meaning set forth in Section 5.16 hereof.

**“Licenses”** shall have the meaning set forth in Section 4.1.22 hereof.

**“Lien”** shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of



trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

**"Management Agreement"** shall mean the Apartment Management Agreement dated [\_\_\_\_\_, 20\_\_], between the Borrower and the Property Manager, pursuant to which the Property Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**"Material Adverse Change"** means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of the Borrower, General Partner, Guarantor or the Mortgaged Property; (c) could reasonably be expected to impair materially the ability of the Borrower, General Partner or Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender or the Fiscal Agent under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or the Fiscal Agent or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

**"Moody's"** shall mean Moody's Investors Service, Inc., or its successor.

**"Mortgaged Property"** shall have the meaning given to that term in the Security Instrument.

**"Net Operating Income"** shall mean: (i) the Gross Income, less (ii) the Expenses of the Project.

**"Nonpurpose Investment"** shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

**"Ongoing Governmental Lender Fee"** shall mean the ongoing Governmental Lender Fee (as defined in the Funding Loan Agreement) payable in arrears on each [May] 1 and [November] 1, commencing [November] 1, 2019. The Ongoing Governmental Lender Fee does not include the Governmental Lender Closing Fee which shall be payable on the Closing Date or the Compliance Monitoring Fee."

**“Other Borrower Moneys”** shall mean moneys of the Borrower other than Borrower Loan Proceeds and includes, but is not limited to, Net Operating Income, the Borrower’s Equity Contributions and any other funds contributed by or loaned to the Borrower for application to the Costs of the Improvements or other costs associated with the Project.

**“Other Charges”** shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

**“Outside Conversion Date”** shall have the meaning set forth in the Construction Funding Agreement.

**“Partnership Agreement”** shall mean that certain Amended and Restated Agreement of Limited Partnership of the Borrower dated as of the date hereof, as the same may be amended, restated or modified in accordance with its terms.

**“Patriot Act”** shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

**“Patriot Act Offense”** shall have the meaning set forth in Section 4.1.48 hereof.

**“Permanent Period”** shall mean the period of time from the Conversion Date to the Maturity Date (as defined in the Funding Loan Agreement).

**“Permanent Period Amount”** shall mean the principal amount of the Borrower Loan following the calculation provided for in the Construction Funding Agreement.

**“Permitted Encumbrances”** shall have the meaning given to that term in the Security Instrument.

**“Permitted Lease”** shall mean a lease and occupancy agreement pursuant to the form approved by Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than six (6) months nor more than two (2) years.

**“Person”** shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

**“Plan”** shall mean (i) an employee benefit or other plan established or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

**“Plans and Specifications”** shall mean the plans and specifications for the construction and/or rehabilitation, as the case may be, of the Project approved by the Funding Lender.

**“Potential Default”** shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice or the passage of time, or both, be an Event of Default.

**“Prepayment Premium”** shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of a Borrower Note (including any prepayment premium as set forth in the related Borrower Note).

**“Project”** shall mean the Mortgaged Property and Improvements thereon owned by the Borrower and encumbered by the Security Instrument, together with all rights pertaining to such real property and Improvements, as more particularly described in the Granting Clauses of the Security Instrument and referred to therein as the **“Mortgaged Property.”**

**“Project Agreements and Licenses”** shall mean any and all Construction Contracts, Engineer’s Contracts and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

**“Property Manager”** shall mean [McCormack Baron Management, Inc., a \_\_\_\_\_], or any other management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

**“Provided Information”** shall have the meaning set forth in Section 9.1.1(a) hereof.

**“Qualified Project Costs”** shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations, provided, however, that only such portion of the interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction or rehabilitation of the Project; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by a Borrower Affiliate (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out of pocket costs incurred by such affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by such affiliate, and (C) any overhead expenses incurred by such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an “affiliated group” (within the

meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to February 20, 2019, being the date on which the Governmental Lender first declared its “official intent” to reimburse costs paid with respect to the Project (within the meaning of Section 1.150-2 of the Regulations) or the date or dates of issue of the Funding Loan, and (iv) if the costs of the acquisition and construction or rehabilitation of the Project were previously paid and are to be reimbursed with proceeds of the Funding Loan such costs were (A) “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Funding Loan (as defined in Section 1.148-1 of the Regulations), or (B) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three years after the expenditures is paid); provided, however, that (w) Costs of Funding shall not be deemed to be Qualified Project Costs; (x) fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) shall not be deemed to be Qualified Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Project Costs and other costs and expenses to be paid from the proceeds of the Funding Loan; and (z) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Project Costs.

**“Rebate Amount”** shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Funding Loan.

**“Rebate Analyst”** shall mean the rebate analyst selected by the Borrower prior to the Closing Date and acceptable to the Governmental Lender and the Funding Lender.

**“Rebate Analyst’s Fee”** shall mean the fee of the Rebate Analyst payable by the Borrower to the Rebate Analyst.

**“Rebate Fund”** shall mean the Rebate Fund created pursuant to Section 5.36(b) hereof.

**“Regulations”** shall have the meaning given to that term in the definition of the “Code” in this Section 1.2.

**“Regulatory Agreement”** shall mean that certain Land Use Restriction Agreement dated as of the date hereof, among the Governmental Lender, the Fiscal Agent and the Borrower.

**“Related Documents”** shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest (including each agreement that is the subject of any Borrower Loan Document), the Partnership Agreement, and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating to or executed in connection with the transactions contemplated by this Borrower Loan Agreement.

**“Replacement Reserve Agreement”** shall mean any Replacement Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

**“Replacement Reserve Fund Requirement”** means the Borrower’s funding obligations from time to time under the Replacement Reserve Agreement.

**“Resolution”** shall mean the resolution of the Governmental Lender authorizing the Funding Loan, as evidenced by the Governmental Lender Notes and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

**“Retainage”** shall have the meaning set forth in the Construction Funding Agreement.

**“Review Fee”** shall mean the three thousand dollar (\$3,000) fee payable to Funding Lender in connection with the review of requests from the Borrower in connection with events requiring the consent and/or approval of the Funding Lender, including, but not limited to, subordinate financings and easements.

**“Secondary Market Disclosure Document”** shall have the meaning set forth in Section 9.1.2 hereof.

**“Secondary Market Transaction”** shall have the meaning set forth in Section 9.1.1 hereof.

**“Securities”** shall have the meaning set forth in Section 9.1.1 hereof.

**“Securities Act”** shall mean the Securities Act of 1933, as amended.

**“Security Documents”** shall mean the Security Instrument, the Replacement Reserve Agreement, the Collateral Agreements, the Collateral Assignments, this Borrower Loan Agreement, the Agreement of Environmental Indemnification, and such other security instruments that Funding Lender may reasonably request.

**“Security Instrument”** shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

**“Servicer”** shall mean the servicer contracting with or appointed by the Funding Lender to service the Borrower Loan. The initial Servicer shall be Citibank, N.A.

**“Servicing Agreement”** shall mean any servicing agreement or master servicing agreement, between the Servicer and the Funding Lender relating to the servicing of the Borrower Loan and any amendments thereto or any replacement thereof.

**“Servicing Documents”** means with respect to the Governmental Lender Servicer, the Construction Loan and Mortgage Servicing Agreement, the Compliance Monitoring Agreement and the Financial Monitoring Agreement, each by and between the Governmental Lender, the Fiscal Agent and the Borrower dated as of May 1, 2019.

**“Standard & Poor’s”** or **“S&P”** shall mean S&P Global Ratings, a division of Standard & Poor’s Financial Services, Inc., and its successors.

**“State”** shall mean the State of Florida.

**“Substantial Completion Date”** shall have the meaning set forth in the Construction Funding Agreement.

**“Substantially Complete”** or **“Substantially Completed”** shall have the meaning set forth in the Construction Funding Agreement.

**“Tax Counsel”** shall have the meaning set forth in the Funding Loan Agreement.

**“Taxes”** shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

**“Term”** shall mean the term of this Borrower Loan Agreement pursuant to Section 10.13.

**“Title Company”** means [\_\_\_\_\_].

**“Title Insurance Policy”** shall mean the mortgagee title insurance policy, or marked title insurance commitment, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

**“Transfer”** shall have the meaning given to that term in the Security Instrument.

**“UCC”** shall mean the Uniform Commercial Code as in effect in the State.

**“Underwritten Management Fee”** shall have the meaning set forth in the Construction Funding Agreement.

**“Unit”** shall mean a residential apartment unit within the Improvements.

**“Written Consent”** and **“Written Notice”** shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender, the Funding Lender or the Fiscal Agent, as appropriate.

## **ARTICLE II GENERAL**

### **Section 2.1    Origination of the Borrower Loan.**

In order to provide funds for the purposes provided herein, the Governmental Lender agrees that it will, pursuant to the Resolution and in accordance with the Act, enter into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender. The proceeds of the Funding Loan shall be advanced by the Funding Lender to the Fiscal Agent for payment to or for the benefit of the Borrower in accordance with the terms of the Construction Funding Agreement, this Borrower Loan Agreement and the Funding Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may designate Servicer to fulfill the rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to this Section 2.1. Notwithstanding the foregoing, disbursements of the Borrower Loan shall be made from the Project Fund held under the Funding Loan Agreement by the Fiscal Agent.

### **Section 2.2    Security for the Funding Loan.**

(a) As security for the Funding Loan, the Governmental Lender has pledged and assigned to the Funding Lender and the Fiscal Agent under and pursuant to the Funding Loan Agreement (a) the Borrower Notes and all of its right, title and interest in and to this Borrower Loan Agreement and the Borrower Loan Documents (except for the Unassigned Rights) and all revenues and receipts therefrom and the security therefor (including the Security Instrument) and (b) the amounts on deposit from time to time in any and all funds established under the Funding Loan Agreement other than the Rebate Fund and Expense Fund created and established thereunder. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Notes, which shall be delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment to the Funding Lender and the Fiscal Agent.

(b) With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

(i) *Tax Covenants.* Seek specific performance of, and enforce, the tax covenants of the Funding Loan Agreement, the Regulatory Agreement, the Tax Certificate and the Borrower Loan Agreement, seek injunctive relief against acts which may be in violation of any of the tax

covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate Fund; and

(ii) *Regulatory Agreement.* Seek specific performance of the obligations of the Borrower or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the Governmental Lender may enforce any right it may have under the Regulatory Agreement for monetary damages (which term shall not be deemed to include fees, expenses and indemnification obligations payable by the Borrower to the Governmental Lender or Fiscal Agent under the Regulatory Agreement, the Funding Loan Agreement or this Borrower Loan Agreement) only against Excess Revenues (defined below), if any, of the Borrower, unless the Funding Lender otherwise specifically consents in writing to the use of other funds; and

(iii) *Unassigned Rights.* Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it may have for monetary damages (which term shall not be deemed to include fees, expenses and indemnification obligations payable by the Borrower to the Governmental Lender under the Regulatory Agreement, the Funding Loan Agreement or this Borrower Loan Agreement) against Excess Revenues, if any, of the Borrower, unless the Funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

(c) In no event shall the Governmental Lender, except at the express written direction of the Funding Lender:

(i) prosecute its action to a lien on the Project; or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by Funding Lender or the Servicer of any of their rights under the Borrower Loan Documents or the Governmental Lender Servicer under the Governmental Servicer Agreement upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or the Funding Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.



(d) The Governmental Lender shall provide Written Notice to the Funding Lender and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.

(e) As used in this Section 2.2, the term “**Excess Revenues**” means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

### **Section 2.3    Loan; the Borrower Notes; Conditions to Closing.**

(a) The Funding Loan shall be funded by the Funding Lender directly to the Fiscal Agent for disbursement to the Borrower upon satisfaction of the conditions set forth in the Construction Funding Agreement and the Funding Loan Agreement, in one or more installments not to exceed, in the aggregate, the Borrower Loan Amount in accordance with the disbursement procedures set forth in the Construction Funding Agreement and the Funding Loan Agreement. Upon funding of each installment of the Funding Loan, the Governmental Lender shall be deemed to have made the Borrower Loan to the Borrower in a like principal amount. The Borrower Loan advances and Funding Loan advances shall be allocated first to the Borrower Construction/Permanent Note and the related Governmental Lender Construction/Permanent Note and, once the Borrower Construction/Permanent Note and the related Governmental Lender Construction/Permanent Note have been fully funded, then to the Borrower Construction Note and the related Governmental Lender Construction Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Notes. The proceeds of the Borrower Loan shall be used by the Borrower to pay costs of the acquisition, construction, rehabilitation, development, equipping and/or operation of the Project. The Borrower hereby accepts the Borrower Loan and acknowledges that the Governmental Lender has contracted with the Funding Lender to fund the Borrower Loan in the manner set forth herein and in the Funding Loan Agreement. The Governmental Lender acknowledges that the Borrower Loan shall be funded by the Funding Lender for the account of the Governmental Lender.

(b) The Borrower hereby accepts the Borrower Loan. As evidence of its obligation to repay the Borrower Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Notes. The Borrower Loan shall mature and be payable at the times and in the amounts required under

the terms hereof and of the Borrower Notes. The Governmental Lender shall assign the Borrower Notes to the Funding Lender on the Closing Date as a condition to closing of the Borrower Loan and the Funding Loan.

(c) Closing of the Borrower Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Governmental Lender and the Funding Lender in their sole discretion of each of the conditions precedent to closing set forth in the Funding Loan Agreement and this Borrower Loan Agreement, including but not limited to the following:

(i) evidence of proper recordation of the Security Instrument, an assignment of the Security Instrument from the Governmental Lender to the Funding Lender, the Regulatory Agreement, and each of the other documents specified for recording in instructions delivered to the Title Company by counsel to the Funding Lender (or that such documents have been delivered to an authorized agent of the Title Company for recordation under binding recording instructions from Funding Lender's counsel or such other counsel as may be acceptable to the Funding Lender);

(ii) delivery to the Fiscal Agent or into escrow with the Title Company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit and the Borrower Initial Equity, all as specified in written instructions delivered to the Title Company by counsel to the Funding Lender (or such other counsel as may be acceptable to the Funding Lender) and/or as specified in a closing memorandum executed by the Borrower and the Funding Lender;

(iii) payment of all fees payable in connection with the closing of the Borrower Loan including the Governmental Lender's Closing Fee and the initial fees, costs and expenses of the Fiscal Agent.

#### **Section 2.4 Borrower Loan Payments.**

(a) The Borrower shall make the Borrower Loan Payments in accordance with the Borrower Notes. Through and including the Conversion Date, each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Servicer by 11:00 a.m., New York City time, on the Borrower Loan Payment Date or, if to the Fiscal Agent, by 11:00 a.m., New York City time, on the Borrower Loan Payment Date. Following the Conversion Date, each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Servicer by 2:00 p.m., New York City time, on the date that is two (2) Business Days prior to the Borrower Loan Payment Date. Each such payment shall be made to the Fiscal Agent or Servicer, as applicable, by deposit to such account as the Fiscal Agent or Servicer, as applicable, may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Notes in the amounts and at the times necessary to

make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(b) Unless there is no Servicer, payments of principal and interest on the Borrower Notes shall be paid to the Servicer and the Servicer shall then remit such funds to the Fiscal Agent for deposit into the Funding Loan Payment Fund created under the Funding Loan Agreement. If there is no Servicer, payments of principal and interest on the Borrower Notes shall be paid by the Borrower to the Fiscal Agent.

## **Section 2.5 Additional Borrower Payments.**

(a) The Borrower shall pay the following amounts:

(i) to the Fiscal Agent, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.36 hereof and the Rebate Analyst's Fee to be deposited in the Expense Fund and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

(ii) to the Fiscal Agent for remittance to the Governmental Lender, the Ongoing Governmental Lender Fee and to the Governmental Lender Servicer, the Governmental Lender Servicing Fees and, on demand, all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under the Borrower Loan Documents or the Funding Loan Documents, and any taxes and assessments with respect to the Project, as and when the same become due;

(iii) all Costs of Funding and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the Funding Loan, as and when the same become due;

(iv) to the Funding Lender, on demand, all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, any Review Fee, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(v) all Late Charges due and payable under the terms of the Borrower Notes and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection (v) shall be made to the Servicer, and, if there is no Servicer, such payments shall be made to the Funding Lender;

(vi) to the Fiscal Agent, the Fiscal Agent's Fees as and when the same become due;

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender, Funding Lender, Fiscal Agent or the Servicer, as applicable;

(ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and

(iii) all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer or the Construction Consultant, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

**Section 2.6 Overdue Payments; Payments in Default.** If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Servicer, a Late Charge in the amount and to the extent set forth in the Borrower Notes, if any.

**Section 2.7 Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds.** The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Funding Lender in accordance with the terms of the Borrower Notes; (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Funding Lender in accordance with the Security Instrument; and (c) deposits with respect to any replacement reserve funds required by the Funding Lender shall be calculated by the Servicer in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Servicer or the Funding Lender, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following Written Notice to the Borrower.

**Section 2.8 Grant of Security Interest; Application of Funds.** To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Funding Lender, and grants to the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all payments to or moneys held in the funds and accounts (other than the Rebate Fund and the Expense Fund) created and held by the Fiscal Agent, the Funding Lender or the Servicer for the Project. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the

continuance of an Event of Default hereunder, the Fiscal Agent, the Funding Lender and the Servicer shall apply or cause to be applied any sums held by the Fiscal Agent (other than sums held in the Rebate Fund and the Expense Fund), the Funding Lender and the Servicer with respect to the Project in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

**Section 2.9 Marshalling; Payments Set Aside.** The Governmental Lender, the Fiscal Agent and the Funding Lender shall be under no obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that the Borrower makes a payment or payments or transfers any assets to the Governmental Lender or Funding Lender, or the Governmental Lender, the Fiscal Agent or the Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Governmental Lender, the Fiscal Agent or the Funding Lender and any and all remedies available to the Governmental Lender, the Fiscal Agent or the Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against the Borrower, Guarantor or General Partner and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Governmental Lender, the Fiscal Agent and the Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by the Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender, the Fiscal Agent or the Funding Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender, the Fiscal Agent or the Funding Lender in connection with the exercise by the Governmental Lender, the Fiscal Agent or the Funding Lender of its rights under this Section 2.9.

**Section 2.10 Borrower Loan Disbursements.** The Borrower Loan shall be disbursed by the Funding Lender, as agent for the Governmental Lender, to the Fiscal Agent and deposited by the Fiscal Agent in the Project Fund held by the Fiscal Agent under the Funding Loan Agreement for further disbursement to the Borrower, or directly to the person, firm or entity to be paid, in accordance with the terms of the Funding Loan Agreement and subject to satisfaction of the conditions set forth in the Construction Funding Agreement.

## **ARTICLE III CONVERSION**

**Section 3.1    Conversion Date and Extension of Outside Conversion Date.** The Borrower shall satisfy each of the Conditions to Conversion and cause the Conversion Date to occur on or before the Outside Conversion Date (including the Extended Outside Conversion Date, if any), as further provided in the Construction Funding Agreement. The failure to satisfy each of the Conditions to Conversion on or before the Outside Conversion Date (or such earlier time as may be required in the Construction Funding Agreement) shall constitute an Event of Default under the Borrower Loan Documents.

**Section 3.2    Notice From Funding Lender; Funding Lender's Calculation Final.**

(a) Following satisfaction of all of the Conditions to Conversion, the Funding Lender shall deliver Written Notice to the Borrower and the Fiscal Agent of: (i) the Conversion Date, (ii) the amount of the Permanent Period Amount, (iii) any required prepayment of the Borrower Notes (as described below in Section 3.3) and (iv) any amendments to the amortization schedule, as applicable.

(b) The Funding Lender's calculation of the Permanent Period Amount and any amendments to the amortization of the Borrower Loan shall be, in the absence of manifest error, conclusive and binding on all parties.

**Section 3.3    Mandatory Prepayment of the Borrower Loan.**

(a) As further provided in the Construction Funding Agreement and Borrower Notes, if and to the extent the Permanent Period Amount is less than the Interim Phase Amount, Funding Lender may in its sole discretion require the Borrower to make a partial prepayment of the Borrower Loan in an amount equal to the difference between the Interim Phase Amount and the Permanent Period Amount, provided, however, that if the Permanent Period Amount is less than the Minimum Permanent Period Amount (as defined in the Construction Funding Agreement), then Funding Lender may in its sole discretion require the Borrower to prepay the Borrower Loan in full.

(b) Any prepayment in full or in part of the Borrower Loan required pursuant to Section 3.3(a) above shall be subject to a prepayment premium under certain circumstances as more particularly set forth in the Borrower Notes.

**Section 3.4    Release of Remaining Loan Proceeds.** If and to the extent that the Permanent Period Amount is greater than the principal amount of the Borrower Loan which has previously been disbursed to the Borrower, the Funding Lender shall deliver Written Notice thereof to the Borrower and the Fiscal Agent on or before the Conversion Date. Within ten (10) business days after delivery of such notice, but in no event later than the Outside Conversion Date, the Funding Lender shall disburse the Borrower Loan proceeds to the Fiscal Agent for the Borrower so that the aggregate principal amount of the Borrower Loan disbursed equals the

Permanent Period Amount. Any Borrower Loan proceeds previously disbursed to the Borrower in excess of the Permanent Period Amount shall be paid by the Borrower to the Fiscal Agent for the account of the Funding Lender.

**Section 3.5 No Amendment.** Nothing contained in this Article III shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Borrower Notes, Security Instrument, the Construction Funding Agreement or any other Borrower Loan Document and, if there shall exist a conflict between the terms and provisions of this Article III and those of the Borrower Notes, Security Instrument, the Construction Funding Agreement or other Borrower Loan Documents, then the terms and provisions of the Borrower Notes, Security Instrument, the Construction Funding Agreement and other Borrower Loan Documents shall control, provided, however, that in the event of a conflict between the terms and provisions of this Article III and those of the Borrower's loan application with the Funding Lender, the terms and provisions of this Article III shall control.

**Section 3.6 Determinations by the Funding Lender.** In any instance where the consent or approval of the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Funding Lender under this Article III, including in connection with the Construction Funding Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Funding Lender (or its designated representative), at its sole and exclusive option and in its sole and absolute discretion.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Borrower Representations.** To induce the Governmental Lender, the Fiscal Agent and the Funding Lender to execute this Borrower Loan Agreement and to induce Funding Lender to make Disbursements, the Borrower represents and warrants for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, that the representations and warranties set forth in this Section 4.1 are complete and accurate as of the Closing Date and, subject to Section 4.2, shall survive the making of the Borrower Loan and will be complete and accurate, and deemed remade, except as otherwise noted through notice to Funding Lender and approved by Funding Lender, as of the date of each Disbursement, as of the original Outside Conversion Date, as of the date of any extension thereof and as of the Conversion Date in accordance with the terms and conditions of the Borrower Notes.

**Section 4.1.1 Organization; Special Purpose.** The Borrower is a Florida limited partnership in good standing under the laws of the State, has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper limited partnership action, has duly authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party,

in the name of and on behalf of the General Partner, is fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership, management and operation of the Project.

**Section 4.1.2      Proceedings; Enforceability.** Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

**Section 4.1.3      No Conflicts.** The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Partnership Agreement of the Borrower, or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

**Section 4.1.4      Litigation; Adverse Facts.** There is no Legal Action, nor is there a basis known to the Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower, the General Partner or the Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the Funding Loan Documents, upon the ability of each of the Borrower, the General Partner and the Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition, assets (including the Project), properties or operations of the Borrower, the General Partner or the Guarantor. None of the Borrower, the General Partner or Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order,



regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of the Borrower, the General Partner and the Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower, the General Partner or the Guarantor. None of the Borrower, the General Partner or the Guarantor are (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the Project), or condition (financial or otherwise) or prospects of Borrower, the General Partner or the Guarantor, as applicable; (b) subject to, or in default with respect to, any other Legal Requirement that would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, the General Partner or Guarantor, as applicable; or (c) in default with respect to any agreement to which the Borrower, the General Partner or Guarantor, as applicable, are a party or by which they are bound, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, the General Partner or Guarantor, as applicable; and (d) there is no Legal Action pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower, the General Partner or Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the Funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

**Section 4.1.5      Agreements; Consents; Approvals.** Except as contemplated by the Borrower Loan Documents and the Funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the Project, or the Borrower's business, properties, operations or financial condition or business prospects, except the Permitted Encumbrances. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Project is bound.

No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of the Borrower Loan Documents or the Funding Loan Documents, or the consummation of any transaction herein or therein

contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

**Section 4.1.6      Title.** The Borrower shall have marketable fee simple title to the Project, free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the fee simple interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

**Section 4.1.7      Survey.** To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

**Section 4.1.8      No Bankruptcy Filing.** The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "**Bankruptcy Proceeding**"), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Closing Date, the Borrower has the ability to pay its debts as they become due.

**Section 4.1.9      Full and Accurate Disclosure.** No statement of fact made by the Borrower in any Borrower Loan Document or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the Project or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

**Section 4.1.10      No Plan Assets.** 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.

**Section 4.1.11      Compliance.** The Borrower, the Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements.

The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect the financial condition or business prospects or the business of the Borrower. There has not been committed by the Borrower or any Borrower Affiliate involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof or any moneys paid in performance of the Borrower's obligations under any Borrower Loan Document or any Funding Loan Documents.

**Section 4.1.12 Contracts.** All service, maintenance or repair contracts affecting the Project have been entered into at arm's length (except for such contracts between the Borrower and its affiliates or the affiliates of the Borrower Controlling Entity of the Borrower) in the ordinary course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

**Section 4.1.13 Financial Information.** All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects, (ii) accurately represent the financial condition of the Project as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

**Section 4.1.14 Condemnation.** No Condemnation or other proceeding has been commenced or, to the Borrower's knowledge, is contemplated, threatened or pending with respect to all or part of the Project or for the relocation of roadways providing access to the Project.

**Section 4.1.15 Federal Reserve Regulations.** No part of the proceeds of the Borrower 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 Legal Requirements or any Borrower Loan Document or Funding Loan Document.

**Section 4.1.16 Utilities and Public Access.** To the best of the Borrower's knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting the Project, and all such utilities are or will be connected so as to serve the Project without

passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (i) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (ii) the number of parties sharing such easement and/or recreational facilities and amenities must be specified, (iii) the Borrower's responsibilities and share of expenses are specified, and (iv) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

**Section 4.1.17     Not a Foreign Person.** The Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

**Section 4.1.18     Separate Lots.** Each parcel comprising the Land is a separate tax lot and is not a portion of any other tax lot that is not a part of the Land.

**Section 4.1.19     Assessments.** There are no pending or, to the Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the Project that may result in such special or other assessments.

**Section 4.1.20     Enforceability.** The Borrower Loan Documents and the Funding Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

**Section 4.1.21     Insurance.** The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the Security Instrument and has delivered to the Servicer copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement, if applicable, and the Security Instrument.

**Section 4.1.22     Use of Property; Licenses.** The Project will be used exclusively as a multifamily residential rental project and other appurtenant and related uses, which use is consistent with the zoning classification for the Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the Project (collectively, the "Licenses") required at this time for the construction or rehabilitation, as appropriate, and equipping of the Project have been obtained. To the Borrower's knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Licenses required for the future use and occupancy of the Project and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course following the Completion Date. No Licenses will terminate, or become void or voidable

or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower's knowledge, pending or threatened that would result in a change of the zoning of the Project.

**Section 4.1.23     Flood Zone.** On the Closing Date, no structure within the Mortgaged Property lies or is located in an identifiable or designated Special Flood Hazard Area. Subsequent to the Closing Date, if the Mortgaged Property is determined to be in a Special Flood Hazard Area, Borrower will obtain appropriate flood insurance as required under the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as amended, or as required by the Servicer pursuant to its underwriting guidelines.

**Section 4.1.24     Physical Condition.** The Project, including all Improvements, parking facilities, systems, fixtures, Equipment and landscaping, are or, after completion of the construction, rehabilitation and/or repairs, as appropriate, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. The physical configuration of the Project is not in material violation of the ADA, if required under applicable law.

**Section 4.1.25     Encroachments.** All of the Improvements included in determining the appraised value of the Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Servicer.

**Section 4.1.26     State Law Requirements.** The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Borrower Loan, the Funding Loan and the Project.

**Section 4.1.27     Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Project to the Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.

**Section 4.1.28     Investment Company Act.** 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; or (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.

**Section 4.1.29     Fraudulent Transfer.** The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan 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 Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower’s assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, exceed the Borrower’s total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower’s assets is and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, be greater than the Borrower’s probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower’s assets do not and, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

**Section 4.1.30     Ownership of the Borrower.** Except as set forth in the Partnership Agreement of the Borrower, the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in the Borrower.

**Section 4.1.31     Environmental Matters.** To the best of the Borrower’s knowledge, the Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument. The Borrower will execute and deliver the Agreement of Environmental Indemnification on the Closing Date.

**Section 4.1.32     Name; Principal Place of Business.** Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other place of business, other than the Project and such principal place of business.

**Section 4.1.33     Subordinated Debt.** There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than Permitted Encumbrances and the permitted indebtedness described in Section 6.7 hereof, except an unsecured deferred developer fee not to exceed the amount permitted by Funding Lender as determined on the Closing Date and unsecured, subordinate partner loans to the Borrower permitted or required under the terms of the Partnership Agreement.

**Section 4.1.34     Filing of Taxes.** The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

**Section 4.1.35     General Tax.** All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Certificate are incorporated by reference herein and the Borrower will comply with such as if set forth herein.

**Section 4.1.36     Approval of Borrower Loan Documents and Funding Loan Documents.** By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer in any manner.

**Section 4.1.37     Funding Loan Agreement.** The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

**Section 4.1.38     Americans with Disabilities Act.** The Project, as designed, will conform in all material respects, with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and its implementing regulations and the American Disabilities Act Amendments Act (ADAAA) Pub. L. 10-325 and all subsequent amendments (the "ADA"), to the extent required (as evidenced by an architect's certificate to such effect).

**Section 4.1.39     Requirements of Act, Resolution, Code and Regulations.** The Project satisfies all requirements of the Act, the Resolution, the Code and the Regulations applicable to the Project.

**Section 4.1.40     Regulatory Agreement.** The Project is, as of the date of origination of the Funding Loan, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act, the Resolution, the Code and the Regulations, and pursuant to leases which comply with all applicable laws.

**Section 4.1.41     Intention to Hold Project.** The Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreement, to sell the Project or any part of it (except for rights granted in the Partnership Agreement which are subordinate to the Security Instrument); and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

**Section 4.1.42     Concerning General Partner.**

(a) The General Partner is a Delaware Limited Liability Company, duly organized and validly authorized to do business under the laws of the State of Florida. The General Partner has all requisite power and authority, rights and franchises to enter into and perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by the General Partner for its own account and on behalf of the Borrower, as general partner of the Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

(b) The General Partner has made all filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of General Partner.

(c) The General Partner is duly authorized to do business in the State.

(d) The execution, delivery and performance by the Borrower of the Borrower Loan Documents and the Funding Loan Documents have been duly authorized by all necessary action of the General Partner on behalf of the Borrower, and by all necessary action on behalf of the General Partner.



(e) The execution, delivery and performance by the General Partner, on behalf of the Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (i) the General Partner's organizational documents; (ii) any other Legal Requirement affecting the General Partner or any of its properties; or (iii) any agreement to which the General Partner is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties, any of the Collateral or any of the property or funds pledged or delivered to Funding Lender pursuant to the Security Documents.

**Section 4.1.43     Government and Private Approvals.** All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, rehabilitation, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that the Borrower is not required to have as of the Closing Date, will be obtained), and will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. All such orders, consents, permits, authorizations and approvals that may not be denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders, consents, permits, authorizations or approvals are required, and, once obtained, such orders, consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. Except as set forth in the preceding two sentences, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of the Borrower, are required for the due execution, delivery and performance by the Borrower or General Partner of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by the Borrower or General Partner, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the Project is not conditional upon the happening of any further event.

**Section 4.1.44     Concerning Guarantor and the Governmental Lender Guarantors.** The Borrower Loan Documents and the Funding Loan Documents to which the Guarantor and the Governmental Lender Guarantors are a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by the Guarantor and the Governmental Lender Guarantors and are legally valid and binding obligations of the Guarantor and the Governmental Lender Guarantors, enforceable against the Guarantor and the Governmental Lender Guarantors in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**Section 4.1.45     No Material Defaults.** Except as previously disclosed to Funding Lender in writing, there exists no material violation of or material default by the Borrower under, and, to the best knowledge of the Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with

respect to: (i) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the Project or any portion or interest thereof or therein; (ii) any lease or other agreement affecting the Project or to which the Borrower is a party; (iii) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which the Borrower or the Project may be bound; or (iv) any mortgage, instrument, agreement or document by which the Borrower or any of its respective properties is bound; in the case of any of the foregoing: (1) which involves any Borrower Loan Document or Funding Loan Document; (2) which involves the Project and is not adequately covered by insurance; (3) that might materially and adversely affect the ability of the Borrower, General Partner or Guarantor or to perform any of its respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party; or (4) which might adversely affect the priority of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

**Section 4.1.46      Payment of Taxes.** Except as previously disclosed to Funding Lender in writing: (i) all tax returns and reports of the Borrower, the General Partner and the Guarantor required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges upon the Borrower, the General Partner and the Guarantor, and upon their respective properties, assets, income and franchises, which are due and payable have been paid when due and payable; and (ii) the Borrower knows of no proposed tax assessment against it or against the General Partner or Guarantor that would be material to the condition (financial or otherwise) of the Borrower, the General Partner or Guarantor, and neither Borrower nor General Partner have contracted with any Governmental Authority in connection with such taxes.

**Section 4.1.47      Rights to Project Agreements and Licenses.** The Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. The Borrower's interest in the Plans and Specifications and all Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents and the Funding Loan Documents or as otherwise approved by Funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business.

**Section 4.1.48      Patriot Act Compliance.** The Borrower is not now, nor has ever been (i) listed on any Government Lists (as defined below), (ii) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "**Patriot Act Offense**" shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of

the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) Bank Representative Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" shall mean (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control ("OFAC"), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Funding Lender notified the Borrower in writing is now included in "Government Lists," or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that the Funding Lender notified the Borrower in writing is now included in "Government Lists."

**Section 4.1.49      Rent Schedule.** The Borrower has prepared a prospective Unit absorption and rent collection schedule with respect to the Project substantially in the form attached as an exhibit to the Construction Funding Agreement, which schedule takes into account, among other relevant factors (i) a schedule of minimum monthly rentals for the Units, and (ii) any and all concessions including free rent periods, and on the basis of such schedule, the Borrower believes it will collect rents with respect to the Project in amounts greater than or equal to debt service on the Borrower Loan.

**Section 4.1.50      Other Documents.** Each of the representations and warranties of the Borrower or General Partner contained in any of the other Borrower Loan Documents or the Funding Loan Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of the Funding Lender.

**Section 4.2      Survival of Representations and Covenants.** All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Governmental Lender and the Servicer notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Servicer or on its or their behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.1.31 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 11.1 hereof.

## ARTICLE V AFFIRMATIVE COVENANTS

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer that:

**Section 5.1    Existence.** The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all material Licenses, and (iv) qualify to do business and remain in good standing under the laws of the State.

**Section 5.2    Taxes and Other Charges.** The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all Taxes and Other Charges of any type or character charged to the Funding Lender affecting the amount available to the Funding Lender from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including Taxes and Other Charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Funding Lender and taxes based upon or measured by the net income or gross receipts (to the extent such Taxes are assessed outside the Property Jurisdiction) of the Funding Lender; provided, however, that the Borrower shall have the right to protest any such Taxes or Other Charges and to require the Funding Lender, at the Borrower's expense, to protest and contest any such Taxes or Other Charges levied upon them and that the Borrower shall have the right to withhold payment of any such Taxes or Other Charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Funding Lender. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.3    Repairs; Maintenance and Compliance; Physical Condition.** The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or Equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

**Section 5.4    Litigation.** The Borrower shall give prompt Written Notice to the Governmental Lender, the Funding Lender and the Servicer of any litigation, governmental

proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

**Section 5.5 Performance of Other Agreements.** The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project.

**Section 5.6 Notices.** The Borrower shall promptly advise the Governmental Lender, the Funding Lender and the Servicer of (i) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (ii) any fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document to which it is a party in a timely manner, or (iii) the occurrence of any Potential Default or Event of Default of which the Borrower has knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower shall cause to be delivered to the Governmental Lender, the Funding Lender and the Servicer any Securities and Exchange Commission or other public filings, if any, of the Borrower within two (2) Business Days of such filing.

**Section 5.7 Cooperate in Legal Proceedings.** The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and/or the Servicer under any Borrower Loan Document or Funding Loan Document.

**Section 5.8 Further Assurances.** The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (i) furnish to the Servicer and the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that the Borrower's construction, rehabilitation or renovation of the Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements relating to the Project, reasonably requested by the Servicer or the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (ii) execute and deliver to the Servicer, the Fiscal Agent and the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Borrower Loan, as the Servicer, the Fiscal Agent and the Funding Lender may reasonably require from time to time; (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Servicer, the Fiscal Agent or the Funding Lender shall reasonably require from time to time; provided,

however, with respect to clauses (i)-(iii) above, the Borrower shall not be required to do anything that has the effect of (A) changing the essential economic terms of the Borrower Loan or (B) imposing upon the Borrower greater personal liability under the Borrower Loan Documents and the Funding Loan Documents; and (iv) upon the Servicer's, the Fiscal Agent's or the Funding Lender's request therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long as such Potential Default or Event of Default, as applicable, is continuing pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (b) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Servicer or the Funding Lender in each of the locations reasonably designated by the Servicer or the Funding Lender.

**Section 5.9 Delivery of Financial Information.** After notice to the Borrower of a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to the Funding Lender or the Servicer, deliver copies of all financial information required under Article IX.

**Section 5.10 Environmental Matters.** So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all Hazardous Materials Laws (as defined in the Security Instrument), (b) promptly notify the Funding Lender, the Fiscal Agent, the Governmental Lender and the Servicer if the Borrower shall become aware that any Hazardous Materials (as defined in the Security Instrument) are on or near the Project in violation of Hazardous Materials Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Hazardous Material Laws, in each case as set forth in the Security Instrument or the Agreement of Environmental Indemnification.

**Section 5.11 Title to the Project.** The Borrower will warrant and defend the title to the Project, subject only to Permitted Encumbrances, against the claims of all Persons.

**Section 5.12 Governmental Lender's, Fiscal Agent's and Funding Lender's Fees.** The Borrower covenants to pay the reasonable fees, costs and expenses of the Governmental Lender (including the Ongoing Governmental Lender Fee and the Governmental Lender Servicer Fees), the Fiscal Agent and the Funding Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender, the Fiscal Agent or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.13 Estoppel Statement.** The Borrower shall furnish to the Funding Lender or the Servicer for the benefit of the Funding Lender or the Servicer within ten (10) days after request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth (i) the unpaid principal of the Borrower Notes, (ii) the applicable Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Borrower Payment Obligations, and (v) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender or the Servicer, within 30 days of a request by the Funding Lender or Servicer, tenant estoppel certificates from each commercial tenant at the Project in form and substance reasonably satisfactory to the Funding Lender and the Servicer; provided that the Funding Lender and the Servicer shall not make such requests more frequently than twice in any year.

**Section 5.14 Defense of Actions.** The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects the Funding Lender's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Funding Lender appears to be prior or superior to the Borrower Loan Documents or the Funding Loan Documents. The Funding Lender shall have no obligation to do any of the above. The Funding Lender may take any such action without notice to or demand upon the Borrower. No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or Funding Loan Documents. In the event (i) that the Security Instrument is foreclosed in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (ii) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding the Funding Lender is made a party or (iii) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any

appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

**Section 5.15 Expenses.** The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the Borrower Loan and the Funding Loan, including reasonable fees, costs and expenses of the Governmental Lender's, the Fiscal Agent's, the Funding Lender's and the Servicer's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of the Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the Funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for all reasonable amounts expended, advanced or incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer to collect the Borrower Notes, or to enforce the rights of the Governmental Lender, the Fiscal Agent, the Funding Lender, the Fiscal Agent and the Servicer under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the Date of Disbursement until the date of reimbursement to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, all of which shall constitute part of the Borrower Loan and the Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.15 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the Funding Loan Documents, including the acquisition of the Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the gross negligence or willful misconduct of any other party, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by Section 18(i) of the Security Instrument. Notwithstanding anything to the contrary in this Agreement, the Borrower shall not be responsible for any costs associated with any securitization of the Borrower Loan.

**Section 5.16 Indemnity.** In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of the



Governmental Lender, the Fiscal Agent or the Funding Lender pursuant hereto and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, the Beneficiary Parties, Citigroup, Inc. and each of their respective officers, directors, employees, attorneys and agents (each an “**Indemnified Party**”), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the “**Liabilities**”) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except with respect to any Secondary Market Disclosure Document (other than any of the Borrower’s obligations under Article IX);

(b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction, installation or rehabilitation of, the Project or any part thereof;

(c) Any lien (other than a Permitted Lien) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and Other Charges imposed on the Governmental Lender, the Fiscal Agent or the Funding Lender in respect of any portion of the Project;

(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

(e) The enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(f) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of the Borrower applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party;

(g) Any Determination of Taxability;

(h) Any breach (or alleged breach) by the Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by the Borrower, the General Partner, Guarantor or their Affiliates to the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer or any other Person in connection with the Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by the Borrower of any agreement with respect to the provision of any substitute credit enhancement);

(i) any failure (or alleged failure) by the Borrower, the Funding Lender or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(j) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or rehabilitation of, the Project or any part thereof; or

(k) the use of the proceeds of the Borrower Loan and the Funding Loan,

except in the case of the foregoing indemnification of the Governmental Lender or any related Indemnified Party, to the extent such damages are caused by the willful misconduct of such Indemnified Party, and except in the case of the foregoing indemnification of the Funding Lender, the Fiscal Agent or the Servicer or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall

remain obligated to indemnify each Indemnified Party pursuant to this Section 5.16 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnify hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan and in the case of the Servicer and the Fiscal Agent, any resignation or removal. The provisions of this Section 5.16 shall survive the termination of this Borrower Loan Agreement.

**Section 5.17 No Warranty of Condition or Suitability by the Governmental Lender or Funding Lender.** Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

**Section 5.18 Right of Access to the Project.** The Borrower agrees that the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Construction Consultant, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice and subject to the rights of residential tenants, to enter onto the Land (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

**Section 5.19 Notice of Default.** The Borrower will provide the Governmental Lender, the Funding Lender and the Servicer as soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Potential Default or Event of Default, with a statement of an Authorized Representative of Borrower describing the details of such Potential Default or Event of Default and any curative action Borrower proposes to take.

**Section 5.20 Covenant with Governmental Lender, the Fiscal Agent and the Funding Lender.** The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the purchase by others of the Governmental Lender Notes and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent and any lawful owner, holder or pledgee of the Borrower Notes or the Governmental Lender Notes from time to time.

**Section 5.21 Obligation of the Borrower to Construct or Rehabilitate the Project.** The Borrower shall proceed with reasonable dispatch to construct or rehabilitate, as the case may be,

and equip the Project. If the proceeds of the Borrower Loan, together with the Other Borrower Moneys, available to be disbursed to the Borrower are not sufficient to pay the costs of such construction or rehabilitation, as appropriate, and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer in respect of any such costs or to any diminution or abatement in the repayment of the Borrower Loan. The Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the Project. The Governmental Lender, the Fiscal Agent and the Funding Lender do not make any representation or warranty, either express or implied, that moneys, if any, which will be made available to the Borrower will be sufficient to complete the Project. The Governmental Lender and the Fiscal Agent shall not be liable to the Borrower or any other person if for any reason the Project is not completed. The Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed, except to the extent such failure results from the gross negligence or willful misconduct of the Funding Lender or the Servicer.

**Section 5.22 Maintenance of Insurance.** Borrower will maintain the insurance required by the Security Instrument.

**Section 5.23 Information; Statements and Reports.** The Borrower shall furnish or cause to be furnished to the Funding Lender and, upon written request, the Governmental Lender:

(a) *Financial Statements; Rent Rolls.* In the manner and to the extent required under the Security Instrument, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

(b) *General Partner.* As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the General Partner, copies of the financial statements of the General Partner as of such date, prepared in substantially the form previously delivered to the Governmental Lender and Funding Lender and in a manner consistent therewith, or in such form (which may include a form prepared in accordance with GAAP) as Funding Lender may reasonably request;

(c) *Leasing Reports.* Prior to the Conversion Date, on a monthly basis (and in any event within fifteen (15) days after the end of each Calendar Month), a report of all efforts made by Borrower, if any, to lease all or any portion of the Project during such Calendar Month and on a cumulative basis since Project inception, which report shall be prepared and delivered by Borrower, shall be in form and substance satisfactory to Funding Lender, and shall, if requested by Funding Lender, be supported by copies of letters of intent, leases or occupancy agreements, as applicable;

(d) *Audit Reports.* Promptly upon receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(e) *Notices; Certificates or Communications.* Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to the Borrower or General Partner naming the Governmental Lender or the Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of the Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

(f) *Certification of Non-Foreign Status.* Promptly upon request of the Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by the Funding Lender;

(g) *Compliance Certificates.* Together with each of the documents required pursuant to Section 5.23(a) hereof submitted by or on behalf of the Borrower, a statement, in form and substance satisfactory to the Funding Lender and certified by an Authorized Borrower Representative, to the effect that the Borrower is in compliance with all covenants, terms and conditions applicable to the Borrower, under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by the Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of the Borrower's actions to correct such noncompliance, Event of Default or Potential Default, as applicable; and

(h) *Other Items and Information.* Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of the Borrower, the General Partner, Guarantor or the Project, as the Funding Lender or the Governmental Lender reasonably requests from time to time.

In addition, and notwithstanding the foregoing, the Governmental Lender shall receive from the Borrower all reports required under the Regulatory Agreement.

**Section 5.24 Additional Notices.** The Borrower will, promptly after becoming aware thereof, give notice to the Funding Lender and the Governmental Lender of:

(a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

(b) any Legal Action which is instituted by or against the Borrower, the General Partner or Guarantor, or any Legal Action which is threatened against the Borrower, the General Partner or the Guarantor which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, prospects, assets, management,

ownership or condition (financial or otherwise) of the Borrower, the General Partner, Guarantor or the Project;

(c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which the Borrower, the General Partner or the Guarantor is a party or by or to which the Borrower, the General Partner or the Guarantor, or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the Project), or condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Guarantor, as applicable;

(d) any default, alleged default or potential default on the part of the Borrower under any of the CC&R's (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

(e) any notice of default, alleged default or potential default on the part of the Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by the Borrower with respect to, or alleging, the same default, alleged default or potential default;

(f) any change or contemplated change in (i) the location of the Borrower's or General Partner's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by the Borrower or the General Partner; or (iii) the nature of the trade or business of the Borrower; and

(g) any default, alleged default or potential default on the part of any general or limited partner (including, without limitation, General Partner and the Equity Investor) under the Partnership Agreement.

#### **Section 5.25 Compliance with Other Agreements; Legal Requirements.**

(a) The Borrower shall timely perform and comply with, and shall cause the General Partner to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Partnership Agreement, and the Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

(b) The Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project or construction and/or rehabilitation of the Improvements, and will furnish the Funding Lender with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. The Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&R's and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, rehabilitation,

equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of low or moderate income. The Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. The Funding Lender shall at all times have the right to audit, at the Borrower's expense, the Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of low or moderate income, and the Borrower shall supply all such information with respect thereto as Funding Lender may request and otherwise cooperate with the Funding Lender in any such audit. Without limiting the generality of the foregoing, the Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to the Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to construct, occupy, operate, market and lease the Project.

**Section 5.26 Completion and Maintenance of Project.** The Borrower shall cause the construction or rehabilitation, as the case may be, of the Improvements to be prosecuted with diligence and continuity and completed substantially in accordance with the Plans and Specifications, and in accordance with the Construction Funding Agreement, free and clear of any liens or claims for liens (but without prejudice to the Borrower's rights of contest under Section 10.15 hereof) ("**Completion**") on or before the Completion Date. The Borrower shall thereafter maintain the Project as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of first class maintenance.

**Section 5.27 Fixtures.** The Borrower shall deliver to the Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which the Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

**Section 5.28 Income from Project.** The Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose. Prior to the Conversion Date, Borrower shall not make or permit any distributions or other payments of Net Operating Income to its partners, shareholders or members, as applicable, in each case, without the prior Written Consent of Funding Lender.

**Section 5.29 Leases and Occupancy Agreements.**

(a) *Lease Approval.*

(i) Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without the Funding Lender's prior Written Consent if:

(A) The lease is a Permitted Lease;

(B) The Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&R and is financially capable of performing all of its obligations under the lease; and

(C) The lease conforms to the Rent Schedule attached as an exhibit to the Construction Funding Agreement and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&R.

(ii) If any Event of Default has occurred and is continuing, the Funding Lender may make written demand on the Borrower to submit all future leases for the Funding Lender's approval prior to execution. The Borrower shall comply with any such demand by the Funding Lender.

(iii) No approval of any lease by the Funding Lender shall be for any purpose other than to protect the Funding Lender's security for the Borrower Loan and to preserve the Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by the Funding Lender shall result in a waiver of any default of the Borrower. In no event shall any approval by Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant or guarantor.

(b) *Landlord's Obligations.* The Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

(c) *Leasing and Marketing Agreements.* Except as may be contemplated in the Management Agreement with the Property Manager, the Borrower shall not without the approval of the Funding Lender enter into any leasing or marketing agreement and the Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

**Section 5.30 Project Agreements and Licenses.** To the extent not heretofore delivered to the Funding Lender, the Borrower will furnish to the Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to the Funding Lender and consents to such assignments where required by the Funding Lender, all in form and substance acceptable to the Funding Lender. Neither the Borrower nor the General Partner has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to Funding Lender.

**Section 5.31 Payment of Debt Payments.** In addition to its obligations under the Borrower Notes, the Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of the Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (iii) promptly inform the Funding Lender of any



default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to the Funding Lender a copy of any notice of default or notice of any event that might result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

**Section 5.32 ERISA.** To the extent applicable, the Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA.

**Section 5.33 Patriot Act Compliance.** The Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and/or the Project, including those relating to money laundering and terrorism. The Funding Lender shall have the right to audit the Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and/or the Project, including those relating to money laundering and terrorism. In the event that the Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then the Funding Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Funding Lender in connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

Borrower covenants that it shall comply with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, Borrower shall not take any action, or permit any action to be taken, that would cause Borrower's representations and warranties in Section 4.1.48 and this Section 5.32 to become untrue or inaccurate at any time during the term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, Borrower shall certify in writing to such Beneficiary Party that Borrower's representations, warranties and obligations under Section 4.1.48 and this Section 5.32 remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. Borrower shall immediately notify the Funding Lender in writing of (a) Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached, (b) Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and economic sanctions. Borrower shall also reimburse Funding Lender for any expense incurred by Funding Lender in evaluating the effect of an investigation by Governmental Authorities on the Funding Loan and Funding Lender's interest in the collateral for the Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of Funding Lender relating to

money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon Funding Lender as a result thereof.

**Section 5.34 Funds from Equity Investor.** The Borrower shall cause the Equity Investor to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms, conditions and adjustments of the Partnership Agreement.

**Section 5.35 Tax Covenants.** The Borrower further represents, warrants and covenants as follows:

(a) *General.* The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Governmental Lender Notes from gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Security Instrument and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Governmental Lender Notes, the Funding Loan or affecting the Project. Capitalized terms used in this Section 5.35 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the Funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the Governmental Lender Notes, unless it has received and filed with the Governmental Lender and the Funding Lender a Tax Counsel No Adverse Effect Opinion (other than with respect to interest on any portion of the Governmental Lender Notes for a period during which such portion of the Governmental Lender Notes is held by a “substantial user” of any facility financed with the proceeds of the Governmental Lender Notes or a “related person,” as such terms are used in Section 147(a) of the Code), the Borrower will comply with this Section 5.35.

(b) *Use of Proceeds.* The use of the net proceeds of the Funding Loan at all times will satisfy the following requirements:

(i) **Limitation on Net Proceeds.** At least ninety-five percent (95%) of the net proceeds of the Funding Loan (within the meaning of the Code) actually expended shall be used to pay Qualified Project Costs that are costs of a “qualified residential rental project” (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and property that is “functionally related and subordinate” thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations).

(ii) **Limit on Costs of Funding.** The proceeds of the Funding Loan will be expended for the purposes set forth in this Borrower Loan Agreement and in the Funding Loan

Agreement and no portion thereof in excess of two percent (2%) of the proceeds of the Funding Loan, within the meaning of Section 147(g) of the Code, will be expended to pay Costs of Funding of the Funding Loan.

(iii) Prohibited Facilities. The Borrower shall not use or permit the use of any proceeds of the Funding Loan or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(iv) Limitation on Land. Less than twenty-five percent (25%) of the net proceeds of the Funding Loan actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein, nor will any portion of the net proceeds of the Funding Loan be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(v) Limitation on Existing Facilities. No portion of the net proceeds of the Funding Loan will be used for the acquisition of any existing property or an interest therein unless (A) the first use of such property is pursuant to such acquisition or (B) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed fifteen percent (15%) of the cost of acquiring such building financed with the proceeds of the Funding Loan (with respect to structures other than buildings, this clause shall be applied by substituting one hundred percent (100%) for fifteen percent (15%)). For purposes of the preceding sentence, the term "rehabilitation expenditures" shall have the meaning set forth in Section 147(d)(3) of the Code.

(vi) Accuracy of Information. The information furnished by the Borrower and used by the Governmental Lender in preparing its certifications with respect to Section 148 of the Code and the Borrower's information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of origination of the Funding Loan.

(vii) Limitation of Project Expenditures. The acquisition, construction, rehabilitation and equipping of the Project were not commenced (each within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of the resolution of the Governmental Lender with respect to the Project on February 20, 2019, and no obligation for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, construction or equipping of the Project was paid or incurred prior to 60 days prior to such date, except for permissible "preliminary expenditures" not in excess of 20% of the aggregate issue price of the Funding Loan which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs (other than land acquisition, site preparation and similar costs incident to commencement of construction or rehabilitation) incurred prior to the commencement of the acquisition, construction, rehabilitation or equipping of the Project.

(viii) Qualified Costs. The Borrower hereby represents, covenants and warrants that the proceeds of the Funding Loan shall be used or deemed used exclusively to pay costs which (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code, and that for the greatest number of buildings the proceeds of the Funding Loan shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that the buildings (including eligible furniture and fixtures and functionally related subordinate facilities) and the land on which they are located will have been financed fifty percent (50%) or more by the proceeds of the Funding Loan for the purpose of complying with Section 42(h)(4)(B) of the Code; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Funding Lender nor the Governmental Lender shall have any obligation to enforce this statement nor shall they incur any liability to any person, including without limitation, the Borrower, the partners of the Borrower, any other affiliate of the Borrower or the holders or payees of the Funding Loan and the Borrower Notes for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided, further, failure to comply with this representation, covenant and warranty shall not constitute a default or event of default under this Borrower Loan Agreement or the Funding Loan Agreement.

(c) *Limitation on Maturity*. The average maturity of the Governmental Lender Notes does not exceed 120 percent of the average reasonably expected economic life of the Project to be financed by the Funding Loan, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the Net Proceeds of the Funding Loan. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (A) the Closing Date for the Funding Loan or (B) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

(d) *No Arbitrage*. The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Governmental Lender Notes or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause a Governmental Lender Note to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall 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 this Borrower Loan Agreement or the Borrower Notes relating to the Funding Loan, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Funding Loan, unless the Borrower has obtained in each case a Tax Counsel No Adverse Effect Opinion with respect to such action, a copy of which shall be provided to the Governmental Lender and the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Funding Loan, invest or cause any Gross Proceeds to be invested in any investment (or to use Gross Proceeds 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 Funding Loan to the Maturity Date, except as permitted by Section 148 of the Code and Regulations thereunder or as provided in the Regulatory Agreement. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Regulations thereunder relating to the Funding Loan and the interest thereon, including the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender at all times from and after the Closing Date for the calculation of rebatable amounts to the United States Treasury Department. The Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts not later than forty-five days after the fifth anniversary of the Closing Date and each five years thereafter and not later than forty-five days after the final Computation Date and agrees that the Borrower will pay all costs associated therewith. The Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the Governmental Lender and Funding Lender.

(e) *No Federal Guarantee.* Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the Governmental Lender Notes to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(f) *Representations.* The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its opinion with respect to the exclusion from gross income of the interest on the Governmental Lender Notes for federal income tax purposes, 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 in order 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 which Tax Counsel has not requested.

(g) *Qualified Residential Rental Project.* The Borrower hereby covenants and agrees that the Project will be operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Governmental Lender Notes remains outstanding, to the end that the interest on the Governmental Lender Notes shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(h) *Information Reporting Requirements.* The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information regarding the Governmental Lender Notes to be filed with the Internal Revenue Service within prescribed time limits.

(i) *Funding Loan Not a Hedge Bond.* The Borrower covenants and agrees that not more than 50% of the proceeds of the Funding Loan will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Funding Loan will be used to carry out the governmental purposes of the Funding Loan within the three-year period beginning on the Closing Date.

(j) *Termination of Restrictions.* Although the parties hereto recognize that, subject to the provisions of the Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate in accordance with Section 10.13 hereof, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) *Public Approval.* The Borrower covenants and agrees that the proceeds of the Funding Loan will not be used in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Funding Loan.

(l) *40/60 Test Election.* The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) *Modification of Tax Covenants.* Subsequent to the origination of the Funding Loan and prior to its payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 5.35 hereof may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Borrower Loan Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Funding Lender and the Borrower hereby agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the Governmental Lender Notes to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion to the effect that such proposed amendment will not adversely impact the excludability of interest on the Governmental Lender Notes in the gross income of the recipient thereof for federal income tax purposes. The Borrower shall pay all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record, any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file-stamped copy to the Funding Lender, necessary to

effectuate the intent of this Section 5.35, and the Borrower and the Governmental Lender hereby appoint the Funding Lender as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section 5.35; provided, however, that the Funding Lender shall take no action under this Section 5.35 without first notifying the Borrower or the Governmental Lender, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 5.35.

The Borrower irrevocably authorizes and directs the Funding Lender and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Funding Lender, or any agent of the Governmental Lender or the Funding Lender. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase interests in the Funding Loan in an amount related to the amount of the Borrower Loan.

#### **Section 5.36   Payment of Rebate.**

(a)     *Arbitrage Rebate.* The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the Governmental Lender Notes in accordance with Section 148(f) of the Code including:

(i)     Delivery of Documents and Money on Computation Dates. The Borrower will deliver to the Fiscal Agent, the Governmental Lender, the Servicer, or, if there is no Servicer, to the Funding Lender, within 55 days after each Computation Date:

(A)     a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

(B)     (1) 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% of the Rebate Amount as of such Installment Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations), or (2) 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 as of such final Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations); and

(C)     an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

(ii) Correction of Underpayments. If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.36 of an amount described in Section 5.36(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Servicer (for deposit to the Rebate Fund) and cause the Fiscal Agent to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Regulations, within 175 days after any discovery or notice and (2) deliver to the Servicer an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the Governmental Lender Notes from becoming an arbitrage bond within the meaning of Section 148 of the Code.

(iii) Records. The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.36 for at least six years after the later of the final maturity of the Governmental Lender Notes or the date the Funding Loan is retired in full.

(iv) Costs. The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst, a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

(v) 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 Funding Loan which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan were not subject to Section 148(f) of the Code.

(vi) Modification of Requirements. If at any time during the term of this Borrower Loan Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.36, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion with respect to such action.

(b) *Rebate Fund.* The Fiscal Agent shall establish under the Funding Loan Agreement and hold a separate fund designated as the "Rebate Fund." The Servicer shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Servicer by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.



(c) Within fifteen (15) days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(d) All payments to the United States of America pursuant to this Section 5.36 shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Servicer by the Borrower or the Rebate Analyst as set forth in this Section 5.36).

(e) The Borrower shall preserve all statements, forms and explanations received or delivered pursuant this Section 5.36 and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan.

(f) Moneys and securities held in the Rebate Fund shall not be deemed funds of the Funding Lender, the Fiscal Agent or of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the Funding Lender to secure the Funding Loan or any other obligations.

(g) Notwithstanding anything to the contrary in this Borrower Loan Agreement, no payment shall be made to the United States if the Borrower shall furnish to the Governmental Lender, the Fiscal Agent and the Funding Lender an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Notes. In such event, the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender, the Fiscal Agent and the Funding Lender with respect to such withdrawal.

(h) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.36 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Funding Lender and the Fiscal Agent.

**Section 5.37 Covenants under Funding Loan Agreement.** The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan Agreement to perform. The foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

**Section 5.38 Continuing Disclosure Agreement.** The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing

disclosure of information about the Funding Loan, the Borrower and other matters as specifically provided for in such agreement.

## **ARTICLE VI NEGATIVE COVENANTS**

The Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Borrower Payment Obligation or other obligation of the Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. The Borrower covenants and agrees that it will not, directly or indirectly:

**Section 6.1    Management Agreement.** Without first obtaining the Funding Lender's prior Written Consent, enter into the Management Agreement, and thereafter the Borrower shall not, without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the Management Agreement or otherwise replace the Property Manager or enter into any other management agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Property Manager to terminate the Management Agreement (or such successor management agreement); provided, however, that Funding Lender's prior Written Consent shall not be required for any extension or renewal of the Management Agreement on the same terms and conditions.

**Section 6.2    Dissolution.** Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

**Section 6.3    Change in Business or Operation of Property.** Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction or rehabilitation, as appropriate, of the Project).

**Section 6.4    Debt Cancellation.** Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

**Section 6.5    Assets.** Purchase or own any real property or personal property incidental thereto other than the Project.

**Section 6.6 Transfers.** Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Security Instrument, nor transfer any material License required for the operation of the Project.

**Section 6.7 Debt.** Other than as expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any partner thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, (iii) trade payables incurred in the ordinary course of business, (iv) unsecured deferred developer fees as permitted pursuant to the terms of the Development Services Agreement, and (v) unsecured loans made by Partners of the Borrower in accordance with the Partnership Agreement.

**Section 6.8 Assignment of Rights.** Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

**Section 6.9 Principal Place of Business.** Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender, the Governmental Lender, the Fiscal Agent and the Servicer.

**Section 6.10 Partnership Agreement.** Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of its rights or remedies under the Partnership Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Partnership Agreement resulting solely from the "Permitted Transfer" of partnership interests of Borrower as defined in and permitted by the Security Instrument.

**Section 6.11 ERISA.** To the extent applicable, maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan, or permit the assets of the Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

**Section 6.12 No Hedging Arrangements.** Without the prior Written Consent of the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being

a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

**Section 6.13 Loans and Investments; Distributions; Related Party Payments.**

(a) Without the prior Written Consent of the Funding Lender in each instance, the Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in the Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in the Borrower, or make any distribution, in cash or in kind, in respect of interests in the Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in the Borrower (except to the extent permitted by the Security Instrument and subject to the limitations set forth in Section 5.28 hereof).

(b) Disbursements for fees and expenses of any Borrower Affiliate and developer fees (however characterized) will only be paid to the extent that such fee or expense bears a proportionate relationship to the percentage of completion of the construction or rehabilitation, as the case may be, of the Improvements, as determined by the Construction Consultant, and only after deducting the applicable Retainage, if any. Except as otherwise permitted hereunder or by the Funding Lender, no Disbursements for the Developer Fee or any “deferred developer fees” shall be made prior to the Conversion Date other than in accordance with the Approved Developer Fee Schedule.

**Section 6.14 Amendment of Related Documents or CC&R’s.** Without the prior Written Consent of Funding Lender in each instance, except as provided herein or in the Construction Funding Agreement, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&R’s (including, without limitation, those contained in this Borrower Loan Agreement, any Architect’s Agreement or Engineer’s Contract, any Construction Contract, and any Management Agreement, but excluding the Partnership Agreement, which is covered by Section 6.10 hereof), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

**Section 6.15 Personal Property.** The Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than the Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in the Borrower at the time of installation, without the Funding Lender’s prior Written Consent; provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

**Section 6.16 Fiscal Year.** Without the Funding Lender’s Written Consent, which shall not be unreasonably withheld, neither the Borrower nor the General Partner shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

**Section 6.17 Publicity.** Neither the Borrower nor the General Partner shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify the Funding Lender or any of its Affiliates as the source of the financing provided for herein, without the prior written approval of the Funding Lender in each instance (provided that nothing herein shall prevent the Borrower or the General Partner from identifying the Funding Lender or its Affiliates as the source of such financing to the extent that the Borrower or the General Partner are required to do so by disclosure requirements applicable to publicly held companies). The Borrower and the General Partner agree that no sign shall be posted on the Project in connection with the construction or rehabilitation of the Improvements unless such sign identifies Citigroup and its affiliates as the source of the financing provided for herein or the Funding Lender consents to not being identified on any such sign.

**Section 6.18 Subordinate Loan Documents.** Without Funding Lender's prior written consent, the Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

## **ARTICLE VII RESERVED**

## **ARTICLE VIII DEFAULTS**

**Section 8.1 Events of Default.** Each of the following events shall constitute an "Event of Default" under this Borrower Loan Agreement:

(a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of one or both of the Borrower Notes, or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due in accordance with the terms and provisions of one or both of the Borrower Notes, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document;

(b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsection (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, one or both of the Borrower Notes, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) days after Written Notice thereof shall have been given to the Borrower;

(c) an Event of Default, as defined by a Borrower Note, the Security Instrument or any other Borrower Loan Document, occurs (or to the extent an "Event of Default" is not defined in any other Borrower Loan Document, any default or breach by the Borrower or any Guarantor of

its obligations, covenants, representations or warranties under such Borrower Loan Document occurs and any applicable notice and/or cure period has expired);

(d) any representation or warranty made by any of the Borrower, the Guarantor or the General Partner in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, the Guarantor or the General Partner in connection with any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Closing Date;

(e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(f) a Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur, unless in all cases the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section 21 of the Security Instrument; which, in the case of a non-profit Borrower Controlling Entity, may be replaced within sixty (60) days of such event with another non-profit the Borrower Controlling Entity acceptable to the Funding Lender, in which case no Event of Default shall be deemed to have occurred;

(g) any portion of the Borrower Deferred Equity to be made by Equity Investor and required for (i) completion of the construction or rehabilitation, as the case may be, of the Improvements, (ii) the satisfaction of the Conditions of Conversion or (iii) the operation of the Improvements, is not received in accordance with the Partnership Agreement after the expiration of all applicable notice and cure periods;

(h) the failure by the Borrower or any ERISA Affiliate of the Borrower to comply in all respects with ERISA, if applicable, or the occurrence of any other event (with respect to the failure of the Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of the Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to impose upon the Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of Fifty Thousand Dollars (\$50,000);

(i) a Bankruptcy Event shall occur with respect to the Borrower, any General Partner or Guarantor, or there shall be a change in the assets, liabilities or financial position of any such Person which has a material adverse effect upon the ability of such Person to perform such Person's obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document, provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default: (i) if such Bankruptcy Event occurs on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was

executed by such Guarantor), or (ii) if such Bankruptcy Event occurs prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(j) all or any part of the property of the Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released: (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days of the date thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days of the date thereof;

(k) subject to Section 10.15 hereof, the Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of One Hundred Thousand Dollars (\$100,000), and such failure continues beyond the expiration of any applicable cure or grace periods;

(l) any material litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower, any General Partner or Guarantor, or property of Borrower, any General Partner or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, any General Partner or Guarantor, as applicable, provided that any such material litigation or proceeding against a Guarantor shall not constitute an Event of Default: (i) if such material litigation is commenced on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such material litigation or proceeding is commenced prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(m) a final judgment or decree for monetary damages in excess of Fifty Thousand Dollars (\$50,000) or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower, any General Partner or Guarantor by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment,

fine or penalty) , provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default: (i) if such judgment, decree, fine or penalty is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, decree, fine or penalty is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(n) a final, un-appealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of Fifty Thousand Dollars (\$50,000) or more shall be rendered against the Borrower, any General Partner or Guarantor, or against any of their respective assets, that is not paid, superseded or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against the Borrower, any General Partner or Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of the Borrower, any General Partner or Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhanded and unstayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of ten (10) days or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of thirty (30) days, or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder, provided that any such judgment, levy, writ, warrant, attachment or similar process against a Guarantor shall not constitute an Event of Default: (i) if such judgment, levy, writ, warrant, attachment or similar process is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, levy, writ, warrant, attachment or similar process is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(o) the inability of the Borrower to satisfy any condition for the receipt of a Disbursement hereunder (other than an Event of Default specifically addressed in this Section



8.1) and failure to resolve the situation to the satisfaction of the Funding Lender for a period in excess of thirty (30) days after Written Notice from the Funding Lender unless (i) such inability shall have been caused by conditions beyond the control of the Borrower, including, without limitation, acts of God or the elements, fire, strikes and disruption of shipping; (ii) the Borrower shall have made adequate provision, acceptable to the Funding Lender, for the protection of materials stored on-site or off-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft; (iii) the Borrower shall furnish to the Funding Lender satisfactory evidence that such cessation of construction or rehabilitation will not adversely affect or interfere with the rights of the Borrower under labor and materials contracts or subcontracts relating to the construction or operation of the Improvements; and (iv) the Borrower shall furnish to the Funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Completion Date;

(p) the construction or rehabilitation of the Improvements is abandoned or halted prior to completion for any period of thirty (30) consecutive days;

(q) the Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any Governmental Authority with jurisdiction over the Mortgaged Property or the Project orders or requires that construction or rehabilitation of the Improvements be stopped, in whole or in part, or that any required approval, license or permit be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days;

(r) failure by the Borrower to Substantially Complete the construction or rehabilitation, as the case may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Substantial Completion Date;

(s) failure by the Borrower to complete the construction or rehabilitation, as the case may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Completion Date;

(t) failure by the Borrower to satisfy the Conditions to Conversion on or before the Outside Conversion Date;

(a) [intentionally omitted];

(u) [intentionally omitted];

(v) [intentionally omitted]; or

(w) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 8.1), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Funding Lender or the Servicer on its behalf to the Borrower; provided, however, if such failure

is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in the Funding Lender's judgment, absent immediate exercise by the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Notes or this Borrower Loan Agreement or any security given under any other Borrower Loan Document.

## **Section 8.2    Remedies.**

**Section 8.2.1    Acceleration.** Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Funding Lender may, take such action (whether directly or by directing the actions of the Fiscal Agent), without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Notes to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion; and upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Funding Lender.

**Section 8.2.2    Remedies Cumulative.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Funding Lender or the Fiscal Agent against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Funding Lender, at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Funding Lender permitted by law, equity or contract or as set forth in the

Borrower Loan Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Funding Lender shall remain in full force and effect until it has exhausted all of its remedies, the Security Instrument has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations have been paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Funding Lender to resort to any portion of the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Funding Lender may seek satisfaction out of the entire Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender, the Fiscal Agent and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

**Section 8.2.3      Delay.** No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Funding Lender or the Fiscal Agent shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Funding Lender and the Fiscal Agent reserve the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Security Instrument to the extent necessary to foreclose on the Project, the Rents, the funds or any other collateral.

**Section 8.2.4      Set Off.** Upon the occurrence of an Event of Default, Funding Lender may, at any time and from time to time, without notice to Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of the Borrower to the Funding Lender or the Fiscal Agent arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not the Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and the Borrower hereby grants to the Funding Lender, as security for the Borrower Payment Obligations, a security interest in, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Debt at any time held or owing by the Funding Lender to or for the credit or the account of the Borrower.

**Section 8.2.5      Assumption of Obligations.** In the event that the Funding Lender or assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations

of the Borrower under this Borrower Loan Agreement, the Borrower Notes, the Regulatory Agreement, and any other Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

**Section 8.2.6      Accounts Receivable.** Upon the occurrence of an Event of Default, the Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing the Borrower's accounts, accounts receivable and other claims for payment of money, arising in connection with the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Funding Lender.

**Section 8.2.7      Defaults under Other Documents.** The Funding Lender shall have the right to cure any default under any of the Related Documents and Subordinate Loan Documents, but shall have no obligation to do so.

**Section 8.2.8      Abatement of Disbursements.** Notwithstanding any provision to the contrary herein or any of the other Borrower Loan Documents or the Funding Loan Documents, the Funding Lender's obligation to make further Disbursements shall abate (i) during the continuance of any Potential Default, (ii) after any disclosure to the Funding Lender of any fact or circumstance that, absent such disclosure, would cause any representation or warranty of the Borrower to fail to be true and correct in all material respects, unless and until the Funding Lender elects to permit further Disbursements notwithstanding such event or circumstance; and (iii) upon the occurrence of any Event of Default.

**Section 8.2.9      Completion of Improvements.** Upon the occurrence of any Event of Default, the Funding Lender shall have the right to cause an independent contractor selected by the Funding Lender to enter into possession of the Project and to perform any and all work and labor necessary for the completion of the Project substantially in accordance with the Plans and Specifications, if any, and to perform the Borrower's obligations under this Borrower Loan Agreement. All sums expended by the Funding Lender for such purposes shall be deemed to have been disbursed to and borrowed by the Borrower and shall be secured by the Security Documents.

**Section 8.2.10      Right to Directly Enforce.** Notwithstanding any other provision hereof to the contrary, the Funding Lender shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Governmental Lender or the Fiscal Agent, provided that only the Governmental Lender may enforce the Unassigned Rights. In the event that any of the provisions set forth in this Section 8.2.10 are inconsistent with the covenants, terms and conditions of the Security Instrument, the covenants, terms and conditions of the Security Instrument shall prevail.

**Section 8.2.11      Power of Attorney.** Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, the Borrower hereby constitutes and appoints Funding Lender, or an independent contractor selected by the Funding Lender, as its true and lawful attorney-in-fact with full power of substitution, for the purposes of completion of the Project and performance of the Borrower's obligations under this Borrower Loan Agreement in the name of the Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence and continuation of an Event of Default (it being understood and agreed that said power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until full payment and performance of all obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents):

(a) to use any of the funds of the Borrower or General Partner, including any balance of the Borrower Loan, as applicable, and any funds which may be held by the Funding Lender for the Borrower (including all funds in all deposit accounts in which the Borrower has granted to Funding Lender a security interest), for the purpose of effecting completion of the construction or rehabilitation, as the case may be, of the Improvements, in the manner called for by the Plans and Specifications;

(b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications;

(c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(d) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;

(e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Project or the Improvements, or may be necessary or desirable for the completion of the construction or rehabilitation, as the case may be, of the Improvements, or clearance of objections to or encumbrances on title;

(f) to execute all applications and certificates in the name of the Borrower, which may be required by any other construction contract;

(g) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the construction or rehabilitation, as the case may be, of the Improvements, which the Borrower might do on its own behalf;

(h) to let new or additional contracts to the extent not prohibited by their existing contracts;

(i) to employ watchmen and erect security fences to protect the Project from injury; and

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the Funding Loan Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the Funding Lender assignees or designees become the owner of the Project and assume the obligations identified above, and the Borrower Notes, the Borrower Loan and the other Borrower Loan Documents and Funding Loan Documents remain outstanding.

## **ARTICLE IX SPECIAL PROVISIONS**

### **Section 9.1    Sale of Notes and Secondary Market Transaction.**

**Section 9.1.1    Cooperation.** Subject to the restrictions of Section 2.5 and Section 2.6 of the Funding Loan Agreement, at the Funding Lender's or the Servicer's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender or the Servicer customarily adheres or which may be reasonably required in the marketplace or by the Funding Lender or the Servicer in connection with one or more permitted sales or assignments of all or a portion of the Governmental Lender Notes or participations therein or securitizations of single or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or a portion of the Governmental Lender Notes (each such sale, assignment and/or securitization, a "**Secondary Market Transaction**"); provided that the Borrower shall not incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender or the Servicer, and shall not materially modify the Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

(a) (i) provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Property Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward-looking statements or lack of audit, and (iii), at the expense of the Funding Lender or the Servicer, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies,

environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender or the Servicer pursuant to this paragraph (a) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Funding Lender or the Servicer and the Rating Agencies;

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender or the Servicer, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Borrower Loan Documents and the Funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

**Section 9.1.2      Use of Information.** The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "**Secondary Market Disclosure Document**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1(c) hereof, with the Funding Lender and the Servicer in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

**Section 9.1.3      Borrower Obligations Regarding Secondary Market Disclosure Documents.** In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Property Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party). The Borrower shall, if requested by the Funding Lender and the Servicer, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure

Document, pertaining to the Borrower, the Project or the Property Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the Property Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender and the Servicer for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

**Section 9.1.4      Borrower Indemnity Regarding Filings.** In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify the Funding Lender, the Governmental Lender, the Fiscal Agent, the underwriter group for any securities (the “**Underwriter Group**”) for any Liabilities to which Funding Lender, the Governmental Lender, the Fiscal Agent, the Servicer or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Funding Lender, the Servicer, the Governmental Lender, the Fiscal Agent, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender, the Governmental Lender, the Fiscal Agent, the Servicer or the Underwriter Group in connection with defending or investigating the Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

**Section 9.1.5      Indemnification Procedure.** Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided however, that each indemnified party shall have the right to employ separate counsel in any such action or



proceeding and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel, investigation and defense if, in such indemnified party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower, and an indemnified party shall have the right to review and approve or disapprove any compromise or settlement by the Borrower, which approval shall not be unreasonably withheld, prior to the acceptance of any compromise or settlement by the Borrower.

**Section 9.1.6 Contribution.** In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## ARTICLE X MISCELLANEOUS

**Section 10.1 Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Borrower:

Monaco Arms Preservation, Ltd.  
c/o Lincoln Avenue Capital, LLC  
201 Santa Monica Boulevard, Suite 550  
Santa Monica, California 90401

Attention: Jonathan A. Gruskin  
Facsimile: \_\_\_\_\_

with a copy to:

Levitt & Boccio, LLP  
423 West 55<sup>th</sup> Street  
8<sup>th</sup> Floor  
New York, New York 10019  
Attention: **[David Boccio, Esq.]**  
Facsimile: \_\_\_\_\_

and a copy to:

Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
Museum Tower  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Attention: Brian McDonough, Esq.  
Facsimile: (305) 789-3395

and a copy to:

Boston Financial Institutional Tax Credit  
LI, Limited Partnership  
101 Arch Street  
13<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attention: Asset Management – Monaco Arms

and a copy to:

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Attention: Thomas A. Giblin, Esq.  
Facsimile: 617-345-1300

If to the Governmental Lender:

Jacksonville Housing Finance Authority  
214 N. Hogan Street, 7<sup>th</sup> Floor  
Jacksonville, Florida 32202  
Attention: Finance Director  
Facsimile: (850) 488-9809

with a copy to:

Office of the General Counsel  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attention: Emerson Lotzia, Esq.  
Facsimile: (904) 630-1731

If to Funding Lender:

Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Re: Monaco Arms Apartments Deal ID# 25795  
Facsimile: (212) 723-8209

with a copy to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: Monaco Arms Apartments Deal ID# 25795  
Facsimile: (805) 557-0924

Prior to the Conversion Date,  
with a copy to:

Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: Monaco Arms Apartments Deal ID# 25795  
Facsimile: (212) 723-8209

Following the Conversion  
Date, with a copy to:

Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Re: Monaco Arms Apartments Deal ID# 25795  
Facsimile: (215) 328-0305

And a copy of any notices of  
default sent to:

Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Re: Monaco Arms Apartments Deal ID# 25795  
Facsimile: (646) 291-5754

If to Fiscal Agent:

The Bank of New York Mellon Trust Company, N.A.  
10161 Centurion Parkway N  
Jacksonville, Florida 32256  
Attention: Jacksonville HFA Relationship Manager  
Facsimile: (904) 645-1930

Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

The Fiscal Agent shall have the right to accept and act upon directions or instructions given pursuant to this Borrower Loan Agreement and delivered using Electronic Means (defined below); provided, however, that Borrower, the Governmental Lender or and such other party giving such direction or instruction, as the case may be, shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such directions or instructions (ach an "**Authorized Officer**") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. "**Electronic Means**" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder. If the Borrower, the Governmental Lender or such other party giving such direction or instructions elects to give the Fiscal Agent directions or instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such directions or instructions, the Fiscal Agent's understanding of such directions or instructions shall be deemed controlling. The Borrower, the Governmental Lender and any other party giving such direction or instruction understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such directions or instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Borrower, the Governmental Lender or such other party giving such instruction shall each be responsible for ensuring that only Authorized Officers transmit such directions or instructions to the Fiscal Agent and that only Authorized Officers transmit such directions or instructions to the Fiscal Agent and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys as confidential and with extreme care. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such directions or instructions notwithstanding such directions or instructions conflict or are inconsistent with a subsequent written directions or written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions or instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions or instructions to the

Fiscal Agent and that there may be more secure methods of transmitting directions or instructions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions or instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 10.2 Brokers and Financial Advisors.** The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations.

**Section 10.3 Survival.** This Borrower Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Notes and the assignment of the Borrower Notes to the Funding Lender, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the Governmental Lender, the Fiscal Agent the Funding Lender and the Servicer.

**Section 10.4 Preferences.** The Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations. To the extent the Borrower makes a payment to the Governmental Lender, the Fiscal Agent or the Servicer, or the Governmental Lender, the Fiscal Agent or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender or the Servicer.

**Section 10.5 Waiver of Notice.** The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender, the Fiscal Agent or the Servicer except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, to the Borrower and except with respect to matters for

which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer to the Borrower.

**Section 10.6 Offsets, Counterclaims and Defenses.** The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender, the Fiscal Agent, the Governmental Lender or the Servicer with respect to a Borrower Loan Payment. Any assignee of the Funding Lender's, the Governmental Lender's or the Fiscal Agent's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

**Section 10.7 Publicity.** The Funding Lender and the Servicer (and any Affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Funding Lender's or the Servicer's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the Funding Lender or the Servicer or one of its or their Affiliates. All news releases, publicity or advertising by the Borrower or Borrower Affiliates through any media intended to reach the general public, which refers to the Borrower Loan Documents or the Funding Loan Documents, the Borrower Loan, the Funding Lender or the Servicer in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Funding Lender or the Servicer, as applicable.

**Section 10.8 Construction of Documents.** The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the Funding Loan Documents and that the Borrower Loan Documents and the Funding Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

**Section 10.9 No Third Party Beneficiaries.** The Borrower Loan Documents and the Funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and nothing contained in any Borrower Loan Document shall be deemed to confer upon anyone other than the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

**Section 10.10 Assignment.** The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the Funding Loan Documents and all Funding Lender's or Fiscal Agent's rights, title, obligations and interests therein may be assigned by the Funding Lender or the Fiscal Agent, as appropriate, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, subject to the requirements of Article II of the Funding Loan Agreement. Upon such assignment, all references to Funding Lender or the Fiscal Agent, as appropriate, in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender or the Fiscal Agent, as appropriate. The Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that Borrower has delivered, or caused to be delivered, to Funding Lender with reference to the Borrower, General Partner, Guarantor or any Borrower Affiliate, or the Project, including information that the Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or Funding Loan Documents, or the Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

**Section 10.11 Governmental Lender, Funding Lender, Fiscal Agent and Servicer Not in Control; No Partnership.** None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Funding Lender and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer or to create an equity interest in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer. Neither the Governmental Lender, the Funding Lender, the Fiscal Agent nor the Servicer undertakes or assumes any responsibility or duty to the Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (1) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its

stockholders, members, or partners and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall in no event be liable for any the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower, or to create an equity interest in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, or any sharing of liabilities, losses, costs or expenses.

**Section 10.12 Release.** The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

**Section 10.13 Term of the Borrower Loan Agreement.** This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full and the Borrower Loan and the Funding Loan have been retired or the payment thereof has been provided for; except that on and after payment in full of the Borrower Notes, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.12, 5.15, 5.16, 9.1.3, 9.1.4, 9.1.5, 9.1.6 and 10.14 hereof, as well as under Section 5.7 of the Construction Funding Agreement, shall survive the termination of this Borrower Loan Agreement.

**Section 10.14 Reimbursement of Expenses.** If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for fees of such attorneys and such other expenses so incurred.

The Borrower's obligation to pay the amounts required to be paid under this Section 10.14 shall be subordinate to its obligations to make payments under the Borrower Note.

**Section 10.15 Permitted Contests.** Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to Funding Lender's rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to the Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless the Borrower shall have given prior Written Notice to the



Governmental Lender and the Funding Lender of the Borrower's intent to so contest or object thereto, and unless (i) the Borrower has, in the Funding Lender's judgment, a reasonable basis for such contest, (ii) the Borrower pays when due any portion of the claim, demand, levy or assessment to which the Borrower does not object, (iii) the Borrower demonstrates to Funding Lender's satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Project, (v) the Borrower at all times prosecutes the contest with due diligence, and (vi) the Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by the Borrower, the amount so determined to be due and owing by the Borrower. In the event that the Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by the Borrower, any payment required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and Funding Lender may draw or realize upon any bond or other security delivered to Funding Lender in connection with the contest by the Borrower, in order to make such payment.

**Section 10.16 Funding Lender Approval of Instruments and Parties.** All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by the Funding Lender. The Funding Lender's approval of any matter in connection with the Project shall be for the sole purpose of protecting the security and rights of the Funding Lender. No such approval shall result in a waiver of any default of the Borrower. In no event shall the Funding Lender's approval be a representation of any kind with regard to the matter being approved.

**Section 10.17 Funding Lender Determination of Facts.** The Funding Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

**Section 10.18 Calendar Months.** With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

**Section 10.19 Determinations by Lender.** Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental Lender and the Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

**Section 10.20 Governing Law.** This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

**Section 10.21 Consent to Jurisdiction and Venue.** The Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. The Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Borrower Loan Agreement against the Borrower or any of the Borrower's assets in any court of any other jurisdiction.

**Section 10.22 Successors and Assigns.** This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities.

**Section 10.23 Severability.** The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

**Section 10.24 Entire Agreement; Amendment and Waiver.** This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver. Without limiting the generality of the foregoing, no Disbursement shall constitute a waiver of any conditions to

the Governmental Lender's or the Funding Lender's obligation to make further Disbursements nor, in the event the Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding the Governmental Lender or the Funding Lender from thereafter declaring such inability to constitute a Potential Default or Event of Default under this Borrower Loan Agreement.

**Section 10.25 Counterparts.** This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

**Section 10.26 Captions.** The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

**Section 10.27 Servicer.** The Borrower hereby acknowledges and agrees that, pursuant to the terms of Section 38 of the Security Instrument: (a) from time to time, the Governmental Lender or the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Notes, this Borrower Loan Agreement or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless the Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same force and effect.

**Section 10.28 Beneficiary Parties as Third Party Beneficiary.** Each of the Beneficiary Parties shall be a third party beneficiary of this Borrower Loan Agreement for all purposes.

**Section 10.29 Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE BENEFICIARY PARTIES OTHER THAN THE GOVERNMENTAL LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY OTHER THAN THE GOVERNMENTAL LENDER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**Section 10.30 Time of the Essence.** Time is of the essence with respect to this Borrower Loan Agreement.

**Section 10.31 Modifications.** Modifications (if any) to this Borrower Loan Agreement ("**Modifications**") are set forth on Exhibit A attached to this Borrower Loan Agreement. In the event of a Transfer under the terms of the Security Instrument, some or all of the Modifications to this Borrower Loan Agreement may be modified or rendered void by the Governmental Lender or the Funding Lender at its option by notice to Borrower or such transferee.

**Section 10.32 Reference Date.** This Borrower Loan Agreement is dated for reference purposes only as of the first day of May, 2019, and will not be effective and binding on the parties hereto unless and until the Closing Date (as defined herein) occurs.

## **ARTICLE XI LIMITATIONS ON LIABILITY**

**Section 11.1 Limitation on Liability.** Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Borrower Notes.

**Section 11.2 Limitation on Liability of Governmental Lender.** The Governmental Lender shall not be obligated to pay the principal (or prepayment price) of or interest on the Funding Loan, except from moneys and assets received by the Fiscal Agent or the Funding Lender on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Any obligation or liability of the Governmental Lender created by or arising out of this Borrower Loan Agreement (including, without limitation, any liability created by or arising out of the representations, warranties or covenants set forth herein or otherwise) shall not impose a debt or pecuniary liability upon the Governmental Lender or a charge upon its general credit, but shall be payable solely out of the moneys due and to become due under the Funding Loan Documents (and not from any moneys due or to become due to the Governmental Lender pursuant to the Unassigned Rights). Neither the issuance of the Funding Loan nor the delivery of this Borrower Loan Agreement shall, directly or indirectly or contingently, obligate the Governmental Lender to make any appropriation for payment of the Funding Loan. No agreements or provisions contained in this Borrower Loan Agreement, the Funding Loan Agreement, any other Funding Loan Document, nor any agreement, covenant or undertaking by the Governmental lender contained in any document executed by the Governmental Lender in connection with the Project or the issuance, sale and delivery of the Governmental Lender Notes shall give rise to any pecuniary liability of the Governmental Lender or a charge against its general credit or taxing powers, or shall obligate the Governmental Lender financially in any way. Nothing in the Funding Loan or this Borrower Loan Agreement or the proceedings of the Governmental Lender authorizing the Funding Loan or in the Act or the Law or in any other related document shall be construed to authorize the Governmental Lender to create a debt of the Governmental Lender within the meaning of constitutional or statutory provision of the State. No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Governmental Lender in his or her individual capacity, and neither any employee or officer of the Governmental Lender nor any officer thereof executing the Governmental Lender Notes shall be liable personally on the Governmental Lender Notes or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee or agent of the Governmental Lender shall incur any personal liability with respect to any other action taken by him or her pursuant to this Borrower Loan Agreement, the Funding Loan Agreement, the Act or the Law. No breach of any pledge, obligation or agreement of the Governmental Lender hereunder may impose any pecuniary liability upon the Governmental Lender or any charge upon its general credit. The

Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement, Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement and the Borrower Notes, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment price) of and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment price) of or interest on the Funding Loan, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

THE FUNDING LOAN IS ORIGINATED PURSUANT TO THE LAW AND IN ACCORDANCE WITH THE RESOLUTION AND THE ACT AND IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER. NEITHER THE GOVERNMENTAL LENDER, THE COUNTY NOR ANY OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL LENDER, NOR ANY PERSON EXECUTING THE FUNDING LOAN, SHALL BE LIABLE PERSONALLY ON THE FUNDING LOAN OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTES AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THE FUNDING LOAN AGREEMENT. NEITHER THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE NOR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF SUCH FUNDING LOAN, THE GOVERNMENTAL LENDER NOTES OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTES AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE A DEBT OF INDEBTEDNESS OR A GENERAL OBLIGATION OF THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE OR ANY MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF OR THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER IS PLEDGED TO THE PAYMENT THE PRINCIPAL OF PREMIUM, IF ANY, OR INTEREST ON THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTES OR OTHER COSTS INCIDENT THERETO. THE FUNDING LOAN AND GOVERNMENTAL LENDER NOTES ARE

NOT DEBTS OF THE UNITED STATES OF AMERICA. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Funding Loan or for any claim based thereon or upon any obligation, covenant or agreement in this Borrower Loan Agreement contained, against any past, present or future member of the Governmental Lender, the County, its respective governing body, officers, attorneys, accountants, financial advisors, agents or staff or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Governmental Lender, the County or any successor public entity, under any rule of law or penalty of otherwise, and all such liability of any member of the Governmental Lender, its governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby, and by the acceptance of the Funding Loan, expressly waived and released as a condition of, and in consideration for, the execution of this Borrower Loan Agreement and the issuance of the Funding Loan. It is recognized that notwithstanding any other provision of this Borrower Loan Agreement, neither the Borrower, the Funding Lender nor the Fiscal Agent shall look to the members of the Governmental Lender or the County or its officers, program participants, attorneys, accountants, financial advisors, agents or staff, past, present or future, for damages suffered by the Borrower, the holders or such Fiscal Agent as a result of the failure of the Governmental Lender to perform any covenant, undertaking or obligation under this Borrower Loan Agreement, the Funding Loan, the Regulatory Agreement, any of the other Funding Loan Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, nor for any other reason except for representations made by the Governmental Lender in any certificate of the Governmental Lender and the opinion of counsel to the Governmental Lender delivered on the date of origination of the Funding Loan. Although this Borrower Loan Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Borrower Loan Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to perform and the performance of which the Governmental Lender has not assigned to the Fiscal Agent or any other person.

**Section 11.3 Waiver of Personal Liability.** No member, director, officer, agent, elected official or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal (or prepayment price) of or interest on the Funding Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

**Section 11.4 Limitation on Liability of Funding Lender's Officers, Employees, Etc.**

(a) The Borrower assumes all risks of the acts or omissions of the Governmental Lender and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender and the Funding Lender at law or under any other agreement. None of Governmental Lender and the Funding Lender, nor the other Beneficiary Parties or their respective officers, directors, employees or agents shall be liable or responsible for (i) for any acts or omissions of the Governmental Lender and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Governmental Lender or the Funding Lender, as applicable.

(b) None of the Governmental Lender the Funding Lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project. Borrower is not and shall not be an agent of the Governmental Lender and the Funding Lender for any purpose. Neither the Governmental Lender nor the Funding Lender is a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender and the Funding Lender. Approvals granted by the Governmental Lender and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

(c) Any obligation or liability whatsoever of the Governmental Lender and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

**Section 11.5 Delivery of Reports, Etc.** The delivery of reports, information and documents to the Governmental Lender and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's and the Funding Lender's receipt

of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender and the Funding Lender.

[The remainder of this page is intentionally left blank; signature pages follow.]



IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

MONACO ARMS PRESERVATION, LTD., a  
Florida limited partnership

By: Monaco Arms GP LLC, a Delaware limited  
liability company, its General Partner

By: \_\_\_\_\_  
Jonathan A Gruskin, Vice President

[Signature Page to Borrower Loan Agreement – Monaco Arms Apartments]

GOVERNMENTAL LENDER:

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY,**

as the Governmental Lender

(SEAL)

By: \_\_\_\_\_  
William I. Gulliford, III, Chair

[Signature Page to Borrower Loan Agreement – Monaco Arms Apartments]

Agreed to and Acknowledged by:

FUNDING LENDER:

**CITIBANK, N.A.**

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

Name:

Title:

FISCAL AGENT:

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

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

Name: Michele R. Noel

Title: Vice President

[Signature Page to Borrower Loan Agreement – Monaco Arms Apartment]

**EXHIBIT A**  
**Modifications**

## **EXHIBIT B-1**

## MULTIFAMILY NOTE

### (Fixed Rate)

[\$\_\_\_\_\_]

May [\_\_\_\_], 2019

FOR VALUE RECEIVED, the undersigned (“**Borrower**”) promises to pay to the order of **JACKSONVILLE HOUSING FINANCE AUTHORITY**, a public body corporate and politic and duly organized and existing under the laws of the State of Florida, the maximum principal sum of [\_\_\_\_\_ AND NO/100 DOLLARS (\$\_\_\_\_\_)], with interest on the unpaid principal balance from time to time outstanding at the annual rate as set forth on Schedule A. The terms of this Note incorporate the Modifications, if any, set forth on Schedule C to this Note.

1. **Defined Terms.** As used in this Note, the following terms shall have the following definitions:

(a) “**Beneficiary Parties**” shall have the meaning set forth in the Security Instrument.

(b) “**Borrower Loan**” means the loan evidenced by this Note, and the Variable Rate Note, the proceeds of which shall be disbursed in accordance with the Borrower Loan Agreement.

(c) “**Borrower Loan Agreement**” means that certain Borrower Loan Agreement, dated as of May 1, 2019, by and between Borrower and Governmental Lender.

(d) “**Business Day**” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(e) “**Closing Date**” shall mean the date of this Note.

(f) “**Conditions to Conversion**” shall have the meaning given to such term in the Construction Funding Agreement.

(g) “**Construction Funding Agreement**” shall mean that certain Construction Funding Agreement, dated as of May 1, 2019, by and between Borrower and Funding Lender.

(h) “**Conversion Date**” shall have the meaning given to such term in the Borrower Loan Agreement.

(i) “**Default Rate**” shall have the meaning set forth in Section 8 of this Note.

(j) “**First Payment Date**” means the first Business Day of the month following the month in which the first disbursement of Borrower Loan proceeds is made

in accordance with the Borrower Loan Agreement, or, if the first disbursement of Borrower Loan proceeds is made after the 20th day of a month, means the first Business Day of the second month following the month in which the first disbursement of Borrower Loan proceeds is made in accordance with the Borrower Loan Agreement.

(k) **“Funding Lender”** means Citibank, N.A., a national banking association, and its successors and assigns.

(l) **“Governmental Lender”** means Jacksonville Housing Finance Authority, a public body corporate and politic and duly organized and existing under the laws of the State of Florida.

(m) **“Indebtedness”** means the principal of, interest on, and any other amounts due at any time under, this Note, the Security Instrument or any other Borrower Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of the Security Instrument as described in Section 12 of the Security Instrument.

(n) **“Interest Rate”** shall have the meaning set forth in Schedule A to this Note.

(o) **“Lender”** means the Funding Lender, as assignee of this Note, and any subsequent holder of this Note.

(p) **“Loan Month”** means the period commencing on a Loan Payment Date and ending on the day preceding the next succeeding Loan Payment Date (without adjustment in either case for Business Day conventions).

(q) **“Loan Payment Date”** means the first Business Day of each month, commencing on the First Payment Date.

(r) **“Mandatory Prepayment Date”** means June 1, 2036.

(s) **“Maturity Date”** means the earlier to occur of (i) December 1, 2051, or (ii) any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise.

(t) **“Maximum Permanent Period Amount”** shall have the meaning set forth in the Construction Funding Agreement.

(u) **“Maximum Rate”** means the lesser of (i) twelve percent (12%) per annum or (ii) the maximum interest rate that may be paid on the Borrower Loan under the laws of the Property Jurisdiction.

(v) **“Minimum Permanent Period Amount”** shall have the meaning set forth in the Construction Funding Agreement.

(w) **“Note”** means this Multifamily Note (Fixed Rate).

(x) “**Note Interest**” shall have the meaning set forth in Schedule A to this Note.

(y) “**Permanent Period Amount**” shall have the meaning set forth in the Construction Funding Agreement.

(z) “**Prepayment Premium Period**” means the period commencing on the date of this Note and ending on December 1, 2035.

(aa) “**Property Jurisdiction**” shall have the meaning set forth in the Security Instrument.

(bb) “**Servicer Remittance Date**” means two (2) Business Days prior to each Loan Payment Date.

(cc) “**Variable Rate Note**” means that certain Multifamily Note (Variable Rate), dated as of the date hereof, in the maximum principal amount of [\$\_\_\_\_\_] made by Borrower payable to the order of Governmental Lender and assigned to Funding Lender.

All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Borrower Loan Agreement.

2. **Method of Payment.** All payments due under this Note shall be payable to the Servicer, or, if there is no Servicer, to the Fiscal Agent, or its successor. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer instructions that the Servicer or Fiscal Agent shall supply by Written Notice to the Borrower from time to time.

3. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein and in the Borrower Loan Agreement. Borrower shall make its payments under this Note in immediately available funds.

(b) Commencing on the First Payment Date and continuing on each Loan Payment Date thereafter until and including the Conversion Date, Borrower shall pay monthly payments of principal and interest, at the Interest Rate set forth on Schedule A attached hereto, in successive monthly installments. Such payments shall be made to the Lender or the Servicer by 11:00 a.m., New York City time, or to the Fiscal Agent by 2:00 p.m., New York City time, on each Loan Payment Date.

(c) Commencing on the first Loan Payment Date following the Conversion Date, and continuing on each Loan Payment Date thereafter until and including the Maturity Date, Borrower shall pay monthly payments of principal and interest as set forth on Schedule A attached hereto, in successive monthly installments. Such payments shall



be made to the Servicer by 11:00 a.m., New York City time, or to the Fiscal Agent by 2:00 p.m., New York City time, on each Servicer Remittance Date.

(d) Any accrued interest remaining past due may, at Lender's discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to "accrued interest" shall refer to accrued interest that has not become part of the unpaid principal balance.

(e) Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due under subsection 3(a) hereof.

(f) Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(g) Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisal laws.

(h) Borrower acknowledges that the calculation of all interest payments shall be made by the Lender and shall be final and conclusive, absent manifest error.

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

5. **Security.** The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable under Section 10, if any, and all other amounts payable under this Note and any other Borrower Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Late Charge.** If any amount payable under this Note or under the Security Instrument or any other Borrower Loan Document is not received by Lender when such amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event, such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5.0%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Notwithstanding the foregoing, with regard to each regularly

scheduled monthly installment of principal and/or interest payable pursuant to this Note, such late charge shall not become due and payable to Lender so long as the Borrower makes such payment on or prior to the tenth (10th) calendar day following the date upon which such payment is due (or the Business Day immediately following such tenth (10th) calendar day if such tenth (10th) calendar day is not a Business Day). Any accrued but unpaid late charges shall be added to and become part of the unpaid principal balance of this Note, shall bear interest at the rate or rates specified in this Note, and shall be secured by the Security Instrument and the other applicable Borrower Loan Documents. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Borrower Loan, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional expenses Lender will incur by reason of such late payment, and such late charge shall be deemed liquidated damages and not additional interest or a penalty. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8. Notwithstanding anything to the contrary in any other Borrower Loan Document, if a Servicer has been appointed by Lender, any late charges payable hereunder shall not be remitted to Lender and shall instead be paid directly to Servicer, who shall apply such late charges in accordance with the terms of the applicable servicing agreement. Any action regarding the collection of a Late Charge will be without prejudice to any other rights, and shall not act as a waiver of any other rights that the Servicer or the Lender may have as provided herein, in the other Borrower Loan Documents, or at law or in equity.

8. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate per annum (the “**Default Rate**”) equal to the lesser of the Maximum Rate or a rate equal to the Interest Rate plus four percent (4%), in each case compounded monthly (computed in accordance with Schedule A in the same manner in which Note Interest is computed). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate until the unpaid principal balance and all accrued interest is paid in full. Borrower also acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Borrower Loan, that, during the time that any monthly installment under this Note is delinquent, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender’s ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent or any other Event of Default has occurred and is continuing, Lender’s risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate as provided above represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional costs and expenses Lender will incur by reason of Borrower’s delinquent payment and the additional compensation

Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. **Personal Liability of Borrower.**

(a) Prior to the Conversion Date, Borrower shall be personally liable under this Note, the Security Instrument and the other Borrower Loan Documents for (1) the repayment of the Indebtedness, including, without limitation, all amounts due under this Note, and (2) the performance of all other obligations of Borrower under this Note and the other Borrower Loan Documents.

(b) On and after the Conversion Date, except as otherwise provided in this Section 9, neither Borrower nor any of its partners, members and/or managers shall have any personal liability under this Note, the Security Instrument or any other Borrower Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Borrower Loan Documents, and Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

(c) Borrower shall at all times be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender (the "**Losses**") as a result of (1) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; (3) failure of Borrower to comply with Section 14(d) or (e) of the Security Instrument relating to the delivery of books and records, statements, schedules, and reports; (4) fraud or material misrepresentation by Borrower or Guarantor or any general partner, managing member, manager, officer, director, partner, member, agent or employee of Borrower or Guarantor in connection with the application for or creation of the Indebtedness or any request for any action or consent by or on behalf of Lender; (5) failure to apply Rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable pursuant to the terms of an Assignment of Management Agreement or any other Borrower Loan Document) and then to amounts ("**Debt Service Amounts**") payable under this Note, the Security Instrument or any other Borrower Loan Document (except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to Rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year); (6) failure of Borrower to comply with the provisions of Section 17(a) of the Security Instrument prohibiting the commission of waste or allowing the impairment or deterioration of the Mortgaged Property; or (7)

failure of Borrower to obtain and maintain any local real estate tax abatement or exemption required under the Security Instrument, or the reduction, revocation, cancellation or other termination of such abatement or exemption, as a result of any act or omission by or on behalf of Borrower, Guarantor or any of their respective partners, members, managers, directors, officers, agents, employees or representatives.

(d) For purposes of determining Borrower's personal liability under this Section 9, all payments made by Borrower with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(e) Borrower shall at all times be personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (1) Borrower's acquisition of any property or operation of any business not permitted by Section 32 of the Security Instrument; or (2) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or (3) a Bankruptcy Event, as defined in the Security Instrument (but only if the Bankruptcy Event occurs with the consent or active participation of Borrower, its General Partner, Guarantor or any Borrower Affiliate.

(f) In addition to the Borrower's personal liability pursuant to the other provisions of this Note, Borrower shall at all times be personally liable to Lender for (1) the performance of all of Borrower's obligations under Section 18 of the Security Instrument (relating to environmental matters) and the Agreement of Environmental Indemnification; (2) the costs of any audit under Section 14(d) of the Security Instrument; and (3) any costs and expenses incurred by Lender in connection with the collection of all amounts for which Borrower is personally liable under this Section 9, including out of pocket expenses and reasonable fees of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(g) To the extent that Borrower has personal liability under this Section 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Borrower Loan Document or applicable law. For purposes of this Section 9, the term "**Mortgaged Property**" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

(h) Nothing herein or in the other Borrower Loan Documents shall be deemed to be a waiver of any right which the Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to the Lender and the Servicer hereunder and under the other Borrower Loan Documents or to require that all collateral shall continue to secure the amounts due hereunder and under the other Borrower Loan Documents.

10. **Prepayments.**

(a) In connection with any prepayment (i.e., any receipt by Lender of principal, other than principal required to be paid in monthly installments pursuant to Section 3, prior to the Maturity Date) made under this Note, whether voluntary or involuntary, a prepayment premium shall be payable to the extent provided below. EXCEPT AS OTHERWISE PERMITTED HEREIN, NO VOLUNTARY PREPAYMENTS OF THIS NOTE, IN WHOLE OR IN PART, SHALL BE PERMITTED.

(b) Prior to the Conversion Date, Borrower may voluntarily prepay a portion of this Note to an amount not less than the Maximum Permanent Period Amount without penalty or premium. Any voluntary prepayment shall be made upon not less than thirty (30) days prior written notice to Servicer. If Borrower voluntarily prepays a portion of this Note which causes the principal balance of this Note to be less than the Maximum Permanent Period Amount, a prepayment premium shall be payable which is equal to the greater of (i) the amount calculated pursuant to Schedule B on the portion of the prepayment of this Note that reduces the principal balance of this Note to an amount less than the Maximum Permanent Period Amount or (ii) one percent (1%) of the portion of the prepayment of this Note that reduces the principal balance of this Note to an amount less than the Maximum Permanent Period Amount; provided, however, Borrower may not prepay any portion of this Note which would cause the principal balance of this Note to be less than the Minimum Permanent Period Amount.

(c) If a mandatory prepayment of this Note is required pursuant to Section 3.3(a) of the Borrower Loan Agreement, a prepayment premium shall be payable which is equal to the greater of (i) the amount calculated pursuant to Schedule B on the portion of the prepayment of this Note that reduces the principal balance of this Note to an amount less than ninety percent (90%) of the Maximum Permanent Period Amount or (ii) one percent (1%) of the portion of the prepayment of this Note that reduces the principal balance of this Note to an amount less than ninety percent (90%) of the Maximum Permanent Period Amount.

(d) After the Conversion Date, Borrower may voluntarily prepay all (but not less than all) of the unpaid principal balance of this Note on any Loan Payment Date if: (i) Borrower has given Lender prior Written Notice of its intention to make such prepayment at least thirty (30) days prior to the proposed prepayment date (or such shorter time as agreed to by Lender in its sole discretion) and (ii) Borrower pays (A) the

entire unpaid principal balance of this Note, (B) all accrued interest, (C) if applicable, the prepayment premium calculated pursuant to Schedule B, and (D) all other sums due Lender at the time of such prepayment. If Lender, in Lender's sole and absolute discretion, agrees in writing to waive the foregoing provisions and allow any prepayment that is not permitted hereunder, a prepayment premium calculated pursuant to Schedule B shall be due and payable by Borrower on the amount of principal being prepaid. In connection with any prepayment pursuant to this Section 10(d), the Borrower shall wire transfer the amount required hereunder in immediately available funds by no later than 12:00 p.m., New York City time, on the date of prepayment. For all purposes including the accrual of interest, any prepayment received by Lender on any day other than the last calendar day of a Loan Month shall be deemed to have been received on the last calendar day of such Loan Month.

(e) Upon Lender's exercise of any right of acceleration under this Note, Borrower shall pay to Lender, in addition to the entire unpaid principal balance of this Note outstanding at the time of the acceleration, (i) all accrued interest and all other sums due Lender, and (ii) if applicable, the prepayment premium calculated pursuant to Schedule B.

(f) Any application by Lender of any collateral or other security to the repayment of any portion of the unpaid principal balance of this Note in the absence of acceleration shall be deemed to be a partial prepayment by Borrower, requiring the payment to Lender by Borrower of a prepayment premium, calculated pursuant to Schedule B.

(g) Notwithstanding the foregoing provisions, a prepayment premium equal to the greater of (i) the amount calculated pursuant to Schedule B on ninety percent (90%) of the Maximum Permanent Period Amount, or (ii) one percent (1.0%) of ninety percent (90%) of the Maximum Permanent Period Amount, shall be payable with respect to any mandatory prepayment in full of the Borrower Loan in accordance with the Borrower Loan Agreement, based on a determination by Lender that the Permanent Period Amount is less than the Minimum Permanent Period Amount or based on a failure of Borrower to satisfy the Conditions to Conversion on or before the Outside Conversion Date as a result of the failure of the Mortgaged Property to achieve 90% physical occupancy under acceptable leases for the 3-month period preceding the Permanent Period.

(h) The Borrower shall prepay the entire outstanding principal balance of this Note, at the direction of the Lender, at a price equal to the outstanding principal balance of this Note, plus (i) accrued interest and any other amounts payable under this Note or the Borrower Loan Agreement through the date of prepayment, and (ii) if applicable, the prepayment premium calculated pursuant to Schedule B, upon the occurrence of any event or condition described below:

(1) no later than the day before (a) any sale of the Project, restructuring of the Borrower or any other event that would cause or be deemed to cause an assumption of obligations of an unrelated party for purposes of Section 1.150-1(d)(2) of the Regulations (any such event referred to herein as a

“**Transfer**”) which Transfer would occur within six months of a “refinancing” (as contemplated by such Regulation), or (b) any “refinancing” that would occur within six months of a Transfer; or

(2) in whole, upon a Determination of Taxability.

In connection with any such prepayment, the Borrower shall wire transfer immediately available funds by no later than 12:00 p.m., New York City time, on the date fixed by the Lender, which date shall be communicated by the Lender in writing to the Borrower.

(i) The Borrower shall prepay the outstanding principal balance of this Note at the direction of the Lender, in whole or in part, at a price equal to the amount of principal being prepaid plus accrued interest and any other amounts payable under this Note or the other Borrower Loan Documents, upon the occurrence of any event or condition described below:

(1) in whole or in part, if the Mortgaged Property shall have been damaged or destroyed to the extent that it is not practicable or feasible to rebuild, repair or restore the damaged or destroyed property within the period and under the conditions described in the Security Instrument following such event of damage or destruction; or

(2) in whole or in part, if title to, or the use of, all or a portion of the Mortgaged Property shall have been taken under the exercise of the power of eminent domain by any Governmental Authority which results in a prepayment of this Note under the conditions described in the Security Instrument; or

(3) in whole or in part, to the extent that insurance proceeds or proceeds of any condemnation award with respect to the Mortgaged Property are not applied to restoration of the Mortgaged Property in accordance with the provisions of the Security Instrument.

In connection with any such prepayment, the Borrower shall wire transfer immediately available funds by no later than 12:00 p.m., New York City time, on the date fixed by the Lender, which date shall be communicated by the Lender in writing to the Borrower. To the extent that the Borrower receives any insurance proceeds or condemnation awards that are to be applied to the prepayment of this Note, such amounts shall be applied to the prepayment of this Note. No prepayment premium shall be payable with respect to any prepayment required by this Section 10(i).

(j) Any permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

(k) Borrower recognizes that any prepayment of the unpaid principal balance of this Note, whether voluntary, involuntary or resulting from a default by Borrower, will

result in Lender incurring a loss, including reinvestment loss, additional expense and frustration or impairment of Lender's ability to meet its commitments to third parties. Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth on Schedule B represents a reasonable estimate of the damages Lender will incur because of a prepayment.

(l) Borrower further acknowledges that the prohibition of voluntary prepayment and the prepayment premium provisions of this Note are a material part of the consideration for the Borrower Loan, and acknowledges that the terms of this Note are in other respects more favorable to Borrower as a result of Borrower's voluntary agreement to such provisions.

(m) Notwithstanding anything herein to the contrary, Borrower shall prepay this Note, together with all amounts due under the Borrower Loan Documents, (i) at Lender's option, in Lender's sole discretion, in full or in part based on the calculation of the Permanent Period Amount in accordance with the terms and provisions of the Borrower Loan Agreement, and (ii) in full on the Mandatory Prepayment Date.

(n) Any prepayment premium payable hereunder shall be remitted to Servicer, or if a Servicer has not been appointed by Lender, to Lender.

11. **Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Borrower Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of Section 9(f) and this Section 11, attorneys' out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

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



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

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

15. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 9, the obligations of the Borrower to make all payments required under this Note and the other Borrower Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Borrower Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Borrower Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Mortgaged Property or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Mortgaged Property or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Mortgaged Property, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Lender's legal organization or status, or any default of the Lender hereunder or under any other Borrower Loan Document, and regardless of the invalidity of any action of the Lender or the invalidity of any portion of this Note or the other Borrower Loan Documents. Provided further, the obligations of Borrower under this Note and the other Borrower Loan Documents shall not be affected by:

- (a) any lack of validity or enforceability of any Borrower Loan Document or any of the Related Documents;

(b) any amendment of, or any waiver or consent with respect to, any of the Borrower Loan Documents or Related Documents;

(c) the existence of any claim, set-off, defense or other rights which Borrower, General Partner or Guarantor may have at any time against Lender (other than the defense of payment in accordance with the terms of this Note or the other Borrower Loan Documents) or any other Person, whether in connection with this Note or any other Borrower Loan Document, the Related Documents or any transaction contemplated thereby or any unrelated transaction;

(d) any breach of contract or other dispute between Borrower, General Partner or Guarantor, and Lender;

(e) any Funding Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of willful misconduct by Lender with respect to same); or

(f) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Borrower Loan Document or in any Related Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the other Borrower Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

16. **Commercial Purpose.** Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household or agricultural purposes.

17. **Counting of Days.** Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days, not Business Days.

18. **Notices.** All notices, demands and other communications required or permitted to be given pursuant to this Note shall be in writing and addressed as set forth below. Each notice shall be deemed given on the earliest to occur of (a) the date when the notice is received by the addressee; (b) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (c) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

If to Borrower:

Monaco Arms Preservation, Ltd.  
c/o Lincoln Avenue Capital LLC  
201 Santa Monica Boulevard, Suite 550  
Santa Monica, California 90401  
Attention: Jonathan A. Gruskin

Facsimile: [\_\_\_\_\_]

With a copy to:

Levitt & Boccio, LLP  
423 West 55<sup>th</sup> Street, 8<sup>th</sup> Floor  
New York, New York 10019  
Attention: David Boccio, Esq.  
Facsimile: (212) 801-3762

If to Lender:

Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (212) 723-8209

And to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (805) 557-0924

Prior to the Conversion  
Date, with a copy to:

Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (212) 723-8209

Following the Conversion  
Date, with a copy to:

Citibank N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (215) 328-0305

And a copy of any notices  
of default sent to::

Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (646) 291-5754

The Borrower or the Lender may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 18. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with

this Section 18, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 18 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

19. **Payments on Non-Business Day.** If the date for the making of any payment under this Note is not a Business Day, such payment shall be due and payable on the next succeeding Business Day.

20. **Terms of Note Governing Payment Matters Control in the Event of any Conflict.** In the event the provisions of the Borrower Loan Agreement or the other Borrower Loan Documents (other than this Note) conflict with the provisions of this Note which govern the terms of repayment of the Borrower Loan or the payment of other amounts due in connection with the Borrower Loan (including, without limitation, the provisions of this Note which govern the required payments of principal, interest and other amounts due in connection with the Borrower Loan, the manner of payment, the calculation of interest, the payment of the Lender's costs and expenses, the application of payments received by the Lender, the acceleration of amounts owed by the Borrower, late charges, default rates of interest, prepayments, prepayment premiums or maximum rates of interest or similar charges), the provisions of this Note shall govern and control.

21. **Local Law Provisions (Florida).** N/A

22. **Determinations by Lender.** Except to the extent expressly set forth in this Note to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Note, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

23. **Release; Indemnity.**

(a) *Release.* Borrower covenants and agrees that, in performing any of its rights or duties under this Note, neither the Beneficiary Parties, nor their respective agents or employees, shall be liable for any losses, claims, damages, liabilities and expenses that may be incurred by any of them as a result of such performance, except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of such party.

(b) *Indemnity.* Borrower hereby agrees to indemnify and hold harmless the Beneficiary Parties and their respective agents and employees from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees and costs and disbursements, which may be imposed or incurred by any of them in connection with this Note, except that no such party will be indemnified for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party.

24. **Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

25. **Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Lender's right to bring any suit, action or proceeding relating to matters arising under this Note against Borrower or any of Borrower's assets in any court of any other jurisdiction where Borrower's assets are located.

26. **Severability.** The invalidity, illegality or unenforceability of any provision of this Note shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

27. **Remedies Cumulative.** In the event of Borrower's default under this Note, the Lender may exercise all or any one or more of its rights and remedies available under this Note, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Lender from exercising any other right or remedy available to the Lender. The Lender may exercise any such remedies from time to time as often as may be deemed necessary by the Lender.

28. **No Agency or Partnership.** Nothing contained in this Note shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

29. **Entire Agreement; Amendment and Waiver.** This Note contains the complete and entire understanding of the parties with respect to the matters covered. This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Note shall be considered as a general waiver.

30. **Further Assurances.** Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to protect any right or interest granted by this Note or to enable Lender to exercise and enforce its rights and remedies under this Note.

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

32. **Servicer.** Borrower hereby acknowledges and agrees that, pursuant to the terms of the Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under this Note or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

33. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

34. **Time of the Essence.** Time is of the essence with respect to this Note.

35. **Modifications.** All modifications (if any) to the terms of this Note (“**Modifications**”) are set forth on Schedule C attached to this Note. In the event of a Transfer under the terms of the Security Instrument, some or all of the Modifications to this Note may be modified or rendered void by Lender at its option by notice to Borrower or such transferee.

36. **Attached Schedules.** The following Schedules are attached to this Note and are incorporated by reference herein as if more fully set forth in the text hereof:

**Schedule A – Principal and Interest Payments**

**Schedule B – Prepayment Premium**

**Schedule C – Modifications to Multifamily Note (Fixed Rate)**

The terms of this Note are modified and supplemented as set forth in said Schedules. To the extent of any conflict or inconsistency between the terms of said Schedules and the text of this Note, the terms of said Schedules shall be controlling in all respects.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Multifamily Note (Fixed Rate) or caused this Multifamily Note (Fixed Rate) to be duly executed and delivered by its authorized representative as of the date first set forth above.

**BORROWER:**

**MONACO ARMS PRESERVATION, LTD.,**  
a Florida limited partnership

By: Monaco Arms GP LLC, a Delaware  
limited liability company,  
its General Partner

By: \_\_\_\_\_  
Name: Jonathan A. Gruskin  
Title: Vice President

**PAY TO THE ORDER OF:**

**CITIBANK, N.A., AS FUNDING LENDER,  
AND THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., AS FISCAL AGENT,  
AS THEIR INTERESTS APPEAR, AS  
ASSIGNEE UNDER THAT CERTAIN  
FUNDING LOAN AGREEMENT DATED  
AS OF MAY 1, 2019**

**WITHOUT RECOURSE**

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY**, a public body corporate and  
politic and duly organized and existing under  
the laws of the State of Florida

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



## **SCHEDULE A**

### **PRINCIPAL AND INTEREST PAYMENTS**

Except as provided in Sections 8 and 14 of this Note, interest (“**Note Interest**”) shall accrue on the unpaid principal of this Note from, and including, the Closing Date until paid in full at an annual rate (the “**Interest Rate**”) as follows:

A. **Interest Rate.** Note Interest shall accrue on the unpaid principal of this Note from, and including, the Closing Date, until the Maturity Date, at an annual rate, as follows:

(1) **Fixed Rate.** Interest shall accrue at the annual rate of [\_\_\_\_ and \_\_/100 percent (\_\_\_\_%)].

(2) **Maximum Rate.** Notwithstanding any other provision of this Note to the contrary, Note Interest shall not exceed the Maximum Rate, as the Maximum Rate may change in accordance with this Note.

(3) **Interest Accrual.** Note Interest shall be computed on the basis of the actual number of days in the period in respect of which payment is being made, divided by 360.

B. **Monthly Interest and Principal Payments Until and Including the Conversion Date.** Consecutive monthly installments of interest shall be payable on each Loan Payment Date until and including the Conversion Date. In addition, consecutive monthly principal payments in the amount of [\$\_\_\_\_\_] shall be payable on each Loan Payment Date until and including the earlier of the Outside Conversion Date or the Conversion Date. In the event the Outside Conversion Date is extended to the Extended Outside Conversion Date, consecutive monthly principal payments in an amount to be determined by Lender shall be payable on each Loan Payment Date after the Outside Conversion Date until and including the Conversion Date. The entire unpaid principal balance and accrued but unpaid interest, if not sooner paid, shall be due and payable on the Maturity Date.

C. **Monthly Payments Following the Conversion Date.** Commencing on the first Loan Payment Date following the Conversion Date and on each Loan Payment Date thereafter until and including the Maturity Date, consecutive monthly installments of principal and interest, in the amount set forth below (based upon an amortization schedule of 35 years, assuming (for these purposes only) a 360-day year comprised of twelve 30-day months) shall be payable on each Loan Payment Date until the entire unpaid principal balance evidenced by this Note is fully paid. Any remaining principal and interest, if not sooner paid, shall be due and payable on the Maturity Date.

(1) If the Permanent Period Amount is [\$\_\_\_\_\_], equal monthly installments of principal and interest in the amount of [\$\_\_\_\_\_] and a final installment on the Maturity Date in the amount of the remaining principal balance and accrued interest on this Note.

(2) If the Permanent Period Amount is other than [\$\_\_\_\_\_] equal monthly installments of principal and interest in the amount necessary to fully amortize the Permanent Period Amount over a period of thirty-five (35) years, assuming (for these purposes only) a 360-day year comprised of twelve 30-day months, and a final installment on the Maturity Date in the amount of the remaining principal balance of this Note, which amortization schedule shall be determined by or on behalf of Lender and which determination shall be final and conclusive absent manifest error.

(3) In the event that the Borrower Loan is reamortized at any time as a result of the application of any insurance proceeds or condemnation award in accordance with Section 10(i) of this Note, equal monthly payments of principal and interest in installments in the amount necessary to fully amortize the remaining principal balance of this Note over the remainder of the original thirty-five (35) year amortization period, assuming (for these purposes only) a 360-day year comprised of twelve 30-day months, and a final installment on the Maturity Date in the amount of the remaining principal balance of this Note, which amortization schedule shall be determined by Lender and which determination shall be final and conclusive absent manifest error.

D. **Loss of Tax Exclusion.** Borrower understands that the interest rates provided under this Note are based on the assumption that interest income paid on the Funding Loan and received by the Funding Lender will be excludable from Funding Lender's gross income under Section 103 of the Internal Revenue Code and applicable state law. In the event that Borrower receives notice from Funding Lender that a Determination of Taxability has occurred, then, notwithstanding any provision to the contrary contained herein, the interest rate on this Note and on all obligations of Borrower under the Borrower Loan Documents (other than those to which the Default Rate applies) shall be increased to a rate equal to the greater of: (i) three and one-half percent (3.50%) in excess of the LIBOR Rate or (ii) the Default Rate, provided such rate shall not exceed the Maximum Rate. As used in this Note, "**LIBOR Rate**" shall mean the rate for deposits in U.S. Dollars for a period of 1-month established by the London Inter-Bank Offered Rate administered by the ICE Benchmark Administration Limited (formerly administered by the British Bankers Association, or such other person which takes over the administration of that rate) which appears on Reuters Screen LIBOR01 Page (or any successor page) as of 11:00 a.m., London time, on the rate determination date. If Lender determines that use of the LIBOR Rate would violate any applicable law or regulation, or if the Index becomes unavailable, then Funding Lender, in its sole and absolute discretion, will choose a new rate which is based upon comparable information and provide notice to Borrower of such choice.

Borrower shall, in addition, pay to Lender, promptly upon demand, an amount equal to the difference between the amount of interest payable on this Note from the date on which such loss of tax exemption on the Funding Loan shall be applicable to the date on which the interest rate on this Note was increased and the amount of interest that would have been payable on this Note during such period had this Note borne interest during such period at such higher rate. The Borrower shall also indemnify, defend and hold Lender harmless from any penalties, interest expense or other costs, including attorneys' fees (including all allocated time and charges of "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Funding Loan and the interest payable to Funding Lender on the Funding Loan. The obligations of the Borrower under

this paragraph shall survive any termination of the Borrower Loan Documents, release of the Security Instrument and repayment of the Borrower Loan and/or Funding Loan.

## SCHEDULE B

### PREPAYMENT PREMIUM

Any prepayment premium payable under Section 10 of this Note shall be computed as follows:

- (a) If the prepayment is made at any time after the date of this Note and before the end of the Prepayment Premium Period (the “**Yield Maintenance Period End Date**”) the prepayment premium shall be the greater of:

(i) 1% of the amount of principal being prepaid; or

(ii) The product obtained by multiplying:

(A) the amount of principal being prepaid,

*by*

(B) the difference obtained by subtracting the Yield Rate (as defined below) from the Underwriting Rate (as defined in the Construction Funding Agreement) on the twenty-fifth Business Day preceding (x) the date upon which any voluntary prepayment will be made, determined in accordance with Section 10 of this Note, or (y) the date Lender accelerates the Borrower Loan or otherwise accepts a prepayment pursuant to Section 10 of this Note,

*by*

(C) the present value factor calculated using the following formula:

$$\frac{1 - (1 + r)^{-n/12}}{r}$$

r = Yield Rate

n = the number of months remaining between (1) either of the following: (x) in the case of a voluntary prepayment, the last calendar day of the month during which the prepayment is made, or (y) in any other case, the date on which Lender accelerates the unpaid principal balance of this Note and (2) the Yield Maintenance Period End Date.

For purposes of this clause (ii), the “**Yield Rate**” means the yield calculated by interpolating the yields for the immediately shorter and longer term U.S. “Treasury constant maturities” (as reported in the Federal Reserve Statistical Release H.15 Selected Interest Rates (the “**Fed Release**”) under the heading “U.S. government

securities”) closest to the remaining term of the Prepayment Premium Period, as follows (rounded to three decimal places):

$$\{ (a - b) \div (x - y) \} \times (z - y) + b$$

$a$  = the yield for the longer U.S. Treasury constant maturity

$b$  = the yield for the shorter U.S. Treasury constant maturity

$x$  = the term of the longer U.S. Treasury constant maturity

$y$  = the term of the shorter U.S. Treasury constant maturity

$z$  = “n” (as defined in the present value factor calculation above) divided by 12.

Notwithstanding any provision to the contrary, if “z” equals a term reported under the U.S. “Treasury constant maturities” subheading in the Fed Release, the yield for such term shall be used, and interpolation shall not be necessary. If publication of the Fed Release is discontinued by the Federal Reserve Board, Lender shall determine the Yield Rate from another source selected by Lender. Any determination of the Yield Rate by Lender will be binding absent manifest error.

(b) Notwithstanding the provisions of Section 10 of this Note, no prepayment premium shall be payable with respect to any prepayment made on or after the Yield Maintenance Period End Date.

## **SCHEDULE C**

### **MODIFICATIONS TO MULTIFAMILY NOTE (FIXED RATE)**

The following modifications are made to the text of the Note that precedes this Schedule:

1. The following new clause (8) is hereby added to Section 9(c) of this Note “or (8) any adverse material effect on Lender resulting from terms contained in the HAP Contract that (i) may have a material adverse effect on Lender’s projections of income from the HAP Contract and (ii) were not previously known due to Borrower’s failure to provide Lender with full, complete, and accurate copies of the HAP Contract, including all amendments, renewals, and assignments thereof.”

2. Section 9 is amended by adding the following sentence to the end of subsection (e) thereof:

“Borrower shall be personally liable to Lender for the payment of any payments made to Borrower under the HAP Contract to the extent such payments are not made to the Lender as provided for under that certain Assignment of Housing Assistance Payments Agreement (pertaining to the HAP Contract, as defined therein), dated as of May 1, 2019, by Borrower (as Owner) for the benefit of Lender.”

3. Section 10 is amended by adding the following new subsection (o) at the end thereof:

“(o) In no event shall Borrower be permitted to prepay this Note in full or in part without simultaneously prepaying the Variable Rate Note in full.”

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Note.

## EXHIBIT B-2

## MULTIFAMILY NOTE

### (Variable Rate)

[\$\_\_\_\_\_]

May [\_\_\_\_], 2019

FOR VALUE RECEIVED, the undersigned (“**Borrower**”) promises to pay to the order of **JACKSONVILLE HOUSING FINANCE AUTHORITY**, a public body corporate and politic and duly organized and existing under the laws of the State of Florida, the maximum principal sum of [\_\_\_\_\_ AND NO/100 DOLLARS (\$\_\_\_\_\_)], with interest on the unpaid principal balance from time to time outstanding at the annual rate as set forth on Schedule A. The terms of this Note incorporate the Modifications, if any, set forth on Schedule B to this Note.

1. **Defined Terms.** As used in this Note, the following terms shall have the following definitions:

(a) “**Beneficiary Parties**” shall have the meaning set forth in the Security Instrument.

(b) “**Borrower Loan**” means the loan evidenced by this Note, and the Fixed Rate Note, the proceeds of which shall be disbursed in accordance with the Borrower Loan Agreement.

(c) “**Borrower Loan Agreement**” means that certain Borrower Loan Agreement, dated as of May 1, 2019, by and between Borrower and Governmental Lender.

(d) “**Business Day**” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(e) “**Closing Date**” shall mean the date of this Note.

(f) “**Conditions to Conversion**” shall have the meaning given to such term in the Construction Funding Agreement.

(g) “**Construction Funding Agreement**” shall mean that certain Construction Funding Agreement, dated as of May 1, 2019, by and between Borrower and Funding Lender.

(h) “**Conversion Date**” shall have the meaning given to such term in the Borrower Loan Agreement.

(i) “**Default Rate**” shall have the meaning set forth in Section 8 of this Note.

(j) “**First Payment Date**” means the first Business Day of the month following the month in which the first disbursement of Borrower Loan proceeds is made



in accordance with the Borrower Loan Agreement, or, if the first disbursement of Borrower Loan proceeds is made after the 20th day of a month, means the first Business Day of the second month following the month in which the first disbursement of Borrower Loan proceeds is made in accordance with the Borrower Loan Agreement.

(k) **“Fixed Rate Note”** means that certain Multifamily Note (Fixed Rate), dated as of the date hereof, in the maximum principal amount of [\$\_\_\_\_\_] made by Borrower payable to the order of Governmental Lender and assigned to Funding Lender.

(l) **“Funding Lender”** means Citibank, N.A., a national banking association, and its successors and assigns.

(m) **“Governmental Lender”** means Jacksonville Housing Finance Authority, a public body corporate and politic and duly organized and existing under the laws of the State of Florida.

(n) **“Indebtedness”** means the principal of, interest on, and any other amounts due at any time under, this Note, the Security Instrument or any other Borrower Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of the Security Instrument as described in Section 12 of the Security Instrument.

(o) **“Interest Rate”** shall have the meaning set forth in Schedule A to this Note.

(p) **“Lender”** means the Funding Lender, as assignee of this Note, and any subsequent holder of this Note.

(q) **“Loan Month”** means the period commencing on a Loan Payment Date and ending on the day preceding the next succeeding Loan Payment Date (without adjustment in either case for Business Day conventions).

(r) **“Loan Payment Date”** means the first Business Day of each month, commencing on the First Payment Date.

(s) **“Maturity Date”** means the earlier to occur of (i) December 1, 2021, or (ii) any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise.

(t) **“Maximum Rate”** means the lesser of (i) twelve percent (12%) per annum or (ii) the maximum interest rate that may be paid on the Borrower Loan under the laws of the Property Jurisdiction.

(u) **“Note”** means this Multifamily Note (Variable Rate).

(v) **“Note Interest”** shall have the meaning set forth in Schedule A to this Note.

(w) “**Property Jurisdiction**” shall have the meaning set forth in the Security Instrument.

All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Borrower Loan Agreement.

2. **Method of Payment.** All payments due under this Note shall be payable to the Servicer, or, if there is no Servicer, to the Fiscal Agent, or its successor. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer instructions that the Servicer or Fiscal Agent shall supply by Written Notice to the Borrower from time to time.

3. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein and in the Borrower Loan Agreement. Borrower shall make its payments under this Note in immediately available funds.

(b) Commencing on the First Payment Date and continuing on each Loan Payment Date thereafter until and including the Maturity Date, Borrower shall pay monthly payments of interest only, at the Interest Rate set forth on Schedule A attached hereto, in successive monthly installments. Such payments shall be made to the Servicer by 11:00 a.m., New York City time, or to the Fiscal Agent by 2:00 p.m., New York City time, on each Loan Payment Date.

(c) Any accrued interest remaining past due may, at Lender’s discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to “accrued interest” shall refer to accrued interest that has not become part of the unpaid principal balance.

(d) Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due under subsection 3(a) hereof.

(e) Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(f) Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisal laws.

(g) Borrower acknowledges that the calculation of all interest payments shall be made by the Lender and shall be final and conclusive, absent manifest error.

4. **Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply that payment to amounts then due and payable under this Note in any manner and in any order determined by Lender, in Lender’s discretion.

Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note and any other Borrower Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Late Charge.** If any amount payable under this Note or under the Security Instrument or any other Borrower Loan Document is not received by Lender when such amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event, such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5.0%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Notwithstanding the foregoing, with regard to each regularly scheduled monthly installment of interest payable pursuant to this Note, such late charge shall not become due and payable to Lender so long as the Borrower makes such payment on or prior to the tenth (10th) calendar day following the date upon which such payment is due (or the Business Day immediately following such tenth (10th) calendar day if such tenth (10th) calendar day is not a Business Day). Any accrued but unpaid late charges shall be added to and become part of the unpaid principal balance of this Note, shall bear interest at the rate or rates specified in this Note, and shall be secured by the Security Instrument and the other applicable Borrower Loan Documents. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Borrower Loan, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional expenses Lender will incur by reason of such late payment, and such late charge shall be deemed liquidated damages and not additional interest or a penalty. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8. Notwithstanding anything to the contrary in any other Borrower Loan Document, if a Servicer has been appointed by Lender, any late charges payable hereunder shall not be remitted to Lender and shall instead be paid directly to Servicer, who shall apply such late charges in accordance with the terms of the applicable servicing agreement. Any action regarding the collection of a Late Charge will be without prejudice to any other rights, and shall not act as a waiver of any other rights that the Servicer or the Lender may have as provided herein, in the other Borrower Loan Documents, or at law or in equity.

8. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate per annum (the “**Default Rate**”) equal to the lesser of the Maximum Rate or a rate equal to the Interest Rate plus four percent (4%), in each case compounded monthly (computed in accordance with Schedule A in the same manner in which Note Interest is computed). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate until the unpaid principal balance and all accrued interest is paid in full. Borrower also acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Borrower Loan, that, during the time that any monthly installment under this Note is delinquent, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender’s ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent or any other Event of Default has occurred and is continuing, Lender’s risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate as provided above represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional costs and expenses Lender will incur by reason of Borrower’s delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. **Personal Liability of Borrower.**

(a) Throughout the term of this Note, Borrower shall be personally liable under this Note, the Security Instrument and the other Borrower Loan Documents for (1) the repayment of the Indebtedness, including, without limitation, all amounts due under this Note, and (2) the performance of all other obligations of Borrower under this Note and the other Borrower Loan Documents.

(b) [Intentionally Omitted].

(c) In addition to the Borrower’s personal liability pursuant to the other provisions of this Note, Borrower shall at all times be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender (the “**Losses**”) as a result of (1) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; (3) failure of Borrower to comply with Section 14(d) or (e) of the Security Instrument relating to the delivery of books and records, statements, schedules, and reports; (4) fraud or material misrepresentation by Borrower or Guarantor or any general partner, managing member,

manager, officer, director, partner, member, agent or employee of Borrower or Guarantor in connection with the application for or creation of the Indebtedness or any request for any action or consent by or on behalf of Lender; (5) failure to apply Rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable pursuant to the terms of an Assignment of Management Agreement or any other Borrower Loan Document) and then to amounts (“**Debt Service Amounts**”) payable under this Note, the Security Instrument or any other Borrower Loan Document (except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to Rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year); (6) failure of Borrower to comply with the provisions of Section 17(a) of the Security Instrument prohibiting the commission of waste or allowing the impairment or deterioration of the Mortgaged Property; or (7) failure of Borrower to obtain and maintain any local real estate tax abatement or exemption required under the Security Instrument, or the reduction, revocation, cancellation or other termination of such abatement or exemption, as a result of any act or omission by or on behalf of Borrower, Guarantor or any of their respective partners, members, managers, directors, officers, agents, employees or representatives.

(d) For purposes of determining Borrower’s personal liability under this Section 9, all payments made by Borrower with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(e) Borrower shall at all times be personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (1) Borrower’s acquisition of any property or operation of any business not permitted by Section 32 of the Security Instrument; or (2) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or (3) a Bankruptcy Event, as defined in the Security Instrument (but only if the Bankruptcy Event occurs with the consent or active participation of Borrower, its General Partner, Guarantor or any Borrower Affiliate.

(f) In addition to the Borrower’s personal liability pursuant to the other provisions of this Note, Borrower shall at all times be personally liable to Lender for (1) the performance of all of Borrower’s obligations under Section 18 of the Security Instrument (relating to environmental matters) and the Agreement of Environmental Indemnification; (2) the costs of any audit under Section 14(d) of the Security Instrument; and (3) any costs and expenses incurred by Lender in connection with the collection of all amounts for which Borrower is personally liable under this Section 9, including out of pocket expenses and reasonable fees of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower’s books and records to determine the amount for which Borrower has personal liability.

(g) To the extent that Borrower has personal liability under this Section 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Borrower Loan Document or applicable law. For purposes of this Section 9, the term “**Mortgaged Property**” shall not include any funds that (1) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower’s personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

(h) Nothing herein or in the other Borrower Loan Documents shall be deemed to be a waiver of any right which the Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to the Lender and the Servicer hereunder and under the other Borrower Loan Documents or to require that all collateral shall continue to secure the amounts due hereunder and under the other Borrower Loan Documents.

#### 10. **Prepayments.**

(a) Borrower may voluntarily prepay all or a portion of this Note without penalty or premium. Any voluntary prepayment shall be made upon not less than thirty (30) days prior written notice to Servicer. Such prepayment shall be made by paying (i) the amount of principal outstanding, (ii) all accrued interest, and (iii) all other sums due Lender at the time of such prepayment. In connection with any such prepayment, the Borrower shall wire transfer the amount required hereunder in immediately available funds by 12:00 p.m., New York City time, on the date of prepayment.

(b) Upon Lender’s exercise of any right of acceleration under this Note, Borrower shall pay to Lender, in addition to the entire unpaid principal balance of this Note outstanding at the time of the acceleration, all accrued interest and all other sums due Lender.

(c) The Borrower shall prepay the entire outstanding principal balance of this Note, at the direction of the Lender, at a price equal to the outstanding principal balance of this Note, plus accrued interest and any other amounts payable under this Note or the Borrower Loan Agreement through the date of prepayment, upon the occurrence of any event or condition described below:

(1) no later than the day before (a) any sale of the Project, restructuring of the Borrower or any other event that would cause or be deemed to cause an assumption of obligations of an unrelated party for purposes of Section

1.150-1(d)(2) of the Regulations (any such event referred to herein as a “**Transfer**”) which Transfer would occur within six months of a “refinancing” (as contemplated by such Regulation), or (b) any “refinancing” that would occur within six months of a Transfer; or

(2) in whole, upon a Determination of Taxability.

In connection with any such prepayment, the Borrower shall wire transfer immediately available funds by no later than 12:00 p.m., New York City time, on the date fixed by the Lender, which date shall be communicated by the Lender in writing to the Borrower.

(d) The Borrower shall prepay the outstanding principal balance of this Note at the direction of the Lender, in whole or in part, at a price equal to the amount of principal being prepaid plus accrued interest and any other amounts payable under this Note or the other Borrower Loan Documents, upon the occurrence of any event or condition described below:

(1) in whole or in part, if the Mortgaged Property shall have been damaged or destroyed to the extent that it is not practicable or feasible to rebuild, repair or restore the damaged or destroyed property within the period and under the conditions described in the Security Instrument following such event of damage or destruction; or

(2) in whole or in part, if title to, or the use of, all or a portion of the Mortgaged Property shall have been taken under the exercise of the power of eminent domain by any Governmental Authority which results in a prepayment of this Note under the conditions described in the Security Instrument; or

(3) in whole or in part, to the extent that insurance proceeds or proceeds of any condemnation award with respect to the Mortgaged Property are not applied to restoration of the Mortgaged Property in accordance with the provisions of the Security Instrument.

In connection with any such prepayment, the Borrower shall wire transfer immediately available funds by no later than 12:00 p.m., New York City time, on the date fixed by the Lender, which date shall be communicated by the Lender in writing to the Borrower. To the extent that the Borrower receives any insurance proceeds or condemnation awards that are to be applied to the prepayment of this Note, such amounts shall be applied to the prepayment of this Note.

(e) Any permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

(f) Notwithstanding anything herein to the contrary, Borrower shall prepay this Note in full, together with all amounts due under the Borrower Loan Documents, on

the earlier to occur of (i) the Conversion Date, (ii) June 1, 2021 unless Borrower exercises its option to extend the Outside Conversion Date to December 1, 2021 pursuant to Section 7.2.1 of the Construction Funding Agreement and Borrower satisfies the conditions precedent to such extension set forth in Section 7.2.1 of the Construction Funding Agreement, and (iii) on any prepayment, in whole or in part, of the Fixed Rate Note.

11. **Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Borrower Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of Section 9(f) and this Section 11, attorneys' out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

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

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

14. **Borrower Loan Charges.** Neither this Note nor any of the other Borrower Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest permitted to be charged under applicable law. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Borrower Loan is interpreted so that any interest or other charge provided for in any Borrower Loan Document, whether considered separately or together with other charges provided for in any other Borrower Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from



Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

15. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 9, the obligations of the Borrower to make all payments required under this Note and the other Borrower Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Borrower Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Borrower Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Mortgaged Property or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Mortgaged Property or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Mortgaged Property, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Lender's legal organization or status, or any default of the Lender hereunder or under any other Borrower Loan Document, and regardless of the invalidity of any action of the Lender or the invalidity of any portion of this Note or the other Borrower Loan Documents. Provided further, the obligations of Borrower under this Note and the other Borrower Loan Documents shall not be affected by:

(a) any lack of validity or enforceability of any Borrower Loan Document or any of the Related Documents;

(b) any amendment of, or any waiver or consent with respect to, any of the Borrower Loan Documents or Related Documents;

(c) the existence of any claim, set-off, defense or other rights which Borrower, General Partner or Guarantor may have at any time against Lender (other than the defense of payment in accordance with the terms of this Note or the other Borrower Loan Documents) or any other Person, whether in connection with this Note or any other Borrower Loan Document, the Related Documents or any transaction contemplated thereby or any unrelated transaction;

(d) any breach of contract or other dispute between Borrower, General Partner or Guarantor, and Lender;

(e) any Funding Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of willful misconduct by Lender with respect to same); or

(f) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Borrower Loan Document or in any Related Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the other Borrower Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

16. **Commercial Purpose.** Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household or agricultural purposes.

17. **Counting of Days.** Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days, not Business Days.

18. **Notices.** All notices, demands and other communications required or permitted to be given pursuant to this Note shall be in writing and addressed as set forth below. Each notice shall be deemed given on the earliest to occur of (a) the date when the notice is received by the addressee; (b) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (c) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

If to Borrower: Monaco Arms Preservation, Ltd.  
c/o Lincoln Avenue Capital LLC  
201 Santa Monica Boulevard, Suite 550  
Santa Monica, California 90401  
Attention: Jonathan A. Gruskin  
Facsimile: [\_\_\_\_\_]

With a copy to: Levitt & Boccio, LLP  
423 West 55th Street, 8th Floor  
New York, New York 10019  
Attention: David Boccio, Esq.  
Facsimile: (212) 801-3762

If to Lender: Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (212) 723-8209

And to: Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (805) 557-0924

With a copy to: Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (212) 723-8209

And a copy of any notices of default sent to: Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Re: Monaco Arms Apartments I & II Deal ID No. 25795  
Facsimile: (646) 291-5754

The Borrower or the Lender may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 18. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 18, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 18 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

19. **Payments on Non-Business Day.** If the date for the making of any payment under this Note is not a Business Day, such payment shall be due and payable on the next succeeding Business Day.

20. **Terms of Note Governing Payment Matters Control in the Event of any Conflict.** In the event the provisions of the Borrower Loan Agreement or the other Borrower Loan Documents (other than this Note) conflict with the provisions of this Note which govern the terms of repayment of the Borrower Loan or the payment of other amounts due in connection with the Borrower Loan (including, without limitation, the provisions of this Note which govern the required payments of principal, interest and other amounts due in connection with the Borrower Loan, the manner of payment, the calculation of interest, the payment of the Lender's costs and expenses, the application of payments received by the Lender, the acceleration of amounts owed by the Borrower, late charges, default rates of interest, prepayments, prepayment premiums or maximum rates of interest or similar charges), the provisions of this Note shall govern and control.

21. **Local Law Provisions (Florida).** N/A

22. **Determinations by Lender.** Except to the extent expressly set forth in this Note to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Note, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

23. **Release; Indemnity.**

(a) *Release.* Borrower covenants and agrees that, in performing any of its rights or duties under this Note, neither the Beneficiary Parties, nor their respective agents or employees, shall be liable for any losses, claims, damages, liabilities and expenses that may be incurred by any of them as a result of such performance, except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of such party.

(b) *Indemnity.* Borrower hereby agrees to indemnify and hold harmless the Beneficiary Parties and their respective agents and employees from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees and costs and disbursements, which may be imposed or incurred by any of them in connection with this Note, except that no such party will be indemnified for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party.

24. **Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

25. **Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Lender's right to bring any suit, action or proceeding relating to matters arising under this Note against Borrower or any of Borrower's assets in any court of any other jurisdiction where Borrower's assets are located.

26. **Severability.** The invalidity, illegality or unenforceability of any provision of this Note shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

27. **Remedies Cumulative.** In the event of Borrower's default under this Note, the Lender may exercise all or any one or more of its rights and remedies available under this Note,

at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Lender from exercising any other right or remedy available to the Lender. The Lender may exercise any such remedies from time to time as often as may be deemed necessary by the Lender.

28. **No Agency or Partnership.** Nothing contained in this Note shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

29. **Entire Agreement; Amendment and Waiver.** This Note contains the complete and entire understanding of the parties with respect to the matters covered. This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Note shall be considered as a general waiver.

30. **Further Assurances.** Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to protect any right or interest granted by this Note or to enable Lender to exercise and enforce its rights and remedies under this Note.

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

32. **Servicer.** Borrower hereby acknowledges and agrees that, pursuant to the terms of the Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under this Note or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

33. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

34. **Time of the Essence.** Time is of the essence with respect to this Note.

35. **Modifications.** All modifications (if any) to the terms of this Note (“**Modifications**”) are set forth on Schedule B attached to this Note. In the event of a Transfer under the terms of the Security Instrument, some or all of the Modifications to this Note may be modified or rendered void by Lender at its option by notice to Borrower or such transferee.

36. **Attached Schedules.** The following Schedules are attached to this Note and are incorporated by reference herein as if more fully set forth in the text hereof:

**Schedule A –Interest Payments**

**Schedule B –Modifications to Multifamily Note (Variable Rate)**

The terms of this Note are modified and supplemented as set forth in said Schedules. To the extent of any conflict or inconsistency between the terms of said Schedules and the text of this Note, the terms of said Schedules shall be controlling in all respects.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Multifamily Note (Variable Rate) or caused this Multifamily Note (Variable Rate) to be duly executed and delivered by its authorized representative as of the date first set forth above.

**BORROWER:**

**MONACO ARMS PRESERVATION, LTD.,**  
a Florida limited partnership

By: Monaco Arms GP LLC, a Delaware  
limited liability company,  
its General Partner

By: \_\_\_\_\_  
Name: Jonathan A. Gruskin  
Title: Vice President

**PAY TO THE ORDER OF:**

**CITIBANK, N.A., AS FUNDING LENDER,  
AND THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., AS FISCAL AGENT,  
AS THEIR INTERESTS APPEAR, AS  
ASSIGNEE UNDER THAT CERTAIN  
FUNDING LOAN AGREEMENT DATED  
AS OF MAY 1, 2019**

**WITHOUT RECOURSE**

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY**, a public body corporate and politic and  
duly organized and existing under the laws of the State  
of Florida

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



## **SCHEDULE A**

### **INTEREST PAYMENTS**

1. **Interest Rate.** Except as provided in Sections 8 and 14 of this Note, interest (“**Note Interest**”) shall accrue on the unpaid principal of this Note from, and including, the Closing Date until paid in full at an annual rate (the “**Interest Rate**”) as follows:

(a) **Adjustable Interest Rate.** Interest shall accrue at the Adjustable Rate.

(b) **Interest Rate Adjustment.** The Adjustable Rate shall be determined by Lender on each Rate Determination Date and shall be adjusted on each Reset Date until the Maturity Date. Accrued interest on this Note shall be paid in arrears.

(c) **Maximum Rate.** Notwithstanding any other provision of this Note to the contrary, Note Interest shall not exceed the Maximum Rate, as the Maximum Rate may change in accordance with this Note.

(d) **Interest Accrual.** Note Interest shall be computed on the basis of the actual number of days in the period in respect of which payment is being made divided by 360.

2. **Definitions.** For purposes of this Schedule A, the following terms shall have the meanings set forth below:

“**Accrual Period**” means the period commencing on the first calendar day of each month and continuing to but excluding the first calendar day of the following month (without adjustment in either case for Business Day payment conventions). The initial Accrual Period shall be the period commencing on the Closing Date and continuing to but excluding the first calendar day of the month in which the First Payment Date occurs.

“**Adjustable Rate**” means the sum of (i) the Current Index, and (ii) the Margin, which sum is then rounded to five decimal places.

“**Current Index**” means the Index that is determined by Lender on each Rate Determination Date, subject to the limitation that the Current Index shall not be less than 0.00%.

“**Index**” means the London Inter-Bank Offered Rate for 1-month U.S. Dollar-denominated deposits administered by the ICE Benchmark Administration Limited (formerly administered by the British Bankers Association, or such other person which takes over the administration of that rate) which appears on Reuters Screen LIBOR01 Page (or any successor page) as of 11:00 a.m., London time, on the Rate Determination Date (the “**LIBOR Rate**”). If Lender determines that use of the Index would violate any applicable law or regulation, or if the Index becomes unavailable, then Lender, in its sole and absolute discretion, will choose a new rate which is based upon comparable information and provide notice to Borrower of such choice.

**“London Business Day”** shall mean any Business Day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency) in the city of London, England.

**“Margin”** means 2.50%.

**“Payment Change Date”** means the first day of the next succeeding Accrual Period that follows each Reset Date until this Note is repaid in full.

**“Rate Determination Date”** means two (2) London Business Days prior to the applicable Reset Date.

**“Required Monthly Payment”** shall have the meaning set forth in Section 3 below.

**“Reset Date”** means the first day of each Accrual Period.

3. **Monthly Interest Only Payments.** Consecutive monthly installments of interest only, each in the amount of the Required Monthly Payment (defined below), shall be payable on each Loan Payment Date until the entire unpaid principal balance evidenced by this Note is fully paid. The Required Monthly Payment shall be an amount equal to the Note Interest that has accrued on the unpaid principal balance of the Borrower Loan during the applicable Accrual Period, and shall change on each Payment Change Date based on the applicable Adjustable Rate and unpaid principal balance. The entire unpaid principal balance and accrued but unpaid interest, if not sooner paid, shall be due and payable on the Maturity Date.

4. **Notification of Required Monthly Payment.** Before each Payment Change Date, Lender shall re-calculate the Adjustable Rate and shall notify Borrower (in the manner specified in Section 18 of this Note for giving notices) of any change in the Required Monthly Payment.

5. **Error in Calculation of Required Monthly Payment.** If Lender at any time determines, in its sole but reasonable discretion, that it has miscalculated the amount of the Required Monthly Payment (whether because of a miscalculation of the Adjustable Rate or otherwise), then Lender shall give notice to Borrower of the corrected amount of the Required Monthly Payment (and the corrected Adjustable Rate, if applicable) and (a) if the corrected amount of the Required Monthly Payment represents an increase, then Borrower shall, within thirty (30) calendar days thereafter, pay to Lender any sums that Borrower would have otherwise been obligated under this Note to pay to Lender had the amount of the Required Monthly Payment not been miscalculated, or (b) if the corrected amount of the Required Monthly Payment represents a decrease thereof and Borrower is not otherwise in breach or default under any of the terms and provisions of this Note, the Security Instrument or any other Borrower Loan Document, then Borrower shall thereafter be paid the sums that Borrower would not have otherwise been obligated to pay to Lender had the amount of the Required Monthly Payment not been miscalculated.

6. **Loss of Tax Exclusion.** Borrower understands that the interest rates provided under this Note are based on the assumption that interest income paid on the Funding Loan and received by the Funding Lender will be excludable from Funding Lender's gross income under Section 103 of the Internal Revenue Code and applicable state law. In the event that Borrower receives notice from Funding Lender that a Determination of Taxability has occurred, then, notwithstanding any provision to the contrary contained herein, the interest rate on this Note and on all obligations of Borrower under the Borrower Loan Documents (other than those to which the Default Rate applies) shall be increased to a rate equal to the greater of: (i) three and one-half percent (3.50%) in excess of the LIBOR Rate or (ii) the Default Rate, provided such rate shall not exceed the Maximum Rate.

Borrower shall, in addition, pay to Lender, promptly upon demand, an amount equal to the difference between the amount of interest payable on this Note from the date on which such loss of tax exemption on the Funding Loan shall be applicable to the date on which the interest rate on this Note was increased and the amount of interest that would have been payable on this Note during such period had this Note borne interest during such period at such higher rate. The Borrower shall also indemnify, defend and hold Lender harmless from any penalties, interest expense or other costs, including attorneys' fees (including all allocated time and charges of "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Funding Loan and the interest payable to Funding Lender on the Funding Loan. The obligations of the Borrower under this paragraph shall survive any termination of the Borrower Loan Documents, release of the Security Instrument and repayment of the Borrower Loan and/or Funding Loan.

## **SCHEDULE B**

### **MODIFICATIONS TO MULTIFAMILY NOTE (VARIABLE RATE)**

The following modifications are made to the text of the Note that precedes this Schedule:

1. The following new clause (8) is hereby added to Section 9(c) of this Note “or (8) any adverse material effect on Lender resulting from terms contained in the HAP Contract that (i) may have a material adverse effect on Lender’s projections of income from the HAP Contract and (ii) were not previously known due to Borrower’s failure to provide Lender with full, complete, and accurate copies of the HAP Contract, including all amendments, renewals, and assignments thereof.”

2. Section 9 is amended by adding the following sentence to the end of subsection (e) thereof:

“Borrower shall be personally liable to Lender for the payment of any payments made to Borrower under the HAP Contract to the extent such payments are not made to the Lender as provided for under that certain Assignment of Housing Assistance Payments Agreement (pertaining to the HAP Contract, as defined therein), dated as of May 1, 2019, by Borrower (as Owner) for the benefit of Lender.”

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Note.

**EXHIBIT C**  
**FORM OF LAND USE RESTRICTION AGREEMENT**

**This document prepared by  
(and after recording return to):**

Rhonda Bond-Collins  
Randall C. Clement  
Bryant Miller Olive P.A.  
Citrus Center  
255 South Orange Avenue  
Suite 1350  
Orlando, Florida 32801

## **LAND USE RESTRICTION AGREEMENT**

Owner's <u>Name and Address:</u>	Monaco Arms Preservation, Ltd. c/o Lincoln Avenue Capital, LLC 201 Santa Monica Boulevard, Suite 550 Santa Monica, California 90401
<u>Location of Development:</u>	10415 Monaco Drive Jacksonville, Florida 32218
<u>Name of Development:</u>	Monaco Arms
Governmental Lender's <u>Name and Address:</u>	Jacksonville Housing Finance Authority 214 N. Hogan Street 7 <sup>th</sup> Floor Jacksonville, Florida 32202

This **LAND USE RESTRICTION AGREEMENT** (this "Regulatory Agreement"), made and entered into as of May 1, 2019, by and among the Jacksonville Housing Finance Authority (the "Governmental Lender"), a public body corporate and politic created pursuant to the laws of the State of Florida (the "State"), whose mailing address is 214 N. Hogan Street, 7<sup>th</sup> Floor, Jacksonville, Florida 32202; The Bank of New York Mellon Trust Company, N.A., a national banking association with a representative office in Jacksonville, Florida, whose mailing address is 10161 Centurion Parkway, N., Jacksonville, Florida 32256, ATTN: Corporate Trust Department, in its capacity as fiscal agent (including its successors and assigns, the "Fiscal Agent") under the Funding Loan Agreement, by and among the Funding Lender, the Governmental Lender and the Fiscal Agent entered into as of May 1, 2019 (the "Funding Loan Agreement"), authorizing and securing the Governmental Lender's Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A (the "Governmental Lender

Construction/Permanent Note") and its Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (the "Governmental Lender Construction Note") (collectively, the "Series 2019 Governmental Lender Notes"); and Monaco Arms Preservation, Ltd., a Florida limited partnership and its successors and assigns, whose mailing address is 201 Santa Monica Boulevard, Suite 550, Santa Monica, California 90401 (the "Owner");

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

**WHEREAS**, the Owner intends to acquire and rehabilitate a multifamily residential rental facility located within Duval County, Florida (the "County") to be occupied by Lower-Income Persons, all for the public purpose of assisting persons or families of low, moderate or middle income within the County to afford the costs of decent, safe and sanitary housing; and

**WHEREAS**, the Governmental Lender has authorized the issuance and delivery of the Series 2019 Governmental Lender Notes in the aggregate principal amount of \$\_\_\_\_\_, pursuant to the Funding Loan Agreement in order to provide a mortgage (the "Borrower Loan") to the Owner, pursuant to a Borrower Loan Agreement dated as of May 1, 2019 (the "Borrower Loan Agreement"), by and between the Governmental Lender, and the Owner, to finance a portion of the cost of the acquisition, rehabilitation and equipping of the Development (as hereinafter defined), all under and in accordance with the Constitution and laws of the State; and

**WHEREAS**, the Funding Loan Agreement and the Borrower Loan Agreement require, as a condition of making the Loan, the execution and delivery of this Regulatory Agreement; and

**WHEREAS**, in order to satisfy such requirement, the Governmental Lender, the Fiscal Agent and the Owner have determined to enter into this Regulatory Agreement to set forth certain terms and conditions relating to the operation of the Development, which is located on the lands described in Exhibit "A" hereto; and

**WHEREAS**, this Regulatory Agreement shall be properly filed and recorded by the Owner within the official records of the County and shall constitute a restriction upon the use of the property subject to and in accordance with the terms contained herein.

**NOW THEREFORE**, in consideration of providing the financing by the Governmental Lender to the Owner, acknowledging that compliance with this Regulatory Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes on the Series 2019 Governmental Lender Notes, covenants and agrees with the other parties hereto as follows:

**Section 1. Definitions and Interpretation.**

(a) The following terms shall have the respective meanings set forth below (undefined terms shall be given the meanings set forth in the Funding Loan Agreement or the Borrower Loan Agreement):

"Affiliated Party" of a person means a person such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein.

"Applicable Income Limit" means sixty percent (60%) of area median gross income (within the meaning of Section 142(d) of the Code) for the City of Jacksonville, Duval County, Florida, Standard Metropolitan Statistical Area, as determined by the Secretary of the United States Department of the Treasury in a manner consistent with determinations of lower income families and area median gross income under Section 8 of the Housing Act, as amended (or if such program is terminated, under such program as in effect immediately before such termination), including adjustments for family size.

"Available Units" means residential units in a residential rental project that are actually occupied and residential units in the project that are unoccupied and have been leased at least once after becoming available for occupancy, provided that (a) in the case of an acquisition of an existing residential rental project, a residential unit that is unoccupied on the later of (i) the date the Project is acquired or (ii) the issue date of the First Notes, 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.

"Beneficiary Parties" shall mean, collectively, the Fiscal Agent, the Governmental Lender and the Funding Lender.

"Bond Counsel" means a firm of nationally recognized standing in the field of municipal finance law whose opinions are generally accepted by purchasers of public obligations and who is acceptable to the Fiscal Agent.

"Borrower" shall mean Monaco Arms Preservation, Ltd., a Florida limited partnership, and its successors and assigns.

"Borrower Loan" shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of the Borrower Loan Amount, as evidenced by the Borrower Notes.

"Borrower Loan Agreement" shall mean the Borrower Loan Agreement dated as of May 1, 2019, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.



"Borrower Loan Amount" shall mean \$[\_\_\_\_\_], the aggregate original maximum principal amount of the Borrower Notes.

"Borrower Notes" shall mean, collectively, the Borrower Construction/Permanent Note and the Borrower Construction Note, and a "Borrower Note" shall mean one of such Notes.

"Certificate of Continuing Program Compliance" means the certificate required to be delivered by the Owner to the Governmental Lender Servicer pursuant to Section 4(d) of this Regulatory Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, including, when appropriate, the statutory predecessor thereof, or any applicable corresponding provisions of any future laws of the United States of America relating to federal income taxation, and except otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of Treasury (including applicable final or temporary regulations and also including regulations issued pursuant to the statutory predecessor of the Code, the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings), and applicable court decisions).

"County" means Duval County, Florida.

"Current Annual Family Income" is determined in accordance with Section 8 of the Housing Act, as amended (or, if such program is terminated, under such program as in effect immediately before such termination), and includes wages and salaries, overtime pay, commissions, fees, tips and bonuses and other forms of compensation for personal services, net income from operation of a business or a profession, interest, dividends and other net income of any kind from real or personal property, periodic payments from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits or similar types of periodic receipts, payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay, welfare assistance, periodic and determinable allowances such as alimony and child support and regular pay, special pay and allowances of a member of the Armed Forces, and other forms of income described in the Income Certification to be provided by the Owner to the Governmental Lender Servicer as pursuant to Section 4 hereof, but does not include earnings of children under 18, payments received for care of foster children or adults, lump sum insurance payments, inheritances, capital gains and settlements for personal or property losses, amounts received specifically for, or in reimbursement of, the cost of medical expenses, income of a live-in aide, certain student financial assistance, special pay to a member of the Armed Forces who is exposed to hostile fire, amounts received under certain training programs and other social service programs, temporary, nonrecurring or sporadic income or other forms of income that the Income Certification specifies may be excluded.

"Development" means the multifamily residential rental housing development known as Monaco Arms, located on the Land and financed, in part, with proceeds of the Series 2019 Governmental Lender Notes pursuant to the Borrower Loan Agreement.

"Eligible Persons" means one or more natural persons or a family, irrespective of race, creed, religion, color, national origin, marital status, handicap or sex.

"Exempt Elderly Unit" means a unit within the Development meeting the requirements for exemption from the prohibition against familial status discrimination contained in Title VIII of the Civil Rights Act of 1968 (known as the Fair Housing Act), as amended.

"First Notes" means the first issue of notes to which Section 142(d) of the Code applies issued to finance the acquisition of a residential rental project.

"Fiscal Agent" shall mean The Bank of New York Mellon Trust Company, N.A., a national banking association, as fiscal agent hereunder, and any successor fiscal agent or co-fiscal agent appointed under the Funding Loan Agreement.

"Funding Lender" shall mean Citibank N.A., a national banking association, and any successor under the Funding Loan Agreement and the Borrower Loan Documents.

"Funding Loan Agreement" shall mean the Funding Loan Agreement dated as of this date, by and among the Funding Lender, the Governmental Lender and the Fiscal Agent, as it may from time to time be supplemented, modified or amended by one or more instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

"Governmental Lender Notes" shall mean the Governmental Lender's Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A (the "Governmental Lender Construction/Permanent Note") and its Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (the "Governmental Lender Construction Note").

"Governmental Lender Servicer" shall mean the Governmental Lender Servicer contracted with or appointed by the Governmental Lender to service the Borrower Loan. Initially, the Governmental Lender Servicer shall be Seltzer Management Group, Inc., a Florida corporation.

"Housing Act" means the United States Housing Act of 1937, as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.

"HUD" means the United States Department of Housing and Urban Development or any successor agency.

"Land" means the real property located in Duval County, Florida, described in Exhibit "A" attached hereto.

"Lower-Income Persons" means Eligible Persons whose Current Annual Family Income does not exceed the Applicable Income Limit; provided, however, that the occupants of a unit shall not be considered to be Lower-Income Persons if all of the occupants of such unit are students (as defined in Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code. Notwithstanding the foregoing, a dwelling unit shall not fail to be treated as a dwelling unit that is occupied by Lower-Income Persons merely because such dwelling unit is occupied (a) by an individual who is a student and (i) receiving assistance under Title IV of the Social Security Act, (ii) was previously under the care and placement responsibility of the State agency program responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (iii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State or local laws, or (b) entirely by full-time students if such students are (i) single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children, or (ii) married and file a joint return.

"Partnership Agreement" shall mean that certain Amended and Restated Agreement of Limited Partnership of the Borrower dated as of the date hereof, as the same may be amended, restated or modified in accordance with its terms.

"Project" means the acquisition and rehabilitation of a multifamily residential housing facility for low, middle or moderate income persons to be located at 10415 Monaco Drive, Jacksonville, Duval County, Florida 32218, to be commonly known as Monaco Arms Apartments.

"Qualified Project Period" means the period beginning on the later of (i) the first day on which at least 10% of the units in the Development are first occupied and (ii) the date the Series 2019 Governmental Lender Notes are issued, and ending on the latest of (a) the date that is fifteen years after the date on which at least 50% of the units in the Development are first occupied, (b) the first date on which no tax-exempt private activity bond issued with respect to the Development is outstanding (within the meaning of the Code); (c) the date on which any assistance provided with respect to the Development under Section 8 of the Housing Act terminates and (d) the date which is fifty (50) years from the date of issuance of the Series 2019 Governmental Lender Notes .

"Regulations" means the Income Tax Regulations issued under the Code, as applicable (including applicable final regulations or temporary regulations).

"State" means the State of Florida.

(b) Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and

all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

(c) The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

**Section 2. Residential Rental Property.** The Owner hereby declares its understanding and intent that, during the term of this Agreement, the Project is to be owned, managed, and operated, as a "project for residential rental property" as such phrase is utilized in Section 142(d) of the Code and as a "qualifying housing development " as defined in Section 159.603(6), Florida Statutes. To that end, the Owner hereby represents, covenants, and agrees as follows:

(a) The Project will be acquired and rehabilitated for the purpose of providing multifamily rental housing, and the Owner shall own, manage, and operate the Project as multifamily rental housing, all in accordance with Section 142(d) of the Code and Treasury Regulations Section 1.103-8(b), as the same may be amended from time to time.

(b) Each residential unit in the Development shall be contained in one or more buildings or structures located on the Land and shall be similarly designed, furnished and constructed (except as to number of bedrooms and bathrooms), each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family, including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range or microwave oven, refrigerator and sink, all of which are separate and distinct from the other units.

(c) None of the units in the Development will at any time be (1) utilized on a transient basis, (2) used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, rest home, trailer court or park, or (3) rented for initial lease periods of less than six (6) months. No part of the Development will, at any time, be owned or used by a cooperative housing corporation or converted to condominiums.

(d) All of the units will be rented or available for rent on a continuous basis to members of the general public (other than units for a resident manager or maintenance personnel), and the Owner will not give preference to any particular class or group of persons in renting the units in the Development, except to the extent that units are Exempt Elderly Units or are required to be leased or rented to Lower-Income Persons. Lower-Income Persons who are residents of the Development will have equal access to and enjoyment of all common facilities of the Development at all times. The Owner will not discriminate against children of any age when renting the units in the Development t (except for units that are Exempt Elderly Units).

(e) The Land consists of a parcel of real property or parcels of real property that are contiguous except for the interposition of a road, street, stream or similar property, and the Development comprises buildings, structures and facilities that are geographically contiguous and functionally related. Any common facilities financed with proceeds of the Series 2019 Governmental Lender Notes (such as swimming pools, recreational facilities, parking areas and other facilities which are reasonably required for the Development, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance or security personnel) are functionally related and subordinate to the Development and are commensurate with its size and intended use.

(f) The Owner or an Affiliated Party of the Owner shall not occupy any of the units in the Development; provided, however, that the employee of the Owner or an Affiliated Party of the Owner may occupy a unit in a building or structure in the Development that contains five or more units if such employee of the Owner or an Affiliated Party of the Owner is a resident manager or other necessary employee (e.g., maintenance and security personnel). No more than two units in the Development shall be occupied by resident managers or maintenance or security personnel.

(g) None of the proceeds of the Series 2019 Governmental Lender Notes (including investment earnings) may be used to provide a skybox or any other private luxury box, an airplane, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises or a facility used primarily for gambling.

The requirements of this Section 2 shall remain in effect during the term of this Regulatory Agreement (as defined in Section 13 below).

**Section 3. Lower-Income Persons.** The Owner hereby represents, warrants and covenants as follows:

(a) At all times during the Qualified Project Period, not less than 100 percent (100%) of the Available Units in the Development, other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to subsection 2(f) above, shall be occupied (or held available for occupancy) on a continuous basis by persons or families at the Applicable Income Limit who are Lower-Income Persons. This occupancy requirement is referred to herein as the "Lower-Income Requirement").

(b) For purposes of paragraph (a) of this Section 3, a unit occupied by an individual or family who at the commencement of the occupancy of such unit is a Lower-Income Person shall be counted as occupied by a Lower-Income Person, as applicable, during such individual's or family's tenancy in such unit, even though such individual or family ceases to be a Lower-Income Person. However, a Lower-Income Person whose income as of the most recent Income Certification (as described in Section 4(a) below) exceeds one hundred forty percent (140%) of the Applicable Income Limit shall not continue to be treated as a Lower-Income Person if after delivery of such Income Certification, but before the delivery of the next Income Certification,

any unit in the building (within the meaning of Section 42 of the Code) is occupied by a new resident who is not a Lower-Income Person. In addition, a unit that was occupied by a Lower-Income Person shall be counted as occupied by a Lower-Income Person until it is reoccupied other than for a temporary period of not more than thirty-one (31) days, at which time the unit shall be considered to be occupied by a Lower-Income Person only if the individual or family then occupying the unit satisfies the definition of a Lower-Income Person.

#### **Section 4. Reporting Requirements.**

(a) Income certifications ("Income Certifications") in the form attached hereto as Exhibit "C" shall be obtained by the Governmental Lender Servicer from each Eligible Person (i) at the time of initial occupancy for all tenants, (ii) upon the vacancy and reoccupancy of any unit in the Development, and (iii) as often as necessary to comply with the requirements of Section 142(d) of the Code.

(b) The Owner shall file with the Governmental Lender Servicer and the Governmental Lender, on the tenth business day of each month, copies of the Income Certifications specified in Section 4(a) hereof obtained by the Owner during the previous month.

(c) The Owner shall maintain complete and accurate records pertaining to the incomes of (as of the date of initial occupancy of each tenant) and rentals charged to Lower-Income Persons residing in the Development, and shall permit, during regular business hours, upon 5 business days' notice to the Owner, any duly authorized representative of the Governmental Lender or the Governmental Lender Servicer to inspect the books and records of the Owner pertaining to the incomes of and rentals charged to all tenants residing in the Development.

(d) The Owner shall prepare and submit to the Governmental Lender Servicer and the Governmental Lender at the beginning of the Qualified Project Period, and on the tenth business day of each month thereafter, rent rolls and a Certificate of Continuing Program Compliance in the form attached hereto as Exhibit "D" executed by the Owner, stating (i) the percentage of units that were occupied by Lower-Income Persons as of the last day of the previous month, (ii) that, other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to Section 2(f) above, at all times during the previous month 100% of the Available Units were occupied by (or held available for occupancy by) Lower-Income Persons (as determined in accordance with Section 3 of this Regulatory Agreement), and (iii) that no default has occurred under this Regulatory Agreement and the Owner has not failed to comply with any provisions of this Agreement, or, if such a default or failure has occurred, the nature of such default or failure and the steps, if any, the Owner has taken or proposes to take to correct such default.

(e) The Owner shall render a yearly report to the Secretary of the Treasury as required by Section 142(d)(7) of the Code.

**Section 5. Indemnification.** The Owner hereby covenants and agrees that it shall indemnify and hold harmless the Governmental Lender, its past, present and future members, employees, agents and representatives, the Governmental Lender, its past, present and future officers of its governing body, employees, attorneys, agents and representatives, and the Fiscal Agent, and its past, present and future officers, directors, officials, employees and agents (any or all of the foregoing being hereinafter referred to as the "Indemnified Persons") from and against any and all losses, costs, damages, expenses and liabilities of whatsoever nature or kind (including but not limited to, reasonable attorneys' fees, litigation and court costs related to trial and appellate proceedings, amounts paid in settlement and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of, or related to, the issuance, offering, sale, remarketing or delivery of the Series 2019 Governmental Lender Notes, or the acquisition, design, rehabilitation, equipping, installation, operation, use, occupancy, maintenance or ownership of the Development other than for such Indemnified Persons' own grossly negligent, illegal or unlawful acts or omissions. In the case of any action or proceeding brought against an Indemnified Person in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Owner, and the Owner upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Owner from any of its obligations under this Section except to the extent that failure prejudices the defense of the action or proceeding by the Owner. Any Indemnified Person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless the named parties to any such action (including any impleaded parties) include both an Indemnified Person and the Owner or one or more other Indemnified Persons, and such Indemnified Person shall have been advised by counsel that a conflict of interest between the Owner and such Indemnified Person, or between Indemnified Persons, exists, and for this reason it is not desirable for the same counsel to represent both the Owner and such Indemnified Person or Indemnified Persons, in which case the Owner shall not have the right to assume the defense of such action on behalf of such Indemnified Person and the fees and expenses of such separate counsel shall be paid by the Owner; it being understood, however, that, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, the Owner shall not be liable for the reasonable fees and expenses of more than one separate firm of attorneys for each of such Indemnified Person, in the event of a potential conflict of interest between such Indemnified Persons, which firm(s) shall be designated in writing by each of such Indemnified Persons. The Owner shall not be liable for any settlement effected without its consent, unless the named parties to any such action (including any impleaded parties) include both an Indemnified Person and the Owner, and such Indemnified Person shall have been advised by counsel that a conflict of interest between the Owner and such Indemnified Person exists. This indemnity shall not be construed to cause the Owner to be personally liable for the principal of or interest on the Series 2019 Governmental Notes or the Borrower Loan.

**Section 6. Reliance.** The Governmental Lender and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by the owners from time to time of the Series 2019 Governmental Lender Notes, the Governmental Lender, Bond Counsel and the other parties to transactions involving the issuance, sale or remarketing of the Series 2019 Governmental Lender Notes and their respective counsel. In performing their duties and obligations hereunder, the Governmental Lender, the Governmental Lender Servicer and the Fiscal Agent may rely upon statements and certificates of the Owner or Lower-Income Persons reasonably believed by the Governmental Lender, Governmental Lender Servicer or the Fiscal Agent, as applicable, or their respective agents or employees to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Owner pertaining to occupancy of the Development. In addition, the Governmental Lender, the Governmental Lender Servicer and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Governmental Lender, the Governmental Lender Servicer or the Fiscal Agent hereunder in good faith and in conformity with the opinion of such counsel. In performing their duties and obligations hereunder, the Owner may rely upon certificates of Lower-Income Persons reasonably believed to be genuine and to have been executed by the proper person or persons.

**Section 7. Fair Housing Laws; Home Ownership Opportunity Program; Social Service Programs.**

(a) The Owner will comply with all fair housing laws, rules, regulations or orders applicable to the Development and shall not discriminate on the basis of race, creed, color, sex, age (except for units that are Exempt Elderly Units), familial status (except for units that are Exempt Elderly Units) or national origin in the lease, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and management of the Development. All advertising and promotional material used in connection with the Development shall contain the phrase "Fair Housing Opportunity."

(b) The Owner hereby covenants and agrees to provide the tenant services and residential programs and amenities indicated in Exhibit "B" attached hereto which are located on site of the Project.

**Section 8. Tenant Lists.** All tenants lists, applications, and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the Development, and shall be maintained, as required by the Governmental Lender or the Governmental Lender Servicer from time to time, in a reasonable condition for proper audit and subject to examination during business hours upon reasonable notice by representatives of the Governmental Lender, the Governmental Lender Servicer or the Fiscal Agent. Failure to keep such lists and applications or to make them available to the Governmental Lender, the Governmental Lender Servicer or Fiscal Agent after written request therefor will be a default hereunder.



**Section 9. Tenant Lease Restrictions.** All tenant leases shall be expressly subordinate to the Mortgage, and shall contain clauses, among others, wherein each individual lessee:

- (a) Certifies the accuracy of the statements made in the Income Certification;
- (b) Agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of such lessee's tenancy; that such lessee will comply promptly with all requests for information with respect thereto from the Owner, the Fiscal Agent or the Governmental Lender, and that such lessee's failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of such lessee's tenancy; and
- (c) Agrees not to sublease to any person or family who does not execute and deliver to the Governmental Lender Servicer an Income Certification.

**Section 10. Sale and Conversion of Development.**

(a) The Owner shall not sell, assign, convey or transfer any material portion of the land, fixtures or improvements constituting a part of the Development, or any material portion of the personal property constituting a portion of the Development during the term of this Regulatory Agreement, without (i) the prior written consent of the Governmental Lender, which consent shall not be unreasonably withheld, and (ii) the Fiscal Agent and the Governmental Lender having received an opinion of Bond Counsel to the effect that, in reliance upon such factual certificates as it deems appropriate and subject to such qualifications as may be generally acceptable in the industry, such sale, conveyance, transfer, or assignment will not result, under then-existing law, in interest on the Series 2019 Governmental Lender Notes, or any part thereof, becoming includable in the gross income of the holders thereof for federal income tax purposes. If a material portion of the Development financed with proceeds from the Borrower Loan is sold during the term hereof and such material portion of such Development consisted of personal property or equipment, the proceeds from the sale thereof may be used by the Owner to purchase property of similar function to be used in connection with the Development, otherwise, the proceeds from such sale shall be applied in accordance with the Mortgage. If such material portion of such Development consists of real property and improvements, the purchaser thereof must execute and deliver to the Owner and the Fiscal Agent a document in form and substance reasonably satisfactory to the Governmental Lender pursuant to which such purchaser shall agree to operate such property in compliance with the terms and conditions of this Regulatory Agreement.

The Owner shall not sell or otherwise transfer the Development in whole, nor shall there be substituted a new general partner of the Owner or a change in the controlling ownership interest in the general partner of the Owner, or other merger, transfer or consolidation of the Owner, unless (a) the Owner has received the prior written consent of the Governmental Lender (which shall respond within a reasonable period of time and shall not unreasonably

withhold such consent), (b) the Owner shall not be in default hereunder, (c) it is reasonably expected that continued operation of the Development will comply with the requirements of this Regulatory Agreement, (d) the subsequent purchaser or assignee shall execute any document reasonably requested by the Governmental Lender with respect to assuming the obligations of the Owner under this Regulatory Agreement, (e) the Governmental Lender shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Development, (f) the purchaser or assignee, or new general partner or entity acquiring a controlling interest in the general partner of the Owner, shall have satisfied such other conditions as may be reasonably required by the Governmental Lender under the circumstances, (g) the purchaser or assignee shall have first executed a document in recordable form addressed to the Governmental Lender and the Fiscal Agent to the effect that such purchaser or assignee will comply with the terms and conditions of this Regulatory Agreement, the Mortgage and the Borrower Loan Agreement, (h) the Fiscal Agent and the Governmental Lender shall receive an opinion of counsel reasonably acceptable to the Governmental Lender to the effect that the purchaser's or assignee's obligations under this Regulatory Agreement, the Borrower Loan Agreement, the Borrower Notes, the Mortgage and any other financing documents relating to the Series 2019 Governmental Lender Notes (collectively, the "Loan Documents") are enforceable against such purchaser or assignee in accordance with their terms, and (i) the Fiscal Agent and the Governmental Lender shall have received an opinion of Bond Counsel to the effect that, in reliance upon such factual certificates as it deems appropriate and subject to such qualifications as may be generally acceptable in the industry, such sale, transfer, disposition or assignment will not result, under then-existing law, in interest on the Series 2019 Governmental Lender Notes, or any part thereof, not being excludable from the gross income of the holders thereof for federal income tax purposes.

It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Development in violation of this Section shall be ineffective to relieve the Owner of its obligations under the Loan Documents. In the event that the purchaser or assignee shall assume the obligations of the Owner under the Borrower Loan, the Borrower Loan Agreement and this Regulatory Agreement, the Owner shall be released from its obligations thereunder and hereunder, other than its obligations hereunder and under the Borrower Loan Agreement arising prior to such date of assumption (unless such obligations are assumed by the purchaser or transferee).

(b) Notwithstanding anything in this Section 10 to the contrary, the restrictions set forth above on the sale, transfer or other disposition or encumbrance of the Development or any portion thereof shall not be applicable to any of the following: (i) leases of apartment units as contemplated by this Regulatory Agreement, (ii) grants of utility related easements and service or concession related leases or easements, including, without limitation, coin-operated laundry service leases and/or television cable easements on the Development, providing same are granted in connection with the operation of the Development as contemplated by this Regulatory Agreement, (iii) any sale or conveyance to a condemning governmental authority as a direct result of the condemnation or a governmental taking or a threat thereof, (iv) subject to

the provisions of the Mortgage, the placing of a subordinate Mortgage lien, assignment of leases and/or rents or security interest on or pertaining to the Development which is made expressly subject and subordinate hereto and to the Mortgage, (v) the placing of a Mortgage lien, assignment of rents or security interests on or pertaining to the Development after the payment of all Series 2019 Governmental Lender Notes and the release of the Mortgage, (vi) subject to the provisions of the Mortgage, any transfer of partnership interests in the Owner, other than with respect to the manager, or in the entities which are members in the Owner, other than with respect to the manager, or (vii) the removal or substitution of the manager of the Owner, for cause, in certain events as set forth in the Partnership Agreement, with a designee of the investor member, provided however, that such managing member shall be an affiliate of the investor member and provided, further, that the Owner retains ownership of the Development.

**Section 11. Negative Covenants.** During the term of this Regulatory Agreement, the Owner shall not:

(a) Except pursuant to and as permitted by the provisions of the Loan Documents, or except upon a sale or transfer of the Development in accordance with the terms of the Loan Documents, encumber any of the mortgaged property, including the grant of commercial leases (other than for vending machines, coin operated laundry facilities and similar amenities functionally related and subordinate to the Development and granted in connection with the day to day operation of an apartment complex), or permit the conveyance, transfer or encumbrance of such property (except for such leases and for apartment leases) for the Qualified Project Period. Nothing in this paragraph shall prohibit the granting of easements for the purpose of providing utility services (including cable television or private satellite television) to the Development.

(b) Demolish any part of the Development necessary for the operation thereof for its intended purposes or substantially subtract from any real or personal property of the Development; or

(c) Permit the use of the dwelling accommodations of the Development for any purpose except rental residences in compliance with Section 142(d) of the Code.

**Section 12. Covenants to Run with the Land.** This Regulatory Agreement and the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, except as provided in Section 13 hereof, shall pass to and be binding upon the Owner's assigns and successors and all subsequent owners of the Land or the Development or any interest therein; provided, however, that upon the termination of this Regulatory Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Except as provided in Section 13 hereof, each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Development or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other

instruments. If a portion or portions of the Land or the Development are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Land or the Development.

**Section 13. Term.** This Regulatory Agreement shall remain in full force and effect until the expiration of the Qualified Project Period; provided, however, that this Regulatory Agreement shall automatically terminate in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure or transfer by deed in lieu of foreclosure, change in a federal law or an action of a federal agency that prevents the Governmental Lender from enforcing the provisions hereof, or condemnation or a similar event (as determined by Bond Counsel), but only if within a reasonable period thereafter (i) the Series 2019 Governmental Lender Notes are retired in full or (ii) the proceeds received as a result of such event are used to finance a development that complies with the provisions hereof and any other applicable requirements of the Code and the Regulations. In the case of foreclosure or transfer of title by deed in lieu of foreclosure or similar event (as determined by Bond Counsel), such termination will cease to be in effect if, at any time during the remainder of the Qualified Project Period following such event, the Owner or an Affiliated Party to the Owner, obtains an ownership interest in the Development for federal tax purposes.

**Section 14. Correction of Noncompliance.** The failure of the Owner to comply with any of the provisions of this Regulatory Agreement shall not be deemed a default hereunder unless such failure has not been corrected within a period of 60 days following the date that the Owner, or with respect to the requirements of Sections 2 or 3 hereof, any of the parties hereto, learned of such failure or should have learned of such failure by the exercise of reasonable diligence (which 60-day period will be extended if (i) such failure cannot reasonably be corrected within such 60-day period, (ii) diligent action to correct such failure commences within such 60-day period, (iii) such action is diligently pursued until such failure is corrected, and (iv) with respect to a failure to comply with any of the requirements of Sections 2 or 3 hereof, the Owner delivers to the Governmental Lender and the Fiscal Agent an opinion of Bond Counsel to the effect that such longer cure period will not adversely affect the exclusion of interest on the Series 2019 Governmental Lender Notes from gross income for federal income tax purposes). Not later than the business day next succeeding the day on which the Fiscal Agent or the Governmental Lender Servicer learns of such failure, the Fiscal Agent or the Governmental Lender Servicer shall attempt with reasonable diligence to notify the Owner of such failure by telephonic communication. The Owner's investor member shall have the right, but not the obligation, to cure any default. The Governmental Lender Servicer shall give written notice to the Owner's investor member of such default.

**Section 15. Modification of Tax Covenants.** Notwithstanding the provisions of Section 22(b) hereof, to the extent any amendments, modifications or changes to the Regulations or the Code shall, in the written opinion of Bond Counsel addressed to the Governmental Lender, the Owner and the Fiscal Agent, impose requirements upon the ownership, occupancy or operation of the Development different than those imposed by the Regulations or the Code and stated

herein, and the Owner's failure to comply with such different requirements would produce a material and substantial risk that interest on the Series 2019 Governmental Lender Notes will become subject to federal income taxation, then this Regulatory Agreement shall be amended and modified in accordance with such requirements. The parties hereto agree to execute, deliver, and record, if applicable, any and all documents or instruments necessary in the opinion of and in the form approved by Bond Counsel to effectuate the intent of this Section 15.

**Section 16. Burden and Benefit.** The Governmental Lender, the Fiscal Agent and the Owner hereby acknowledge their respective understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Owner's legal interest in the Land and the Development is rendered less valuable thereby. The Fiscal Agent, the Governmental Lender and the Owner hereby further acknowledge their respective understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Development by Lower-Income Persons, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Series 2019 Governmental Lender Notes were issued. The Owner hereby expressly acknowledges that this Regulatory Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Series 2019 Governmental Lender Notes issued by the Governmental Lender to finance the Loan and covenants and agrees that in connection with the acquisition, rehabilitation, equipping, ownership and operation of the Development, it shall and shall require any subsequent purchaser of the Development, to fully comply with all terms and conditions of this Regulatory Agreement.

**Section 17. Uniformity; Common Plan.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Development.

**Section 18. Application of Insurance and Condemnation Proceeds.** Subject to the provisions of the Borrower Loan Agreement and the Loan Documents (as defined in Section 10 hereof), if during the Qualified Project Period, the Project is damaged or destroyed or if all or a portion thereof is taken through eminent domain proceedings, or under the threat thereof, proceeds from insurance on the Project or any condemnation awards pertaining to such eminent domain proceedings shall be applied as provided in the Borrower Loan Agreement and the Mortgage.

**Section 19. Remedies; Enforceability.** (a) The benefits of this Regulatory Agreement shall inure to, and may be enforced by, respectively, (i) the Governmental Lender and the Fiscal Agent, (ii) the holders of the Series 2019 Governmental Lender Notes and their successors and assigns to the extent permitted by the Funding Loan Agreement, and (iii) solely as to Sections 2, 3 and 7 of this Regulatory Agreement, the Lower-Income Persons and their successors who shall reside or be eligible to reside in units set aside for their occupancy pursuant to Section 3 of this Regulatory Agreement for the period set forth in Section 13 hereof, whether or not the Loan may be paid in full, and whether or not the Series 2019 Governmental Lender Notes are Outstanding. If a material violation of any of the provisions hereof occurs and is not cured

within the period provided by Section 14 hereof, any or all of such parties may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to compel specific performance hereunder, it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default. The remedies of the beneficiaries of this Regulatory Agreement other than the Governmental Lender (as provided in Section 19(b)) shall be limited to those described in the preceding sentence.

(b) In addition to such other remedies as may be provided for herein, if a violation of any of the provisions of this Regulatory Agreement occurs which is not corrected during the period provided in Section 14 hereof, the Governmental Lender (and only the Governmental Lender) shall have the right (but not the obligation), and is specifically authorized by the Owner, to terminate the property manager and subject to the approval of the Owner's investor member during the 15-year tax credit compliance period and to the approval of the Funding Lender, appoint a new property manager of the Development to operate the Development in accordance with this Regulatory Agreement and the Borrower Loan Agreement and take all actions necessary, in the reasonable judgment of the Governmental Lender, to cure any default by the Owner hereunder, and such new property manager assuming such management hereunder shall be paid by or on behalf of the Owner, from the rents, revenues, profits and income from the Development, a management fee not to exceed the prevailing management fee paid to managers of similar housing projects in the area of the County. Subject to Section 13 hereof, the provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Development at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times. All rights and remedies provided in this Regulatory Agreement are cumulative, non-exclusive and in addition to any and all rights and remedies that the parties and beneficiaries hereof may otherwise have.

The Owner hereby agrees that the appointment of a new property manager may be necessary to serve the public purpose for which the Series 2019 Governmental Lender Notes were issued and to preserve the exclusion from gross income for federal income tax purposes of interest on the Series 2019 Governmental Lender Notes following a violation of the provisions of this Regulatory Agreement which is not cured within the period provided in Section 14 hereof. The Owner hereby expressly consents to, and agrees not to contest, the appointment of a new property manager to operate the Development following a violation by the Owner of the provisions of this Regulatory Agreement which is not cured as provided in Section 14 hereof and hereby waives any and all defenses and objections that might otherwise be raised to any such appointment of a new property manager in accordance with the terms hereof. The Owner further agrees that the Governmental Lender shall have the right to require the Owner to remove any manager or managing agent whose actions or inactions present a material risk of a breach of the agreements of the Owner herein, including, without limitation, a material risk of

an adverse impact on the excludability from gross income for federal income tax purposes of interest on the Series 2019 Governmental Lender Notes and which action or inaction is not being corrected as provided in Section 14 hereof, upon such manager or managing agent being given thirty (30) days' written notice of any violation hereof, and such right shall be expressly acknowledged in any contract between the Owner and any such manager or managing agent. The Owner covenants and agrees to diligently and in good faith pursue the appointment and, if required, approval of such a replacement manager or managing agent.

**Section 20. Filing.** Upon execution and delivery by the parties hereto, the Owner shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the official public deed records of the County, and in such manner and in such other places as the Governmental Lender or the Fiscal Agent may reasonably request, and shall pay all fees and charges incurred in connection therewith.

**Section 21. Governing Law.** This Regulatory Agreement shall be governed by the laws of the State.

**Section 22. Amendments.**

(a) The interest of the Governmental Lender in this Regulatory Agreement shall be assigned to the Fiscal Agent and the rights of the Governmental Lender hereunder shall be enforceable by the Fiscal Agent. The Owner shall not assign its interest hereunder, except by writing and in accordance with the provisions of Section 10 hereof.

(b) This Regulatory Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties hereto (or their successors in title), and duly recorded in the official public records for the County. Anything to the contrary notwithstanding, the parties hereby agree to amend this Regulatory Agreement to the extent required in the opinion of Bond Counsel, in order for interest on the Series 2019 Governmental Lender Notes to remain exempt from federal income taxation under Section 103 of the Code. The Owner agrees, from time to time, to take such other actions and steps necessary to comply, and to cause the Development to comply, with the requirements of Section 142(d) of the Code and to enter into modifications and amendments to this Regulatory Agreement to the extent required by federal law, by any amendment to the Code or by any Regulation promulgated thereunder, in each case so that interest on the Series 2019 Governmental Lender Notes remains exempt from federal income taxes. Any such amendment, revision or termination shall be effected only in accordance with the Funding Loan Agreement.

**Section 23. Notice.** Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, to the Governmental Lender, the Fiscal Agent and the Owner at their respective addresses set forth in the first paragraph hereof, or at such other addresses as may be specified in writing by the parties hereto. A copy of any notice sent to the Owner shall also be sent to Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., 150 Flagler Street, Miami, Florida 33130 Attention: Brian

McDonough, Esq., to Citibank, N.A., 388 Greenwich Street, 8th Floor, New York, New York 10013, Attention: Transaction Management Group (Re: Monaco Arms Apartments I & II Deal ID No. 25795) and to Boston Financial Institutional Tax Credit LI, Limited Partnership, 101 Arch Street, 13th Floor, Boston, Massachusetts 02110, Attention: Asset Management – Monaco Arms, with a copy to Nixon Peabody LLP, Exchange Place, 53 State Street, Boston, Massachusetts, 02109, Attention: Thomas A. Giblin, Esq.

Notice shall be deemed given on the third business day after the date of mailing.

**Section 24. Release of Trustee.** Notwithstanding anything in this Regulatory Agreement to the contrary, on and after the date the Series 2019 Governmental Lender Notes are no longer outstanding under the Funding Loan Agreement and the lien of the Borrower Loan Agreement has been discharged, the Fiscal Agent shall be released from all duties and obligations under this Regulatory Agreement, and all provisions throughout this Regulatory Agreement related to the duties of, or notice to or from, the Fiscal Agent shall be of no further force and effect. If any approval or consent of the Fiscal Agent is required, such approval or consent shall be obtained from the Governmental Lender however, multiple notices need not be provided. Notwithstanding the foregoing, any such references shall remain in effect when needed to construe or enforce land use restriction obligations under this Regulatory Agreement or to provide definitions.

Upon release of the Fiscal Agent, all other covenants, terms and conditions of this Regulatory Agreement shall remain unaffected and in full force and effect unless further modified at the time of such release.

**Section 25. Severability.** If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**Section 26. Multiple Counterparts.** This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

[Remainder of page intentionally left blank]



**IN WITNESS WHEREOF**, the Governmental Lender , the Fiscal Agent, and the Owner have executed this Regulatory Agreement by duly authorized representatives, all as of the 1st day of May, 2019.

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY**

[SEAL]

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

ATTEST:

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

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by William I Gulliford, III, and Jeff Rosen, Chair and Assistant Secretary, respectively, of the Jacksonville Housing Finance Authority, a public body corporate and politic, this \_\_\_\_ day of \_\_\_\_\_, 2019, on behalf of said Governmental Lender. They are personally known to me or have produced a valid drivers license as identification.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Notary Public-State of Florida  
Commission Number: \_\_\_\_\_

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

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

Name: Michelle R. Noel

Title: Vice President

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by Michelle R. Noel, as Vice President of The Bank of New York Mellon Trust Company, N.A., this \_\_\_\_ day of \_\_\_\_, 2019, on behalf of said national association. She is personally known to me or has produced a valid drivers license as identification.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_

Notary Public-State of Florida

Commission Number: \_\_\_\_\_

**MONACO ARMS PRESERVATION, LTD.,**  
a Florida limited partnership

By: Monaco Arms GP LLC, a Delaware limited liability  
company, its General Partner

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

Name: Jonathan A. Gruskin

Title: Vice President

STATE OF \_\_\_\_\_

COUNTY \_\_\_\_\_

The foregoing instrument was acknowledged before me by Jonathan A. Gruskin, Vice President of Monaco Arms GP LLC, a Delaware limited liability company, General Partner of Monaco Arms Preservation, Ltd., a Florida limited partnership, this \_\_\_\_ day of \_\_\_\_\_, 2019. He is personally known to me or has produced a valid driver's license as identification.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_

Notary Public-State of Washington

Commission Number: \_\_\_\_\_

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

#### **PARCEL A:**

THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE CITY OF JACKSONVILLE, COUNTY OF DUVAL, STATE OF FLORIDA, TO WIT:

THAT CERTAIN TRACT OR PARCEL OF LAND BEING A PORTION OF THE WEST 600 FEET OF LOT 2 OF A SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 49, TOWNSHIP 1 SOUTH, RANGE 26 EAST, ACCORDING TO PLAT RECORDED IN PLAT BOOK 1, PAGES 7 AND 8 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY BOUNDARY OF SAID JOHN BROWARD GRANT, THE SAME BEING THE NORTHERLY BOUNDARY OF EAST HIGHLANDS ACCORDING TO PLAT RECORDED IN PLAT BOOK 26, PAGES 34 AND 34A OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY, WITH THE EASTERLY RIGHT-OF-WAY LINE OF MONACO DRIVE, A 60-FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE NORTH 00°26'40" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID MONACO DRIVE, 731.54 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF BECKNER AVENUE (A 60 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED) RECORDED IN OFFICIAL RECORDS VOLUME 2788, PAGE 435 OF SAID COUNTY; THENCE NORTH 89°30'25" EAST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE AND PARALLEL WITH SAID SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT, 539.64 FEET TO THE EASTERLY BOUNDARY LINE OF THE WEST 600 FEET OF SAID LOT 2; THENCE SOUTH 00°30'58" EAST, ALONG SAID EASTERLY BOUNDARY LINE 731.79 FEET TO THE SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT; THENCE SOUTH 89°32'01" WEST ALONG SAID SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT, BEING THE SAME AS THE NORTHERLY BOUNDARY LINE OF AFOREMENTIONED EAST HIGHLANDS, A DISTANCE OF 540.65 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MONACO DRIVE AND THE POINT OF BEGINNING.

#### **PARCEL B:**

EASEMENT RIGHTS GRANTED IN THAT GRANT OF EASEMENT DATED JULY 2, 1971 RECORDED IN O.R. BOOK 3239, PAGE 837, SAID EASEMENT PERTAINING TO THE FOLLOWING DESCRIBED LAND:

A PART OF LOT 2, OF A SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 49, TOWNSHIP 1 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 3, BLOCK 7, EAST HIGHLANDS, PLAT BOOK 26, PAGES 34 AND 34A OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 89°28'20" EAST ALONG THE NORTHERLY LINE OF NORTH PANAMA AS RECORDED IN PLAT BOOK 5, PAGE 9 OF SAID PUBLIC RECORDS, A DISTANCE OF 243.06 FEET TO THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 2425, PAGE 512 AND THE POINT OF BEGINNING; THENCE NORTH 00°31'30" WEST, ALONG THE EASTERLY LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 2425, PAGE 512 AND OFFICIAL RECORDS VOLUME 645, PAGE 310, A DISTANCE OF 310 FEET; THENCE NORTH 89°28'20" EAST, 20 FEET; THENCE SOUTH 00°31'30" EAST, 300 FEET; THENCE NORTH 89°28'20" EAST, 282.73 FEET TO THE

CENTER OF AN EXISTING 70 FOOT EASEMENT AS RECORDED IN OFFICIAL RECORDS VOLUME 2500 PAGE 581; THENCE SOUTH 03°14'34" WEST ALONG SAID CENTERLINE, 10.02 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF SAID NORTH PANAMA; THENCE SOUTH 89°28'20" WEST ALONG SAID NORTHERLY LINE, A DISTANCE OF 302.07 FEET TO THE POINT OF BEGINNING.

## **EXHIBIT B**

### **RESIDENT PROGRAMS AND PROJECT AMENITIES**

# EXHIBIT C

## FORM OF INCOME CERTIFICATION

### Tenant Income Certification

1

FLORIDA HOUSING FINANCE CORPORATION TENANT INCOME CERTIFICATION						Enter Full Date (mm/dd/yyyy)	
<input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____ <small>Indicates Type</small>						Effective Date: _____ Move-in Date: _____	
<b>PART I - DEVELOPMENT DATA</b>							
Key Number _____ Development _____ County _____ Unit ID: _____ BIN # _____ Address _____ City _____							
<b>PART II - HOUSEHOLD COMPOSITION</b>							
HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (mm/dd/yyyy)	Age as of Effective Date	Full Time Student (Y or N)	
1			H - Head				
2							
3							
4							
5							
6							
7							
8							
9							
<b>PART III - GROSS ANNUAL ANTICIPATED HOUSEHOLD INCOME (USE ANNUALIZED AMOUNTS)</b>							
HH Mbr #	(A) Employment or Wages	(B) Social Security/ Pensions	(C) Public Assistance	(D) Other Income	If Other, Indicate Type		
Calculate sum of (A) through (D), above						<b>(E) TOTAL ANTICIPATED INCOME:</b> \$ -	
<b>PART IV - CASH VALUE OF ASSETS AND ANNUALIZED ANTICIPATED HOUSEHOLD INCOME FROM ASSETS</b>							
HH Mbr #	(F) C / I	(G) Checking	(H) Savings	(I) CD	(J) Other	If Other, Indicate Type (K) Asset Income	
(L) TOTAL CASH VALUE: Calculate sum of (G) through (J) above:						\$ -	
(M) Total Anticipated Actual Asset Income:						\$ -	
(N) Enter Item (L) amount if total exceeds \$5,000: \$ - X Passbook Rate 0.06% = (O) Imputed Income:						\$ -	
<b>(P) TOTAL INCOME FROM ASSETS: Enter the greater of Item (M) or Item (O)</b>						\$ -	
<b>PART V - (Q) TOTAL HOUSEHOLD INCOME FROM ALL SOURCES - Add (E) + (P)</b>						\$ -	
<b>HOUSEHOLD CERTIFICATION AND SIGNATURES</b>							
<small>The information on the form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated gross annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.</small>							
<small>Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.</small>							
Signature _____		(Date) _____		Signature _____		(Date) _____	
Signature _____		(Date) _____		Signature _____		(Date) _____	

Florida Housing Finance Corporation

Rev. August 2016

**Tenant Income Certification**

**2**

PART VI - STUDENT STATUS																							
Is every household member a full-time student? <i>(refer to Part II)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>Student Explanation</b> 1 TANF assistance 2 Job training program 3 Single parent / dependent child 4 Married / joint return 5 Former foster child in transition to independence																					
If YES, enter Student Explanation number _____																							
PART VII - PROGRAM NAME		PART VIII - DETERMINATION OF INCOME ELIGIBILITY																					
<b>Indicate AMI category served by household for set-aside requirement of each Florida Housing program</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">AMI Category</th> <th style="text-align: left;">CAP **</th> </tr> </thead> <tbody> <tr> <td>MMRB _____ %</td> <td>** Upon _____</td> </tr> <tr> <td>SAIL _____ %</td> <td>recertification the _____</td> </tr> <tr> <td>Housing Credit _____ %</td> <td>household _____</td> </tr> <tr> <td>HOME _____ %</td> <td>exceeded the _____</td> </tr> <tr> <td>AHL _____ %</td> <td>income cap _____</td> </tr> <tr> <td>HUD Risk Sharing _____ %</td> <td>according to _____</td> </tr> <tr> <td>SHIP _____ %</td> <td>program(s) _____</td> </tr> <tr> <td>_____ %</td> <td>eligibility _____</td> </tr> <tr> <td>_____ %</td> <td>requirements. _____</td> </tr> </tbody> </table>		AMI Category	CAP **	MMRB _____ %	** Upon _____	SAIL _____ %	recertification the _____	Housing Credit _____ %	household _____	HOME _____ %	exceeded the _____	AHL _____ %	income cap _____	HUD Risk Sharing _____ %	according to _____	SHIP _____ %	program(s) _____	_____ %	eligibility _____	_____ %	requirements. _____	Current total household income \$ _____ <i>(refer to Part V)</i> <b>Most restrictive AMI category met by household</b> <i>(refer to Part VII)</i> <input type="checkbox"/> AMI %    Current Income Limit \$ _____ <b>Recertification only</b> Household size at move in _____ Total household income at move in \$ _____ Current Income Limit x 140% \$ _____ Household income exceeds 140% at Recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No	
AMI Category	CAP **																						
MMRB _____ %	** Upon _____																						
SAIL _____ %	recertification the _____																						
Housing Credit _____ %	household _____																						
HOME _____ %	exceeded the _____																						
AHL _____ %	income cap _____																						
HUD Risk Sharing _____ %	according to _____																						
SHIP _____ %	program(s) _____																						
_____ %	eligibility _____																						
_____ %	requirements. _____																						
PART IX - RENT																							
Rental Assistance \$ _____ If Section 8, indicate assistance type: Tenant Based _____ Project Based _____ Utility Reimbursement \$ _____ Tenant-Paid Rent (include non-optional charges) \$ _____ Utility Allowance \$ _____ <b>TOTAL TENANT PAYMENT</b> <i>(Tenant paid rent plus utility allowance)</i> \$ _____		Unit meets ELI / Housing Credit / HUD Risk Sharing rent restriction at AMI Category _____ % Unit meets HOME Program rent restriction at _____ Number of bedrooms in this unit _____ Current rent limit for this unit \$ _____ <i>(Refer to applicable schedule of maximum allowable rents)</i> <b>Rent Concession - throughout current lease</b> Total Amount \$ _____ Lease Term _____ <i>(in months)</i>																					
PART X - CATEGORICAL OR PUBLIC PURPOSE SET ASIDE OR TARGETING REQUIREMENT TYPES																							
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="4" style="text-align: left;">(Indicate with X to select ALL set asides or targets that apply to this household)</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> SPND</td> <td><input type="checkbox"/> Link</td> <td><input type="checkbox"/> Referral Agency Number</td> <td><input type="checkbox"/> Workforce Housing</td> </tr> <tr> <td><input type="checkbox"/> Commercial fishing worker</td> <td><input type="checkbox"/> Elderly</td> <td><input type="checkbox"/> Family (SAIL only)</td> <td><input type="checkbox"/> Veteran</td> </tr> <tr> <td><input type="checkbox"/> Farmworker</td> <td><input type="checkbox"/> Homeless</td> <td><input type="checkbox"/> Number of BR's (MMRB PPC only)</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Developmentally Disabled</td> <td><input type="checkbox"/> Special Needs</td> <td></td> <td></td> </tr> </tbody> </table>				(Indicate with X to select ALL set asides or targets that apply to this household)				<input type="checkbox"/> SPND	<input type="checkbox"/> Link	<input type="checkbox"/> Referral Agency Number	<input type="checkbox"/> Workforce Housing	<input type="checkbox"/> Commercial fishing worker	<input type="checkbox"/> Elderly	<input type="checkbox"/> Family (SAIL only)	<input type="checkbox"/> Veteran	<input type="checkbox"/> Farmworker	<input type="checkbox"/> Homeless	<input type="checkbox"/> Number of BR's (MMRB PPC only)		<input type="checkbox"/> Developmentally Disabled	<input type="checkbox"/> Special Needs		
(Indicate with X to select ALL set asides or targets that apply to this household)																							
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<input type="checkbox"/> Farmworker	<input type="checkbox"/> Homeless	<input type="checkbox"/> Number of BR's (MMRB PPC only)																					
<input type="checkbox"/> Developmentally Disabled	<input type="checkbox"/> Special Needs																						
SIGNATURE OF OWNER REPRESENTATIVE																							

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of the program(s) indicated in Part VII, and the Extended Use Agreement and/or Land Use Restriction Agreement (if applicable), to live in a unit in this Development.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



# Tenant Income Certification

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## PART XI - STATISTICAL DATA

**Note:** Information in this Part XI is gathered for statistical use only. No resident is required to give such information unless they desire to do so.

Refusal to provide information in this Part will not affect any rights the household has as residents. There is no penalty for households that do not complete the form.

**For Office Use: Household elected not to participate.**

### New Households

#### Prior Housing Information

(Answer for household head)

Monthly rent payment \_\_\_\_\_

Monthly house payment \_\_\_\_\_

ZIP Code \_\_\_\_\_

### All Households

#### Current Employment

(Answer for household head)

Occupation \_\_\_\_\_

ZIP Code \_\_\_\_\_

#### Primary Transportation Mode

(Answer for household head)

Motor vehicle \_\_\_\_\_

Public transportation \_\_\_\_\_

Other \_\_\_\_\_

#### Additional Household Information

A member of the household:

(Check all that Apply)

Receives Medicare benefits \_\_\_\_\_

Receives Medicaid benefits \_\_\_\_\_

Is a Person With a Disability \* \_\_\_\_\_

Racial Categories* (Select All That Apply)	Total Number of Household Members Per Category	Total Number of Hispanic or Latino Household Members
American Indian or Alaska Native		
Asian		
Black or African American		
Native Hawaiian or Other Pacific Islander		
White		
American Indian or Alaska Native and White		
Asian and White		
Black or African American and White		
American Indian or Alaska Native and Black or African American		
Asian and Black or African American		
Other multiple race combination		
<b>TOTALS</b>		

### \* Definitions

Person With a Disability	A person who has a mental or physical impairment that substantially limits one or more of such person's * Major Life Activities; has a record of such impairment; or is regarded as having such an impairment.
Major Life Activities	Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, sitting, standing, lifting, reaching, thinking, concentrating, reading, interacting with others, learning, sleeping and working.
Hispanic or Latino	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic" or "Latino."
Not-Hispanic or Latino	A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
Black or African American	A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American."
Native Hawaiian or Other Pacific Islander	A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
White	A person having origins in any of the original peoples of Europe, the Middle East or North Africa.

Florida Housing Finance Corporation

Rev. August 2016

## EXHIBIT D

### FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned authorized representative of Monaco Arms Preservation, Ltd., a Florida limited partnership (the "Borrower"), has read and is thoroughly familiar with the provisions of the various documents associated with the issuance by the Jacksonville Housing Finance Authority ("the Governmental Lender"), of its \$\_\_\_\_\_ Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A (the "Governmental Lender Construction/Permanent Note") and its \$\_\_\_\_\_ Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (the "Governmental Lender Construction Note") (collectively, the "Governmental Lender Notes"), such documents including:

1. The Land Use Restriction Agreement, as of May 1, 2019, among the Governmental Lender, the Fiscal Agent and the Borrower; and

Based on the representations contained in the Income Certification and the proofs and documentation submitted pursuant to the Income Certification, the following percentages of dwelling units in the Development have been either occupied by Lower Income Tenants (as such term is defined in the Regulatory Agreement) on the fifteenth (15th) day of the month in which this certificate is dated and at all times during the month preceding the date of this certificate or were held vacant and available for such occupancy for all or part of such period:

Lower-Income Tenants: \_\_\_\_\_%

The undersigned hereby certifies that the Borrower is not in default under any of the above documents, with the exception of the following (if none, please so state):

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Capitalized terms used but not defined in this certificate shall have the meanings assigned in the Funding Loan Agreement dated as of May 1, 2019, by and between the Governmental Lender and The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent.

Date: \_\_\_\_\_

#### **BORROWER:**

**MONACO ARMS PRESERVATION, LTD.**

By: Monaco Arms GP LLC  
its general partner

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

Name:

Title:

**EXHIBIT D**  
**FORM OF COMPLIANCE MONITORING AGREEMENT**

**COMPLIANCE MONITORING AGREEMENT  
(MONACO ARMS APARTMENTS)**

**THIS COMPLIANCE MONITORING AGREEMENT** (the "Agreement") is made as of May 1, 2019, by and among the **JACKSONVILLE HOUSING FINANCE AUTHORITY**, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Governmental Lender"), **SELTZER MANAGEMENT GROUP, INC.** (the "Compliance Monitoring Agent"), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, Jacksonville, Florida, a national banking association, in its capacity as Fiscal Agent (in such capacity, the "Fiscal Agent"), and **MONACO ARMS PRESERVATION LTD.**, a Florida limited partnership (the "Borrower").

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

**WHEREAS**, all capitalized terms in this Agreement not otherwise defined shall have the meanings set forth in the Funding Loan Agreement or the Borrower Loan Agreement (hereinafter defined); and

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of Chapter 159, Part IV, Florida Statutes, as amended (the "Act"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe and sanitary housing for persons or families of low, moderate or middle income in Duval County, Florida (the "County"); and

**WHEREAS**, the Act authorizes the Governmental Lender; (a) to make loans to sponsors to provide financing for residential developments located within the County, and intended to be occupied to the extent required by applicable state or federal tax law by persons or families of low, moderate and middle income; (b) to issue revenue bonds for the purpose of obtaining monies to make such loans and provide such financing and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds; and

**WHEREAS**, pursuant to resolutions of the Governmental Lender adopted on February 20, 2019 and [\_\_\_\_], 2019, respectively, the Governmental Lender has authorized, approved and issued \$[\_\_\_\_\_] aggregate principal amount of its Jacksonville Housing Finance Authority Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A and \$[\_\_\_\_\_] Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (collectively, the "Governmental Lender Notes") pursuant to that certain Funding Loan Agreement dated as of May 1, 2019 between the Governmental Lender and the Fiscal Agent (the "Funding Loan Agreement"); and

**WHEREAS**, pursuant to its lawful authority under the Act, the Governmental Lender has entered into that certain Borrower Loan Agreement dated May 1, 2019 (the "Borrower Loan Agreement"), by and between the Governmental Lender and the Borrower, by the terms of which the Governmental Lender has agreed to loan the proceeds of the Governmental Lender Notes to the Borrower (the "Loan") for the purpose of providing funds to acquire, rehabilitate and equip a multifamily residential development located on property within the County, to be known as Monaco Arms Apartments (the "Property"); and

**WHEREAS**, the Loan will be secured by those certain promissory notes, dated as of May 1, 2019 (collectively, the "Notes"), from the Borrower to the Governmental Lender; and

**WHEREAS**, the Governmental Lender intends to assign the Notes and other instruments securing repayment of the Notes, to the Fiscal Agent for the benefit of the holder of the Governmental Lender Notes, as their interests may appear; and

**WHEREAS**, to assure compliance with certain requirements of the Internal Revenue Code of 1986, as amended, and certain other requirements of the Governmental Lender with respect to the operation of the Property, the Governmental Lender, the Fiscal Agent and the Borrower have entered into that certain Land Use Restriction Agreement dated as of May 1, 2019 (the "Land Use Restriction Agreement"); and

**WHEREAS**, the Compliance Monitoring Agent has represented and warranted that it is duly qualified and authorized to engage in the business of administering loans of the type of the Loan referred to herein; and

**WHEREAS**, the Compliance Monitoring Agent shall act as agent of the Governmental Lender in performing certain functions under the Funding Loan Agreement, the Borrower Loan Agreement and the Land Use Restriction Agreement, and shall monitor tenant eligibility with respect to the Property subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS.** The following terms shall have the respective meanings set forth below (undefined terms shall be given the meanings set forth in the Funding Loan Agreement or the Borrower Loan Agreement):

A. "Improvements" -- All improvements described in the plans for the Property (the "Plans") and all additions and equipment reasonably necessary to construct, equip, renovate, operate and rent the Property, including all amenities. Without limiting the foregoing, the term Improvements shall include all landscaping, walls, drives, approaches, sidewalks, curbs, paving and all chattels, furniture, furnishings and equipment described in the Plans.

B. "Loan Documents" -- Collectively, this Agreement, the Notes, the Borrower Loan Agreement, the Land Use Restriction Agreement, the Mortgage and the Funding Loan Agreement and all other documents and instruments evidencing, securing or guaranteeing payment of the Loan, or any portion thereof.

C. "Mortgage" - " means that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time).

D. "Property" -- The real property described in Exhibit "A", which is attached hereto and by this reference made a part hereof, and the Improvements.

E. "Title Insurance Policy" -- Policy issued pursuant to mortgagee title insurance Commitment No. [ ] issued by [ ] and all endorsements issued as required by this Agreement as of the date of reference.

2. **TERM.** This Agreement shall continue from the earlier of the date of this Agreement or from the date the Compliance Monitoring Agent shall begin compliance monitoring for the Governmental Lender until occurrence of the first of the following events:

A. The end of the Qualified Project Period (as defined in the Land Use Restriction Agreement).

B. Termination of this Agreement as to the Compliance Monitoring Agent pursuant to Section 11 hereof.

3. **SERVICING OF THE LOAN.** The Compliance Monitoring Agent shall provide the compliance monitoring services required of the "Governmental Lender Servicer" under the Loan Documents, including, without limitation, monitoring the Property and compliance by the Borrower with the requirements of the Land Use Restriction Agreement, exercising the same degree of care in performing its obligations under this Agreement as is customary in the industry for financial institutions which service real estate loans for their own portfolios and on behalf of others. The Governmental Lender agrees that it will do and perform all things reasonably necessary to assist the Compliance Monitoring Agent in performing its obligations hereunder and under the Loan Documents.

4. **COMPENSATION OF THE COMPLIANCE MONITORING AGENT.** The Borrower shall pay to the Fiscal Agent for payment to the Compliance Monitoring Agent, the amount invoiced by the Compliance Monitoring Agent to the Borrower and the Fiscal Agent for the services rendered by the Compliance Monitoring Agent hereunder in accordance with the following provisions:

A. The annual compensation of the Compliance Monitoring Agent for the compliance monitoring services specified hereunder shall be paid semi-annually by the Borrower to the Fiscal Agent on or before each \_\_\_\_\_ 1st and \_\_\_\_\_ 1st,

commencing upon notification to the Fiscal Agent and the Borrower by the Compliance Monitoring Agent of the issuance of an initial certificate of occupancy, in an amount equal to 4 basis points (.04%) of the original Governmental Lender Notes amount. In the event the Governmental Lender Notes are paid off and the Qualified Project Period has not ended, the fee will be set at the minimum of \$3,662.80 until the Period has ended. Every January 1st, the minimum would be adjusted, but not decreased, based on the South Region Consumer Price Index for the twelve month period ending each November 30th.

An additional fee of \$181 per hour shall be paid by Borrower for follow-up reviews and/or extraordinary compliance monitoring services.

B. The Compliance Monitoring Agent's rights to compensation hereunder for compliance monitoring shall cease upon the later to occur of:

(1) the end of the Qualified Project Period; or

(2) notification by the Governmental Lender to the Compliance Monitoring Agent that its services or this Agreement shall be terminated by the Governmental Lender or the Fiscal Agent with the Governmental Lender's consent, with or without cause.

C. Any fees not paid by the Borrower may be paid by the Fiscal Agent (from amounts available under the Funding Loan Agreement) and charged against the Loan unless Borrower gives Fiscal Agent written notice that such fees are disputed prior to such fee being paid by the Fiscal Agent.

**5. INSURANCE TO BE MAINTAINED BY THE COMPLIANCE MONITORING AGENT.** The Compliance Monitoring Agent shall maintain at all times during the existence of this Agreement, at its own expense, blanket fidelity insurance and errors and omissions insurance covering the Compliance Monitoring Agent's officers and employees and other persons acting on behalf of the Compliance Monitoring Agent relating to the Compliance Monitoring Agent's performance of this Agreement. The amount of coverage of such policies shall be acceptable to the Governmental Lender. All such policies of insurance shall be issued by an insurance company, with coverage satisfactory to the Governmental Lender and the Compliance Monitoring Agent and shall name the Governmental Lender and the Fiscal Agent as the insured under said policies.

**6. NOTIFICATION TO THE GOVERNMENTAL LENDER AND THE FISCAL AGENT.** The Compliance Monitoring Agent shall promptly notify the Governmental Lender, the Borrower and the Fiscal Agent in writing of any of the following which may come to the attention of the Compliance Monitoring Agent:

A. Any failure of the Borrower to perform any covenant or obligation, applicable to it, under the Loan Documents (of which the Compliance Monitoring Agent

has knowledge) if such failure continues for a period of fifteen (15) days, or lesser period, if so provided in any Loan Document.

B. Abandonment of the Property.

C. Any lack of repair or the deterioration or waste suffered or committed in respect to the Property.

D. Any other matter which would adversely or materially affect or result in diminution of value of the Property.

E. Any loss or damage by fire or any hazard to the mortgaged property requiring repairs costing in excess of FIFTEEN THOUSAND AND 00/100 (\$15,000) DOLLARS to restore the Property of its condition prior to such loss or damage.

7. **DEFAULT OF BORROWER.** The Compliance Monitoring Agent shall not at any time, without the express written consent of the Governmental Lender and the Fiscal Agent, consent to a postponement of compliance on the part of the Borrower with any of the terms and provisions of the Borrower Loan Agreement, the Land Use Restriction Agreement, or any other Loan Document, or in any manner grant an extension or waiver to the Borrower.

8. **REPRESENTATIONS OF THE COMPLIANCE MONITORING AGENT.** The Compliance Monitoring Agent covenants, warrants and represents to the Governmental Lender and the Borrower as follows:

A. The Compliance Monitoring Agent is a duly organized corporation under the laws of the State of Florida, is in good standing in the State of Florida, and is authorized to do business in the State of Florida; that it is authorized to execute, deliver and perform this Agreement and all other documents and agreements required hereunder, and in so doing, that it will not violate any law, any provision of its charter or bylaws or any other agreement of instrument binding upon it.

B. The Compliance Monitoring Agent shall comply with all applicable laws and the provisions of the Loan Documents, as applicable.

C. The Compliance Monitoring Agent shall cause any funds advanced to the Compliance Monitoring Agent by the Fiscal Agent under this Agreement to be deposited with a financial institution, the deposits of which are insured by FDIC or by any successor agency or instrumentality of the United States government; and will cause such financial institution to designate said funds as escrow funds for the benefit of the Fiscal Agent; and will cause such financial institution to execute an agreement providing that it will not exercise any powers of right of offset or banker's lien against such escrow funds.



D. The Compliance Monitoring Agent hereby waives and releases any lien or encumbrances which it might at any time have or be able to claim against any property or funds held by the Fiscal Agent or the Governmental Lender.

9. **BORROWER'S REPRESENTATIONS AND WARRANTIES.** The Borrower represents and warrants to the Compliance Monitoring Agent that it may rely on the representations and warranties made by Borrower to the Governmental Lender as set forth in the Borrower Loan Agreement and the Land Use Restriction Agreement.

10. **COVENANTS OF THE BORROWER.** The Borrower covenants and agrees with the Governmental Lender, the Fiscal Agent and the Compliance Monitoring Agent as follows:

A. **Right of Entry.** The Borrower shall permit the Governmental Lender, the Fiscal Agent and the Compliance Monitoring Agent and their authorized employees, agents or representatives to enter upon the Property after reasonable prior notice during normal business hours to inspect the Improvements and all books and records related to the Property of the Borrower and will cooperate with the Governmental Lender, the Compliance Monitoring Agent, the Fiscal Agent and its representatives to enable them to perform their functions hereunder. It is expressly agreed that any inspection made by the Governmental Lender, the Fiscal Agent and the Compliance Monitoring Agent, or their representatives shall be made solely and exclusively for the protection and benefit of each of them and neither the Borrower nor any third party shall be entitled to claim, any loss or damage either against the Governmental Lender, the Fiscal Agent and the Compliance Monitoring Agent, or their employees, agents or representatives for failure to properly discharge any alleged duties of the Governmental Lender, the Fiscal Agent and the Compliance Monitoring Agent, and they shall have no duty to make such inspections.

B. **Additional Documents.** The Borrower agrees to execute any and all such other and further instruments as may reasonably be required by the Governmental Lender or the Fiscal Agent from time to time in order to carry out the provisions of this Agreement, the Loan Documents or for the purpose of protecting, maintaining, or enforcing the Governmental Lender's and the Fiscal Agent's security for the Loan.

11. **TERMINATION.**

A. **By the Governmental Lender.** The Governmental Lender shall have the right to terminate the Compliance Monitoring Agent's rights and obligations under this Agreement, without cause, upon ten (10) days' written notice to the Compliance Monitoring Agent, and with cause, upon such written notice as the Governmental Lender deems reasonable under the circumstances.

B. **Automatic Termination.** Upon the occurrence of any one or more of the following events, this Agreement shall be automatically terminated:

(1) The Compliance Monitoring Agent shall assign or attempt to assign its rights or obligations under this Agreement.

(2) The Compliance Monitoring Agent shall institute proceedings for voluntary bankruptcy or shall file a petition seeking reorganization under the Federal Bankruptcy Laws or for relief under any other law for the relief of debtors or shall consent to the appointment of a receiver of all or substantially all of its property, or make a general assignment for the benefits of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall be adjudicated bankrupt or insolvent by a court of competent jurisdiction, or if an order shall be made by a court of competent jurisdiction appointing a receiver, liquidator or trustee of the Compliance Monitoring Agent or of all or substantially all of its property or approving any petition filed against the Compliance Monitoring Agent for its reorganization, and such adjudication or order shall remain in force or unstayed for a period of thirty (30) days.

(3) The Compliance Monitoring Agent shall fail to perform any of its obligations hereunder and shall fail, within thirty (30) days after written notice from the Fiscal Agent or the Governmental Lender, to correct or cure such failure.

(4) The Property is no longer subject to the Land Use Restriction Agreement.

C. Effect of Termination. In the event this Agreement is terminated pursuant to this Section 11, then the rights and obligations of the Compliance Monitoring Agent and its right to compensation hereunder shall immediately terminate. The Compliance Monitoring Agent shall forthwith deliver to the Governmental Lender or to whomever the Governmental Lender directs, all documents relating to the Loan and shall do such other acts as may reasonably be required by the Governmental Lender to facilitate the termination hereof.

**12. TENANT ELIGIBILITY.** The Compliance Monitoring Agent shall be responsible for the following with respect to the Property:

A. Conduct on-site management reviews of the Property at least annually. Such reviews shall include examination of tenant files, a review of administration procedures, and a physical inspection of the Property. The Compliance Monitoring Agent shall also prepare a written Management Review and Inspection Report and distribute copies to the on-site manager, the Borrower, the management company, the Fiscal Agent and the Governmental Lender. Such report shall include a statement as to the compliance by the Borrower with its obligations under the Land Use Restriction Agreement. Such management reviews shall be conducted through the Qualified Project Period, as extended, or until no Governmental Lender Notes are outstanding, whichever is later.

B. Review Program Reports and Tenant Income Certifications and recertifications for completeness, tenant income eligibility and timeliness of completion. The Compliance Monitoring Agent shall contact management personnel regarding any discrepancies and follow-up with respect thereto until required corrections are made and provide copies of any correspondence with respect thereto to the Governmental Lender.

C. Provide the Governmental Lender with occupancy information from each Program Report in the format provided by the Governmental Lender.

D. In addition, the Compliance Monitoring Agent shall:

(1) Be available to answer telephone inquiries relating to bond program requirements.

(2) Keep the Governmental Lender apprised of scheduled activities, any compliance problems as such occur, and changes in apartment management personnel.

(3) Provide the Governmental Lender with copies of all correspondence relating to the Property.

### **13. MISCELLANEOUS PROVISIONS.**

A. No Waiver. Nothing herein shall be construed to waive or diminish any right or security of the Governmental Lender or the Fiscal Agent under the Funding Loan Agreement and the Land Use Restriction Agreement. It is the purpose and intent hereof to provide safeguards, protections and rights for the Governmental Lender and the Fiscal Agent in addition to those provided in the Funding Loan Agreement.

B. Cumulative Remedies. The remedies provided herein shall be in addition to and not a substitution for the rights and remedies which would otherwise be vested under any Loan Document or in law or equity, all of which rights and remedies are specifically reserved. The remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent or the Compliance Monitoring Agent shall be cumulative and may be exercised separately or concurrently and as often as the occasion therefor may arise. The failure to exercise any of the remedies herein shall not constitute a waiver thereof, nor shall use of any of the remedies hereby provided prevent the subsequent or concurrent use of any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent or the Compliance Monitoring Agent shall continue and be each and all available until all sums due by reason of the Borrower Loan Agreement are paid in full and all obligations incurred by the Borrower in connection with the construction or operation of the Improvements have been fully discharged.

C. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns. The Borrower may be released from obligations and agreements hereunder only by a written instrument of the Fiscal Agent and the Governmental Lender specifically providing for such release. The Borrower shall be released from any and all liability hereunder, upon payment of the Loan in full and expiration of the Qualified Project Period.

D. Assignability. This Agreement shall not be assignable by the Borrower or Compliance Monitoring Agent without the prior written consent of the Governmental Lender and the Fiscal Agent. If the Governmental Lender and the Fiscal Agent approve an assignment hereof by the Borrower, the Fiscal Agent shall be entitled to make advances to such assignee and such advances shall be secured by the Loan Documents.

E. Governing Law. This Agreement shall be construed under the laws of the State of Florida, regardless of where it may have been executed or delivered. Any action to enforce or interpret this Agreement, whether arising in contract or tort, by statute or otherwise, may be brought in or removed to a state or federal court of competent jurisdiction in or for Duval County, Florida, and the parties hereto hereby submit itself to the jurisdiction of said courts.

F. Construction. Whereas this Agreement was negotiated with input from all parties hereto, this Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

G. [Reserved].

H. Invalid Provisions. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby, nor shall such terms be invalid or unenforceable under other, dissimilar facts and circumstances.

I. Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning, content, or interpretation hereof.

J. Amendments. This Agreement shall not be amended or modified except by an amendment in writing, executed by all parties hereto in the same form as this Agreement. The Governmental Lender reserves the right to amend this Agreement to comply with federal and state laws and regulations.

K. Time of Essence. Time is of the essence of this Agreement.

L. Right to Publicize. The Governmental Lender and the Compliance Monitoring Agent shall have the right to publicize its involvement in the financing of the Property and may require the Borrower to name the Governmental Lender in all publicity releases and promotional materials issued in connection with the Property.

M. Dealings with the Compliance Monitoring Agent. The Compliance Monitoring Agent shall be protected and shall incur no liability in acting or proceeding in good faith upon resolution, notice, telegram, consent, waiver, certificate, affidavit, voucher, bond, title insurance commitment or policy or endorsement thereto or other paper or document which it shall in good faith reasonably believe (i) to be genuine and, (ii) to have been passed or prepared and furnished pursuant to the provisions of the Funding Loan Agreement, the Land Use Restriction Agreement or the Borrower Loan Agreement, and the Compliance Monitoring Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements unless the instrument on its face reasonably indicated that the Compliance Monitoring Agent should inquire further or unless the Compliance Monitoring Agent has actual knowledge or information which reasonably should cause the Compliance Monitoring Agent to inquire further. The Compliance Monitoring Agent shall not be held liable under this Agreement except for its own negligence or willful misconduct. The Borrower shall indemnify and hold the Compliance Monitoring Agent harmless from any claim, action or liability of any kind or character whatsoever arising from or in any way related to acts or omissions of the Borrower or any of its agents, employees, consultants, counsel, or independent contractors. This paragraph shall in no way be construed to relieve the Compliance Monitoring Agent of the normal and usual duties of a reasonably prudent loan servicer or monitoring agent.

N. Terms. Wherever used herein, the terms utilized shall include masculine, feminine, neuter, singular and/or plural, as the context admits or requires.

O. Conflicts. Notwithstanding anything herein to the contrary, the terms and conditions of the Borrower Loan Agreement shall govern, control and prevail, in the event of any conflict between the terms and conditions hereof and those contained in the Borrower Loan Agreement.

**14. REMEDIES.** Subject to the applicable terms, conditions and restrictions set forth in the Land Use Restriction Agreement, upon the occurrence of any Event of Default which is not cured within the applicable cure period, the Governmental Lender (or the Fiscal Agent or the Compliance Monitoring Agent) shall be entitled to seek specific performance hereof against the Borrower, and/or in addition to any other right or remedy available to it in law or equity. It is specifically agreed by the Borrower that a violation of this Agreement or the Land Use Restriction Agreement could cause harm for which no damages could be calculated, therefore entitling the Governmental Lender to immediate equitable relief, including without limitation a temporary restraining order or mandatory injunction without notice.

**15. NOTICES.** Any notice required to be given hereunder shall be given by personal delivery, by registered U.S. mail or by expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt of sent by registered U.S. Mail.

The Governmental Lender: Jacksonville Housing Finance Authority  
214 N. Hogan Street, 7<sup>th</sup> Floor  
Jacksonville, Florida 32202  
Attention: Finance Director  
Telephone: (904) 255 8200  
Telecopier: (904) 255-8244

The Trustee: The Bank of New York Mellon Trust Company, N.A.  
10161 Centurion Parkway N.  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department  
Telephone: (904) 645-1900  
Telecopier: (904) 645-1930

The Borrower: Monaco Arms Preservation, Ltd.  
c/o Lincoln Avenue Capital, LLC  
201 Santa Monica Boulevard  
Suite 550  
Santa Monica, California 90401  
Attention: Jonathan A. Gruskin  
Telephone: (424) 222-8259

With copies to: Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 W. Flagler Street  
Suite 2200  
Miami, Florida 33130  
Attention: Brian McDonough  
Telephone: (305) 789-3350  
Email: [bmcdonough@stearnsweaver.com](mailto:bmcdonough@stearnsweaver.com)

To the Investor  
Limited Partner: Boston Financial Institutional  
Tax Credit LI, Limited Partnership  
101 Arch Street  
13th Floor  
Boston, Massachusetts 02110  
Attention: Asset Management – Monaco Arms

Telephone: [\_\_\_\_\_]

Email: [\_\_\_\_\_]

With copies to:

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Attention: Thomas A. Giblin, Esq.  
Facsimile: 617-345-1300

The Compliance  
Monitoring Agent:

Seltzer Management Group, Inc.  
17633 Ashley Drive  
Panama City, Florida 32413  
Attention: Ben Johnson  
Telephone: (850) 233-3616 ext. 223  
Telecopier: (813) 233-1429

**16. ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement among the Governmental Lender, the Compliance Monitoring Agent, the Fiscal Agent and the Borrower as to the subject matter hereof, and all prior agreements, negotiations and understandings with respect thereto are merged into and superseded by this Agreement.

**[SIGNATURE PAGES TO FOLLOW]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

**MONACO ARMS PRESERVATION, LTD.,**  
a Florida limited partnership

By: Monaco Arms GP LLC, a Delaware limited liability  
company, its General Partner

By: \_\_\_\_\_  
Name: Jonathan A. Gruskin  
Title: Vice President

[Compliance Monitoring Agreement – Monaco Arms Apartments]



JACKSONVILLE HOUSING FINANCE  
AUTHORITY

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

Name: William I. Gulliford, III

Title: Chair

[SEAL]

[Compliance Monitoring Agreement – Monaco Arms Apartments]

**SELTZER MANAGEMENT GROUP, INC.,**  
a Florida corporation

By: \_\_\_\_\_  
Print: Ben Johnson  
Title: President

[Compliance Monitoring Agreement – Monaco Arms Apartments]

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

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

Name: Michele R. Noel

Title: Vice President

[Compliance Monitoring Agreement – Monaco Arms Apartments]

## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL A:

THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE CITY OF JACKSONVILLE, COUNTY OF DUVAL, STATE OF FLORIDA, TO WIT:

THAT CERTAIN TRACT OR PARCEL OF LAND BEING A PORTION OF THE WEST 600 FEET OF LOT 2 OF A SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 49, TOWNSHIP 1 SOUTH, RANGE 26 EAST, ACCORDING TO PLAT RECORDED IN PLAT BOOK 1, PAGES 7 AND 8 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY BOUNDARY OF SAID JOHN BROWARD GRANT, THE SAME BEING THE NORTHERLY BOUNDARY OF EAST HIGHLANDS ACCORDING TO PLAT RECORDED IN PLAT BOOK 26, PAGES 34 AND 34A OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY, WITH THE EASTERLY RIGHT-OF-WAY LINE OF MONACO DRIVE, A 60-FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE NORTH 00°26'40" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID MONACO DRIVE, 731.54 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF BECKNER AVENUE (A 60 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED) RECORDED IN OFFICIAL RECORDS VOLUME 2788, PAGE 435 OF SAID COUNTY; THENCE NORTH 89°30'25" EAST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE AND PARALLEL WITH SAID SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT, 539.64 FEET TO THE EASTERLY BOUNDARY LINE OF THE WEST 600 FEET OF SAID LOT 2; THENCE SOUTH 00°30'58" EAST, ALONG SAID EASTERLY BOUNDARY LINE 731.79 FEET TO THE SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT; THENCE SOUTH 89°32'01" WEST ALONG SAID SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT, BEING THE SAME AS THE NORTHERLY BOUNDARY LINE OF AFOREMENTIONED EAST HIGHLANDS, A DISTANCE OF 540.65 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MONACO DRIVE AND THE POINT OF BEGINNING.

#### PARCEL B:

EASEMENT RIGHTS GRANTED IN THAT GRANT OF EASEMENT DATED JULY 2, 1971 RECORDED IN O.R. BOOK 3239, PAGE 837, SAID EASEMENT PERTAINING TO THE FOLLOWING DESCRIBED LAND:

A PART OF LOT 2, OF A SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 49, TOWNSHIP 1 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 3, BLOCK 7, EAST HIGHLANDS, PLAT BOOK 26, PAGES 34 AND 34A OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 89°28'20" EAST ALONG THE NORTHERLY LINE OF NORTH PANAMA AS RECORDED IN PLAT BOOK 5, PAGE 9 OF SAID PUBLIC RECORDS, A DISTANCE OF 243.06 FEET TO THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 2425, PAGE 512 AND THE POINT OF BEGINNING; THENCE NORTH 00°31'30" WEST, ALONG THE EASTERLY LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 2425, PAGE 512 AND OFFICIAL RECORDS VOLUME 645, PAGE 310, A DISTANCE OF 310 FEET; THENCE NORTH 89°28'20" EAST, 20 FEET; THENCE SOUTH 00°31'30" EAST, 300 FEET; THENCE NORTH 89°28'20" EAST, 282.73 FEET TO THE CENTER OF AN EXISTING 70 FOOT EASEMENT AS RECORDED IN OFFICIAL RECORDS VOLUME

2500 PAGE 581; THENCE SOUTH 03°14'34" WEST ALONG SAID CENTERLINE, 10.02 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF SAID NORTH PANAMA; THENCE SOUTH 89°28'20" WEST ALONG SAID NORTHERLY LINE, A DISTANCE OF 302.07 FEET TO THE POINT OF BEGINNING.

**EXHIBIT E**

**FORM OF CONSTRUCTION AND LOAN SERVICING AGREEMENT**

**CONSTRUCTION LOAN AND MORTGAGE  
SERVICING AGREEMENT  
(MONACO ARMS APARTMENTS)**

**THIS CONSTRUCTION LOAN AND MORTGAGE SERVICING AGREEMENT** (this "Agreement") is made as of May 1, 2019, by and among the **JACKSONVILLE HOUSING FINANCE AUTHORITY** a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Governmental Lender"), **SELTZER MANAGEMENT GROUP, INC.**, its successors and assigns, a Florida corporation (the "Governmental Lender Servicer"), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association existing under the laws of the United States of America, in its capacity as fiscal agent (in such capacity, the "Fiscal Agent") and **MONACO ARMS PRESERVATION LTD.**, a Florida limited partnership (the "Borrower").

**WITNESSETH:**

**WHEREAS**, all capitalized terms in this Agreement not otherwise defined shall have the meanings set forth in the Funding Loan Agreement or the Borrower Loan Agreement (hereinafter defined); and

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of Chapter 159, Part IV, Florida Statutes, as amended (the "Act"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe and sanitary housing for persons or families of low, moderate or middle income in Duval County, Florida (the "County"); and

**WHEREAS**, the Act authorizes the Governmental Lender; (a) to make loans to sponsors to provide financing for residential developments located within the County, and intended to be occupied to the extent required by applicable state or federal tax law by persons or families of low, moderate and middle income; (b) to issue revenue bonds for the purpose of obtaining monies to make such loans and provide such financing and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds; and

**WHEREAS**, pursuant to resolutions of the Governmental Lender adopted on February 20, 2019 and [\_\_\_\_], 2019, respectively, the Governmental Lender has authorized, approved and issued \$[\_\_\_\_] aggregate principal amount of its Jacksonville Housing Finance Authority Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A and \$[\_\_\_\_] Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (collectively, the "Governmental Lender Notes") pursuant to that certain Funding Loan

Agreement dated as of May 1, 2019 between the Governmental Lender and the Fiscal Agent (the "Funding Loan Agreement"); and

**WHEREAS**, pursuant to its lawful authority under the Act, the Governmental Lender has entered into that certain Borrower Loan Agreement dated May 1, 2019 (the "Borrower Loan Agreement"), by and between the Governmental Lender and the Borrower, by the terms of which the Governmental Lender has agreed to loan the proceeds of the Governmental Lender Notes to the Borrower (the "Loan") for the purpose of providing funds to acquire, rehabilitate and equip a multifamily residential development located on property within the County consisting of 156 units and related personal property and equipment, to be known as Monaco Arms Apartments (the "Project"); and

**WHEREAS**, the Loan will be evidenced by those certain promissory notes, dated as of May 1, 2019 (collectively, the "Notes"), which Loan and Notes will be secured by that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time, (the "Mortgage"), granting the Governmental Lender a first mortgage lien and security interest in the real and personal property described therein; and

**WHEREAS**, the Governmental Lender intends to assign the Notes and other instruments securing repayment of the Notes, to the Fiscal Agent for the benefit of the holder of the Governmental Lender Notes, as their interests may appear; and

**WHEREAS**, to assure compliance with certain requirements of the Internal Revenue Code of 1986, as amended, and certain other requirements of the Governmental Lender with respect to the operation of the Property, the Governmental Lender, the Fiscal Agent and the Borrower have entered into that certain Land Use Restriction Agreement dated as of May 1, 2019 (the "Land Use Restriction Agreement"); and

**WHEREAS**, the Governmental Lender Servicer has represented and warranted that it is duly qualified and authorized to engage in the business of administering loans of the type of the Loan referred to herein; and

**WHEREAS**, the Governmental Lender Servicer shall act as agent of the Governmental Lender in performing certain functions under the Loan Documents, and shall manage and service the Mortgage with respect to the Property subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS.** Any capitalized terms used herein and not defined below shall have the meaning ascribed to them in the Funding Loan Agreement or the Borrower Loan Agreement. The following definitions shall apply as context may require in this Agreement:



A. "Agreement" – This Construction Loan and Mortgage Servicing Agreement, as from time to time amended, modified or supplemented.

B. "Architect" – Gallo Herbert Architects, LLC.

C. "Budget" – The proposed budget for the Improvements which is attached hereto as Exhibit "B" and by this reference made a part hereof, which contains a construction schedule of the Improvements, as amended in accordance with the terms hereof, including, without limitation, amendments resulting from change orders approved in accordance with the terms hereof.

D. "Consulting Engineer" – Partner Engineering and Sciences, Inc.

E. "Construction Contract" – That certain standard form of agreement for the Project between the Borrower and the Contractor named therein regarding the construction of the Improvements.

F. "Contractor" – Pyramid ETC Companies LLC.

G. "Costs of the Improvements" – All direct and indirect costs, including interest costs, required to be expended by the Borrower to comply with requirements of this Agreement, specifically including items set forth in the Budget. The Cost of the Improvements shall include the reasonable cost of labor and materials actually expended or incurred by the Borrower and incorporated in the Improvements on the Land, as well as interest costs and issuance costs and fees associated with the closing of the Loan and the issuance of the Governmental Lender Notes (excluding any fees and profit of the Borrower), and include materials stored on the Land.

H. "Funding Lender" shall mean Citibank N.A., a national banking association, and any successor under the Funding Loan Agreement and the Borrower Loan Documents.

I. "Environmental Indemnity" – That certain Environmental Indemnity from the Borrower, the General Partner, SJB Management LLC, Red Rocks 88, LLC, and Monaco Arms Developer, LLC and Jeremy S. Bronfman and Jonathan A. Gruskin, individually, in favor of the Governmental Lender and the Fiscal Agent.

J. "Events of Default" – Those events of default as defined in Paragraph 19 of this Agreement.

K. "Force Majeure" – An act of God, strikes, lockouts, act of public enemy, lightning, fire, storm, flood, or any other cause of delay beyond the reasonable control of the party claiming the applicability of the Force Majeure doctrine (financial inability excepted).

L. "General Partner" – Monaco Arms GP LLC, a Delaware limited liability company, as the general partner of the Borrower.

M. "Guarantees" – That certain (i) Absolute and Unconditional Guaranty of Completion, (ii) that certain Continuing Absolute and Unconditional Guaranty of Recourse Obligations, and (iii) that certain Absolute and Unconditional Guaranty of Operating Deficits each from the Borrower, the General Partner, SJB Management LLC, Red Rocks 88, LLC, and Monaco Arms Developer, LLC and Jeremy S. Bronfman and Jonathan A. Gruskin, individually, all of which guarantees are in favor of the Governmental Lender and the Fiscal Agent.

N. "Improvements" – All improvements described in the plans for the Property (the "Plans") and all additions and equipment reasonably necessary to construct, equip, renovate, operate and rent the Property, including all amenities. Without limiting the foregoing, the term Improvements shall include all landscaping, walls, drives, approaches, sidewalks, curbs, paving and all chattels, furniture, furnishings and equipment described in the Plans.

O. "Inspector" – [\_\_\_\_\_].

P. "Land" – The real property described in Exhibit "A", which is attached hereto and by this reference made a part hereof.

Q. "Land Use Restriction Agreement" – The Land Use Restriction Agreement, dated May 1, 2019 by and among the Governmental Lender, the Fiscal Agent and the Borrower.

R. "Loan" – The loan contemplated by the Borrower Loan Agreement in an original amount of \$[\_\_\_\_\_].

S. "Loan Documents" – Collectively, this Agreement, the Note, the Borrower Loan Agreement, the Mortgage, the Land Use Restriction Agreement, the Funding Loan Agreement, and all other documents and instruments evidencing, securing or guaranteeing payment of the Loan, or any portion thereof.

T. "Mortgage"- The Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time

U. "Mortgagee" – The Governmental Lender, and its successors or assigns, including the Funding Lender and the Fiscal Agent.

V. "Plans" – The final plans and specifications for the Improvements heretofore approved by the Governmental Lender and the Inspecting Engineer or their respective agents together with any and all amendments and modifications thereto made with the approval of the Governmental Lender or its agent or otherwise in accordance with the terms

hereof. (It is understood that the Plans shall be construed in such manner so that any works, structures or parts thereof mentioned or shown in the Plans and not mentioned or shown in the specifications, or vice versa, are to be constructed and erected as if they were in fact reflected in the Plans.)

W. "Property" – The real property described in Exhibit "A", which is attached hereto and by this reference made a part hereof, and the Improvements.

X. "Title Insurance Company" [\_\_\_\_\_].

Y. "Title Insurance Policy or Policies" effective as of [\_\_\_\_\_] and all endorsements issued as required by this Agreement insuring the Mortgage as of the date of reference.

**2. TERM.** This Agreement shall continue from the earlier of the date of this Agreement or from the date the Governmental Lender Servicer shall begin servicing the Loan for the Governmental Lender until occurrence of the first of the following events:

A. The Loan shall be paid in full and the Qualified Project Period (as defined in the Land Use Restriction Agreement) shall have expired.

B. The Mortgage shall be foreclosed in accordance with the Loan Documents or the property encumbered by the Mortgage shall be acquired by the Fiscal Agent or the Funding Lender.

C. Termination of this Agreement as to the Governmental Lender Servicer, with or without cause, pursuant to Paragraph 16 hereof.

D. Assignment of all right, title and interest of the Governmental Lender to a third party which terminates the interests of the Governmental Lender.

**3. SERVICING.** The Governmental Lender Servicer shall perform the services of the Governmental Lender Servicer provided herein. The Governmental Lender Servicer shall exercise the same degree of care, skill, prudence and diligence in servicing the Mortgage as is the customary and usual practice of prudent financial institutions, which service real property loans for their own portfolios and on behalf of others.

A. Construction Servicing. During the period of construction of the Improvements, the Governmental Lender Servicer and/or its contractor shall be responsible for monitoring the progress of the construction work on behalf of the Governmental Lender as follows:

(1) The Governmental Lender Servicer and/or its contractor shall attend all draw meetings, if any, and represent the Governmental Lender with respect to approving all construction draws. The Governmental Lender Servicer shall approve the

draw only if all documents are appropriate, accurate and supported by proper documentation in accordance with the plans, specifications and construction contract.

(2) The Governmental Lender Servicer and/or its contractor shall make site visits sufficient to verify that the work is being performed in accordance with the plans, specifications, this Agreement and other construction documents. This includes (a) verifying the quality of the work and the materials incorporated therein, (b) determining that the Architect is providing proper inspections of the Property in accordance with its contract, (c) notifying appropriate parties if the Governmental Lender Servicer becomes aware that any unhealthful or unsafe condition exists at the Property, (d) comparing waivers of and lien of materialmen and affidavits of contractor and subcontractor with Notice-to-Owner forms, and verifying that no payments are being improperly made, and (e) such other monitoring tasks as are customary and that minimize risk to the Property.

(3) Provide monthly written reports to the Governmental Lender confirming that all of the above are being performed in a manner consistent with the best interest of the project provided in sufficient detail to allow a reasonable person to assess the Property's status.

(4) Upon completion of the Improvements, the Governmental Lender Servicer shall provide the Governmental Lender with the Architect's Certificate of Substantial Completion.

B. Permanent Loan Servicing. Following [Conversion] (as defined in the Funding Loan Agreement) the Governmental Lender Servicer shall perform servicing of the Loan as follows:

(1) Establish a separate loan servicing file for the Property. The file shall contain copies of all closing documents pertaining to the Property.

(2) Verify and confirm with quarterly reports to the Governmental Lender (with a copy to the Fiscal Agent) the sufficiency of all insurance policies as to dollar amounts and the types of coverage required by the Governmental Lender. Establish tickler files for the renewal or anniversary premium payment dates of all policies. In the event of loss, the Governmental Lender Servicer will administer the restoration program.

(3) Provide monthly loan servicing reports to the Governmental Lender.

(4) Timely renew and file UCC continuation statements with the Florida Secured Transaction Registry and in Duval County, Florida.

C. Continuing Duties of the Governmental Lender Servicer after completion of the rehabilitation.

Monitor any other letters of credit or insurance policies issued or received in connection with the Property or Development and do all things or take any actions necessary or appropriate on behalf of the Governmental Lender and the Fiscal Agent to secure, or cause to be secured, the timely renewal thereof for such periods as such items are to be in force and effect by the Loan Documents; provided, that the Governmental Lender Servicer has received from the Fiscal Agent (from available funds held under the Funding Loan Agreement) from time to time any fees or charges the Governmental Lender Servicer requires to secure payment or the timely renewal of such items upon the Borrower's failure to do so. The Governmental Lender Servicer shall provide timely notice to the Fiscal Agent and the Borrower of any failure by the Borrower to renew within thirty (30) days before the expiration any such letters of credit or insurance policies.

D. Continuing Duties of the Governmental Lender and the Fiscal Agent. In connection with the construction period, the Governmental Lender, the Borrower and the Fiscal Agent agree that:

(1) They shall do and perform all things reasonably necessary to assist the Governmental Lender Servicer in servicing the Loan;

(2) Borrower shall direct investment of the proceeds of the Governmental in accordance with the Funding Loan Agreement in such manner as will insure that such proceeds will be available to be disbursed at such reasonable times as proceeds of the Loan are required to be disbursed by the Fiscal Agent under this Agreement and substantially in accordance with the Draw Schedule attached hereto as Exhibit "B" and by this reference made a part hereof.

**4. COLLECTION AND DEPOSIT OF PAYMENTS.** The Governmental Lender Servicer shall confirm that the Fiscal Agent has received each payment due under the Notes and Mortgage, as due, and if not, shall assist the Governmental Lender and the Fiscal Agent, or the holder of the Governmental Lender Notes in the event that payments are being made directly to the holder of the Governmental Lender Notes, in the enforcement of their rights pursuant to the Loan Documents. The Fiscal Agent, or the holder of the Governmental Lender Notes in the event that payments are being made directly to the holder of the Governmental Lender Notes, shall receive each payment made under the Loan Documents and the Fiscal Agent shall notify the Governmental Lender Servicer, the Funding Lender and the Borrower in writing if payment is not made when due.

**5. ADVANCES DURING REHABILITATION.** The Governmental Lender and the Fiscal Agent agree to make or cause to be made disbursements to the Borrower under the Funding Loan Agreement, the Borrower Loan Agreement and this Agreement of the proceeds of the Governmental Lender Notes in accordance with the Funding Loan Agreement, the

Borrower Loan Agreement, the Budget, and in accordance with and subject to the procedures set forth below. The Budget may be amended by the Governmental Lender Servicer from time to time, upon the written request of the Borrower with the consent of the Funding Lender; approval of such requests shall not be unreasonably withheld or delayed.

A. Requisition Request to be submitted to the Fiscal Agent, the Funding Lender, and the Governmental Lender Servicer:

(1) At such time as the Borrower shall desire to obtain an advance, the Borrower shall complete, execute and deliver a Requisition Request, in the form as provided for in the Funding Loan Agreement, to the Funding Lender and the Governmental Lender Servicer. Each Requisition Request submitted by Borrower to obtain an advance under the Loan shall be signed by an authorized signatory of the Borrower (or the Borrower Designee). The Borrower shall not submit any Requisition Request to the Fiscal Agent until it has been approved by the Funding Lender and the Governmental Lender Servicer, and each Advance by the Fiscal Agent of the proceeds of the Governmental Lender Notes shall be subject to the prior approval of the Requisition Request by the Funding Lender and the Governmental Lender Servicer, except as provided in (2) below and to the other conditions precedent set forth in the Funding Loan Agreement and the Borrower Loan Agreement. Requisition Requests should be submitted to the Fiscal Agent without attachments, except as provided in the Funding Loan Agreement or the Borrower Loan Agreement. The Governmental Lender Servicer shall approve or object to any Requisition Request within ten (10) Business Days of its submission together with all additional information required in connection with such advance. If the Governmental Lender Servicer neither approves nor objects within such time, its approval shall be deemed given; in such instances, the Governmental Lender Servicer must sign the Requisition Request by the tenth (10th) Business Day and forward it, as if it had been approved. Failure to approve a Requisition Request on the part of the Funding Lender shall not be deemed to be an approval of the Funding Lender and under no circumstances shall the Fiscal Agent disburse a Requisition Request unless signed by the Funding Lender and the Governmental Lender Servicer as provided herein.

(2) Notwithstanding the foregoing, if a Requisition Request has been approved by the Funding Lender and (a) (i) has been approved by the Consulting Engineer, (ii) complies with the Budget, as amended in accordance with the terms of the Loan Documents, (iii) is for work that is in substantial accordance with the Plans and Specifications, and (iv) is accompanied by lien waivers with respect to the prior Requisition Request or by evidence that any liens which have been filed or for which notices of filing have been sent have been bonded to the satisfaction of the Title Company, or (b) if not approved, would jeopardize the coverage afforded by any Payment and Performance Bond, the Governmental Lender Servicer shall not have the right to withhold its approval of any Requisition Request approved by the Funding Lender unless, in the opinion of the Governmental Lender Servicer, such Requisition

Request would violate the terms of the Loan Documents. In addition, the Governmental Lender Servicer shall not unreasonably withhold its approval of any Requisition Request otherwise approved by the Funding Lender. In the event the Governmental Lender Servicer withholds its approval of a Requisition Request which does not meet the requirements of subsections (a) and (b) of this paragraph, but which has otherwise been approved by the Funding Lender, no funds shall be advanced for the disputed items (however, funds allocable to the items on such Requisition Request which are not disputed shall be available to be advanced) and the Funding Lender and the Governmental Lender Servicer shall submit the dispute to binding arbitration by a mutually acceptable single arbitrator experienced in the type of construction contemplated in this Agreement, selected by the Funding Lender and the Governmental Lender Servicer. The Funding Lender and the Governmental Lender Servicer shall use all reasonable efforts to complete such arbitration proceedings and obtain a decision within thirty (30) days.

B. The Governmental Lender Servicer shall review each Requisition Request for compliance with this Agreement, the Land Use Restriction Agreement, draw schedule, budgets and time lines and all other Loan Documents; for compliance with the Plans and all legal requirements; and for compliance with the customary and usual construction and on disbursement practices for the geographical area in which the Property is located.

(1) Where the Requisition Request includes amounts to be paid to the Contractor, such Requisition Request shall be accompanied by forms the same as or similar to AIA Form G702 and G703, to be reviewed and approved by the Governmental Lender Servicer and executed by the Contractor and the Architect.

(2) Where the Requisition Request relates to items other than payments for work performed under the Construction Contract or a subcontract, there shall be included a statement of the purpose for which the advance is desired and/or invoices for the same, as the Governmental Lender Servicer shall reasonably require.

(3) The Requisition Request shall be subject to the Inspecting Engineer verifying that the work has been accomplished in substantial accordance with the Plans so as to entitle the Borrower to the disbursement required.

(4) The Governmental Lender shall retain from each Requisition Request a sum equal to ten percent (10%) of the amount of each Requisition Request (less any soft costs which shall be fully funded) as retainage. The Requisition Request shall specify the amount of retainage. Upon completion of fifty percent (50%) of the Improvements (as certified by the Inspecting Engineer) no further retainage shall be withheld from subsequent requisitions. All retainage shall be released when the Improvements are one hundred percent (100%) complete and all conditions of paragraph G herein have been met. The final payment of any balance due the Contractor or any subcontractor (including materialman or suppliers within the term

"subcontractor") shall be made after full and final completion subject to punch list of the work on the Improvements being done by the Contractor or such subcontractor, as certified by the Borrower, the Governmental Lender Servicer and the Inspecting Engineer, and delivery to the Governmental Lender Servicer of a final mechanic's lien waiver and the other documents required in subparagraph G hereof, in a form reasonably approved by the Governmental Lender Servicer and its counsel, at the time of final disbursement.

C. It is specifically understood and agreed that the making of any advance or advances, or part of any advance, shall not be construed as an approval or acceptance by the Governmental Lender and the Fiscal Agent of the work theretofore done.

D. Each Requisition Request shall be submitted to the Governmental Lender Servicer at least ten (10) business days prior to the date of the requested advance; disbursements shall be made no more frequently than monthly at the principal office of Fiscal Agent or at such other place as Fiscal Agent may designate. The provisions of this Paragraph shall not restrict the ability of the Fiscal Agent to make interest payments in accordance with the Funding Loan Agreement.

E. If an Event of Default has occurred and is continuing and all applicable cure periods have expired, the Fiscal Agent (at the written direction of the Governmental Lender but only with the written consent of the Funding Lender) may make any or all advances for construction expenses directly to the Contractor for deposit in an appropriately designated special bank account and the execution of this Agreement by the Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan, subject, however, to the applicable provisions of this Agreement including, but not limited to the Funding Lender's approval of all advances. No further authorization from the Borrower shall be necessary to warrant such direct advances to Contractor and all such advances shall satisfy *pro tanto* the obligations of the Governmental Lender and the Fiscal Agent hereunder and shall be secured by the Mortgage as fully as if made directly to the Borrower.

F. All advances or parts of advances including the initial advance will be made subject to the approval of the Governmental Lender Servicer and to the following conditions precedent as to each advance (each of which the Borrower covenants to fulfill), satisfaction of which shall be evidenced by the Governmental Lender Servicer's approval which are in addition to and not in replacement of the requirements for advances of the Funding Lender as set forth in the Borrower Loan Agreement:

(1) That the Borrower has fully complied with all of the provisions of the Loan Documents and is entitled to such advance, it being understood that the making of any advance or portion thereof when the Borrower is not so entitled will not constitute waiver of such compliance and that no event has occurred and is continuing which constitutes a "Default" or an "Event of Default" under any Loan Document.



(2) That the Mortgage is a good and valid first lien for the full amount then and theretofore advanced, and good, marketable and insurable title to the Borrower's fee simple interest in the Land is vested in the Borrower, free and clear of all encumbrances, except Permitted Encumbrances as defined in the Funding Loan Agreement and except for encumbrances being properly contested under the Mortgage, as evidenced by an updated title insurance endorsement.

(3) That the Improvements rehabilitated through the date of the Requisition Request have been rehabilitated in substantial accordance with the Plans and all legal requirements, and that the Inspecting Engineer has made an inspection of and approves the work completed as represented in the current Requisition Request.

(4) That the Governmental Lender Servicer has been furnished with an affidavit executed by an authorized representative of the Borrower or its agent as to whether or not the Borrower has been served with written notice that a lien may be claimed for any amounts unpaid for materials furnished or labor performed by any person, firm, entity or corporation furnishing materials or performing labor of any kind in the construction/rehabilitation or installation of any of the Improvements. The date and manner of service shall be stated in such affidavit and a true and correct copy of each such notice shall be attached to the affidavit.

(5) That the Borrower has procured or will procure verified and proper mechanic's lien waivers and receipted bills or receipts from the Contractor, any subcontractor or materialmen in a form reasonably satisfactory to the Governmental Lender or the Governmental Lender Servicer, showing payment of all parties who have furnished materials or performed labor of any kind pertaining to the construction/rehabilitation or installation of any of the Improvements, except for claims bonded off, insured over or being contested under the terms of the Mortgage, through the date of the previous disbursement. The Governmental Lender, the Fiscal Agent, and the Governmental Lender Servicer shall not be required nor be responsible to ascertain that any such bills are, in fact, paid. In the event a lien has been filed against the Land, the Governmental Lender Servicer shall require such lien to be satisfied or bonded before approving a Requisition Request.

(6) That the Borrower has furnished the Governmental Lender Servicer reasonably satisfactory evidence that the undisbursed proceeds of the Loan together with projected earnings on invested funds under the Funding Loan Agreement and other identifiable funds available to the Borrower, including but not limited to capital contributions made or to be made under the Borrower's partnership agreement will be sufficient to pay the cost of completing the Improvements (other than the deferred developer fee and other deferred fees to parties related to the Borrower) as required by the Loan Documents.

(7) That the Improvements are not being constructed in violation of the Land Use Restriction Agreement or any covenants, restrictions, codes, or zoning ordinances affecting the Land.

(8) That the Borrower has caused the Governmental Lender Servicer to be provided with a title endorsement with respect to the Title Insurance Policy theretofore delivered, indicating that since issuance of the Title Insurance Policy there has been no change in the state of title to the Land which is not permitted under the terms of the Mortgage or which not otherwise accepted by the Mortgagee.

(9) That the Borrower and/or the Contractor have caused the Governmental Lender Servicer to be provided with a list of all subcontractors and materialmen to be used on the Property, to be updated with each Requisition Request, and if requested by the Governmental Lender Servicer, copies, certified by the Borrower and/or the Contractor to be true and correct, material, equipment and furnishings to complete the Improvements.

(10) That the Requisition Request is accompanied by a certificate on the part of the Architect that the work has been accomplished in substantial accordance with the Plans so as to entitle the Borrower to the disbursement requested.

G. Prior to approving the final advance and release of any Retainage being held back hereunder, the Governmental Lender Servicer shall have received (those items with \* are necessary for releasing Retainage):

\*(1) each of the items specified in the foregoing subparagraphs F(2) through (10);

\*(2) such documents, if any, as may be required by Duval County, Florida (the "County"), as appropriate for the issuance of a final certificate of occupancy;

\*(3) a certificate of substantial completion in a form reasonably acceptable to the Governmental Lender (the AIA form G704 is acceptable to the Governmental Lender);

\*(4) final lien waivers from all subcontractors and materialmen;

\*(5) updated title insurance endorsements insuring the lien of the Mortgage as of the Completion Date to be a valid first lien on the Property, subject only to Permitted Encumbrances (as defined in the Borrower Loan Agreement) other than mechanic's liens, and otherwise providing the title insurance coverage required under the Mortgage as of the Completion Date;

\*(6) a set of "as-built" Plans;

H. The Fiscal Agent may conclusively rely upon the approval of a Requisition Request by the Funding Lender and the Governmental Lender Servicer to establish compliance by the Borrower with subparagraphs A, B, E, F and G above.

**6. COMPENSATION OF THE GOVERNMENTAL LENDER SERVICER.** The Borrower shall pay to the Fiscal Agent, for immediate payment to the Governmental Lender Servicer, the amount invoiced by the Governmental Lender Servicer to the Borrower and the Fiscal Agent for the services rendered by the Governmental Lender Servicer hereunder in accordance with the following provisions:

A. Servicing Fees. The Borrower shall pay the Governmental Lender Servicer fees, which include:

- (1) Compensation payable to the Governmental Lender Servicer for construction/rehabilitation servicing shall be deposited by the Borrower with the Fiscal Agent, for immediate payment to the Governmental Lender Servicer in the following amounts:
  - (a) an on-site inspection fee of \$[ ] per hour for services rendered during the rehabilitation of the Property, but not in excess of \$[ ] per disbursement.
  - (b) an in-house review fee of \$[ ] per hour for services rendered during the rehabilitation of the Property.

An additional fee of \$ \$[ ] per hour shall be paid by Borrower for extraordinary construction servicing services.

- (2) Compensation payable to the Governmental Lender Servicer for permanent loan servicing shall be deposited by the Borrower with the Fiscal Agent, for immediate payment to the Governmental Lender Services, on or before each [ ] 1 and [ ] 1 in an amount of [ ] basis points ([ ]%) per annum of the outstanding principal amount of the Governmental Lender Notes, with a minimum monthly fee of \$[ ], payable in arrears commencing on [ ], [ ]. On January 1<sup>st</sup> of each year, the minimum fee shall be adjusted, but not decreased, based on the South Region Consumer Price Index for the twelve month period ending each November 30<sup>th</sup>. This automatic increase shall not exceed 3% of the prior year's fees.

An additional fee of \$[ ] per hour shall be paid by Borrower for extraordinary permanent loan servicing services.

Notwithstanding anything in this Agreement or any of the other Loan Documents to the contrary, permanent loan servicing services related to the review, inspection and/or consideration of requests for disbursements from the replacement reserve account shall not be considered extraordinary permanent loan servicing services, unless otherwise approved in advance by the Governmental Lender.

B. Termination of Compensation. The Governmental Lender Servicer's right to compensation hereunder (except for accrued, unpaid compensation and unreimbursed, previously incurred costs and expenses) for servicing the Loan shall cease upon the occurrence of any of the following events:

1. the Loan shall be paid in full and the Qualified Project Period shall have expired;
2. an Event of Default under the Note, Mortgage or the Borrower Loan Agreement unless the Governmental Lender Servicer is directed to assist in foreclosure of the Mortgage by the Fiscal Agent;
3. notification by the Fiscal Agent to the Governmental Lender Servicer that its services or this Agreement shall be terminated by the Governmental Lender or the Fiscal Agent at the written direction of the Governmental Lender, with or without cause;
4. assignment of all right, title and interest of the Fiscal Agent in and to the Mortgage .

C. Deductions of unpaid fees.

D. Any fees not paid by the Borrower may be deducted from a subsequent draw request.

**7. TITLE INSURANCE UPDATE FEES.** The Borrower shall be responsible for payment to the Title Insurance Company for periodic title update charges as required by the Governmental Lender or the Fiscal Agent.

**8. BUILDER'S RISK AND HAZARD INSURANCE.** The Governmental Lender Servicer shall see to it that at all times during the term of this Agreement and the other Loan Documents, all buildings and improvements making up the Property are insured, under standard mortgagee clauses, for the benefit of the Fiscal Agent and the Governmental Lender, against loss or damage by fire and from such other insurable risks and hazards, all as more specifically set forth in the Mortgage and other Loan Documents. Subject to the applicable provisions of the Borrower Loan Agreement, fire insurance and extended coverage shall be in an amount at least equal to the full replacement value of the Property less applicable deductibles. Subject to the applicable provisions of the Borrower Loan Agreement, in the event of the failure by the Borrower to maintain such insurance in full force and effect, and upon the

written authorization of the Governmental Lender, such insurance shall be maintained by the Governmental Lender Servicer, and the Fiscal Agent shall advance necessary funds (from amounts available for such purposes pursuant to the Funding Loan Agreement) to the Governmental Lender Servicer at the direction of the Governmental Lender Servicer. The Governmental Lender Servicer shall retain and safely store, service and continually maintain all such policies and documents related thereto as are required by this Paragraph. All insurance coverage maintained pursuant to this Paragraph shall be without contribution by the Fiscal Agent and shall be issued by insurance companies having a general policyholder's rating and financial rating acceptable to the Governmental Lender.

**9. INSURANCE TO BE MAINTAINED BY THE GOVERNMENTAL LENDER SERVICER.** The Governmental Lender Servicer shall maintain at all times during the existence of this Agreement, at its own expense, blanket fidelity insurance and errors and omissions insurance covering the Governmental Lender Servicer's officers and employees and other persons acting on behalf of the Governmental Lender Servicer relating to the Governmental Lender Servicer's performance of this Agreement. The amount of coverage of such policies shall be at least equal to the coverage that would be required by the Funding Lender with respect to the Governmental Lender Servicer if the Governmental Lender Servicer were servicing mortgage loans for the Funding Lender relating to the Governmental Lender Servicer's performance of its obligations under this Agreement. All such policies of insurance shall be issued by an insurance company, with coverage satisfactory to the Governmental Lender and the Governmental Lender Servicer and shall name the Governmental Lender and the Fiscal Agent as the insured under said policies. All premiums for such insurance shall be paid by the Governmental Lender Servicer at its own expense as a cost of doing business.

**10. NOTIFICATION TO THE FISCAL AGENT.** The Governmental Lender Servicer shall promptly notify the Governmental Lender, the Borrower, the Funding Lender and the Fiscal Agent of any of the following which may come to the attention of the Governmental Lender Servicer with respect to the Mortgage:

A. Any failure of the Borrower to perform any covenant of obligation, applicable to it, under the Loan Documents (of which the Governmental Lender Servicer has knowledge) if such failure continues for a period of fifteen (15) days, or lesser period, if so provided in any Loan Document.

B. Abandonment of the Property.

C. Any lack of repair or the deterioration or waste suffered or committed in respect to the Property.

D. Any other matter which would adversely or materially affect or result in diminution of value of the security described herein and in the Mortgage.

E. Any loss or damage by fire or any hazard to the mortgaged property requiring repairs costing in excess of FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS to restore the Property of its condition prior to such loss or damage.

**11. DEFAULT OF BORROWER.** The Governmental Lender Servicer shall not at any time, without the express written consent of the Governmental Lender, the Funding Lender and the Fiscal Agent, consent to a postponement of compliance on the part of the Borrower with any of the terms and provisions of the Borrower Loan Agreement, the Mortgage, or any other Loan Document, or in any manner grant an extension or waiver to the Borrower, subject to the applicable provisions of the Funding Loan Agreement and Borrower Loan Agreement. The Governmental Lender Servicer shall only act at the written direction given to it by the Fiscal Agent or the Governmental Lender. The Fiscal Agent, at the written direction of the Funding Lender, shall have the right to institute and prosecute any foreclosure proceedings of the Mortgage through an attorney selected and directed by the Fiscal Agent, and the Governmental Lender Servicer agrees to cooperate with such proceedings.

**12. FISCAL AGENT ACTION.** Subject to Section 11.4(h) of the Funding Loan Agreement, the Fiscal Agent shall conduct all such foreclosure proceedings and take title to the Property in the name of such other party as designated in the Mortgage and Funding Loan Agreement.

In such event, the Governmental Lender Servicer shall be released from the obligations to conduct and be responsible for such foreclosure proceedings.

**13. REPRESENTATIONS OF THE GOVERNMENTAL LENDER SERVICER.** The Governmental Lender Servicer covenants, warrants and represents to the Governmental Lender and the Borrower as follows:

A. The Governmental Lender Servicer is a duly organized corporation under the laws of the State of Florida is in good standing in such jurisdiction and in the State of Florida, and is authorized to conduct business in the State of Florida; that it is authorized to execute, deliver and perform this Agreement and all other documents and agreement required hereunder, and in so doing, that it will not violate any law, any provision of its charter or bylaws or any other agreement of instrument binding upon it.

B. The Governmental Lender Servicer shall comply with all applicable laws and the provisions of the Loan Documents.

C. The Governmental Lender Servicer shall cause any funds advanced to the Governmental Lender Servicer by the Fiscal Agent under this Agreement to be deposited with a financial institution the deposits of which are insured by FDIC or by any successor agency or instrumentality of the United States government; and will cause such financial institution to designate said funds as escrow funds for the benefit of the Fiscal Agent; and will cause such financial institution of execute an agreement providing that it will not exercise any powers of right of offset or banker's lien against such escrow funds.

D. The Governmental Lender Servicer hereby waives and releases any lien or encumbrances which it might at any time have or be able to claim against any property or funds held by the Fiscal Agent or the Governmental Lender, except monies on deposit in the Expense Fund (or similar account under the Funding Loan Agreement) and available for such payment under the Funding Loan Agreement.

**14. BORROWER'S REPRESENTATIONS AND WARRANTIES.** As of the Closing Date, the Borrower represents and warrants to the Governmental Lender, the Fiscal Agent and the Governmental Lender Servicer as follows:

A. Valid Existence. That it is a duly organized and validly existing limited partnership in good standing under the laws of the State, with full power and authority to consummate the transactions contemplated hereby.

B. Unencumbered Land. That the Borrower is indefeasibly seized of a fee simple title in the Land and has full power and lawful right to mortgage the same, and that the Land is free and clear of all encumbrances, except current taxes and assessments which are not yet due and payable and Permitted Encumbrances as defined in the Funding Loan Agreement.

C. No Mechanic's Liens. That no materials of any kind have been placed on the Land by anyone, and no work or labor has been performed, thereon that has not been paid for; there are no unpaid bills for labor, materials, supplies or services furnished upon the Land; and no notice of commencement or claim of lien affecting the Land or the Improvements has been filed in the public records of the County which has not been provided to and approved by the Governmental Lender, and no such notice of commencement or claim of lien will be so filed prior to the recording of the Mortgage . The Borrower covenants, however, that it will, immediately upon notification of recordation of the Mortgage, cause to be executed and filed of record among the public records of the County, a notice of commencement, as required by Chapter 713, Florida Statutes, as amended, and a certified copy thereof to be posted on the Land and to remain so posted during the period of rehabilitation, all in accordance with the applicable provisions of Chapter 713, Florida Statutes, as amended.

D. Plans Approved. Except as provided in the next succeeding sentence, by the date of commencement of rehabilitation, the Plans shall have been approved by the Governmental Lender Servicer and the Inspecting Engineer on behalf of the Governmental Lender, and to the extent required by applicable law or any effective restrictive covenant, by all governmental authorities having jurisdiction thereover and the beneficiary of any such covenant, respectively.

E. Utilities. That all utilities services necessary for the rehabilitation of the Improvements and the operation thereof for their intended purpose, are or will be available prior to commencement of rehabilitation, for the use of the Borrower at the Land, including water supply, storm and sanitary sewer facilities, electric, and telephone services.

F. Access. That adequate vehicular, pedestrian and utility access for reasonably direct ingress, egress and service, to and from the Land from publicly owned and maintained paved roadways are or will be available when needed at the Land.

G. Licenses and Permits. That all necessary licenses and permits will be obtained as soon as each is reasonably obtainable so as to permit the rehabilitation and completion of the Improvements, and operation of the Property.

H. Labor and Materials. That all labor and materials contracted for or utilized in connection with the rehabilitation of the Improvements shall be used and employed solely on the Land and in said rehabilitation and shall be substantially in accordance with the Plans.

I. Monies in Trust. That the monies disbursed under this Agreement shall constitute a trust fund and shall be used solely for the payment of the Costs of the Improvements and for no other purpose, unless another use is specifically provided for in this Agreement or another Loan Document, or is consented to in writing by the Governmental Lender and Fiscal Agent prior to any such usage.

J. No Suits Pending. That there are no actions, suits, or proceedings pending, or, to the knowledge of the Borrower, threatened against or affecting it or the Land or involving the validity or enforceability of the Mortgage or the priority of the lien thereof, at law or in equity, or before or by any governmental authority except actions, suits and proceedings fully covered by insurance or which, if adversely determined, would not substantially impair the ability of the Borrower to pay when due any amounts which may become payable in respect to the Borrower Loan Agreement; and to the Borrower's knowledge it is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

K. No Violation of Agreements. That the consummation of the transactions hereby contemplated and performance of this Agreement and the Mortgage will not result in any breach of, or constitute default under, any mortgage, lease, bank loan or credit agreement, corporate charter, bylaws, partnership agreement, operating agreement, joint venture agreement, or other instrument to which the Borrower or its General Partner are a party or by which they may be bound or affected.

L. No Event of Default Under Loan Agreement. That no Event of Default presently exists under the Note, the Borrower Loan Agreement, the Mortgage, this Agreement or any other Loan Document, and no event has occurred and is continuing which with notice or the passage of time or either would constitute a default under the Note, the Borrower Loan Agreement, the Mortgage or this Agreement or any other Loan Document.

M. No Financial Impediments. That Borrower has no known or contingent liabilities, and no material financial obligations under other agreements to which Borrower is a party or by which the Land is bound other than those obligations incurred with regard to the



acquisition of the Land or in the ordinary course of the operation of the Property and those obligations arising out of or specified in the Mortgage, the other Loan Documents and the Borrower's partnership agreement.

N. Continuing Warranties. That each of the representations and warranties set forth in this Paragraph will be true on the date of each advance hereunder and the acceptance of any advance hereunder by the Borrower shall be deemed to be a reaffirmation of each and every one of said representations and warranties.

**15. COVENANTS OF THE BORROWER.** As of the Closing Date, and thereafter, the Borrower covenants and agrees with the Governmental Lender, the Fiscal Agent and the Governmental Lender Servicer as follows:

A. Survey. The Borrower shall forthwith, and prior to the initial disbursement of any funds hereunder or under the Loan Documents, furnish to the Governmental Lender Servicer, at the Borrower's expense, a current survey, which survey shall meet all requirements of the Title Insurance Company (including any flood requirements), so as to enable the Title Insurance Company to eliminate any exception for survey matters from the Title Insurance Policy, and which survey shall locate all recorded restrictions and easements by recording references. Upon the completion of the Improvements, the Borrower shall furnish to the Governmental Lender Servicer and the Fiscal Agent a final completion survey showing the Improvements completed and properly located on the Land. Such survey shall be made by a civil engineer or surveyor reasonably acceptable to the Governmental Lender Servicer and the Governmental Lender and shall be paid for by the Borrower and shall be on a form and contain such matters as may reasonably be required by the Governmental Lender Servicer and the Governmental Lender.

B. Insurance. The Borrower shall furnish and pay, or cause to be furnished and paid, the premiums for fire and extended coverage insurance as well as insurance against such other hazards (i) as required under the Borrower Loan Agreement and the Mortgage, or (ii) if greater, as may be reasonably required by the Governmental Lender and the Governmental Lender Servicer, including flood insurance if required, with a company or companies meeting the reasonable requirements of the Governmental Lender and the Mortgage, said policies to be in full replacement value of the Improvements and covering the same, said policies to be in such amount, in such form and with such deductibles as are reasonably acceptable to the Governmental Lender and the Governmental Lender Servicer. Loss under such insurance policies shall be payable in accordance with the relevant provisions of the Mortgage and said policies shall provide that they shall not be cancelable without at least thirty (30) days' prior written notice by the insurer to the Fiscal Agent and the Governmental Lender. The Borrower shall also furnish at the Borrower's expense, or cause to be furnished, such workers' compensation insurance as may be reasonably required by law. Evidence of the foregoing shall be provided to the Fiscal Agent prior to the initial disbursement of funds. All insurance policies identified herein shall be renewed at least twenty (20) days prior to expiration with notice of renewal provided the Fiscal Agent. The provisions herein are

intended to be consistent with and to impose the same insurance obligations as set forth in the Borrower Loan Agreement and the Mortgage.

C. Rehabilitation in Workmanlike Manner. The Borrower shall rehabilitate, or cause to be rehabilitated, the Improvements on the Land in a true, thorough and workmanlike manner and in substantial accordance with the Plans. The Borrower shall provide, or cause to be provided, at the Borrower's cost, all manner of materials, labor, scaffolding, implements and other items of every description as are required for the complete rehabilitation of the Improvements. The Borrower shall not make any material changes in the Plans or materially deviate therefrom, except with the prior written consent of the Governmental Lender and the Governmental Lender Servicer which approval will not be unreasonably withheld or delayed and except with respect to change orders that do not require the consent of the Governmental Lender or the Governmental Lender Servicer pursuant to Section 17D of this Agreement. The question of materiality will be solely and reasonably decided by the Governmental Lender or the Governmental Lender Servicer in light of the Plans submitted, existing building standards and the public purpose of the Property.

D. Lien Releases. The Borrower shall furnish all receipted bills, certificates, affidavits, receipts, releases of lien, approved bonds and any other documents which may be required or allowed by the lien laws of the State, or which may be reasonably required by the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent or the Title Insurance Company providing the Title Insurance Policy, as evidence of full payment or acceptable bond for all labor and materials incident to the rehabilitation of the Improvements, and will promptly secure the release (except for liens which are the subject of a bond as herein described) of the Land from any and all liens that might be imposed thereon. The Borrower specifically reserves the right to contest any such liens, provided such liens are properly transferred to a surety bond or cash deposit in accordance with Florida law.

E. Compliance with Borrower Loan Agreement. The Borrower shall comply with and perform each and every one of the provisions, terms, conditions, requirements and contingencies embodied in the Borrower Loan Agreement and the other Loan Documents required to be complied with by Borrower and shall execute all instruments required to completely comply with and perform the same, and shall abide by, complete and carry out all of the Borrower's representations, proposals and commitments made in the Loan Documents.

F. No Further Encumbrances. The Borrower will not convey, encumber or impose a security interest on its interest in the Land or the Improvements in any way without the consent of the Governmental Lender and the Fiscal Agent, except as permitted in the Mortgage; nor shall the Borrower assign any rights under this Agreement or any advance or portion of any advance to be made hereunder without the Governmental Lender's and the Fiscal Agent's prior written consent. All proposed easements affecting the Land shall be submitted to the Governmental Lender Servicer for its reasonable approval prior to the execution thereof by the Borrower and shall be accompanied by a drawing or survey adequate to show the proposed location thereof.

G. Right of Entry. The Borrower will permit the Governmental Lender, the Fiscal Agent and the Governmental Lender Servicer and their authorized employees, agents or representatives to enter upon the Land after reasonable prior notice during normal business hours, to inspect the Improvements and all materials to be used in the rehabilitation thereof, and to examine all detailed plans and shop drawings which are or may be kept at the construction site and all books and records of the Borrower and the Contractor relating to the Land, and will cooperate and cause the Contractor to cooperate with the Governmental Lender, the Fiscal Agent and/or the Governmental Lender Servicer and their representatives to enable them to perform their functions hereunder. It is expressly agreed that any inspection made by the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or their representatives shall be made solely and exclusively for the protection and benefit of each of them and neither the Borrower nor any third party shall be entitled to claim any loss or damage either against the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or its employees, agents or representatives for failure to properly discharge any alleged duties of the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer and they shall have no duty to make such inspections.

H. Correct Non-Complying Work. The Borrower agrees that it will cause to be corrected at no cost to the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer, any work performed and replace any material that does not substantially comply with the Plans.

I. Additional Documents. The Borrower agrees to execute any and all such other and further instruments as may reasonably be required by the Governmental Lender or Fiscal Agent from time to time in order to carry out the provisions of this Agreement, the Loan Documents or for the purpose of protecting, maintaining, or enforcing the Governmental Lender's and the Fiscal Agent's security for the Loan.

J. Insufficiency of Loan Proceeds. Unless otherwise agreed in writing by the Governmental Lender and the Governmental Lender Servicer, the Borrower covenants, warrants and agrees that it will provide from its own funds such amounts as may be necessary to pay for all Costs of the Improvements which are in excess of the disbursements required to be made by the Fiscal Agent hereunder and other available and identified funds (as approved by the Governmental Lender Servicer), and in the event of any default hereunder (subject to any applicable notice and cure periods), the Governmental Lender Servicer shall not be required to approve any disbursement hereunder if the undisbursed proceeds of the Loan together with all other available and identified funds shall be less than the amount necessary to pay for the completion of the Improvements. If the Governmental Lender or the Governmental Lender Servicer at any time determine in their reasonable judgment from any certification, report, cost projection, work stoppage, price or wage change or from any other source or for any reason, that the Cost of the Improvements will exceed those costs and projections estimated by the Borrower or the Governmental Lender and certified to the Governmental Lender Servicer from time to time, and that the undisbursed proceeds of the Loan (plus any and all funds of the Borrower deposited with the Fiscal Agent together with all other available and identified funds)

shall be less than the amount necessary, in the Governmental Lender's or the Governmental Lender Servicer's reasonable judgment, to pay for all work done or to be done and all other expenses for completion of the Improvements, or that any amount specified in the Budget may be less than the amount necessary (taking into account all other available and identified funds which are so approved by the Governmental Lender Servicer), in the Governmental Lender's or the Governmental Lender Servicer's reasonable judgment, to pay for all work done or to be done and all expenses incurred or to be incurred in connection with the Improvements, then in such event, the Fiscal Agent shall, if directed by the Governmental Lender, withhold further disbursements to the Borrower until the Borrower shall have provided a sufficient plan to pay for all work done or to be done and expenses incurred or to be incurred in connection with the Improvements, to the reasonable satisfaction of the Governmental Lender, including but not limited to the requirement that collateral sufficient to cover such costs be posted with or for the benefit of the Fiscal Agent.

K. Construction Contract. Except as otherwise provided herein with respect to change orders that do not require consent, the Borrower shall not amend the Construction Contract in any manner without the prior written consent of the Governmental Lender, the Funding Lender and the Governmental Lender Servicer.

## **16. TERMINATION.**

A. By the Fiscal Agent. The Fiscal Agent, at the written direction of the Governmental Lender, shall have the right to terminate the Governmental Lender Servicer's rights and obligations under this Agreement, without cause, upon ten (10) days' written notice to the Governmental Lender Servicer, and with cause, upon such written notice as the Governmental Lender deems reasonable under the circumstances. If the Governmental Lender Servicer shall be terminated pursuant to this Section 16.A., the Governmental Lender shall cause notice of such termination to be sent to the Borrower and the Funding Lender.

B. Automatic Termination. Upon the occurrence of any one or more of the following events, the Governmental Lender Servicer's rights and obligations under this Agreement shall be automatically terminated:

(1) The Governmental Lender Servicer shall assign or attempt to assign its rights or obligations under this Agreement.

(2) The Governmental Lender Servicer shall institute proceedings for voluntary bankruptcy or shall file a petition seeking reorganization under the Federal Bankruptcy Laws or for relief under any other law for the relief of debtors or shall consent to the appointment of a receiver of all or substantially all of its property, or make a general assignment for the benefits of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall be adjudicated bankrupt or insolvent by a court of competent jurisdiction, or if an order shall be made by a court of competent jurisdiction appointing a receiver, liquidator or Fiscal Agent of the

Governmental Lender Servicer or of all or substantially all of its property or approving any petition filed against the Governmental Lender Servicer for its reorganization, and such adjudication or order shall remain in force or unstayed for a period of thirty (30) days.

(3) The Governmental Lender Servicer shall fail to perform any of its obligations hereunder and shall fail, within thirty (30) days after written notice from the Fiscal Agent or the Governmental Lender, to correct or cure such failure.

(4) The Property is no longer subject to any federal regulation dealing with tax-exempt financed housing projects.

(5) The amounts owed by the Borrower under the Loan Documents are paid in full.

C. Effect of Termination. In the event this Agreement is terminated pursuant to this Paragraph 16, then the rights and obligations of the Governmental Lender Servicer and its right to compensation hereunder shall immediately terminate, the Governmental Lender Servicer shall forthwith deliver to the Governmental Lender or to whomever the Governmental Lender directs, all documents relating to the Loan and shall do such other acts as may reasonably be required by the Governmental Lender to facilitate the termination hereof.

D. Upon termination of the rights and duties of the Governmental Lender Servicer hereunder (other than pursuant to Section 16B(5) hereof, the Fiscal Agent and the Borrower shall join the Governmental Lender in entering into a substantially similar agreement with a replacement Governmental Lender Servicer designated by the Governmental Lender.

## **17. AGREEMENTS RELATING TO CONTRACTORS.**

A. Rights Inferior. The rights of all contractors, subcontractors, sub-subcontractors, laborers, suppliers and materialmen performing any work in connection with the Improvements, or furnishing any services, labor or materials thereto or to the Land, shall be subordinate and inferior to the Mortgage. Neither the Fiscal Agent nor the Governmental Lender shall be liable to materialmen, contractors, subcontractors, sub-subcontractors, laborers, suppliers or others for goods or services delivered by them in or upon the Land or employed in the rehabilitation of the Improvements, or for any debts or claims accruing to any of said parties against the Borrower or against the Land, and it is distinctly understood and agreed that there is no contractual relationship, either express or implied, between either the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer and any materialmen, contractors, sub-contractors, sub-subcontractors, craftsmen, laborers or any person supplying any work, labor or material. The Borrower is not, and shall not be, the agent of either the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer for any purpose, nor shall any of them be the agent of Borrower for any purpose, except, as to both, as may be specifically set forth herein. It is specifically

understood and agreed that no party shall be a third party beneficiary hereunder, except and unless it is specifically provided herein that any provision shall operate or inure to the use and benefit of a party, i.e., no subcontractor, sub-subcontractor or materialman, laborer or supplier shall have any rights hereunder against the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or be entitled to the protection of any of the covenants herein contained.

B. Borrower's Rights Assigned. The Borrower hereby assigns to the Governmental Lender and Fiscal Agent, effective, however, only after an Event of Default and the expiration of applicable cure periods, all rights of the Borrower under its contract with the Contractor and under its contract with the Architect and the Governmental Lender or the Fiscal Agent shall have the option after an Event of Default, and the expiration of applicable cure periods, in its sole discretion and in addition to any other rights and remedies the Governmental Lender or the Fiscal Agent may have, to exercise their rights under this assignment. Nothing herein shall be construed, however, to require the Governmental Lender or the Fiscal Agent to exercise any rights under this Paragraph.

C. No Other Contracts. Except for items set forth and approved by the Governmental Lender Servicer in the Budget, the Borrower represents that it has not and agrees that it will not enter into any significant contract or agreement (in excess of \$50,000) relating to the rehabilitation, purchase or installation of the Improvements other than the contracts with the property manager, the Developer, the Architect and the Contractor and a contract with its surveyors or engineers, nor will the Borrower agree to any material modification or amendment in its contract with the property manager, the Contractor or the Architect without first obtaining the Governmental Lender Servicer's written approval of and consent to such contract, agreement or amendment, which consent shall not be unreasonably withheld or delayed for more than five (5) days after receipt of said notice.

D. Change Orders. The Borrower covenants and warrants that any change order of \$25,000 or more, shall require the prior written approval of the Governmental Lender Servicer, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Governmental Lender Servicer shall be provided with copies of all change orders, regardless of amount. Change orders that do not require the consent of the Governmental Lender Servicer shall not be deemed material.

E. No Joint Venture. Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between the Borrower and the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer with respect to the Loan.

## **18. EVENTS OF DEFAULT.**

A. Subject in all instances to the provisions of subparagraph B of this Section 18 and the provisions of the Funding Loan Agreement, including but not limited to the

right of the Funding Lender to control all proceedings under Section 9.3 of the Funding Loan Agreement, and Section 8.2.1 of the Borrower Loan Agreement, an Event of Default under this Agreement shall, at the Governmental Lender's option, be deemed to have occurred hereunder if:

(1) Default Under Loan Documents. Any Event of Default, as defined therein, shall occur under any of the other Loan Documents which is not cured within any applicable grace or cure period; or

(2) Breach of Covenant. The Borrower shall breach or fail to perform, observe or meet any material covenant or condition in this Agreement within thirty (30) days after written notice thereof or such longer period of time in the reasonable discretion of the Governmental Lender Servicer if such default cannot reasonably be cured within thirty (30) days and Borrower is diligently prosecuting a cure to completion; or

(3) Filing of Liens Against the Land. Any lien for labor, materials, or taxes (except for ad valorem taxes not yet due and payable) or otherwise shall be filed against Borrower's interest in the Land and not be either released (by payment, bonding or otherwise) within the earlier of forty (40) days after the date of filing thereof or thirty (30) days after the Borrower receives actual notice thereof or properly contested as provided for in the Mortgage , except as disclosed in the pending litigation schedule attached hereto as Exhibit "C" and made a part hereof; or

(4) Judgment Against Borrower. Any final judgment shall be entered against the Borrower or the General Partner, which the Borrower or the General Partner has not appealed and which could reasonably be expected to impair the ability of the Borrower to perform each and every one of its respective obligations under and by virtue of the Loan Documents; or

(5) Levy Upon The Property. A levy shall be made under any process on, or a receiver be appointed for, the Property or any part thereof and not dismissed within thirty (30) days; or

(6) Bankruptcy. The Borrower or the General Partner shall commit any act of bankruptcy; or any proceeding under bankruptcy laws or other debtor-relief or similar laws shall be brought against the Borrower or the General Partner which is not dismissed within sixty (60) days; or the Borrower or the General Partner shall file for or take advantage of any form of reorganization or arrangement under any bankruptcy law or other debtor-relief or similar law or proceeding; or

(7) Assignment for the Benefit of Creditors. The Borrower or the General Partner shall make a general assignment for the benefit of creditors; or

(8) Abandonment or Cessation of Construction/Rehabilitation. Construction/rehabilitation of the Improvements shall cease and not be resumed within thirty (30) days thereafter, unless the Borrower is prevented from resuming same as a result of Force Majeure, or shall be abandoned for more than thirty (30) days; or

(9) Denial of Inspection. The Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or representatives shall not be permitted, at all reasonable times and after reasonable notice, to enter upon the Land, to inspect the Improvements and the construction/rehabilitation thereof and all materials, fixtures, and articles used or to be used in the construction/rehabilitation of the Improvements, and to examine all detailed plans, shop drawings, specifications and other records which relate to the Improvements, or the Borrower shall fail to furnish to the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or to their authorized representatives, when reasonably requested, copies of such plans, shop drawings, specifications, and records; or

(10) Improper Materials. Any of the materials, fixtures, machinery, equipment, articles and/or personal property used in the rehabilitation of the Improvements or the appurtenances thereto, or to be used in the operation thereof, shall not, in the reasonable opinion of the Governmental Lender Servicer or the Governmental Lender, confirmed by the Inspecting Engineer, substantially comply with the Plans as approved by the Governmental Lender and such default is not cured by the Borrower within forty-five (45) days after the Governmental Lender Servicer or the Fiscal Agent has given notice to the Borrower to cure same; or

(11) Materials Not Free and Clear. The Borrower shall not, except in the case of leased washing machines, dryers, vending machines, office telephones, office equipment, office communications equipment and model furniture and other items normally used in common by tenants, execute (other than to the Governmental Lender or the Fiscal Agent or any mortgage constituting a Permitted Encumbrance) any conditional bill of sale, chattel mortgage, security agreement or other security instrument covering any materials, fixtures, machinery, equipment, articles, and/or personal property intended to be incorporated in the Improvements or the appurtenances thereto, or placed in the Improvements, or if a financing statement publishing notice of such security instrument shall be filed, or if any of such materials, fixtures, machinery, equipment, articles, and/or personal property shall not be purchased so that the ownership thereof will vest unconditionally in the Borrower, free from encumbrances other than the Governmental Lender and the Fiscal Agent or any mortgage constituting a Permitted Encumbrance, on delivery at the Land, or if the Borrower shall not produce to the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer upon demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which the Borrower claims title to any thereof; or



(12) Failure to Complete Improvements. The Improvements, in the reasonable judgment of the Governmental Lender Servicer or the Governmental Lender, are not, or cannot reasonably be, completed on or before the Completion Date (as defined in the Funding Loan Agreement), subject, however, to force majeure; or

(13) False Representation or Warranty. At any time any representation, warranty or statement made by the Borrower in any Loan Document shall be incorrect or misleading in any material respect when made and such matter not be cured within thirty (30) days of the giving of notice thereof to the Borrower by the Governmental Lender or the Fiscal Agent.

Notwithstanding anything herein to the contrary, this Paragraph shall in no way be construed to limit the Governmental Lender's, the Fiscal Agent's or the Governmental Lender Servicer's right to seek specific performance of this Agreement against the Borrower or to enforce its remedies under Paragraph 20 hereof or to, unless the Funding Lender has elected to control all proceedings following an Event of Default as provided in Section 9.3 of the Funding Loan Agreement, withhold approval of a Requisition until the Borrower is in compliance with this Agreement.

B. Notice of Default; Opportunity to Cure. Except as set out below no default under the preceding Section shall constitute an Event of Default hereunder until:

(1) The Governmental Lender Servicer by registered or certified mail, shall give notice to the Governmental Lender, the Funding Lender, the Borrower, the Borrower's investor limited partner and the Fiscal Agent of such default specifying the same and stating that such notice is a "Notice of Default"; and

(2) The Borrower shall have had thirty (30) days (or such extended period as permitted by the Governmental Lender and the Funding Lender when curative action is being diligently pursued (approved in writing with notice to the Fiscal Agent and the Governmental Lender Servicer) after receipt of such notice to correct the default and shall not have corrected it or, if such default cannot be corrected within thirty (30) days, shall have failed to initiate and diligently pursue (in the sole reasonable judgment of the Governmental Lender) appropriate corrective action. The Borrower's investor limited partner shall have the right, but not the obligation to cure any default.

Notwithstanding the foregoing, notice of and opportunity to cure any default arising from a default under the other Loan Documents shall be governed by the terms of such agreements, and no additional notices of or opportunity to cure any default under such agreements shall be required hereunder to complete the notice and cure procedure provided in such agreements.

## **19. MISCELLANEOUS PROVISIONS:**

A. No Waiver. Nothing herein shall be construed to waive or diminish any right or security of the Governmental Lender, Funding Lender or the Fiscal Agent under the Borrower Loan Agreement and the Mortgage. It is the purpose and intent hereof to provide safeguards, protections and rights for the Governmental Lender, Funding Lender and the Fiscal Agent in addition to those provided in the Borrower Loan Agreement and Mortgage.

B. Cumulative Remedies. The remedies provided herein shall be in addition to and not a substitution for the rights and remedies which would otherwise be vested under any Loan Document or in law or equity, all of which rights and remedies are specifically reserved. The remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent, Funding Lender or the Governmental Lender Servicer shall be cumulative and may be exercised separately or concurrently and as often as the occasion therefor may arise. The failure to exercise any of the remedies herein shall not constitute a waiver thereof, nor shall use of any of the remedies hereby provided prevent the subsequent or concurrent use of any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent, Funding Lender or the Governmental Lender Servicer shall continue and be each and all available until all sums due by reason of the Borrower Loan Agreement or the Mortgage are paid in full and all obligations incurred by the Borrower in connection with the rehabilitation or operation of the Improvements have been fully discharged.

C. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns. The Borrower may be released from obligations and agreements hereunder only by a written instrument of the Fiscal Agent and the Governmental Lender specifically providing for such release. The Borrower shall be released from any and all liability hereunder, upon payment of the Loan in full and the expiration of the Qualified Project Period. The Funding Lender shall be an express third party beneficiary hereof.

D. Assignability. This Agreement shall not be assignable by the Borrower or the Governmental Lender Servicer without the prior written consent of the Funding Lender and the Governmental Lender and the Fiscal Agent. If the Governmental Lender and the Fiscal Agent approve an assignment hereof by the Borrower, the Fiscal Agent shall be entitled to make advances to such assignee and such advances shall be secured by the Loan Documents.

E. Governing Law. This Agreement shall be construed under the laws of the State of Florida, regardless of where it may have been executed or delivered.

F. Construction. Whereas this Agreement was negotiated with input from all parties hereto, this Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

G. [Reserved].

H. Invalid Provisions. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby, nor shall such terms be invalid or unenforceable under other, dissimilar facts and circumstances.

I. Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning, content, or interpretation hereof.

J. Amendments. This Agreement shall not be amended or modified except by an amendment in writing, executed by all parties hereto in the same form as this Agreement.

K. Time of Essence. Time is of the essence of this Agreement.

L. Right to Publicize. The Governmental Lender and the Governmental Lender Servicer shall have the right to publicize its involvement in the financing of the Property and may require the Borrower to name the Governmental Lender as its mortgage lender in all publicity releases and promotional materials issued in connection with the Property.

M. Dealings with the Governmental Lender Servicer. The Governmental Lender Servicer shall be protected and shall incur no liability in acting or proceeding in good faith upon resolution, notice, telegram, consent, wavier, certificate, affidavit, voucher, bond, title insurance commitment or policy or endorsement thereto or other paper or document which it shall in good faith reasonably believe (i) to be genuine and, (ii) to have been passed or prepared and furnished pursuant to the provisions of the Funding Loan Agreement, the Land Use Restriction Agreement, the Mortgage or the Borrower Loan Agreement, and the Governmental Lender Servicer shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements unless the instrument on its face reasonably indicated that the Governmental Lender Servicer should inquire further or unless the Governmental Lender Servicer has actual knowledge or information which reasonably should cause the Governmental Lender Servicer to inquire further. The Governmental Lender Servicer shall not be held liable under this Agreement except for its own negligence or willful misconduct or gross negligence. The Borrower shall indemnify and hold the Governmental Lender Servicer harmless from any claim, action or liability of any kind or character whatsoever arising from or in any way related to acts or omissions of the Borrower or any of its agents, employees, consultants, counsel, or independent contractors. This Paragraph shall in no way be construed to relieve the Governmental Lender Servicer of the normal and usual duties of a reasonably prudent loan servicer or monitoring agent.

N. Terms. Wherever used herein, the terms utilized shall include masculine, feminine, neuter, singular and/or plural, as the context admits or requires.

O. Conflicts. Notwithstanding anything herein to the contrary, the terms and conditions of the Note, the Borrower Loan Agreement and the Mortgage shall govern, control and prevail, in the event of any conflict between the terms and conditions hereof and those contained in the Note, the Borrower Loan Agreement and the Mortgage .

**20. REMEDIES.** Subject to the terms of the Land Use Restriction Agreement, upon the occurrence of any Event of Default which is not cured within the applicable cure period, the Governmental Lender (or the Fiscal Agent or the Governmental Lender Servicer), shall be entitled to seek specific performance hereof against the Borrower, and/or in addition to any other right or remedy available to it in law or equity. It is specifically agreed by the Borrower that a violation of this Agreement or the Land Use Restriction Agreement could cause harm for which no damages could be calculated, therefore entitling the Governmental Lender to immediate equitable relief, including without limitation a temporary restraining order or mandatory injunction without notice.

**21. [RESERVED.]**

**22. EXERCISE OF RIGHTS BY GOVERNMENTAL LENDER.** Notwithstanding any provision herein to the contrary, the Governmental Lender Servicer shall approve or disapprove all advances requested hereunder by the Borrower and in accordance with the Loan Documents and in accordance with the credit underwriting guidelines of the Governmental Lender.

**23. [RESERVED.]**

**24. NOTICES.** Any notice required to be given hereunder shall be given by personal delivery, by registered U.S. mail or by expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt of sent by registered U.S. Mail.

The Governmental  
Lender:

Jacksonville Housing Finance Authority  
214 N. Hogan Street, 7th Floor  
Jacksonville, Florida 32202  
Attention: Finance Director  
Telephone: (904) 255-8200  
Facsimile: (904) 255-8244

The Fiscal Agent:

The Bank of New York Mellon  
Trust Company, N.A.  
10161 Centurion Parkway N.  
Jacksonville, Florida 32256

Attention: Corporate Trust Department  
Telephone: (904) 645-1900  
Telecopier: (904) 645-1930

The Governmental  
Lender Servicer:

Seltzer Management Group, Inc.  
17633 Ashley Drive  
Panama City, Florida 32413  
Attention: Ben Johnson  
Telephone: (850) 233-3616 ext. 223  
Telecopier: (813) 233-1429

To the Borrower:

Monaco Arms Preservation, Ltd.  
c/o Lincoln Avenue Capital, LLC  
201 Santa Monica Boulevard  
Suite 550  
Santa Monica, California 90401  
Attention: Jonathan A. Gruskin  
Telephone: (424) 222-8259

and a copy to:

Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 W. Flagler Street  
Suite 2200  
Miami, Florida 33130  
Attention: Brian McDonough  
Telephone: (305) 789-3350  
Email: bmcdonough@stearnsweaver.com

To Funding Lender:

Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Re: Monaco Arms Apartments ID# 25795  
Facsimile: (212) 723-8209

With copies to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: Monaco Arms Apartments ID# 25795  
Facsimile: (805) 557-0924

Prior to the Conversion Citibank, N.A.

Date, with a copies to            388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: Monaco Arms Apartments ID# 25795  
Facsimile: (212) 723-8209

Following the Conversion    Citibank, N.A.  
Date, with a copies to:        c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002

**25. ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement among the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent and the Borrower as to the subject matter hereof, and all prior agreements, negotiations and understandings with respect thereto are merged into and superseded by this Agreement.

**26. WAIVER OF TRIAL BY JURY. THE BORROWER, THE GOVERNMENTAL LENDER, THE FISCAL AGENT AND THE GOVERNMENTAL LENDER SERVICER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER LOAN DOCUMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF PARTIES, WHETHER IN CONNECTION WITH THE MAKING OF THE LOAN, COLLECTION OF THE LOAN, OR OTHERWISE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE GOVERNMENTAL LENDER TO MAKE INTO THE LOAN EVIDENCED BY THE LOAN AGREEMENT.**

**(SIGNATURE PAGES TO FOLLOW)**

**SIGNATURE PAGE TO  
CONSTRUCTION LOAN AND MORTGAGE  
SERVICING AGREEMENT  
(MONACO ARMS APARTMENTS)**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

**MONACO ARMS PRESERVATION, LTD.,**  
a Florida limited partnership

By: Monaco Arms GP LLC, a Delaware limited liability  
company, its General Partner

By: \_\_\_\_\_  
Name: Jonathan A. Gruskin  
Title: Vice President

[Construction Loan and Mortgage Servicing Agreement – Monaco Arms Apartments]

**SIGNATURE PAGE TO  
CONSTRUCTION LOAN AND MORTGAGE  
SERVICING AGREEMENT  
(MONACO ARMS APARTMENTS)**

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY**

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

Name: William I. Gulliford, III

Title: Chair

[Construction Loan and Mortgage Servicing Agreement – Monaco Arms Apartments]



**SIGNATURE PAGE TO  
CONSTRUCTION LOAN AND MORTGAGE  
SERVICING AGREEMENT  
(MONACO ARMS APARTMENTS)**

**SELTZER MANAGEMENT GROUP, INC.,** a  
Florida corporation

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

Name: Ben Johnson

Title: President

[Construction Loan and Mortgage Servicing Agreement – Monaco Arms Apartments]

**SIGNATURE PAGE TO  
CONSTRUCTION LOAN AND MORTGAGE  
SERVICING AGREEMENT  
(MONACO ARMS APARTMENTS)**

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

By: \_\_\_\_\_  
Name: Michele R. Noel  
Title: Vice President

[Construction Loan and Mortgage Servicing Agreement – Monaco Arms Apartments]

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

#### **PARCEL A:**

THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE CITY OF JACKSONVILLE, COUNTY OF DUVAL, STATE OF FLORIDA, TO WIT:

THAT CERTAIN TRACT OR PARCEL OF LAND BEING A PORTION OF THE WEST 600 FEET OF LOT 2 OF A SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 49, TOWNSHIP 1 SOUTH, RANGE 26 EAST, ACCORDING TO PLAT RECORDED IN PLAT BOOK 1, PAGES 7 AND 8 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY BOUNDARY OF SAID JOHN BROWARD GRANT, THE SAME BEING THE NORTHERLY BOUNDARY OF EAST HIGHLANDS ACCORDING TO PLAT RECORDED IN PLAT BOOK 26, PAGES 34 AND 34A OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY, WITH THE EASTERLY RIGHT-OF-WAY LINE OF MONACO DRIVE, A 60-FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE NORTH 00°26'40" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID MONACO DRIVE, 731.54 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF BECKNER AVENUE (A 60 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED) RECORDED IN OFFICIAL RECORDS VOLUME 2788, PAGE 435 OF SAID COUNTY; THENCE NORTH 89°30'25" EAST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE AND PARALLEL WITH SAID SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT, 539.64 FEET TO THE EASTERLY BOUNDARY LINE OF THE WEST 600 FEET OF SAID LOT 2; THENCE SOUTH 00°30'58" EAST, ALONG SAID EASTERLY BOUNDARY LINE 731.79 FEET TO THE SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT; THENCE SOUTH 89°32'01" WEST ALONG SAID SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT, BEING THE SAME AS THE NORTHERLY BOUNDARY LINE OF AFOREMENTIONED EAST HIGHLANDS, A DISTANCE OF 540.65 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MONACO DRIVE AND THE POINT OF BEGINNING.

#### **PARCEL B:**

EASEMENT RIGHTS GRANTED IN THAT GRANT OF EASEMENT DATED JULY 2,1971 RECORDED IN O.R. BOOK 3239, PAGE 837, SAID EASEMENT PERTAINING TO THE FOLLOWING DESCRIBED LAND:

A PART OF LOT 2, OF A SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 49, TOWNSHIP 1 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 3, BLOCK 7, EAST HIGHLANDS, PLAT BOOK 26, PAGES 34 AND 34A OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 89°28'20" EAST ALONG THE NORTHERLY LINE OF NORTH PANAMA AS RECORDED IN PLAT BOOK 5, PAGE 9 OF SAID PUBLIC RECORDS, A DISTANCE OF 243.06 FEET TO THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 2425, PAGE 512 AND THE POINT OF BEGINNING; THENCE NORTH 00°31'30" WEST, ALONG THE EASTERLY LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 2425, PAGE 512 AND OFFICIAL RECORDS VOLUME 645, PAGE 310, A DISTANCE OF 310 FEET; THENCE NORTH 89°28'20" EAST, 20 FEET; THENCE SOUTH 00°31'30" EAST, 300 FEET; THENCE NORTH 89°28'20" EAST, 282.73 FEET TO THE

CENTER OF AN EXISTING 70 FOOT EASEMENT AS RECORDED IN OFFICIAL RECORDS VOLUME 2500 PAGE 581; THENCE SOUTH 03°14'34" WEST ALONG SAID CENTERLINE, 10.02 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF SAID NORTH PANAMA; THENCE SOUTH 89°28'20" WEST ALONG SAID NORTHERLY LINE, A DISTANCE OF 302.07 FEET TO THE POINT OF BEGINNING.

**EXHIBIT "B"**

**BUDGET AND CONSTRUCTION DRAW SCHEDULE**

**EXHIBIT "C"**

**PENDING LITIGATION SCHEDULE**

[\_\_\_\_\_]

**EXHIBIT F**  
**FORM OF FINANCIAL MONITORING AGREEMENT**

**FINANCIAL MONITORING AGREEMENT  
(MONACO ARMS APARTMENTS)**

**THIS FINANCIAL MONITORING AGREEMENT** (the "Agreement") is made as of May 1, 2019, by and among the **JACKSONVILLE HOUSING FINANCE AUTHORITY**, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Governmental Lender"), **SELTZER MANAGEMENT GROUP, INC.** (the "Monitoring Agent"), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, Jacksonville, Florida, a national banking association, in its capacity as Fiscal Agent (in such capacity, the "Fiscal Agent"), and **MONACO ARMS PRESERVATION LTD.**, a Florida limited partnership (the "Borrower").

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

**WHEREAS**, all capitalized terms in this Agreement not otherwise defined shall have the meanings set forth in the Funding Loan Agreement or the Borrower Loan Agreement (hereinafter defined); and

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of Chapter 159, Part IV, Florida Statutes, as amended (the "Act"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe and sanitary housing for persons or families of low, moderate or middle income in Duval County, Florida (the "County"); and

**WHEREAS**, the Act authorizes the Governmental Lender; (a) to make loans to sponsors to provide financing for residential developments located within the County, and intended to be occupied to the extent required by applicable state or federal tax law by persons or families of low, moderate and middle income; (b) to issue revenue bonds for the purpose of obtaining monies to make such loans and provide such financing and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds; and

**WHEREAS**, pursuant to resolutions of the Governmental Lender adopted on February 20, 2019 and [\_\_\_\_], 2019, respectively, the Governmental Lender has authorized, approved and issued \$[\_\_\_\_] aggregate principal amount of its Jacksonville Housing Finance Authority Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019A and \$[\_\_\_\_] Multifamily Mortgage Revenue Note (Monaco Arms Apartments), Series 2019B (collectively, the "Governmental Lender Notes") pursuant to that certain Funding Loan Agreement dated as of May 1, 2019 between the Governmental Lender and the Fiscal Agent (the "Funding Loan Agreement"); and



**WHEREAS**, pursuant to its lawful authority under the Act, the Governmental Lender has entered into that certain Borrower Loan Agreement dated May 1, 2019 (the "Borrower Loan Agreement"), by and between the Governmental Lender and the Borrower, by the terms of which the Governmental Lender has agreed to loan the proceeds of the Governmental Lender Notes to the Borrower (the "Loan") for the purpose of providing funds to acquire, rehabilitate and equip a multifamily residential development located on property within the County, to be known as Monaco Arms Apartments (the "Project"); and

**WHEREAS**, The Governmental Lender has contracted with Seltzer Management Group, Inc., its successors and assigns, to serve as the Monitoring Agent for the Project pursuant to the terms and conditions of this Agreement.

**NOW THEREFORE**, for the consideration contained herein, the Governmental Lender, the Borrower and the Monitoring Agent agree as follows:

1. Seltzer Management Group, Inc., its successors and assigns, is designated the Monitoring Agent for the Project for a term equal to the Qualified Project Period (as defined in the Land Use Restriction Agreement) or until terminated in accordance with this Agreement.
2. The duties of the Monitoring Agent shall be to:
  - A. Perform financial monitoring of the Loan.
  - B. Obtain and maintain certain financial information for the Governmental Lender with regard to the Project.
  - C. Provide the Governmental Lender with written reports in a form approved by the Governmental Lender.
  - D. Provide the Governmental Lender with a report on the Project's annual budget within 60 days after the beginning of the Project's Fiscal Year.
  - E. Provide the Governmental Lender with a report on the Project's mid-year operating results within 90 days after the Project's mid-year.
  - F. Provide the Governmental Lender with a report on the Project's year-end operating results within 90 days after the Project's year-end.
  - G. Provide the Governmental Lender with a report summarizing the Project's audited financial performance within 160 days after the end of the Project's Fiscal Year.
  - H. Provide the Governmental Lender with an annual Executive Summary Report within 160 days after the end of the Project's Fiscal Year.

3. For the purposes of this Agreement, Financial Monitoring shall mean:
  - A. Obtain the Project's mid-year operating results in a form approved by the Governmental Lender. The Monitoring Agent will review the interim operating results and annualize the numbers, the Monitoring Agent shall compare the annualized results to projections. The Monitoring Agent shall report any unusual variances or trends and provide a copy of the analysis to the Governmental Lender.
  - B. Obtain the Project's annual audited financial statements when due. The Monitoring Agent shall provide an analysis of the Project's balance sheet, income statement, and any other schedules, in a form approved by the Governmental Lender. The Monitoring Agent shall compare actual year end results to projections and budget (if applicable).
  - C. Provide a written report to the Governmental Lender summarizing the results of the financial statement analysis within 160 days after the end of the Project's fiscal year end. (This assumes that the Project submits its annual audited financial statements within 120 days after year end, thus allowing the Monitoring Agent 40 days for which to complete the analysis.).
4. As set forth in paragraph 8, for the above described services, the Monitoring Agent shall be paid 0.015% basis points per annum on the principal amount of Governmental Lender Notes outstanding on the Project, with a \$2,061 minimum fee per annum. On January 1 of each year, the minimum fee shall be adjusted, but not decreased, based on the South Region Consumer Price Index for the twelve month period ending each November 30<sup>th</sup>. This automatic increase shall not exceed 3% of the prior year's fees.
5. The Borrower hereby agrees to pay the fee described above and to provide the Monitoring Agent reasonable access to the Project and Project records at reasonable times and upon reasonable notice so as to allow the Monitoring Agent to fulfill its obligations to the Governmental Lender. The Borrower further agrees to provide the Monitoring Agent on behalf of the Governmental Lender the following documents:
  - A. Annual budget for the Project not later than thirty 30 days prior to the beginning of each Fiscal Year of the Project. The annual budget should be in the form attached hereto as Exhibit A.
  - B. Interim operating results within 45 days after the end of the Project's mid-year. Mid-year Operating Statements should be in the form attached hereto as Exhibit B.

- C. End of year operating results within 45 days after the Project's year-end. End of year Operating Statements should be in the form attached hereto as Exhibit C.
  - D. Annual Audited Financial Statements for the Project within 120 days of the end of the Borrower's Fiscal Year.
  - E. Certified rent roll as of the last day of the last month of the Project's Fiscal Year.
  - F. Month by month occupancy reports on a monthly basis shall be provided commencing on the first month following the issuance of the Project's first certificate of occupancy.
  - G. Schedule of Capital Repairs/Improvements for the current Fiscal Year and for any projected Fiscal Years beyond the current Fiscal Year to the extent not contained in the Annual Budget.
6. The Governmental Lender agrees to provide the Monitoring Agent with a Project description including unit mix information, with income and expense projections which were provided to the Monitoring Agent in conjunction with the underwriting of the Loan.
7. This Agreement may be terminated by the Governmental Lender, with or without cause, upon 10 days' written notice to the Monitoring Agent. Such termination does not relieve the Borrower from its obligation to pay any fees owed hereunder.
8. The Borrower shall provide compensation for the services rendered by the Monitoring Agent hereunder in accordance with the following provisions:
- A. The annual compensation of the Monitoring Agent for the monitoring services specified hereunder shall be paid by the Fiscal Agent, immediately upon receipt of corresponding fees paid by the Borrower to the Fiscal Agent pursuant to an invoice delivered by the Monitoring Agent to the Borrower and the Fiscal Agent, in an amount equal to [\_\_\_\_\_] % per annum of the principal balance of the Governmental Lender Notes outstanding as of each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 (prior to any principal reduction on such date) or a minimum fee of \$2,061 per annum, payable each \_\_\_\_\_ 1 and \_\_\_\_\_ 1. On January 1<sup>st</sup> of each year, the minimum fee shall be adjusted, but not decreased, based on the South Region Consumer Price Index for the twelve month period ending each November 30<sup>th</sup>. This automatic increase shall not exceed 3% of the prior year's fees.

- B. The Monitoring Agent's rights to compensation hereunder for monitoring services shall cease upon the occurrence of any of the following events:
    - (1) the end of the Qualified Project Period (as defined in the Land Use Restriction Agreement);
    - (2) notification by the Fiscal Agent to the Monitoring Agent that its services or this Agreement shall be terminated by the Governmental Lender or the Fiscal Agent with the Governmental Lender's consent, with or without cause.
  - C. No termination fee shall be due the Monitoring Agent in the event this Agreement is terminated (with or without cause) by the Governmental Lender or the Fiscal Agent.
  - D. Any fees not paid by the Borrower may be paid upon written direction from the Governmental Lender, by the Fiscal Agent (from amounts available under the Indenture) and charged against the Loan unless Borrower gives the Governmental Lender and the Fiscal Agent written notice that such fees are disputed prior to such fee being paid by the Fiscal Agent.
9. The parties hereto acknowledge that other persons or parties may have access to the reports described herein in that they may become public records of the Governmental Lender.
10. The persons executing this Agreement acknowledge and represent that they have the legal authority to execute this document and to commit the party for which they are executing to the terms of this Agreement.
11. This Agreement and the information provided to the Governmental Lender hereunder are solely for the information, benefit and use of the Governmental Lender and the Governmental Lender undertakes no responsibility or obligation hereby to any third party, including, without limitation, the Noteholders, to monitor, assure or enforce the performance by the Borrower of its obligations with respect to the Loan or the Project. No other party, including without limitation, the Noteholders, shall be entitled to rely on the information and services of the Monitoring Agent hereunder.

[SIGNATURE PAGES TO FOLLOW]

**SIGNATURE PAGE FOR  
FINANCIAL MONITORING AGREEMENT  
(MONACO ARMS APARTMENTS)**

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and affixed their seals the day and year first above written.

**MONACO ARMS PRESERVATION, LTD.,**  
a Florida limited partnership

By: Monaco Arms GP LLC, a Delaware limited liability  
company, its General Partner

By: \_\_\_\_\_  
Name: Jonathan A. Gruskin  
Title: Vice President

**SIGNATURE PAGE FOR  
FINANCIAL MONITORING AGREEMENT  
(MONACO ARMS APARTMENTS)**

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY**

By: \_\_\_\_\_  
Name: William I. Gulliford, III  
Title: Chair

**SIGNATURE PAGE FOR  
FINANCIAL MONITORING AGREEMENT  
(MONACO ARMS APARTMENTS)**

**SELTZER MANAGEMENT GROUP, INC.,** a  
Florida corporation

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

Print: Ben Johnson

Title: President

**SIGNATURE PAGE FOR  
FINANCIAL MONITORING AGREEMENT  
(MONACO ARMS APARTMENTS)**

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

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

Name: Michele R. Noel

Title: Vice President



**EXHIBIT A**  
**FORM OF ANNUAL BUDGET**

**EXHIBIT B**  
**FORM OF MID-YEAR OPERATING STATEMENT**

**EXHIBIT C**  
**FORM OF YEAR-END OPERATING STATEMENT**

**EXHIBIT G**

**FORM OF ASSIGNMENT**

**OF MORTGAGE AND LOAN DOCUMENTS**

THIS INSTRUMENT PREPARED BY:

Andrew L. Kramer, Esq.  
Robinson & Cole LLP  
Chrysler East Building  
666 Third Avenue, 20th Floor  
New York, New York 10017

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Citibank, N.A.  
Transaction Management Group/Post Closing  
388 Greenwich Street, 8th Floor  
New York, New York 10013  
Attention: Tanya Jimenez  
Re: Monaco Arms Apartments I & II Deal ID No. 25795

ABOVE SPACE RESERVED FOR  
RECORDING PURPOSES ONLY

**ASSIGNMENT OF MORTGAGE  
AND LOAN DOCUMENTS**

KNOW ALL PERSONS BY THESE PRESENTS:

**JACKSONVILLE HOUSING FINANCE AUTHORITY**, a public body corporate and politic and duly organized and existing under the laws of the State of Florida (“**Assignor**”), pursuant to that certain Funding Loan Agreement, dated as of the date hereof (“**Funding Loan Agreement**”), by and among Assignor, The Bank of New York Mellon Trust Company, N.A., as fiscal agent (“**Fiscal Agent**”), and **CITIBANK, N.A.**, a national banking association (“**Funding Lender**”, and together with Fiscal Agent, collectively, as their interests appear, “**Assignee**”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents assign, without recourse, to Assignee as their respective interests may lie all of Assignor’s right, title and interest in and to, subject to the [Unassigned Rights] (as defined in the Funding Loan Agreement), the instruments (“**Assigned Instruments**”) described on Schedule 1 attached hereto.

TOGETHER with the Note described in the Assigned Instruments, and the money due and to become due thereon, with the interest thereon, TO HAVE AND TO HOLD the same unto the said Assignee forever, subject only to all the provisions contained therein, AND the said Assignor hereby constitutes and appoints the Assignee as the Assignor’s true and lawful attorney, irrevocable in law or in equity, in the Assignor’s name, place and stead, but at Assignee’s cost and expense, to have, use and take all lawful ways and means for the recovery of all of the said money and interest; and in case of payment, to discharge the same as fully as the Assignor might or could if these presents were not made.

**Overriding Limitations.** In no event shall Assignor:

(i) prosecute its action to a lien on the Project, as defined in that certain Borrower Loan Agreement by and between Monaco Arms Preservation, Ltd., a Florida limited partnership (“**Borrower**”), and Assignor (the “**Borrower Loan Agreement**”); or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by Assignee or Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by Borrower under the Borrower Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan.

**Definitions.** All capitalized terms that are used and are not defined herein shall have the respective meanings ascribed to them in the Funding Loan Agreement or Borrower Loan Agreement. In all references herein to any parties, persons, entities or corporations the use of any particular gender on the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

Dated as of the 1st day of May, 2019 (the foregoing date is for reference purposes only and this Assignment shall not be effective until the Closing Date, as defined in the Borrower Loan Agreement).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Assignment of Mortgage and Loan Documents or caused this Assignment of Mortgage and Loan Documents to be duly executed and delivered by its authorized representative as of the date first set forth above.

**ASSIGNOR:**

**WITNESSES:**

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY**, a public body corporate and  
politic and duly organized and existing under  
the laws of the State of Florida

\_\_\_\_\_

Name:

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

Name:

\_\_\_\_\_

Name:

Title:

**ACKNOWLEDGEMENT**

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by \_\_\_\_\_, \_\_\_\_\_ of **JACKSONVILLE HOUSING FINANCE  
AUTHORITY**, a public body corporate and politic and duly organized and existing under the  
laws of the State of Florida, who is personally known to me, or who has produced  
\_\_\_\_\_ as identification and who did/did not take an oath:

[Notary Seal must be affixed]

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Name of Notary (Typed, Printed or Stamped)

Commission Number

(if not legible on seal):

My Commission Expires

(if not legible on seal):

**SCHEDULE 1  
TO  
ASSIGNMENT OF DEED OF TRUST  
AND LOAN DOCUMENTS**

**ASSIGNEE:**

The Bank of New York Mellon Trust Company, N.A.  
10161 Centurion Parkway North  
Jacksonville, Florida 32256

Citibank, N.A.  
388 Greenwich Street, 8th Floor  
New York, New York 10013

**ASSIGNED INSTRUMENTS:**

1. Multifamily Note (Fixed Rate) by Borrower, to Assignor, dated as of the Closing Date, in the original principal amount of up to [\$\_\_\_\_\_].
2. Multifamily Note (Variable Rate) by Borrower, to Assignor, dated as of the Closing Date, in the original principal amount of up to [\$\_\_\_\_\_].
3. Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, executed by Borrower for the benefit of Assignor securing the principal amount of up to \$16,400,000, which is being recorded immediately prior hereto in the Clerk's Office of Duval County, Florida, and encumbers the real property (and improvements thereon) that is more particularly described on **Exhibit A**.



## **EXHIBIT A**

### **LEGAL DESCRIPTION**

The Mortgaged Property referred to herein below is situated in the County of Duval, State of Florida, and is described as follows:

#### **PARCEL A:**

THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE CITY OF JACKSONVILLE, COUNTY OF DUVAL, STATE OF FLORIDA, TO WIT:

THAT CERTAIN TRACT OR PARCEL OF LAND BEING A PORTION OF THE WEST 600 FEET OF LOT 2 OF A SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 49, TOWNSHIP 1 SOUTH, RANGE 26 EAST, ACCORDING TO PLAT RECORDED IN PLAT BOOK 1, PAGES 7 AND 8 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY BOUNDARY OF SAID JOHN BROWARD GRANT, THE SAME BEING THE NORTHERLY BOUNDARY OF EAST HIGHLANDS ACCORDING TO PLAT RECORDED IN PLAT BOOK 26, PAGES 34 AND 34A OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY, WITH THE EASTERLY RIGHT-OF-WAY LINE OF MONACO DRIVE, A 60-FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE NORTH 00°26'40" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID MONACO DRIVE, 731.54 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF BECKNER AVENUE (A 60 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED) RECORDED IN OFFICIAL RECORDS VOLUME 2788, PAGE 435 OF SAID COUNTY; THENCE NORTH 89°30'25" EAST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE AND PARALLEL WITH SAID SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT, 539.64 FEET TO THE EASTERLY BOUNDARY LINE OF THE WEST 600 FEET OF SAID LOT 2; THENCE SOUTH 00°30'58" EAST, ALONG SAID EASTERLY BOUNDARY LINE 731.79 FEET TO THE SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT; THENCE SOUTH 89°32'01" WEST ALONG SAID SOUTHERLY BOUNDARY LINE OF SAID BROWARD GRANT, BEING THE SAME AS THE NORTHERLY BOUNDARY LINE OF AFOREMENTIONED EAST HIGHLANDS, A DISTANCE OF 540.65 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MONACO DRIVE AND THE POINT OF BEGINNING.

#### **PARCEL B:**

EASEMENT RIGHTS GRANTED IN THAT GRANT OF EASEMENT DATED JULY 2, 1971 RECORDED IN O.R. BOOK 3239, PAGE 837, SAID EASEMENT PERTAINING TO THE FOLLOWING DESCRIBED LAND:

A PART OF LOT 2, OF A SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 49, TOWNSHIP 1 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 3, BLOCK 7, EAST HIGHLANDS, PLAT BOOK 26, PAGES 34 AND 34A OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 89°28'20" EAST ALONG THE NORTHERLY LINE OF NORTH PANAMA AS RECORDED IN PLAT BOOK 5, PAGE 9 OF SAID PUBLIC RECORDS, A DISTANCE OF 243.06 FEET TO THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 2425, PAGE 512 AND THE POINT OF BEGINNING; THENCE NORTH 00°31'30" WEST, ALONG THE EASTERLY LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 2425, PAGE 512 AND OFFICIAL RECORDS VOLUME 645, PAGE 310, A DISTANCE OF 310 FEET; THENCE NORTH 89°28'20" EAST, 20 FEET; THENCE SOUTH 00°31'30" EAST, 300 FEET; THENCE NORTH 89°28'20" EAST, 282.73 FEET TO THE CENTER OF AN EXISTING 70 FOOT EASEMENT AS RECORDED IN OFFICIAL RECORDS VOLUME 2500 PAGE 581; THENCE SOUTH 03°14'34" WEST ALONG SAID CENTERLINE, 10.02 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF SAID NORTH PANAMA; THENCE SOUTH 89°28'20" WEST ALONG SAID NORTHERLY LINE, A DISTANCE OF 302.07 FEET TO THE POINT OF BEGINNING.

## **SECOND AMENDED AND RESTATED RESOLUTION**

**RESOLUTION OF THE JACKSONVILLE HOUSING FINANCE AUTHORITY (THE "AUTHORITY") AMENDING AND RESTATING A PRIOR RESOLUTION REGARDING THE OFFICIAL ACTION OF THE AUTHORITY RELATIVE TO THE ISSUANCE OF NOT TO EXCEED \$17,750,000 AGGREGATE PRINCIPAL AMOUNT OF ITS MULTIFAMILY HOUSING REVENUE BONDS (THE WAVES PROJECT), SERIES 2019, FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS RELATED TO THE CONSTRUCTION OF MULTIFAMILY RESIDENTIAL HOUSING FACILITIES FOR PERSONS OR FAMILIES OF LOW, MIDDLE OR MODERATE INCOME; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Jacksonville Housing Finance Authority desires to adopt this Resolution (the "Resolution") amending and restating in its entirety its prior resolution adopted on March 21, 2018 in connection with the Project (as defined below); and

**WHEREAS**, The Waves of Jacksonville, Ltd. and its permitted successors and assigns (the "Company") has applied to the Jacksonville Housing Finance Authority (the "Authority") to: (a) issue its Multifamily Housing Revenue Bonds (The Waves Project), Series 2019 in a principal amount not to exceed \$17,750,000 (the "Bonds") for the purpose of financing all or a portion of the costs related to the construction of scattered site multifamily residential housing facilities to be located at 1<sup>st</sup> Ave. S., SE of the intersection of 1<sup>st</sup> Ave. S. and 8<sup>th</sup> St. S., 1<sup>st</sup> Ave. S., NW of intersection of 1<sup>st</sup> Ave. S. and 9<sup>th</sup> St. S., 1<sup>st</sup> Ave. S., NE of the intersection of 1<sup>st</sup> Ave. S. and 9<sup>th</sup> St. S., 2<sup>nd</sup> Ave. S., NE of intersection of 2<sup>nd</sup> Ave. S. and 8<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., NW of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., NE of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SW of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SE of intersection of 5<sup>th</sup> Ave. S. and 8<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SE of the intersection of 5<sup>th</sup> Ave. S. and 7<sup>th</sup> Street S., all to be located in Jacksonville Beach, Duval County, Florida 32250, consisting of a total of approximately 127 units to be commonly known as The Waves (the "Project"), to be occupied by low, middle or moderate income persons in accordance with the Company's application submitted to the Authority, and (b) loan the proceeds of the Bonds to the Company pursuant to Chapter 159, Part IV, Florida Statutes, or such other provision or provisions of Florida law as the Authority may determine advisable (collectively, the "Act"); and

**WHEREAS**, a determination by the Authority to issue the Bonds under the Act, if so requested by the Company, in one or more issues or series not exceeding an aggregate principal amount of \$17,750,000 and to loan the proceeds thereof to the Company to finance the Project under a loan agreement or other financing agreement which will provide that payments thereunder be at least sufficient to pay the principal of and interest and redemption premium, if

any, on such Bonds and such other costs in connection therewith as may be incurred by the Authority, will assist the Company and promote the purposes provided in the Act; and

**WHEREAS**, the Company has executed and delivered that certain Preliminary Agreement, as amended, between the Authority and the Company relating to the issuance of the Bonds, the form of which is attached hereto as EXHIBIT A (the "Preliminary Agreement"); and

**WHEREAS**, in order to satisfy certain of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, the Authority held a public hearing on the proposed issuance of the Bonds on March 20, 2019 for the purposes herein stated, which hearing was scheduled at least fourteen (14) days following the publication of notice of public hearing in a newspaper of general circulation in Duval County, Florida (the "County") (a form of such notice is attached hereto as EXHIBIT B), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on both the issuance of such Bonds and the location and nature of the portion of the Project to be financed with the proceeds therefrom; and

**WHEREAS**, it is intended that this Resolution ("Resolution") shall constitute official action toward the issuance of the Bonds within the meaning of the applicable United States Treasury Regulations.

**NOW, THEREFORE, BE IT DETERMINED AND RESOLVED BY THE JACKSONVILLE HOUSING FINANCE AUTHORITY THAT:**

**SECTION 1. APPROVAL OF THE PROJECT.** The construction of the Project and the financing thereof by the Authority through the issuance of the Bonds, pursuant to the Act, will promote the health and welfare of the citizens of the County and will thereby serve the public purposes of the Act.

**SECTION 2. EXECUTION AND DELIVERY OF THE PRELIMINARY AGREEMENT.** The Chair has executed, for and on behalf of the Authority, the Preliminary Agreement, providing understandings relative to the proposed issuance of the Bonds by the Authority to finance the Project in an aggregate principal amount not to exceed the lesser of: (a) \$17,750,000 or (b) the cost of the Project, as determined by the Authority.

**SECTION 3. AUTHORIZATION OF THE BONDS.** Subject to receipt by the Authority of at least \$17,750,000 of private activity bond allocation from the Division of Bond Finance, there is hereby authorized to be issued and the Authority hereby determines to issue the Bonds, if so requested by the Company and subject to the conditions set forth in the Preliminary Agreement and any subsequent resolution of the Authority related to the Bonds, in one or more issues or series in an aggregate principal amount not to exceed \$17,750,000 for the purpose of financing the Project. The Bonds shall be designated "Jacksonville Housing Finance Authority Multifamily Housing Revenue Bonds (The Waves Project), Series 2019" or such other name or series designation as the Authority may subsequently determine. The Bonds shall not

be issued unless such Bonds are in compliance with the applicable terms and conditions of the Authority's Multifamily Bond Allocation Policies and Procedures and Program Handbook (revised September 2018). The rate of interest payable on the Bonds shall not exceed the rate permitted by law.

**SECTION 4. RECOMMENDATION FOR APPROVAL TO CITY COUNCIL OF THE CITY OF JACKSONVILLE, FLORIDA.** The Authority hereby recommends the issuance of the Bonds and the financing of the Project for approval to the City Council of the City of Jacksonville, Florida (the "City"). The Authority hereby directs the Chair or Vice Chair, at the expense of the Company, to seek approval for the issuance of the Bonds and the financing of the Project by the City as the applicable elected representatives of the County under and pursuant to the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended.

**SECTION 5. GENERAL AUTHORIZATION.** The Chair, the Vice Chair, the Secretary and counsel for the Authority, the Authority's financial advisor and bond counsel, are hereby further authorized to proceed, with the undertakings provided for in the Preliminary Agreement on the part of the Authority and are further authorized to take such steps and actions as may be required and necessary in order to cause the Authority to issue the Bonds subject to the terms and conditions set forth herein and in the Preliminary Agreement.

**SECTION 6. AFFIRMATIVE ACTION.** This Resolution is an affirmative action of the Authority toward the issuance of the Bonds, as contemplated in the Preliminary Agreement, in accordance with the purposes of the laws of the State of Florida (the "State") and the applicable United States Treasury Regulations.

**SECTION 7. APPROVAL OF NOTICE OF PUBLIC HEARING.** The publishing of the notice of public hearing was previously approved by the Authority and the hearing was held on March 20, 2019. The notice of public hearing attached hereto as EXHIBIT B is a copy the final notice of public hearing. The public hearing is required by Section 147(f) of the Code and was held by the Director of Finance, related to the Project and the Bonds.

**SECTION 8. LIMITED OBLIGATIONS.** The Bonds and the interest and premium, if any, thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the City, the County, the State or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to, among other things, a trust indenture, a loan agreement or financing agreement and a land use restriction agreement prior to or contemporaneously with the issuance of the Bonds.

**SECTION 9. LIMITED APPROVAL.** The approval given herein shall not be construed as (a) an endorsement of the creditworthiness of the Company or the financial ability of the Project, (b) a recommendation to any prospective purchaser of the Bonds, (c) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (d) an approval of any necessary re-zoning applications nor for any other regulatory permits relating to the Project and the Authority shall not be construed by reason of its adoption of this Resolution to have made

any such endorsement, finding or recommendation or to have waived any right of the City's or the Authority's rights or estopping the City or the Authority from asserting any rights or responsibilities it may have in that regard.

**SECTION 10. SEVERABILITY.** If any one or more of the covenants, agreements or provisions of this Resolution, or any of the documents attached hereto or contemplated hereby, should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Resolution.

**SECTION 11. EFFECTIVE DATE.** This Resolution shall become effective immediately upon its passage.

**APPROVED AND ADOPTED** by the Jacksonville Housing Finance Authority this 3rd day of May, 2019.

[SEAL]

**JACKSONVILLE HOUSING  
FINANCE AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
William I. Gulliford, III, Chair

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

**APPROVED AS TO LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Office of the General Counsel

## **EXHIBIT LIST**

- EXHIBIT A – FORM OF PRELIMINARY AGREEMENT
- EXHIBIT B – NOTICE OF PUBLIC HEARING



**EXHIBIT A**  
**FORM OF PRELIMINARY AGREEMENT**

**FIRST AMENDMENT TO  
PRELIMINARY AGREEMENT**

This **FIRST AMENDMENT TO PRELIMINARY AGREEMENT** (this "First Amendment"), made and entered into as of February 20, 2019, between the **JACKSONVILLE HOUSING FINANCE AUTHORITY**, a body corporate and politic of the State of Florida (the "Authority"), and **THE WAVES OF JACKSONVILLE, LTD.**, a Florida limited partnership and its permitted successors and assigns (the "Company"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Original Agreement (as defined below).

**WITNESSETH:**

**WHEREAS**, the Authority and the Company previously entered into that certain Preliminary Agreement, dated as of March 30, 2018 (the "Original Agreement"); and

**WHEREAS**, the parties now desire to amend the Original Agreement as set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual agreements and covenants hereinafter contained, the sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**Section 1. Amendment.** All references to December 31, 2018 in the Original Agreement are hereby revised to December 31, 2019.

**Section 2. Applicability of Original Agreement.** Except as specifically amended and modified herein, the Original Agreement shall remain in full force and effect. This First Amendment shall not be construed as approving any subsequent amendment requests.

**Section 3. Counterparts.** This First Amendment may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

**Section 4. Laws.** This First Amendment shall be construed and governed in accordance with the laws of the State of Florida, Duval County.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the Authority and the Company have executed this First Amendment by duly authorized representatives, all as of the 20th day of February, 2019.

[SEAL]

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY**

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

**COMPANY:**

**THE WAVES OF JACKSONVILLE, LTD.,**  
a Florida limited partnership

By: The Waves GP, LLC, a Florida limited liability  
company, its sole general partner

**By: JACKSONVILLE HOUSING  
AUTHORITY**, a public body corporate and politic  
established pursuant to Chapter 421 of the Florida  
Statutes, its manager

By: \_\_\_\_\_  
Name: Fred McKinnies  
Title: President & CEO

## **PRELIMINARY AGREEMENT**

This **PRELIMINARY AGREEMENT** (this "Preliminary Agreement") dated as of March 30, 2018 between the **JACKSONVILLE HOUSING FINANCE AUTHORITY**, a body corporate and politic of the State of Florida (the "Authority"), and **THE WAVES OF JACKSONVILLE, LTD.**, a Florida limited partnership and its permitted successors and assigns (the "Company").

### **WITNESSETH:**

**SECTION 1. PRELIMINARY STATEMENT.** Among the matters of mutual understanding which have resulted in the execution of this Preliminary Agreement are the following:

(a) The Florida Housing Finance Authority Law (Chapter 159, Part IV, Florida Statutes), as amended (the "Act") provides that the Authority may issue its revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, or use such proceeds to defray the cost of acquiring, by purchase or construction, certain qualifying facilities.

(b) The Company is considering the construction of scattered site multifamily residential housing facilities for low, middle or moderate income persons to be located at 1<sup>st</sup> Ave. S., SE of the intersection of 1<sup>st</sup> Ave. S. and 8<sup>th</sup> St. S., 1<sup>st</sup> Ave. S., NW of intersection of 1<sup>st</sup> Ave. S. and 9<sup>th</sup> St. S., 1<sup>st</sup> Ave. S., NE of the intersection of 1<sup>st</sup> Ave. S. and 9<sup>th</sup> St. S., 1<sup>st</sup> Ave. S., SW of the intersection of 1<sup>st</sup> Ave. S. and 8<sup>th</sup> St. S., 1<sup>st</sup> Ave. S., SE of intersection of 1<sup>st</sup> Ave. S. and 6<sup>th</sup> St. S., 2<sup>nd</sup> Ave. S., NE of intersection of 2<sup>nd</sup> Ave. S. and 8<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., NW of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., NE of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SW of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SE of intersection of 5<sup>th</sup> Ave. S. and 8<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SE of the intersection of 5<sup>th</sup> Ave. S. and 7<sup>th</sup> Street S., all to be located in Jacksonville Beach, Duval County, Florida 32250, to be more commonly known as The Waves (the "Project"). It is currently estimated that the cost related to the construction of the Project will be approximately \$23,377,628.

(c) The Authority intends this Preliminary Agreement to constitute its official binding commitment for purposes of the Act and applicable federal tax law only, subject to the terms hereof, to issue its Multifamily Housing Revenue Bonds (The Waves Project), Series 2018 in a principal amount not to exceed \$17,750,000 (the "Bonds") in one or more series or issues pursuant to the Act in a final amount to be determined by the Authority and to loan the proceeds thereof to the Company, or to use such proceeds, to finance all or a portion of the cost related to the construction of the Project, including all costs incurred in connection with the issuance of the Bonds by the Authority.

(d) The Authority considers the issuance and sale of the Bonds, for the purpose hereinabove set forth, consistent with the objectives of the Act. This commitment is an affirmative official action of the Authority toward the issuance of the Bonds as herein contemplated in accordance with the purposes of both the Act and the applicable United States Treasury Regulations provided, however, the commitment is specifically subject to the terms and

conditions set forth in this Preliminary Agreement and creates no rights of specific performance on the part of the Company.

**SECTION 2. UNDERTAKINGS ON THE PART OF THE AUTHORITY.** Subject to the terms hereof, the Authority agrees as follows:

(a) The Authority will authorize the issuance of the Bonds in the aggregate principal amount necessary and sufficient to finance all or a portion of the costs related to the construction of the Project as the Authority and the Company shall agree in writing, but in all events, the principal amount of such Bonds shall not exceed the lesser of: (i) the costs related to the Project, as determined by the Authority, or (ii) \$17,750,000.

(b) Such actions and documents may, at the option of the Authority, permit the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether *pari passu* with other series of bonds or otherwise, for the purpose of defraying the cost of completion, enlargements, improvements and expansion of the Project, or any segment thereof, or refunding of the Bonds.

(c) The loan or financing agreement between the Authority and the Company (the "Loan Agreement") shall, under the terms agreed upon by the parties, provide for payments to be made by the Company in such sums as shall be necessary to pay the amounts required under the Act including the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable.

(d) In authorizing the loan of the proceeds of the Bonds pursuant to the Loan Agreement, the Authority will make no warranty, either expressed or implied, that the proceeds of the Bonds will be sufficient to pay all costs of the construction of the Project or that those facilities encompassed by the Project will be suitable for the Company's purposes or needs.

(e) The Bonds shall specifically provide that they are payable solely from the revenues derived from the Loan Agreement, the Trust Indenture relating to the Bonds (the "Indenture") or other agreements approved by the Authority, except to the extent payable out of amounts attributable to the proceeds of the Bonds. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the Authority, the general credit of the City of Jacksonville, Duval County, Florida or of the State of Florida (the "State"), and such fact shall be plainly stated on the face of the Bonds.

**SECTION 3. UNDERTAKINGS ON THE PART OF THE COMPANY.** Subject to the terms hereof, the Company agrees as follows:

(a) The Company will use reasonable efforts to insure that the Bonds in the aggregate principal amount as stated above are sold; provided, however, that the terms of such Bonds and of the sale and delivery thereof shall be mutually satisfactory to the Authority and the Company.

(b) The Company will cooperate with the Authority and with the underwriters or purchasers of the Bonds and the Authority's counsel, financial advisor and bond counsel with respect to the issuance and sale of the Bonds and will take such further action and authorize the execution of such documents as shall be required by the Authority for the authorization, issuance

and sale of such Bonds and the use of the proceeds thereof to finance the cost related to the construction of the Project all in accordance with the Authority's policies and procedures.

(c) Prior to the issuance of the Bonds, the Company will enter into the Loan Agreement, consent to the execution by the Authority of the Indenture, approve such other documents related to the Bonds, as shall be determined reasonably necessary by the Authority, providing for, among other things, the issuance, delivery and security for the Bonds and the loan or use of the proceeds of the Bonds to finance the Project. Such documents will provide, among other things, that the Company will be obligated to pay the Authority (or to trustees for holders of the Bonds on behalf of the Authority, as the case may be) sums sufficient in the aggregate to enable the Authority to pay the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable, and all other expenses related to the issuance and delivery of the Bonds inclusive of the Authority's ongoing fees. The Company will agree in such documents that if the cost related to the construction of the Project exceeds the amounts allocated therefor, it shall not be entitled to any additional reimbursement or funding for any such excess either from the Authority, the bondholders or the trustee for the bondholders.

(d) The Company shall be responsible for the Authority's up-front issuance fee in effect at the time the Bonds are issued and the fees of the Authority's counsel, underwriters, financial advisor and bond counsel.

(e) The Company shall, in addition to paying the amounts set forth in the Loan Agreement, pay all costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the Project.

(f) The Company will hold the Authority free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of the issuance, sale or delivery of the Bonds, as well as any mortgaging or other disposition of the Project.

(g) All costs of issuance, including, without limitation, the Authority's fees and counsel fees not paid at the time of application shall be paid in full at the time of the sale and delivery of the Bonds. The Company shall pay, upon request, a reasonable retainer to bond counsel to the Authority to compensate said counsel for legal services which must be performed whether or not the Bonds are actually issued. Any retainers so paid will be credited against the respective counsel fees payable at closing.

(h) The Company shall take all such actions such that the Bonds shall be issued in compliance with the applicable terms and conditions of the Authority's Multifamily Bond Allocation Policies and Procedures (revised November 2016).

(i) The Company will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

(j) Should the Company cancel this Preliminary Agreement in accordance with the terms hereof, the Company shall pay any and all of the Authority's fees and expenses including, without limitation, the fees and expenses of Authority's counsel, bond counsel and financial advisor.

**SECTION 4. GENERAL PROVISIONS.** All commitments of the Authority under Section 2 hereof and of the Company under Section 3 hereof are subject to the conditions that the following events shall have occurred not later than December 31, 2018, or such other date as shall be mutually satisfactory to the Authority and the Company:

(a) The Company shall deliver evidence satisfactory to the Authority's counsel and bond counsel (including such opinions issued by counsel to the Company acceptable to the Authority) that the Company is an entity organized and operated under the applicable laws of the State.

(b) The Authority shall have received at least \$17,750,000 of private activity bond allocation from the Division of Bond Finance and shall be lawfully entitled to issue the Bonds as herein contemplated.

(c) The Authority and the Company shall have agreed on mutually acceptable terms for the Bonds and the sale and delivery thereof and mutually acceptable terms and conditions of the Indenture, the Loan Agreement or other agreements incidental to the financing or referred to in Sections 2 and 3 hereof.

(d) Such other rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Authority as to such matters with respect to the Bonds, the Project, the Indenture, the Loan Agreement, as shall be specified by the Authority, shall have been obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competence or jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Bonds.

(e) Notwithstanding the designation as an "official binding commitment" for purposes of the Act and federal tax law, the Company and the Authority each reserve the absolute right to unilaterally cancel this Preliminary Agreement for reasonable cause at any time prior to the time the Bonds are issued by the Authority upon written notice to the other party of cancellation.

(f) If the events set forth in this Section 4 do not take place within the time set forth or any extension thereof, or if the Company or the Authority exercises its rights of cancellation as set forth in this Section 4, the Company shall pay any and all of the Authority's fees and expenses including, without limitation, the fees and expenses of Authority's counsel, bond counsel and financial advisor.

(g) The Company acknowledges that the Authority may, during the time this Preliminary Agreement is in effect, issue similar "inducement" agreements to other companies for other multifamily projects, and/or may issue bonds or participate jointly with other authorities to issue bonds for multifamily or single family housing. This Preliminary Agreement will create no priority or rights *vis a vis* subsequent agreements for the issuance of multifamily or single family bonds.

**SECTION 5. DEPOSIT FROM THE COMPANY.** Notwithstanding anything herein to the contrary, the Company has represented to the Authority that it expects to complete the

financing of the Project on or before the December 31, 2018, utilizing the Authority's private activity bond allocation. On the basis of the foregoing representation by the Company, the Authority has agreed to reserve \$17,750,000 of its private activity bond allocation for the Project and issue the Bonds on behalf of the Company, subject to the Company's compliance with, among other things, all other applicable guidelines, policies and procedures of the Authority, as well as the terms and conditions set forth herein. The Company acknowledges and agrees that failure to consummate the sale and delivery of the Bonds on or before December 31, 2018 will result in substantial damages to the Authority which cannot be easily or adequately measured. Consequently, in addition to the \$7,500 non-refundable application fee paid to the Authority and a fee paid to the Authority's creditor underwriter for the requisite credit underwriting fee to prepare the credit underwriting report, the Company shall deliver to the Authority on or before March 31, 2018: (a) a cashier's check in the amount of \$40,000 which reflects the required final document preparation deposit (the "Deposit"), and (b) a cashier's check in the amount of \$500 to cover the initial cost of publishing the TEFRA notice and conducting a hearing, all payable to the Authority and all of which shall be immediately cashed by the Authority. In addition, the Company shall pay a \$10,000 retainer to bond counsel (the "Retainer"). If Bonds are sold and delivered on or before the December 31, 2018, the Authority will deliver to the Company a check in the amount of the Deposit simultaneously with the sale and delivery of the Bonds. If for any reason Bonds are not sold and delivered on or before December 31, 2018, the Deposit shall be retained by the Authority as and for full liquidated damages for any defaults hereunder on the part of the Company unless this Agreement is cancelled by the Company for reasonable cause as provided in Section 4(e) hereof and as determined by the Authority. The Authority and the Company hereby agree that time is of the essence and it is the intent of the parties hereto that the provisions of this Preliminary Agreement be strictly construed. Should the Authority cancel this Preliminary Agreement in accordance with Section 4(e) hereof, then the Company shall be entitled to a return of the Deposit less the reasonable fees and expenses of the Authority including, without limitation, the fees and expenses of the Authority's counsel (other than bond counsel) and financial advisor.

The Project is subject to final approval from the Florida Housing Finance Corporation ("Florida Housing"). Notwithstanding anything in this Agreement to the contrary, should the Company not receive final approval from Florida Housing (including any challenges to said approval), the Company shall be entitled to a return of the Deposit less the reasonable fees and expenses of the Authority including, without limitation, the reasonable fees and expenses of the Authority's counsel (other than bond counsel) and financial advisor, and shall be entitled to a return of the Retainer less the reasonable fees and expenses of bond counsel.

**SECTION 6. BINDING EFFECT.** All covenants and agreements herein contained by or on behalf of the Authority and the Company shall bind and inure to the benefit of the respective successors and assigns of the Authority and the Company whether so expressed or not; provided, however, the Company may not assign this Preliminary Agreement.

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**SIGNATURE PAGE TO  
PRELIMINARY AGREEMENT  
(THE WAVES PROJECT)**

**IN WITNESS WHEREOF**, the parties hereto have entered into this Preliminary Agreement by their officers thereunder duly authorized on the date set forth above.

**AUTHORITY:**

**JACKSONVILLE HOUSING FINANCE  
AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
William I. Gulliford, III, Chair

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

Name: \_\_\_\_\_

Title: Assistant Secretary

**SIGNATURE PAGE TO  
PRELIMINARY AGREEMENT  
(THE WAVES PROJECT)**

**IN WITNESS WHEREOF**, the parties hereto have entered into this Preliminary Agreement by their officers thereunder duly authorized on the date set forth above.

**COMPANY:**

**THE WAVES OF JACKSONVILLE, LTD.,**  
a Florida limited partnership

By: The Waves GP, LLC, a Florida limited liability  
company, its sole general partner

**By: JACKSONVILLE HOUSING**  
**AUTHORITY**, a public body corporate and  
politic established pursuant to Chapter 421 of the  
Florida Statutes, its manager

**By:** \_\_\_\_\_  
Name: Fred McKinnies  
Title: President & CEO

**EXHIBIT B**  
**NOTICE OF PUBLIC HEARING**

## **NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN**, pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, of a public hearing by the Jacksonville Housing Finance Authority (the "Authority"), to be held on March 20, 2019 at 214 N. Hogan Street, 8th Floor, Room 825, Jacksonville, Florida, 32202, at 1:15p.m., or as soon thereafter as possible, for the purpose of receiving comments and hearing discussion concerning the issuance by the Authority of its Multifamily Housing Revenue Bonds (The Waves Project), Series 2019, in an aggregate face amount of not to exceed \$17,750,000 (the "Bonds"). The proceeds of the Bonds will be loaned to The Waves of Jacksonville, Ltd., or its permitted successors and assigns (the "Company"), and used for the purpose of financing all or a portion of the costs related to the construction of scattered site multifamily residential housing facilities for persons or families of low, middle or moderate income located at 1<sup>st</sup> Ave. S., SE of the intersection of 1<sup>st</sup> Ave. S. and 8<sup>th</sup> St. S., 1<sup>st</sup> Ave. S., NW of intersection of 1<sup>st</sup> Ave. S. and 9<sup>th</sup> St. S., 1<sup>st</sup> Ave. S., NE of the intersection of 1<sup>st</sup> Ave. S. and 9<sup>th</sup> St. S., 2<sup>nd</sup> Ave. S., NE of intersection of 2<sup>nd</sup> Ave. S. and 8<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., NW of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., NE of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SW of intersection of 5<sup>th</sup> Ave. S. and 9<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SE of intersection of 5<sup>th</sup> Ave. S. and 8<sup>th</sup> St. S., 5<sup>th</sup> Ave. S., SE of the intersection of 5<sup>th</sup> Ave. S. and 7<sup>th</sup> Street S., all to be located in Jacksonville Beach, Duval County, Florida 32250, consisting of approximately 127 units to be commonly known as The Waves (the "Project"). The Waves of Jacksonville, Ltd., or its affiliate, is expected to be the owner and operator of the Project.

All interested persons are invited to attend said hearing and, either personally or through their representatives, present oral or written comments and discussion concerning the proposed issuance of the Bonds for the purposes described in the preceding paragraph and the nature and location of the Project. Written comments may be submitted to the Jacksonville Housing Finance Authority, 214 N. Hogan Street, 7th Floor, Jacksonville, Florida, 32202. Should any person decide to appeal any decision made by the Authority at this hearing, or by the Council of the City of Jacksonville (the "City") with respect to the approval of the issuance of the Bonds for the purposes described in the preceding paragraph, he or she will need a record of the proceedings, and he or she may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Comments made at the hearing are for the consideration of the Authority or the City and will not bind the Authority or the City to any action it may take.

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Jacksonville Housing Finance Authority at (904) 255-8200.

All interested persons are invited to attend and be heard and present their comments.

### **JACKSONVILLE HOUSING FINANCE AUTHORITY**

Laura Stagner-Crites, Finance Director