
CITY OF COLORADO SPRINGS, COLORADO

and

ROYAL PINE APARTMENTS LLC,
a Colorado limited liability company

LOAN AGREEMENT

Dated as of [____], 2025

Relating to:

\$[_____]

City of Colorado Springs, Colorado
Multifamily Housing Revenue Bonds
(Royal Pine Apartments Project), Series 2025A-1

\$[_____]

City of Colorado Springs, Colorado
Multifamily Housing Revenue Bonds
(Royal Pine Apartments Project), Series 2025A-2

\$[_____]

City of Colorado Springs, Colorado
Multifamily Housing Revenue Bonds
(Royal Pine Apartments Project), Series 2025A-T (Taxable)

The amounts payable to the City of Colorado Springs, Colorado (the “*Issuer*”) and other rights of the Issuer (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to Zions Bancorporation, National Association, as trustee (the “*Trustee*”) under the Indenture of Trust between the Issuer and the Trustee dated as of [____], 2025.

Table of Contents

Page

ARTICLE I DEFINITIONS

Section 1.01.	Definitions.....	2
Section 1.02.	Rules of Construction; Time of Day	2

ARTICLE II LOAN AND PROVISIONS FOR REPAYMENT

Section 2.01.	Basic Loan and Repayment Terms	2
Section 2.02.	Fees	3
Section 2.03.	Termination; Voluntary Prepayment and Redemption	4
Section 2.04.	Obligations Absolute	5
Section 2.05.	Indemnification	5
Section 2.06.	Amounts Remaining on Deposit Upon Payment of the Bonds.....	10

ARTICLE III SECURITY

Section 3.01.	Mortgage and Other Bond Documents	10
Section 3.02.	Financing Statements	11

ARTICLE IV REPRESENTATIONS OF ISSUER; LIMITED LIABILITY OF ISSUER

Section 4.01.	Representation by the Issuer	11
Section 4.02.	No Liability of Issuer; No Charge Against Issuer's Credit.....	12
Section 4.03.	Reliance by Issuer on Facts or Certificates.....	13

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE BORROWER

Section 5.01.	Existence	14
Section 5.02.	Power, Authorization and No Conflicts.....	14
Section 5.03.	Governmental Authorizations and Other Approvals	14
Section 5.04.	Validity and Binding Effect	15
Section 5.05.	No Litigation	15
Section 5.06.	No Violations	15
Section 5.07.	Compliance	16
Section 5.08.	Title to Properties; Liens and Encumbrances	16
Section 5.09.	Utilities and Access.....	16
Section 5.10.	Financial Information.....	16
Section 5.11.	ERISA	17
Section 5.12.	Environmental Representations	17
Section 5.13.	Outstanding Obligations and Material Contracts.....	18
Section 5.14.	Solvency.....	18
Section 5.15.	Full Disclosure	18
Section 5.16.	Bond Documents.....	19

Table of Contents
(continued)

	Page
Section 5.17. Illegal Activity	19
Section 5.18. No Broker.....	19
Section 5.19. Construction Contract; Architect's Agreement	19
Section 5.20. Development Budget	19
Section 5.21. Plans and Specifications	19
Section 5.22. Survey	19
Section 5.23. Flood Plain	20
Section 5.24. Fannie Mae Commitment	20
Section 5.25. Operation of Project.....	20
Section 5.26. Requisition	20
Section 5.27. Reliance by Issuer	20

ARTICLE VI
GENERAL COVENANTS

Section 6.01. Conduct of Business; Maintenance of Existence; Mergers	20
Section 6.02. Compliance with Legal Requirements; Payment of Impositions	21
Section 6.03. Maintenance of Governmental Authorizations	21
Section 6.04. Maintenance of Insurance	21
Section 6.05. Compliance with Other Contracts and Bond Documents	22
Section 6.06. Maintenance of Project Facilities.....	22
Section 6.07. Inspection Rights	23
Section 6.08. Keeping of Books	23
Section 6.09. Reporting Requirements	24
Section 6.10. Tax-Exempt Status.....	26
Section 6.11. Single Purpose Entities	29
Section 6.12. Negative Pledge; No Sale	30
Section 6.13. Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness.....	30
Section 6.14. Environmental Covenants	31
Section 6.15. Controlling Person	33
Section 6.16. Tax Returns	33
Section 6.17. Leases.....	33
Section 6.18. Further Assurances.....	34
Section 6.19. Management Agreement.....	34
Section 6.20. Determination of Taxability.....	34
Section 6.21. List of Bondholders.....	35
Section 6.22. Use of Proceeds.....	35
Section 6.23. Compliance With Anti-Terrorism Regulations.....	35
Section 6.24. Adoption of Capital and Operating Budgets.....	35
Section 6.25. Borrower's Approval of Indenture.....	36
Section 6.26. Conditions Precedent; Payment of Certain Fees, Deposits and Expenses	36
Section 6.27. Additional Conditions Precedent	37

Table of Contents
(continued)

Page

Section 6.28.	Fannie Mae Commitment	37
Section 6.29.	Construction of Improvements	37
Section 6.30.	Evidence of Payment of Costs	37
Section 6.31.	Correction of Deficiencies in Improvements	37
Section 6.32.	Loan Rebalancing	38
Section 6.33.	Use of Loan Proceeds	38
Section 6.34.	[Reserved]	38
Section 6.35.	Developer Fee	38
Section 6.36.	[Reserved]	38
Section 6.37.	Extension of the Outside Conversion Date	38
Section 6.38.	Conversion; Pre-Conversion Loan Equalization Payment	39
Section 6.39.	[Reserved]	39
Section 6.40.	Compliance with Regulatory Agreement.....	39

ARTICLE VII
DEFAULTS AND REMEDIES

Section 7.01.	Defaults	39
Section 7.02.	Remedies	42
Section 7.03.	No Levy or Other Execution Against Project Facilities	44
Section 7.04.	No Waivers; Consents.....	44
Section 7.05.	No Waiver; Remedies Cumulative	44
Section 7.06.	Set-Off.....	44
Section 7.07.	Borrower to Give Notice of Default	45
Section 7.08.	Cure by Guarantor and Investor Member	45
Section 7.09.	Default Rate; Acceleration Premium; Penalty Rate.....	45
Section 7.10.	Reserved Rights; Regulatory Agreement Defaults	45

ARTICLE VIII
DEPOSITS TO FUNDS

Section 8.01.	[Reserved]	47
Section 8.02.	Deposits to Tax and Insurance Escrow Fund.....	47
Section 8.03.	[Reserved]	47
Section 8.04.	Deposits to Redemption Fund.....	47
Section 8.05.	[Reserved]	47
Section 8.06.	Investment.....	47
Section 8.07.	Security Interest in Accounts	48
Section 8.08.	Account Statements	48
Section 8.09.	No Liability of Trustee.....	48

ARTICLE IX
CONSTRUCTION AND FUNDING OF ADVANCES

Section 9.01.	Construction of Project Facilities; Final Completion	48
Section 9.02.	Making The Advances	48

Table of Contents
(continued)

		Page
Section 9.03.	Payments to Contractors; to Others	49
Section 9.04.	Requisition	49
Section 9.05.	Project Costs	49
Section 9.06.	Retainage.....	50
Section 9.07.	Contingency Reserve	50
Section 9.08.	Stored Materials	50
Section 9.09.	Cost Overruns and Savings	50
Section 9.10.	Right to Retain the Engineering Consultant	51
Section 9.11.	Inspections	52
Section 9.12.	Initial Disbursement.....	52
Section 9.13.	Subsequent Disbursements	53
Section 9.14.	Construction Information and Verification.....	55
Section 9.15.	Effect of Approval	56

ARTICLE X
MISCELLANEOUS

Section 10.01.	Notices	56
Section 10.02.	Successors and Assigns; Third Party Beneficiaries	56
Section 10.03.	Survival of Covenants	57
Section 10.04.	Counterparts; Electronic Signature	57
Section 10.05.	Costs, Expenses and Taxes	57
Section 10.06.	Severability	57
Section 10.07.	Interest Limitation.....	57
Section 10.08.	Conflicts	58
Section 10.09.	Complete Agreement	58
Section 10.10.	Consent to Jurisdiction; Venue; Waiver of Jury Trial	58
Section 10.11.	Governing Law	58
Section 10.12.	Headings	58
Section 10.13.	Nonrecourse	58
Section 10.14.	Publicity	62
Section 10.15.	Determinations by the Majority Owner and Controlling Person	62
Section 10.16.	Further Assurances.....	63
Section 10.17.	Patriot Act	63
Section 10.18.	References to the Credit Provider	63
Section 10.19.	Issuer Provisions	63

EXHIBIT A-1 FORM OF SERIES 2025A-1 PROMISSORY NOTE
EXHIBIT A-2 FORM OF SERIES 2025A-2 PROMISSORY NOTE
EXHIBIT A-3 FORM OF SERIES 2025A-T PROMISSORY NOTE
EXHIBIT B FORM OF WRITTEN REQUISITION OF THE BORROWER
EXHIBIT C MOLD/MILDEW ADDENDUM
EXHIBIT D ACCELERATION PREMIUM
EXHIBIT E DEVELOPMENT BUDGET
SCHEDULE 1 CONDITIONS TO DISBURSEMENTS FROM PROJECT FUND

Table of Contents
(continued)

Page

SCHEDULE 2 FORM OF FINAL COMPLETION CERTIFICATE	
SCHEDULE 3 FORM OF USE OF PROCEEDS COMPLIANCE CERTIFICATE	

LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this “*Agreement*”) made as of [____], 2025, by and between the City of Colorado Springs, Colorado (together with its successors and assigns, the “*Issuer*”), a municipal corporation duly organized and existing as a home-rule city under Article XX of the Constitution of the State of Colorado (the “*State*”) and the home rule charter (the “*Charter*”) of the City of Colorado Springs, Colorado and Royal Pine Apartments LLC, a limited liability company duly organized and validly existing under the laws of the State (together with its permitted successors and assigns, the “*Borrower*”).

WITNESSETH:

WHEREAS, the County and Municipality Development Revenue Bond Act, constituting Article 3, Title 29, Colorado Revised Statutes, as amended (the “*Act*”); the Colorado Supplemental Public Securities Act, constituting Part 2, Article 57, Title 11, Colorado Revised Statutes, as amended (the “*Supplemental Act*”); and the Charter authorize the Issuer to finance one or more projects, including any land, buildings or other improvements and all real and personal properties, whether or not in existence, which shall be suitable for residential facilities for low- and middle-income families or persons and intended for use as the sole place of residence by the owners or intended occupants to the end that more adequate residential housing facilities for low- and middle-income families and persons may be provided, which promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, the Issuer is further authorized by the Act, the Supplemental Act, and the Charter to issue revenue bonds for the purpose of defraying the cost of financing any project, including the payment of principal and interest on such revenue bonds for not exceeding three years, the funding of any reserve funds which the Issuer may deem advisable to establish in connection with the retirement of such revenue bonds or the maintenance of the project and all incidental expenses incurred in issuing such revenue bonds, and to secure payment of such revenue bonds as provided in the Act; and

WHEREAS, pursuant to the Act, the Supplemental Act, the Charter, and the below-defined Indenture, the Issuer proposes to finance the acquisition, construction, and equipping of an approximately 232-unit multifamily residential rental housing project to be located at 4150 Royal Pine Drive, Colorado Springs, Colorado 80920, and subordinate and related facilities thereto, to be known as Royal Pine Apartments (the “*Project Facilities*”); and

WHEREAS, the Issuer has determined to issue and sell its \$[SERIES A-1 PAR] City of Colorado Springs, Colorado Multifamily Housing Revenue Bonds (Royal Pine Apartments Project), Series 2025A-1 (the “*Series 2025A-1 Bonds*”), \$[SERIES A-2 PAR] City of Colorado Springs, Colorado Multifamily Housing Revenue Bonds (Royal Pine Apartments Project), Series 2025A-2 (the “*Series 2025A-2 Bonds*”) and \$[SERIES A-T PAR] City of Colorado Springs, Colorado Multifamily Housing Revenue Bonds (Royal Pine Apartments Project), Series 2025A-T (Taxable) (the “*Series 2025A-T Bonds*”; collectively, with the Series 2025A-1 Bonds and the Series 2025A-2 Bonds, the “*Bonds*”), for the purpose of financing the cost of the acquisition,

construction, installation and equipping of the Project, all pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the “*Indenture*”) dated as of [____], 2025, between the Issuer and Zions Bancorporation, National Association, as trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the “*Trustee*”), to provide funds to finance the costs of the acquisition, construction and equipping of the Project Facilities.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE BORROWER AND THE ISSUER HEREBY AGREE AS FOLLOWS; *PROVIDED*, THAT ANY OBLIGATION OF THE ISSUER CREATED BY OR ARISING OUT OF THIS AGREEMENT SHALL NEVER CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF THE ISSUER, THE STATE OR THE LOCAL GOVERNMENT, BUT SHALL BE PAYABLE SOLELY OUT OF THE SECURITY (AS DEFINED IN THE INDENTURE), ANYTHING HEREIN CONTAINED TO THE CONTRARY BY IMPLICATION OR OTHERWISE NOTWITHSTANDING:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture.

Section 1.02. Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words “hereof,” “herein,” “hereto,” “hereby” and “hereunder” refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants,” (v) the term “including” shall mean “including, but not limited to,” and (vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of any Authorized Person of the Borrower. References to any time of the day in this Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day.

ARTICLE II LOAN AND PROVISIONS FOR REPAYMENT

Section 2.01. Basic Loan and Repayment Terms. (a) The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. To provide funds to make the Loan for purposes of assisting in paying the Project Costs, the Issuer will issue, sell and deliver the Bonds to the Holders from time to time in accordance with Section 3.2 of the Indenture and the Bond Placement Agreement. The Bonds will be issued pursuant to the Indenture, from time to time, in the aggregate principal amount, will bear interest and will mature as set forth therein. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered. The Borrower’s obligation to repay the Loan shall be evidenced by the Note (collectively comprised of two tax-exempt promissory notes,

the Series 2025A-1 Note and the Series 2025A-2 Note, and a taxable note, the Series 2025A-T Note), the form of which is attached hereto as *Exhibit A-1*, *Exhibit A-2* and *Exhibit A-3*, respectively.

(b) The Borrower hereby agrees, prior to Conversion, to pay the Note and repay the Loan made pursuant to this Agreement by paying or causing to be paid to the Trustee in immediately available funds for the account of the Issuer for deposit into the Bond Fund or the Redemption Fund, as applicable, two Business Days before the dates that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds as provided in the Indenture. The Borrower hereby agrees from and after Conversion to pay the Note in accordance with the Note and the Reimbursement Agreement.

(c) It is understood and agreed that prior to Conversion, the Note and all payments payable by the Borrower under this Section 2.01 are assigned by the Issuer to the Trustee for the benefit of the Bondholders and from and after Conversion, pursuant to the Credit Provider Assignment. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 10.01 hereof, all loan repayments payable to the Issuer pursuant to the Note and this subsection.

(d) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.03(b) hereof and Section 3.4(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

(e) As of the Conversion Date, the Borrower agrees to cause credit enhancement for the Loan or the Bonds and support for the tender of Bonds to be in effect in the amounts and during the periods as required by the Indenture. From time to time, the Borrower may arrange for the delivery to the Trustee of one or more alternate Credit Facilities meeting the requirements of the Indenture in substitution for the Credit Facility then in effect. No Credit Facility shall be in effect prior to the Conversion Date.

Section 2.02. Fees. (a) Subsequent to the Conversion Date, the Borrower shall pay all of the Servicer's expenses.

(b) The Borrower shall pay to the Servicer (i) on the Issue Date, an amount equal to \$[] for the upfront costs of the Engineering Consultant, (ii) prior to Final Completion, an amount equal to \$1,750 per month for the ongoing fees of the Engineering Consultant, and (iii) prior to Conversion (as directed by the Controlling Person) an amount equal to \$3,000 for the costs of the Servicer incurred by the Controlling

Person (the “*Servicing Fee*”). The Servicing Fee shall be paid together with each monthly Requisition submitted, commencing with the first Requisition submitted following the Issue Date, and continuing through Final Completion of the Work in respect of the Project Facilities; *provided*, that in the event a Requisition is not submitted in any month during the period referenced above, the amount submitted with the next Requisition shall be in an aggregate amount sufficient to pay the monthly amount for the prior month or months in which no Requisition was submitted.

(c) The Borrower shall pay or cause to be paid to the Issuer, the Issuance Fee, the other Issuer Fees and Expenses, and any other reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, and consultants selected by the Issuer to act on its behalf in connection with the Bond Documents, or the Bonds, including, without limitation, any and all reasonable expenses incurred: (i) in connection with the authorization, issuance, sale and delivery of the Bonds, (ii) in connection with any litigation which may at any time be instituted involving the Bond Documents, or the Bonds or any of the other documents contemplated thereby, (iii) in connection with any amendment or modification of this Agreement, any Bond Documents or any related documents, or the reasonable supervision or inspection of the Borrower, its properties, assets or operations, (iv) in connection with any debt reporting or other requirements applicable to the Issuer required by law or a governmental authority, or (v) or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Loan hereunder or termination of this Agreement.

(d) The Borrower shall pay all reasonable fees and expenses of the Trustee (including the Trustee’s Fees), Dissemination Agent and/or a Qualified Custodian, including attorneys’ fees and expenses.

(e) The Borrower shall pay all fees, costs and expenses in connection with Conversion.

(f) The Borrower shall pay all fees of the Department of Local Affairs of the State of Colorado that relate to the Issuer’s private activity bond volume cap allocation, if any.

Section 2.03. Termination; Voluntary Prepayment and Redemption. (a) Notwithstanding anything to the contrary contained in this Agreement or the other Bond Documents, the Controlling Person’s and the Majority Owner’s and each Holder’s rights, interests and remedies hereunder and under the other Bond Documents shall not terminate or expire or be deemed to have been discharged or released until the earlier to occur of (i) the payment in full of the Bonds, or (ii) defeasance of all of the Bonds. No such termination, expiration or release shall affect the survival of the indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release.

(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed, with the consent of the Investor Member, (A) in whole, pursuant to Section 3.4(a)(ii) of the Indenture, on any date on or after the First Optional Redemption Date, at the redemption prices set forth therein and (B) in whole or in part, pursuant to

Section 3.4(a)(i) of the Indenture on any date, in each case, upon the payment of the required principal amount of the Bonds plus interest accrued thereon to, but not including, the date of redemption, without premium or penalty.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to the First Optional Redemption Date shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount calculated in accordance with the provisions of *Exhibit D* attached to this Agreement.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 3.4(b) of the Indenture.

(e) Notwithstanding the foregoing, the Borrower shall have the right at any time to defease the Bonds in accordance with the provisions of Article V of the Indenture, without premium.

Section 2.04. Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Credit Facility, the Credit Facility Documents, the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer, the Trustee (or any persons or entities for whom the Trustee may be acting), the Credit Provider, the Servicer or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.05. Indemnification. The Borrower covenants to defend, indemnify and hold harmless (without limiting the indemnity provided in the Regulatory Agreement) the Issuer, the Local Government, the Trustee, the Controlling Person, the Servicer, the Majority Owner, and each of their respective Affiliates and each of their and their Affiliates' respective directors, officers, members, city council members, directors, trustees, counsel, officials, employees, representatives and agents (and as to the Issuer, its counsel and attorneys) (collectively, the "*Indemnified Parties*"), from and 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, and amounts paid to discharge judgments), by or on behalf of any person arising from any cause whatsoever, joint and several, to which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) this Agreement, the Bonds, the Indenture, the Regulatory Agreement, the Tax Certificate, or the other Bond Documents, or the execution or amendment hereof or thereof or in connection with the transactions contemplated hereby or thereby, including the issuance, sale or resale, defeasance or redemption of the Bonds;

(b) the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents or any other documents relating to the Project Facilities or the Bonds or in connection with any federal or state tax audit, or any questions or other matters arising under such documents;

(c) any act or omission of the Issuer or the Borrower or any of their agents, servants, employees or licensees, in connection with the Project or the Bonds, including but not limited to, the Bond Documents;

(d) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought thereon;

(e) the approval of financing for the Project or the issuance of the Bonds, or the execution or amendment of any document related thereto;

(f) the issuance and sale, resale or remarketing of any Bonds or any certifications or representations made by any Person other than the party seeking indemnification in connection therewith, including, but not limited to, any: (i) statement or information made by the Borrower with respect to the Borrower or the Project Facilities in any offering document or materials regarding the Bonds, the Project Facilities or the Borrower or in the Tax Certificate of the Borrower or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect, (ii) untrue statement or alleged untrue statement of a material fact contained in any offering material relating to the sale of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, (iii) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold;

(g) the carrying out by the Borrower of any of the transactions contemplated by the Bonds and the Bond Documents or the Borrower's failure to comply with any requirement of this Agreement or the Regulatory Agreement;

(h) any breach or alleged breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or the other Bond Documents or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by the Borrower, the Managing Member, or their affiliates to the Issuer, the Trustee or any other Person in connection with the Borrower's application for the 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), including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default

- (i) the use of the proceeds of the Loan;
- (j) any Determination of Taxability;
- (k) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Controlling Person or the Majority Owner's actions taken pursuant to this Agreement or any of the other Bond Documents or any other event or transaction contemplated by any of the foregoing;
- (l) the Credit Facility, the Credit Facility Documents, or the execution or amendment hereof or thereof or in connection with the transactions contemplated thereby;
- (m) the acceptance or administration of the Bond Documents or the Security Interests thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project Facilities or the use thereof, including without limitation any lease thereof or assignment of its interest in this Agreement;
- (n) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Advances or the Project Facilities;
- (o) the operation of the Project Facilities, or the conditions thereof, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, rehabilitation, equipping, installation or construction of, the Project or any part thereof, including any violation of any law, ordinance, court order or regulation affecting the Project Facilities or any part of it;
- (p) 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 Loan or contained in any of the Bond Documents to which the Borrower is a party;
- (q) any Lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project Facilities;
- (r) any violation or alleged violation of any applicable law or regulation including, without limitation, any Environmental Law or any inspection, review or testing with respect to, or the release of any toxic substance from, the Project Facilities or any part thereof;

(s) the enforcement of, or any action taken by the Issuer or any Indemnified Party, related to remedies under, this Agreement, the Indenture and the other Bond Documents;

(t) any action, suit, claim, proceeding, audit, inquiry, examination, or investigation of a judicial, legislative, administrative or regulatory nature concerning or related to interest payable on the Bonds not being excludable from gross income for purposes of federal income taxation or exempt from state income taxation;

(u) any action, suit, claim or demand contesting or affecting the title of the Project Facilities;

(v) the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project Facilities or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project Facilities or any Indemnified Party;

(w) the Trustee's acceptance or administration of the trusts created by the Indenture and the exercise of its powers or duties thereunder or under this Agreement or any other agreements in connection therewith to which it is a party;

(x) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project Facilities or arising out of any action or inaction of the Borrower or any of its agents, servants, employees or licensees, whether or not related to the Project Facilities, or resulting from the acquisition, construction, design, rehabilitation, repair, operation, use or management of all or any part of the Project Facilities; and

(y) any brokerage commissions or finders' fees claimed by any broker or other party in connection with the Bonds or the Project; and

(z) to the extent not mentioned in any of the preceding subsections, any cause whatsoever in connection with transactions provided for in this Agreement and the other Bond Documents or otherwise in connection with the Project Facilities, the Bonds or the execution or amendment of any document relating to the Bonds or the Project Facilities, except: (i) in the case of the foregoing indemnification of the Indemnified Parties (excluding the Issuer and any Indemnified Parties related to the Issuer, including without limitation, any of its officers, members, city council members, directors, trustees, fiscal agents, counsel, officials, agents and employees) to the extent such damages are caused by the gross negligence or willful misconduct of such Person; or (ii) in the case of the foregoing indemnification of the Issuer or any of its officers, members, city council members, directors, trustees, fiscal agents, counsel, officials, agents and employees, to the extent such damages are caused by the willful misconduct of such Person.

In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the

Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Borrower, subject to the approval of the Indemnified Party in such party's sole discretion, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Parties shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the Indenture, the final payment or defeasance of the Bonds, and the resignation or removal of the Trustee. Notwithstanding any other provision of this Agreement or the Indenture to the contrary, the Borrower agrees (i) not to assert any claim or institute any action or suit against the Trustee or its employees arising from or in connection with any investment of funds made by the Trustee in good faith in compliance with the Indenture as directed by the Borrower, the Controlling Person or the Majority Owner, and (ii) to indemnify and hold the Trustee and its employees harmless against any liability, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment. Nothing in this Section is intended to limit the Borrower's obligations contained in Sections 2.01 and 2.02 hereof. Amounts payable to the Issuer hereunder shall be due and payable five (5) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the five (5) day period. When the Issuer or the Trustee 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. The obligations of the Borrower to the Indemnified Parties under this Section shall not be subject to the recourse limitations of Section 10.13 hereof but shall be subordinate and junior in priority, right of payment and all other respects to any and all obligations of the Borrower under the Bond Documents and to the Credit Provider under or in respect of the Credit Facility Documents; *provided, however,* that the Borrower shall not be liable to the Indemnified Parties under this Section to the extent of any claims, damages, losses, liabilities, costs or expenses incurred by the Indemnified Parties as a result from the Indemnified Parties' willful misconduct or, except the Issuer, the Indemnified Parties' breach of its obligations under the Bond Documents.

To the extent applicable, the indemnification provisions of this section are expressly intended to be enforceable regardless of whether the Borrower alleges or proves the sole, concurrent, contributory or comparative negligence of the Indemnified Parties (excluding the Trustee).

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 2.05 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such Indemnified Party has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder; provided that, in all events, no subsequent owner of the Project Facilities acquiring title as a result of a foreclosure, a deed in lieu of foreclosure or comparable conversion of the Loan shall be liable for

any breach or default of any obligation of any prior owner under the Regulatory Agreement or this Agreement, including any payment or indemnification obligation.

The indemnification provided in this Section 2.05 is in addition to, and not in substitution of, the indemnification provisions in other documents executed and delivered in connection with the making of the loans to the Borrower evidenced by this Agreement and the issuance of the Bonds. Nothing in this Section 2.05 shall in any way limit the Borrower's indemnification and other payment obligations set forth in the Regulatory Agreement.

This indemnification shall not be affected by any investigation by or on behalf of the Issuer or by any information the Issuer may have or obtain with respect thereof. This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim to the fullest extent permitted by law; provided however, that nothing in Section 2.05 shall be deemed to require the Borrower to provide indemnification with respect to liabilities which are found by a court of competent jurisdiction in a non-appealable judgment to have been caused by the willful misconduct of the Issuer, the Local Government, or one of their respective directors, officers, officials, employees, representatives or agents or their successors and assigns (and their respective counsel and attorneys) (each, an "*Issuer Indemnified Party*" and collectively, the "*Issuer Indemnified Parties*").

All amounts payable to the Issuer under this Agreement shall be deemed to be fees and expenses payable to the Issuer for the purposes of the provisions of this Agreement, and of the Indenture dealing with assignment of the Issuer's rights under this Agreement. The Issuer Indemnified Parties shall not be liable to the Borrower for any reason, except as arising from the willful misconduct of such parties. NOTWITHSTANDING THE FOREGOING, THE ISSUER INDEMNIFIED PARTIES SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM THE GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY OF THE ISSUER INDEMNIFIED PARTIES, BUT NOT FOR ANY LIABILITIES ARISING FROM THE WILLFUL MISCONDUCT OF THE ISSUER INDEMNIFIED PARTIES.

Any provision of this Agreement or any other instrument or document executed and delivered in connection therewith to the contrary notwithstanding, the Issuer retains the right to (i) enforce any applicable federal or State law or regulation or resolution of the Issuer, and (ii) enforce any rights accorded to the Issuer by federal or State law or regulation of the Issuer, and nothing in this Agreement shall be construed as an express or implied waiver thereof. The indemnifications provided by the Borrower shall survive the termination of this Agreement and the satisfaction of the Note, and the resignation or removal of the Trustee.

Section 2.06. Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

ARTICLE III SECURITY

Section 3.01. Mortgage and Other Bond Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver, or cause to be executed and delivered, to the Trustee (and where required, duly record) the Security Instrument and each of the other Bond Documents.

Section 3.02. Financing Statements. The Borrower shall file or cause to be filed on the Issue Date, the financing statements necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Security Instrument and the other Bond Documents. The Borrower hereby authorizes the Trustee and the Controlling Person, at the direction of the Borrower, to file continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Security Instrument and the other Bond Documents; *provided, however*, the Trustee shall only file the continuation statements required to be filed by the Trustee pursuant to Section 7.8 of the Indenture. The Borrower will pay upon demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Controlling Person may designate. *The Issuer shall have no responsibility for the filing, perfection or continuation of any security interest created hereunder or under the Indenture.*

ARTICLE IV REPRESENTATIONS OF ISSUER; LIMITED LIABILITY OF ISSUER

Section 4.01. Representation by the Issuer. The Issuer represents to the Borrower, the Trustee and the Holders from time to time of the Bonds as follows:

(a) The Issuer is a legally and regularly created, established, organized and validly existing home rule city, municipal corporation and political subdivision under the provisions of Article XX of the Constitution of the State and the Charter and is duly authorized to issue the Bonds and to perform its obligations under this Agreement.

(b) All requirements have been met and procedures have occurred in order to authorize the execution and delivery of this Agreement. The Issuer has taken all necessary action and has complied with all provisions of the law required to make this Agreement a valid and binding limited obligation of the Issuer, except to the extent 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, or by public policy.

(c) The Bonds have been duly authorized, executed and delivered by the Issuer. Nothing in this Agreement shall be construed as requiring the Issuer to provide any financing for the Project other than the proceeds of the Bonds or to provide sufficient moneys for all of the cost of financing the Project.

(d) To the best knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Issuer that: (i) affects or seeks to prohibit, restrain or enjoin the issuance, execution or delivery of the Bonds, the origination of the loan or the lending of the proceeds of the Bonds to the Borrower, or the execution and delivery of the Bond Documents, (ii) affects or questions the validity or enforceability of the Bonds or the Bond Documents, or (iii) questions the tax-exempt status of interest on the Bonds.

(e) To the Issuer's knowledge, there is no default of the Issuer in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of the Bond Documents or the ability of the Issuer to perform its obligations thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes or, with the lapse of time or the giving of notice, or both, would constitute such a default.

(f) The Bonds are being issued under the Indenture, and are secured by the Trust Estate. Under the Indenture the Issuer's interest in this Agreement (other than the Reserved Rights) and the revenues and receipts to be derived by the Issuer pursuant to this Agreement, are pledged and assigned to the Trustee as security for payment of the principal of and interest and any premium on the Bonds.

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

(h) No representations, warranties or covenants are made by the Issuer other than those expressly set forth herein. Without limitation of the foregoing, the Issuer does not make any warranty, either express or implied, that any conditions applicable to the delivery of the Bonds will be satisfied, or that the proceeds of the loan under this Financing Agreement will be sufficient to pay all of the costs of the acquisition, construction, rehabilitation, and equipping of the Project. No representation is made as to compliance with any state securities or "blue sky" laws.

Section 4.02. No Liability of Issuer; No Charge Against Issuer's Credit. The Issuer shall not be obligated to pay the principal (or prepayment amount) of or interest on the Bonds, except from the Trust Estate. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith, credit and taxing power of the Issuer is pledged to the payment of the principal (or redemption price) of, premium, if any, or interest on the Bonds. The Issuer 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 Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof

from the Borrower under this Agreement, or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth in the Indenture.

The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment amount) of and interest on the Bonds as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Trustee, 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 amount) of or interest on the Bonds, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

The Borrower agrees that EACH OF THE BONDS IS A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM, AND SECURED ONLY BY THE TRUST ESTATE (BUT NOT FUNDS RESULTING FROM THE EXERCISE OF THE RESERVED RIGHTS), AND WHICH SHALL BE USED FOR NO OTHER PURPOSE EXCEPT AS EXPRESSLY AUTHORIZED IN THE INDENTURE. THE BONDS SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE ISSUER, ANY PUBLIC AGENCY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE ISSUER, ANY PUBLIC AGENCY, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE FOR PAYMENT OF THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER WITH RESPECT THERETO, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS, ASSETS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THE INDENTURE (BUT NOT FUNDS RESULTING FROM THE EXERCISE OF THE RESERVED RIGHTS). THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS OR A MULTIPLE FISCAL-YEAR FINANCIAL OBLIGATION WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS WITH RESPECT TO THE BONDS, OR UNDER THE INDENTURE, 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 ISSUER, ANY PUBLIC AGENCY, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER.

Section 4.03. Reliance by Issuer on Facts or Certificates. Anything in this Agreement or the Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties to this Agreement that: (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Servicer, the Trustee or the Borrower as to the existence of any fact or state of affairs, (b) the Issuer shall not be under any obligation under the Indenture or this 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 Borrower or such other appropriate party, and (c) none of the provisions of the Indenture, this Agreement, the Regulatory Agreement or any Bond Document shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Indenture, this Agreement, the Regulatory Agreement and any Bond Document 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. It is recognized that notwithstanding any other provision of this Agreement, neither the Borrower nor the Trustee shall look to the Issuer or the members of its City Council, officers, program participants, attorneys, accountants, financial advisors, agents or staff for damages suffered by the Borrower or Trustee as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Agreement, the Bonds, the Regulatory Agreement, any of the Bond Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason except for representations made by the Issuer in the Indenture, this Agreement and any certificate of the Issuer and the opinion of counsel to the Issuer delivered on the Issue Date.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower represents and warrants to and for the benefit of the Issuer, the Trustee, the Controlling Person and the Holders from time to time of the Bonds as follows:

Section 5.01. Existence. The Borrower is a limited liability company, duly organized, validly existing and in good standing under the Legal Requirements of the State. The Borrower has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its Operating Agreement and formation documents. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower and the Managing Member have been, are and will be engaged solely in the business of acquiring, constructing, equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The Managing Member of the Borrower is DBG Royal Pine Apartments Investors LLC, a Colorado limited liability company, duly organized, validly existing and in good standing under the laws of the State. The Managing Member has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its formation documents and Company Operating Agreement. The Managing Member has and will have no other assets other than its interests in the Borrower.

Section 5.02. Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the Operating Agreement or partnership agreement, as applicable, or certificate of formation of the Borrower or the Managing Member, or any Legal Requirement applicable to the Borrower or the Managing Member or any Material Contract or restriction

binding on or affecting the Borrower, the Managing Member or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof.

Section 5.03. Governmental Authorizations and Other Approvals. The Borrower and the Managing Member have all necessary Governmental Actions and qualifications (except those ordinarily obtained during the construction, or upon completion, of the Project Facilities) and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and construct the Project Facilities in accordance with the provisions of the Bond Documents. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities (except those ordinarily obtained during the construction, or upon completion, of the Project Facilities) and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower have been validly issued and are in full force and effect. With respect to any Government Actions not yet obtained, the Borrower knows of no reason such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the construction or operation of the Project Facilities. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Security Instrument.

Section 5.04. Validity and Binding Effect. This Agreement and the other Bond Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.05. No Litigation. Except as disclosed to the Controlling Person, the Purchaser, and the Investor Member, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower or the Managing Member or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the knowledge of the Borrower and the Managing Member, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the Managing Member before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the Managing Member, or the validity or enforceability of this Agreement, the Bonds, or the Bond Documents or the construction, operation or ownership of the Project Facilities, or the excludability from gross income of interest on the Bonds for purposes of federal income taxation.

Section 5.06. No Violations. The Borrower and the Managing Member are in compliance in all material respects with, and not in material breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Bond Documents, the Subordinate Debt Documents, the Credit Facility Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities.

Section 5.07. Compliance. The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Certificate, the Project Certificate and the Regulatory Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained, or will obtain prior to the necessary timeframe, all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Issuer's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities.

Section 5.08. Title to Properties; Liens and Encumbrances. The Borrower has a fee simple interest in the Project Facilities and the real property on which the Project Facilities are located, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.09. Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10. Financial Information. (a) All of the financial information furnished to the Controlling Person or the Majority Owner with respect to the Borrower, the Guarantors, and the

Managing Member in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the Guarantors or the Managing Member has any material liability or contingent liability not disclosed to the Controlling Person or the Majority Owner in writing; and (b) Since its formation, each of the Borrower, the Guarantors and the Managing Member has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the Guarantors or the Managing Member.

Section 5.11. ERISA. No employee pension plan maintained by the Borrower or the Managing Member or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the Managing Member or any ERISA Affiliate by the Pension Benefit Guaranty Corporation (“PBGC”) or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower’s, the Managing Member’s or any ERISA Affiliate’s property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the Managing Member or any ERISA Affiliate which is intended to be qualified under Section 401(a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the Managing Member or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the Managing Member or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the Managing Member or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the Managing Member nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, “ERISA Affiliate” means (i) any corporation included with the Borrower or the Managing Member in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower or the Managing Member within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower or the Managing Member is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the Managing Member under Section 414(o) of the Code.

Section 5.12. Environmental Representations. Except as set forth on the Environmental Audit delivered to the Controlling Person (a) the Borrower has no knowledge of any activity at the

Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets, or condition (financial or otherwise) of the Borrower: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea formaldehyde foam insulation present at the Project Facilities, or (v) lead-based paint at the Project Facilities; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the Managing Member identifying the Borrower or the Managing Member as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the construction of the Project Facilities.

Section 5.13. Outstanding Obligations and Material Contracts. Except as disclosed in writing to the Controlling Person and the Purchaser, none of the Borrower or the Managing Member has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the Managing Member has complied with all provisions of the Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14. Solvency. Each of the Borrower, the Guarantors and the Managing Member is and, after giving effect to this Agreement and all other agreements of the Borrower, the Guarantors or the Managing Member being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due); *provided*, the foregoing shall not be deemed a guaranty.

Section 5.15. Full Disclosure. This Agreement, the exhibits hereto and the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person by or on behalf of the Borrower, the Guarantors or the Managing Member in connection with the transactions contemplated hereby or by the Bond Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantors or the Project Facilities and do not omit to state a material fact with respect to the Borrower, the Guarantors or the Managing Member or the Project Facilities necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower which materially adversely affects or in the future may adversely affect the business, operations, properties, assets or financial condition of the Borrower, the Guarantors or the Managing Member

which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person on behalf of any such party before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.16. Bond Documents. Each of the Borrower, the Guarantors and the Managing Member has provided the Controlling Person and the Majority Owner with true, correct and complete copies of: (i) all documents executed by the Borrower in connection with the Bonds, including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (iii) all material correspondence, if any, relating to the Bonds from the Trustee, the Issuer, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (iv) all documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing (including, without limitation, the Subordinate Debt and the Credit Facility) relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents to which the Borrower is a party remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Bond Documents to which the Borrower is a party.

Section 5.17. Illegal Activity. No portion of any of the Project Facilities has been or will be acquired, constructed, fixtured, equipped or furnished with proceeds of any illegal activity conducted by the Borrower.

Section 5.18. No Broker. The Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.19. Construction Contract; Architect's Agreement. The Construction Contract and the Architect's Agreement are each in full force and effect, and the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all Work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

Section 5.20. Development Budget. The Development Budget provided to the Controlling Person accurately reflects, to the best of the Borrower's knowledge: (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.21. Plans and Specifications. The Borrower has furnished the Controlling Person with true and complete sets of the Plans and Specifications. To the best of the Borrower's knowledge, the Plans and Specifications so furnished comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Investor Member and such Governmental Authority as is required for construction of the Project Facilities.

Section 5.22. Survey. The survey for the Project Facilities delivered to the Controlling Person does not fail to reflect any material matter of survey affecting the Project Facilities or the title thereto.

Section 5.23. Flood Plain. No part of the Project Facilities is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project Facilities is an area identified as an area having special flood hazard, flood insurance in an amount equal to 100% of the appraised insurable value of the Project Facilities has been obtained by the Borrower.

Section 5.24. Fannie Mae Commitment. The Fannie Mae Commitment is in full force and effect, all fees and costs required to be paid thereunder have been paid in full, and no breach or default on the part of the Borrower thereunder has occurred and is continuing.

Section 5.25. Operation of Project. The Borrower will cause the Project to be owned, operated and managed at all times during the term of this Agreement so as to qualify as a “Residential development” as defined in the Act.

Section 5.26. Requisition. Each Requisition submitted to the Controlling Person shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Bond Documents remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Controlling Person is notified to the contrary, in writing, prior to the requested date of the disbursement under such Requisition, shall constitute an affirmation that the same remain true and correct on the date of such disbursement.

Section 5.27. Reliance by Issuer. The Borrower acknowledges that the representations and covenants herein made by the Borrower have been expressly and specifically relied upon by the Issuer in determining to make the loan under the Note to the Borrower, and the loan under the Note would not have been made but for such representations and covenants.

ARTICLE VI GENERAL COVENANTS

So long as any amount is due and owing hereunder, the Borrower covenants and agrees, except to the extent the Controlling Person shall otherwise consent in writing to perform and comply with each of the following covenants:

Section 6.01. Conduct of Business; Maintenance of Existence; Mergers. Each of the Borrower and the Managing Member will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership or limited liability company, as applicable, under the Legal Requirements of the State, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, (v) except for Permitted Transfers and subject to Section 6.11(b), not amend any provision of its articles of organization or the Operating Agreement or partnership agreement, as applicable, relating to its purpose,

management or operation without the prior written consent of the Controlling Person, which shall not be unreasonably withheld, conditioned or delayed, and (vi) promptly and diligently enforce its rights under the Operating Agreement and cause Investor Member to make its capital contributions as and when required under the Operating Agreement.

Section 6.02. Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due (to the extent such payments are not made by the Trustee from the reserve) and will make the applicable deposits required by Section 8.02 of this Agreement for such purposes. The Borrower shall make commercially reasonable efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to the Controlling Person.

Section 6.03. Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the construction of the Project Facilities not obtained prior to the Issue Date and shall provide copies thereof to the Controlling Person and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, construction and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person.

Section 6.04. Maintenance of Insurance. (a) At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as required by the Controlling Person for facilities of the type and size of the Project Facilities and shall pay, as the same become due and payable, all premiums with respect thereto.

(b) All insurance required by this Section 6.04 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.04(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.04(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Controlling Person. The policy evidencing liability insurance required by Section 6.04(a) hereof shall name the Issuer and the Trustee as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.04(a) and the net proceeds thereof is being granted to the Trustee

pursuant to the Security Instrument. Upon request of the Trustee, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.04(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Security Instrument for application as provided in the Security Instrument. The policies under Section 6.04(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.04(a) hereof shall be delivered to the Trustee, with a copy to the Controlling Person on or before the Issue Date. The Borrower shall deliver to the Issuer and the Trustee before the first (1st) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.04. Prior to the expiration of each such policy, the Borrower shall furnish the Trustee, with a copy to the Controlling Person, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person may, from time to time, reasonably require.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.04(a) hereof shall be applied as provided in the Security Instrument and the net proceeds of the liability insurance required by Section 6.04(a) hereof shall be applied, with the prior written consent of the Controlling Person toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.05. Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). The Borrower shall comply in all material respects with all of its covenants and agreements under the Subordinate Debt Documents and Credit Facility Documents. The Borrower shall comply in all materials respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.06. Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iii) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable

efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.07. Inspection Rights. (a) The Borrower will, upon reasonable prior notice and at any reasonable time and from time to time, permit the Controlling Person, the Trustee, the Issuer, and the agents or representatives of the Controlling Person, the Trustee and the Issuer, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the Managing Member and the Accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant, if any, to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Controlling Person may direct. The Borrower shall pay or reimburse the Controlling Person on demand for reasonable fees and expenses incurred in connection with such inspections.

(b) If the Controlling Person has retained an Engineering Consultant pursuant to Section 9.10 hereof, then after the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person notifying the Controlling Person of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.06 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Controlling Person shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.06 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c) The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report. If the Borrower fails to complete the work within such time period, the Controlling Person, at the Controlling Person's discretion, may complete such work for and on the Borrower's behalf and may do any act or thing the Controlling Person deems necessary or appropriate to that end. The expenses incurred by the Controlling Person in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Controlling Person immediately upon demand. All work performed by the Borrower shall be performed in a good and workmanlike manner and shall be completely free and

clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.06 hereof.

Section 6.08. Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.09. Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person the following in form satisfactory to the Controlling Person and in such number of copies as the Controlling Person may reasonably require:

(a) Beginning after the Completion Date, as soon as available and in any event within forty-five (45) days after the close of each fiscal quarter of each Fiscal Year of the Borrower:

(i) unaudited financial statements for the Borrower and the Project Facilities, including a balance sheet and related statement of income as of the end of such fiscal quarter and for such fiscal quarter and the current Fiscal Year to the end of such fiscal quarter, which shall be internally prepared and presented on a consistent basis;

(ii) a certificate signed by an Authorized Person stating that, except as disclosed in such certificate, (i) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents (including the rules qualifying the interest payable on the Bonds for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued thereunder), except as disclosed in such certificate, (ii) if the Project Facilities have received a tax credit allocation, during such fiscal quarter the Project Facilities have complied with the requirements of Section 42 of the Code and the regulations issued thereunder, and (iii) no Event of Default has occurred or exists;

(b) Beginning after the Completion Date, as soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower:

(i) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year;

(ii) a certificate signed by an Authorized Person stating that (i) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents, except as

disclosed in such certificate, and (ii) no Default or Event of Default has occurred or exists, except as disclosed in such certificate;

(iii) an occupancy report stating as of the last day of the month prior to the date of delivery thereof, with respect to each lease of all or any part of the Project Facilities, the tenant's name, the date thereof, the premises demised, the term, the rent, the security deposits, any advance rent payments in excess of one month and any defaults by the tenant or the Borrower in respect thereof (including, without limitation, the amounts of arrearages); and

(iv) notwithstanding the foregoing, if the Completion Date occurred on or after [____], 2028, the Borrower may elect, by written notice to the Controlling Person, to include the period from the Completion Date through the end of such Fiscal Year in the subsequent Fiscal Year audited financial statements in lieu of providing audited annual statements for the Fiscal Year in which the Completion Date occurred.

(c) Beginning during lease up of the Project, as soon as possible and in any event within thirty (30) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of expense and income as well as occupancy reports, a rent roll and, if required by the Controlling Person, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Controlling Person.

(d) Weekly during any period after the Conversion Date with occupancy of less than 90% and within twenty-five (25) days of the end of each fiscal quarter for other periods, an occupancy report for the Project Facilities, certified by an Authorized Person.

(e) Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by the Accountant in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report.

(f) As soon as possible and in any event within fifteen (15) days after receipt of written notice thereof, notice of any pending or threatened litigation, investigation or other proceeding involving the Borrower, the Managing Member, the Guarantors or the Project Facilities; (i) which could have a material adverse effect on the operations or financial condition of the Borrower, the Managing Member, the Guarantors or the Project Facilities; (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies); or (iii) which challenges the excludability from gross income of interest on the Tax-Exempt Bonds for purposes of federal income taxation.

(g) As soon as possible, notice of any material adverse change in the operations or financial condition of the Borrower, the Managing Member, the Guarantor or the Project Facilities.

(h) Upon delivery thereof by the Borrower, copies of any reports, certifications, financial information, compliance documents, rebate information, audits and all other items submitted by or on behalf of the Borrower to the Trustee or the Issuer.

(i) Not later than the Completion Date, the certificate of Final Completion set forth as Schedule 2 hereof (a copy of which shall also be provided to the Trustee) and not later than the Conversion Date, the Use of Proceeds Compliance Certificate set forth as Schedule 3 hereof (a copy of which shall also be provided to the Trustee).

(j) As and when required under the Regulatory Agreement, the monthly compliance certificates, the annual copies of IRS Forms 8703 and other reports and notices required to be delivered under the Regulatory Agreement.

(k) Upon receipt thereof by the Borrower, notice of the cancellation or expiration (without renewal or replacement) of any insurance required to be maintained by this Agreement.

(l) If construction work resulted in new structures or expansion of foot prints of the existing structures, the Trustee shall have received an as-built ALTA/NSPS Survey certified to the Trustee and the Controlling Person.

(m) Unless cured, as soon as possible and in any event within fifteen (15) days after the occurrence of an Event of Default, a statement of the Managing Member setting forth the details of such Event of Default and the action which the Borrower proposes to take with respect thereto.

(n) Contemporaneously with the delivery to the Trustee copies of any notices, reports or other information provided to the Trustee under the Bond Documents.

(o) Copies of IRS Forms 8609 as issued and received by the Borrower.

(p) [Reserved].

(q) Upon receipt thereof, copies of all real estate tax bills and insurance bills.

(r) Promptly following filing thereof, all tax returns of the Borrower and the Managing Member.

(s) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Controlling Person may from time to time reasonably request.

Section 6.10. Tax-Exempt Status. It is the intention of the parties hereto that interest on the Tax-Exempt Bonds (other than with respect to interest on any portion of the Tax-Exempt Bonds

for a period during which such portion of the Bonds is held by a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code) shall be and remain excludable from gross income for federal income tax purposes, and, to that end, the covenants and agreements of the Borrower in this Section are for the benefit of the Issuer on behalf of and for each and every holder of the Tax-Exempt Bonds. Borrower covenants that it will comply with the requirements and conditions of the Tax Certificate and the Regulatory Agreement. The Borrower further represents, agrees, and covenants as follows:

(a) The Borrower covenants, represents and agrees that it will not take or omit to take or permit any action that, if taken or omitted, respectively, would adversely affect the excludability of interest on the Tax-Exempt Bonds from gross income 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 Agreement, the Security Instrument, and the Regulatory Agreement, as may be necessary, in the Opinion of Bond 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 Tax-Exempt Bonds or affecting the Project Facilities.

(b) The Borrower will not make or permit any use, and will not direct the Trustee to make any investment or use of the proceeds of any of the Tax-Exempt Bonds, which would cause any of the Tax-Exempt Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the regulations thereunder as the same may be applicable to the Tax-Exempt Bonds at the time of such action, investment or use and agrees to take and cause the Issuer and the Trustee to take all actions required to comply with the provisions of Section 148 of the Code. The representations contained in the Tax Certificate (which is incorporated herein by reference) are true and correct, and the Borrower and the Issuer will observe the applicable covenants therein as if set forth herein.

(c) The Borrower further covenants and agrees that it will comply with and will take all action reasonably required to cooperate with the Trustee in complying with all applicable requirements of said Section 148 and the rules and regulations of the United States Treasury Department thereunder relating to the Tax-Exempt Bonds and the interest thereon, including the employment of a Rebate Analyst for the calculation of any rebatable amount (the “*Rebate Amount*”) to the United States Treasury Department. The Borrower agrees that it will cause [REBATE ANALYST] or a qualified rebate analyst reasonably acceptable to the Controlling Person (the “*Rebate Analyst*”) to calculate the Rebate Amount not later than forty-five (45) days after the fifth (5th) anniversary of the Issue Date and each five (5) years thereafter and agrees that the Borrower will pay all costs associated therewith. Within fifteen (15) days of the date of each such calculation, the Borrower shall promptly (i) deliver a report or letter from the Rebate Analyst setting forth the Rebate Amount, if any, then due and the methods used to calculate such amount (each, a “*Rebate Report*”) to the Issuer, the Controlling Person and the Trustee, (ii) deliver the Rebate Amount to the Trustee, and (iii) deliver to the Trustee any forms required by the Internal

Revenue Service to be submitted with the Rebate Amount, if any, and the addresses to which such forms must be sent.

(d) Neither the Borrower nor any related person shall, pursuant to any arrangement, formal or informal, purchase any of the Tax-Exempt Bonds, unless the Borrower or such related person delivers a Favorable Opinion of Bond Counsel to the Trustee, the Controlling Person and the Issuer.

(e) No changes will be made to the Project Facilities, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the excludability from gross income of interest on the Tax-Exempt Bonds for purposes of federal income taxation.

(f) The Borrower will not make any changes in the Project Facilities that would, at the time made, cause the average reasonably expected economic life of the Project Facilities, determined pursuant to Section 147(b) of the Code, to be less than the average reasonably expected economic life of the Project Facilities set forth in such certificates or letters of representation of the Borrower, unless the Borrower files with the Trustee and the Controlling Person a Favorable Opinion of Bond Counsel.

(g) The Borrower will make payment to the United States of any amount required to be paid by the Issuer or the Borrower pursuant to Section 148(f) of the Code and the Regulations thereunder, including, to the extent applicable, Section 1.148-3 of the Regulations or subsequent applicable Regulations, at the times, in the amounts and at the places required thereby in order to maintain the exclusion of interest on the Bonds for federal income tax purposes; and the Borrower hereby irrevocably authorizes and directs the Issuer and the Trustee (and any other agent designated by the Issuer) to make payment of such amounts from funds of the Borrower, if any, held by the Issuer, the Trustee, or any agent of the Issuer or the Trustee.

(h) The Project Facilities will be owned, managed and operated as a “qualified residential rental project” as such phrase is utilized in Section 142(d) of the Code. To that end, the Borrower hereby represents and covenants and agrees that it will comply with the terms, conditions and provisions of the Regulatory Agreement.

(i) The Borrower will permit any duly authorized representative of the Trustee, the Department of the Treasury or the Internal Revenue Service and the Controlling Person to inspect the books and records of the Borrower pertaining to the incomes of qualifying tenants residing in the Project Facilities upon reasonable notice (given at least five (5) days in advance) and at reasonable times during business hours on Business Days.

(j) The Borrower will promptly notify the Trustee and the Controlling Person if at any time the dwelling units in the Project Facilities are not available for occupancy as required by the Regulatory Agreement and, upon request, the Borrower will provide the Trustee and the Controlling Person a copy of the compliance certificates required to be filed by the Borrower under and at the times provided by the Regulatory Agreement.

The foregoing covenants of the Issuer assume compliance by the Borrower with its obligations under the Bond Documents and the Tax Certificate.

The Borrower acknowledges that in the event of an examination of the Tax-Exempt Bonds by the Internal Revenue Service (the “Service”) to determine compliance of the Tax-Exempt Bonds with the provisions of the Code as they relate to tax-exempt obligations, the Issuer is likely to be treated as the “taxpayer” in such examination. The Borrower agrees, upon notification by the Issuer, that the Borrower: (a) will timely respond to any inquiries from the Service in connection with such examination; and (b) upon request of the Issuer, will reimburse the Issuer for all expenses incurred by the Issuer, including fees and expenses of counsel (and, upon request, will provide in advance a cash deposit in the amount of the reasonably anticipated expenses to be incurred by the Issuer) in connection with such examination of the Tax-Exempt Bonds by the Service, or will directly pay the costs of any such examination. The Issuer covenants that it will promptly notify the Borrower of any inquiry or examination by the Service relating to the Tax-Exempt Bonds and will cooperate with the Borrower, at the Borrower’s sole expense, in connection with any such inquiry or examination. The Borrower understands and agrees that the interests of the Issuer and the Borrower in any such examination may differ and that the existence of the examination may be subject to public disclosure by the Issuer under the open records laws of the State.

Notwithstanding the foregoing, the Issuer shall not be required to expend any money or take any action unless it is reimbursed by the Borrower for the expense or the cost of taking such action.

Section 6.11. Single Purpose Entities. (a) The Borrower and the Managing Member shall (i) not engage in any business or activity, other than the construction, ownership, operation and maintenance of the Project Facilities and activities incidental thereto; and (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Project Facilities and such personal property as may be necessary for the operation of the Project Facilities and shall conduct and operate its business as presently conducted and operated.

(b) Each of the Borrower and the Managing Member shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the Managing Member shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than the Managing Member, or any respective Affiliate thereof; (iii) not incur or contract to incur any obligations, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement, the other Bond Documents, the Subordinate Debt Documents, the Credit Facility Documents or unsecured loans or guaranty payments made by the members of the Borrower pursuant to the Operating Agreement or by a Guarantor, or unsecured trade payables or the Developer Fee; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the Managing Member), except as otherwise permitted under this Agreement or the Bond Documents; (v) do or cause to be done all things necessary to preserve its existence; (vi) not amend, modify or otherwise change its certificate of formation or Operating Agreement or partnership agreement, as applicable, without obtaining the prior written consent of the Controlling Person, not to be

unreasonably withheld, conditioned or delayed (and which the Controlling Person will endeavor to accept or reject within ten (10) Business Days of request); *provided* that no consent shall be required for changes or amendments to the Operating Agreement to the extent such changes or amendments are solely required to effect a Permitted Transfer or do not materially and adversely affect the rights of the Holder, in which case the Majority Owner shall be given written notice of any such amendments, and provided that any changes with respect to installments of capital contributions which constitute Required Equity Funds or the timing thereof, or that otherwise, except for a change or amendment solely required to effect a Permitted Transfer, materially and adversely affect the rights and interests of the Holders or materially and adversely affect the Project also require Majority Owner consent, which consent shall not be unreasonably withheld, conditioned or delayed; (vii) conduct and operate its business as presently conducted and operated or contemplated to be conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the Managing Member ; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the Managing Member to dissolve, or (C) consent to the dissolution or liquidation of the Managing Member; (xiv) not commingle the funds and other assets of the Borrower with those of the Managing Member, any Affiliate thereof or any other Person; and (xv) not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person or as permitted pursuant under the Bond Documents.

Section 6.12. Negative Pledge; No Sale. (a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), by the Borrower (the sale with recourse of receivables or any “sale and lease back” of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

(b) Other than Permitted Transfers and the making of residential leases, the Borrower shall not sell, assign, transfer, convey or otherwise dispose of the Project Facilities, or any part thereof, or permit or consent to a Sale without in each instance (i) obtaining the express prior written consent of the Controlling Person, which consent may be withheld or granted (and be subject to the payment of such fees and the satisfaction of other conditions as set forth in Section 1.12 of the Security Instrument) in the Controlling Person’s sole and absolute discretion; and (ii) complying with the applicable requirements of the Regulatory Agreement.

Section 6.13. Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness. (a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they

become delinquent, as the case may be, all of the Borrower's Indebtedness under the Bond Documents, the Subordinate Debt Documents, the Credit Facility Documents and all of its other Obligations, whether now existing or hereafter arising, and comply with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and capital expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall make no distribution of funds to its members unless no Default or Event of Default exists, such distribution is in accordance with the provisions of the Operating Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution.

(c) Without obtaining the prior written consent of the Controlling Person, the Borrower will not create, incur, assume, guarantee or be or remain liable for any indebtedness or Obligations other than (i) Indebtedness under the Bond Documents; (ii) Indebtedness under the Subordinate Debt Documents and Credit Facility Documents; (iii) current liabilities of the Borrower relating to the Project Facilities incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit; and (iv) any unsecured loans or guaranteed payments from members or their Affiliates or the Guarantors pursuant to the Operating Agreement and the deferred Developer Fee.

Section 6.14. Environmental Covenants. (a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by the Controlling Person, the Borrower will provide to the Controlling Person copies of (i) applications or other materials submitted to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any Governmental Action granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint or other document received by the Borrower, its lessees, sub-lessees or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower will, at all times during the term of this Agreement, cause Hazardous Substances used at the Project Facilities to be handled, used, stored and disposed in accordance with all Environmental Laws and in a manner which will not cause an undue risk of Contamination in violation of Environmental Laws.

(c) The Borrower will cause all construction of new structures at the Project Facilities during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the Environmental Protection Agency's recommended threshold of 4.0pCi/L.

(d) The Borrower shall not install or permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground, except after obtaining written permission from the Controlling Person to do so and in compliance with Environmental Laws.

(e) The Borrower shall implement a moisture management and control program (the "*Moisture Management Program*") for the Improvements at the Project Facilities to prevent the occurrence of mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduces through the release of spores or the splitting of cells (collectively, "*Mold*"), at, on or under the Project Facilities, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Project Facilities for Mold, (b) removing or cleaning up any Mold and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person, and (c) in the event that the Mold identified at the Improvements at the Project Facilities cannot be removed or cleaned from any impacted building materials (*e.g.*, porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Project Facilities, all in accordance with the procedures set forth in the United States Environmental Protection Agency's ("*EPA*") guide entitled "Mold Remediation in Schools and Commercial Buildings," EPA No. 402-K-01-001, dated March 2001 and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person. The Borrower shall include as part of every residential lease a Mold/Mildew Addendum in the form attached hereto as *Exhibit C*. The Borrower further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of the Borrower hereunder, the source (*e.g.*, leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Project Facilities shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

(f) Upon the occurrence of an Event of Default, or if the Controlling Person has reason to believe that there has occurred and is continuing a violation of Environmental Law or that there exists a condition that could give rise to any Governmental Action, the Controlling Person may, at its discretion, commission an investigation at the Borrower's expense of (i) compliance at the Project Facilities with Environmental Laws, (ii) the presence of Hazardous Substances or Contamination at the Project Facilities, (iii) the presence at the Project Facilities of materials which are described in clause (b) of Section 5.12, (iv) the presence at the Project Facilities of Environmentally Sensitive Areas, (v) the presence at the Project Facilities of radon products, (vi) the presence at the Project Facilities of tanks of the type described in paragraph (e) of Section 5.12 or in paragraph (d) of Section 6.14 above, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this paragraph, the Borrower, and its lessees, sub-lessees and assigns, will comply with any reasonable request for information made by the Controlling Person or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees or assigns of the Borrower in connection

with an investigation pursuant to this paragraph. The Borrower will permit the Controlling Person and its agents access to all areas of the Project Facilities at reasonable times and in reasonable manners in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project Facilities (after reasonable notice and opportunity to cure) and take any and all other actions as the Controlling Person shall deem necessary or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Security Instrument on the Project Facilities.

Section 6.15. Controlling Person. The Borrower acknowledges and agrees that (a) prior to the Conversion Date (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture and the Controlling Person has appointed the Servicer to service the Loan; (ii) the Majority Owner has appointed NewPoint Real Estate Investment Management LLC, a Delaware limited liability company, to serve in the capacity of Controlling Person hereunder, under the other Bond Documents, and under the Indenture; (iii) the Majority Owner retains the sole and exclusive right to appoint, remove or replace the Controlling Person, without the consent or approval of the Borrower, and (b) from and after the Conversion Date (i) the Credit Provider shall be the Controlling Person and shall have the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture. The Borrower shall comply with the directions of the Controlling Person and the Servicer under the Bond Documents to which it is a party.

Section 6.16. Tax Returns. The Borrower shall cause the Managing Member to timely file all tax returns for itself and for the Borrower, pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties, and, upon request, provide to the Controlling Person copies of such returns and receipts for payment of such taxes.

Section 6.17. Leases. The Borrower hereby represents that there are no leases or agreements to sublease all or any part of the Project Facilities now in effect. Except for leases to residential tenants in compliance with the Regulatory Agreement and leases for services associated with residential rental properties (such as laundry and cable lease), the Borrower shall not enter

into or become liable under, any leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person. Each lease of residential units in the Project Facilities to a residential tenant shall be on a form of lease approved by the Controlling Person and shall be in compliance with the requirements of the Regulatory Agreement.

Section 6.18. Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and the other Bond Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture. The Borrower shall obtain any approvals required under the Subordinate Debt Documents and Credit Facility Documents in connection with any of the foregoing.

Section 6.19. Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person with the Managing Agent (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time, the “*Management Agreement*”). Under the Management Agreement, the Managing Agent shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. The Borrower shall not replace the Managing Agent for the Project Facilities without the Controlling Person’s prior written approval, and the Management Agreement shall not be terminated or modified without the Controlling Person’s prior written approval. In the event the Managing Agent resigns or is removed, the Borrower shall promptly seek a replacement Managing Agent and submit such Managing Agent and its proposed form of Management Agreement to the Controlling Person for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person may (but shall not be required to) engage a new Managing Agent on terms satisfactory to the Controlling Person in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Managing Agent shall execute a consent to the Assignment of the Management Agreement pursuant to which the Managing Agent shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days’ notice following and during the existence of an Event of Default.

Section 6.20. Determination of Taxability. None of the Borrower or the Managing Member shall admit in writing to the Issuer or the Trustee or to any Governmental Authority that interest on the Bonds has become includable in gross income for purposes of federal income taxation without first providing reasonable advance notice to the Controlling Person and the Majority Owner and permitting the Controlling Person or the Majority Owner, at its sole discretion and at its expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any

Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Trustee, the Controlling Person and the Majority Owner.

Section 6.21. List of Bondholders. Upon the written request of the Controlling Person, the Borrower shall exercise any right it may have under the Indenture to request a list of Bondholders and shall deliver such list to the Controlling Person. Any costs associated with obtaining the list of Bondholders at the Controlling Person's request shall be paid by the Controlling Person.

Section 6.22. Use of Proceeds. The Borrower agrees that the proceeds of the Tax-Exempt Bonds will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the Tax-Exempt Bond proceeds will be allocated on a pro rata basis to each building in the Project Facilities and the land on which such building is located, so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Tax-Exempt Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code.

Section 6.23. Compliance With Anti-Terrorism Regulations. Neither the Borrower, the Managing Member nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by the Office of Foreign Assets Control (“OFAC”) or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the Managing Member hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an “OFAC Violation”), the Borrower or the Managing Member, as applicable, will immediately (i) give notice to the Controlling Person of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the “Anti-Terrorism Regulations”), and the Borrower and the Managing Member hereby authorize and consent to the Controlling Person's taking any and all reasonable steps the Controlling Person deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24. Adoption of Capital and Operating Budgets. (a) On or before December 1 of each Fiscal Year following Final Completion, the Borrower shall submit to the Controlling Person for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the “*Proposed Budget*”). The Controlling Person shall have the right to approve or disapprove any Proposed Budget, which approval shall not be unreasonably withheld or delayed. Third party costs not within the Borrower’s control and costs associated with remediation of emergency conditions shall be permitted variances to the Annual Budget. If any Proposed Budget is not disapproved by the Controlling Person within thirty (30) days following submission by the Borrower, such budget shall be deemed approved. If any budget is disapproved, the Borrower shall thereafter consult with the Controlling Person in an effort to achieve a mutually acceptable Annual Budget for an additional thirty (30) days. To the extent the proposed operating budget is disapproved, the operating budget for the previous Fiscal Year shall remain in effect increased by five percent (5%) over the previous Fiscal Year (except for costs of utilities, Impositions and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Annual Budget may be revised from time to time with approval of Controlling Person to reflect changes to Expenses and proposed Capital Expenditures set forth in the then-current Annual Budget.

(b) Without limiting the generality that each Proposed Budget must be approved by the Controlling Person, each Proposed Budget:

(i) shall be prepared on the basis of sound accounting practices consistently applied;

(ii) shall reflect the projected revenues and Expenses of the Project Facilities;

(iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project Facilities during the Fiscal Year covered by such Proposed Budget; and

(iv) shall be in such form as is reasonably acceptable to the Controlling Person and containing such other information as reasonably may be requested by the Controlling Person.

Section 6.25. Borrower’s Approval of Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of, acceleration premium, if any, and the interest on, the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to

enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

Section 6.26. Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Controlling Person shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.02(a) hereof, and the fees of the Engineering Consultant, if any, set forth in Section 2.02(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article VIII hereof.

Section 6.27. Additional Conditions Precedent. The rights of the Borrower to the disbursement of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 1 hereof.

Section 6.28. Fannie Mae Commitment. The parties contemplate that the Credit Facility will be issued by the Credit Provider with respect to the Bonds upon satisfaction of the Conditions to Conversion in accordance with the Fannie Mae Commitment. Prior to the Conversion Date, (a) Borrower shall duly observe, pay and perform all of Borrower's obligations and responsibilities under the Fannie Mae Commitment as and when required thereunder and shall maintain the Fannie Mae Commitment in full force and effect, (b) Borrower shall not consent to any amendment or waiver of any term or provision of the Fannie Mae Commitment or permit any departure therefrom by Credit Provider without the prior written consent of the Controlling Person in its sole and absolute discretion, and (c) Borrower shall promptly provide Lender with copies of all notices of default or potential default delivered or received and notices of any material adverse event that constitutes (or following the giving of notice or passage of time or both, would constitute) a default or event of default under the Fannie Mae Commitment, whether such event is declared a default or an event of default or is waived by Credit Provider.

Section 6.29. Construction of Improvements. The Borrower shall construct the Project Facilities in a true, thorough and workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance in all material respects with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements and cartage of every description for the due completion of construction of the Project Facilities. The Borrower shall take all necessary steps to assure that commencement of construction of the Project Facilities shall begin within thirty (30) days following the Issue Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and Specifications and in all instances in compliance in all material respects with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date.

Section 6.30. Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with

copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

Section 6.31. Correction of Deficiencies in Improvements. The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and Specifications in any material respect. In the event of any dispute between the Borrower and the Controlling Person with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by the Controlling Person.

Section 6.32. Loan Rebalancing. If, prior to Conversion, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (i) the remaining proceeds of the Loan, (ii) the capital contributions from the Borrower's members; (iii) any other source of funds shown in the Development Budget attached hereto; and (iv) any other sums deposited by the Borrower with the Trustee are insufficient to pay through completion of the Project Facilities, all of the following sums: (x) all remaining costs of construction, marketing, ownership, maintenance and leasing of the Project Facilities; and (y) all remaining interest and all other remaining sums which may accrue or be payable under the Bond Documents, then the Controlling Person may require the Borrower to deposit with the Trustee for deposit into the Project Fund, within ten (10) Business Days after written request by the Controlling Person, the projected deficiency, and such deposit shall be first disbursed in the same manner as the Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Loan shall be made. Notwithstanding the foregoing, if, at any time, the Controlling Person determines, in Controlling Person's reasonable discretion, that it is unlikely that the Borrower will receive all or a portion of the sources of funds shown on the Development Budget (other than Loan proceeds), the Controlling Person may exclude such amount from its determination of whether the Loan is "in balance" as provided above.

Section 6.33. Use of Loan Proceeds. All labor and materials contracted for and in connection with the construction of the Project Facilities shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from Accounts held under the Indenture to or for the account of the Borrower under this Agreement shall constitute a trust fund in the hands of the Borrower or other payee and shall be used solely by such payee for the payment of the Qualified Project Costs and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by the Controlling Person. Nothing in this paragraph shall be deemed to impose a trust on the undisbursed portion of the Loan or any other amounts held under the Indenture or to impose any duty on the Controlling Person with respect thereto.

Section 6.34. [Reserved].

Section 6.35. Developer Fee. The Borrower will not pay any Developer Fee prior to the Conversion Date.

Section 6.36. [Reserved].

Section 6.37. Extension of the Outside Conversion Date. Notwithstanding any provisions in this Agreement to the contrary, the Borrower may, upon not less than 30 days prior written notice to the Controlling Person, extend the deadline for the Project Facilities to satisfy the Conditions to Conversion so long as:

- (a) there is no uncured Default or Event of Default exists and the Borrower is then in compliance with its obligations under the Bond Documents;
- (b) the extended deadline for the satisfaction of the Conditions to Conversion is no later than six months after the initial Outside Conversion Date;
- (c) Fannie Mae consents;
- (d) the Borrower certifies in writing to the Controlling Person that cash flows generated from property operations and/or funds on deposit with the Trustee (or other sources approved by the Controlling Person) will be sufficient to pay debt service during the term of the extension; and
- (e) Borrower shall have paid any extension fees and satisfied any conditions actions required by the Credit Provider to maintain the Fannie Mae Commitment in effect for the term of any such extension.

Section 6.38. Conversion; Pre-Conversion Loan Equalization Payment. The Project Facilities shall satisfy the Conditions to Conversion on or prior to the Termination Date. In order to satisfy the Conditions to Conversion, the Borrower make a Pre-Conversion Loan Equalization Payment and cause a redemption of the Bonds, as set forth in Section 3.4(a)(i) of the Indenture.

Section 6.39. [Reserved].

Section 6.40. Compliance with Regulatory Agreement. During the Qualified Project Period (as such term is defined in the Regulatory Agreement), the Borrower hereby represents, covenants and agrees that it will comply with all requirements and restrictions set forth in the Regulatory Agreement. The Borrower agrees that the provisions of this Section 6.40 shall remain in full force and effect for the Qualified Project Period.

ARTICLE VII DEFAULTS AND REMEDIES

Section 7.01. Defaults. Each of the following shall constitute an event of default hereunder (“Event of Default”):

- (a) Failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement, the Note or any of the other Bond Documents when the same shall become due and payable;
- (b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.01, 6.11 or 6.12 hereof;

(c) Failure by the Borrower to perform or comply with any of the terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party, other than (i) pursuant to the Continuing Disclosure Agreement or (ii) as described in paragraphs (a) and (b) above, and continuation of such failure for thirty (30) days after written notice from the Trustee or the Controlling Person to the Borrower (with a copy to the Investor Member and the Guarantor), or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the Managing Member, the Guarantor or the Investor Member shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the Issuer, the Trustee the Controlling Person or the Majority Owner pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(e) Any provision of this Agreement or any of the other Bond Documents to which the Borrower, the Managing Member or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the Managing Member or any Guarantor, is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the Managing Member or any Guarantor or any Governmental Authority, or the Borrower, the Managing Member or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower, the Managing Member or any Guarantor is a party, in any such case, contrary to the term thereof;

(f) The occurrence of an Event of Default as defined in the Indenture or the other Bond Documents;

(g) The Borrower, any Guarantor or the Managing Member (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the Managing Member, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the Managing Member to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the Managing Member in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the Managing Member is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the Managing Member, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating

to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the Managing Member an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the Managing Member or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the Managing Member, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of sixty (60) days;

(h) The Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement; provided, however, with respect to non-compliance with such insurance requirements which, in the reasonable determination of the Majority Owner, could not have a material adverse effect, the Borrower shall have three (3) Business Days' notice to cure such non-compliance;

(i) The Project Facilities suffer a loss by fire or other casualty and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee within thirty (30) days of the determination of such deficiency;

(j) The Project Facilities fail to achieve (i) subject to Force Majeure, Final Completion on or before the Completion Date; or (ii) Conversion on or before the Termination Date;

(k) Any litigation or administrative proceeding ensues, and is not dismissed within sixty (60) days, involving the Borrower, the Managing Member, any Guarantor or any instrument, contract or document delivered by the Borrower to the Controlling Person or the Trustee in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Controlling Person's opinion, a materially adverse effect on the Borrower's, the Managing Member's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(l) Any one or more judgments or orders are entered against the Borrower, any Guarantor or the Managing Member (and the result of such judgment or order would have, in the Majority Owner Representative's reasonable opinion, a materially adverse effect on the Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents), and (1) continue unsatisfied and unstayed for thirty (30) days or (2) a judgment lien on any property of the Borrower is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower on terms which do not violate any of the Borrower's covenants under this Agreement;

(m) Failure by the Borrower or any Guarantor (1) to make any payment or payments in respect of any Obligation or Indebtedness (unless a bona fide dispute exists as to whether such payment is due), when such payment or payments are due and payable (after the lapse of any applicable grace period), (2) to perform any other obligation or covenant under any such obligation or obligations or (3) to pay or perform any obligation or covenant under any Material Contract, any of which (x) results in the acceleration of such Obligation or Indebtedness or enables the holder or holders of such Obligation or Indebtedness or any person acting on behalf of such holder or holders to accelerate the maturity of such obligation or (y) would have, in the Controlling Person's reasonable opinion, a materially adverse effect on either the Borrower's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(n) As subject to Force Majeure, construction of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except such reason as the Controlling Person shall deem reasonable;

(o) The Contractor shall have defaulted under the Construction Contract, which default the Controlling Person, in its sole opinion, shall deem to be substantial, and the Borrower, upon five (5) days written notice from the Controlling Person, shall have failed to exercise any right or remedy to which it shall be entitled;

(p) An event of default shall have occurred under the Subordinate Debt Documents;

(q) The occurrence of any breach or default by Borrower under the Fannie Mae Commitment, the failure to satisfy the Conditions to Conversion on or prior to the Termination Date, or any termination of the Fannie Mae Commitment; and

(r) The Credit Provider provides written notice to the Trustee of an Event of Default under this Agreement by reason of the occurrence of an Event of Default under the Reimbursement Agreement. No Event of Default under the Reimbursement Agreement shall constitute a default under this Agreement unless specifically declared to be so by the Credit Provider. The Credit Provider shall make such declaration by written notice to the Trustee.

Section 7.02. Remedies. If an Event of Default has occurred and is continuing uncured, the Trustee, acting solely at the direction of the Controlling Person and subject to the Credit Provider Assignment, shall:

(a) Declare the principal of all Bonds then Outstanding and the interest accrued thereon to be due and payable;

(b) Declare the Borrower's obligations hereunder, under the Note and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.01(g) hereof;

(c) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Trustee or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Controlling Person shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower; if the Controlling Person elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and as the Controlling Person shall deem expedient or necessary, and the Trustee may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Controlling Person's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement and under the Note or any other note given by it pursuant to the provisions hereof, to pay the Trustee upon demand any amount or amounts expended by the Trustee or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Trustee or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the Default Rate, and shall be considered part of the indebtedness evidenced by the Note and secured by the Security Instrument;

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Controlling Person shall proceed to negotiate or invite bidding to procure, within an additional fifteen (15) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Controlling Person in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within fifteen (15) days after notice from the Borrower to do so, the Controlling Person shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity;

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Trustee and its counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents

contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are grossly negligent or due to its willful misconduct) under Section 2.05 hereof, the other Bond Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities;

(f) Subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Trustee; and

(g) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Bond Documents or at law or in equity.

Section 7.03. No Levy or Other Execution Against Project Facilities. Neither the Issuer nor the Trustee shall have any right to levy, execute or enforce any judgment in respect of the Borrower's obligations under this Agreement, including the Reserved Rights, against the Project Facilities or any other property of the Borrower which secures the obligations of the Borrower under the Loan or to the Credit Provider under any of the Credit Facility Documents.

Section 7.04. No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the direction of the Controlling Person (or by the Issuer if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.05. No Waiver; Remedies Cumulative. Unless the Controlling Person and the Credit Provider otherwise consent in writing, neither the Issuer nor the Trustee may waive or annul any Event of Default under this Agreement unless (i) all amounts which would then be payable under this Agreement by the Borrower if such Event of Default had not occurred and was not continuing are paid by or on behalf of the Borrower, and (ii) the Borrower also performs all other obligations in respect of which there is then an Event of Default under this Agreement and pays the reasonable charges and expenses of the Issuer and the Trustee, including reasonable attorneys' fees and expenses paid or incurred in connection with such default. No failure on the part of the Issuer, the Trustee, the Controlling Person or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.06. Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder, the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the Managing Member (any such notice being expressly waived by the Borrower and the Managing Member) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the Issuer to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the Issuer in connection therewith, whether or not the Issuer shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Trustee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Trustee may have.

Section 7.07. Borrower to Give Notice of Default. The Borrower covenants that it will, at its own expense, promptly give to the Trustee, the Issuer, the Controlling Person, Guarantor and the Investor Member and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 7.08. Cure by Guarantor and Investor Member. Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any timely cure of any default or Event of Default under this Agreement or any Bond Document made or tendered by the Guarantor or the Investor Member 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; *provided, however*, that the Investor Member shall not have any obligation or duty to take any action to cure any default or Event of Default or to cause any default or Event of Default to be cured under this Agreement or any Bond Document.

Section 7.09. Default Rate; Acceleration Premium; Penalty Rate. (a) In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the First Optional Redemption Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.03(c) hereof.

(b) In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.10. Reserved Rights; Regulatory Agreement Defaults. (a) Notwithstanding anything to the contrary contained herein, the Issuer may enforce its Reserved Rights under the Bond Documents and exercise the permitted remedies with respect thereto against the Borrower, subject to the provisions of Section 7.03 above and subparagraph (c) below.

(b) If there shall have occurred and be then continuing an event of default under the Regulatory Agreement which would, in the reasonable judgment of the Issuer, the Controlling Person or the Majority Owner, jeopardize the excludability from gross income of interest on the Tax-Exempt Bonds (a “*Regulatory Agreement Default*”) and such Regulatory Agreement Default remains uncured or unwaived for a period of sixty (60) days after the Borrower, the Trustee, the Controlling Person, the Issuer and the Majority Owner, as applicable, receive written notice from the Issuer, the Controlling Person or the Majority Owner, as applicable stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Bond Documents, the Issuer and the Trustee may, without the consent of the Controlling Person or the Majority Owner, exercise the remedy of pursuing specific performance of the Bond Documents on account of such default, unless:

(i) The Issuer and the Trustee, prior to the end of such sixty (60) day period, are provided with an opinion of Bond Counsel (at the Borrower’s expense) to the effect that the failure to cure such default will not have an adverse effect on the excludability from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds (which opinion may be requested and obtained by the Controlling Person or the Majority Owner);

(ii) The Controlling Person, the Majority Owner or the Borrower institutes action to cure such Regulatory Agreement Default within such sixty (60) day period and diligently pursues such action thereafter until such Regulatory Agreement Default is cured; or

(iii) If such Regulatory Agreement Default is not reasonably curable by the Controlling Person or the Majority Owner without the Trustee’s first securing possession of the Project Facilities and/or operational control of the Borrower and the Controlling Person or the Majority Owner (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Trustee, subject to the terms of the Indenture, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Bond Documents; (y) thereafter instructs the Trustee, pursuant to the terms of the Indenture, to pursue diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Trustee or other designee of the Controlling Person or the Majority Owner obtains possession or control of the Project Facilities, until such default is cured; *provided, however*, that any extension, of the period within which a Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the opinion of Bond Counsel (at the expense of the Borrower) provided to the Trustee and the Issuer, such extension will not adversely affect the excludability from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds; and *provided, further*, that the Trustee, upon five (5) Business Days’ prior written notice to the Controlling Person and the Majority Owner following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in

no event less than fifteen (15) Business Days), but only if the Trustee, the Issuer, the Controlling Person and the Majority Owner shall have been provided with an opinion of Bond Counsel (at the expense of the Borrower) to the effect that such reduction of such period is necessary to preserve the excludability from gross income for federal income tax purposes of interest the Tax-Exempt Bonds.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Issuer, the Controlling Person and the Majority Owner, as applicable, nothing in this Section 7.09 shall restrict or in any way limit the right of the Issuer or the Trustee to take any action for specific performance available under the Regulatory Agreement or at law or in equity in order to enforce the terms of the Regulatory Agreement or to enforce Reserved Rights hereunder, so long as neither the Issuer nor the Trustee takes any action (i) to declare the Outstanding balance of the Bonds or the Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Security Instrument, (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby, or (v) impair the ability of the Borrower to pay its obligations under the Bond Documents.

ARTICLE VIII DEPOSITS TO FUNDS

Section 8.01. [Reserved].

Section 8.02. Deposits to Tax and Insurance Escrow Fund. (a)[On the Issue Date][Prior to Conversion] [NTD – WILL THERE BE ONGOING DEPOSITS FOLLOWING CONVERSION], the Borrower shall pay, or cause to be paid, to the Trustee to be deposited in the Tax and Insurance Escrow Fund, the amount specified in Section 4.1 of the Indenture, if any.

(b) Thereafter, unless otherwise directed by the Controlling Person, two Business Days before each Interest Payment Date, commencing the first Interest Payment Date, and continuing each month thereafter, the Borrower shall pay, or cause to be paid, to the Trustee an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

Section 8.03. [Reserved].

Section 8.04. Deposits to Redemption Fund. The Borrower shall pay to the Trustee for deposit into the Redemption Fund pursuant to Section 4.5(a) of the Indenture on the dates set forth in Section 2.01(b), the amounts set forth therein. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund any other amounts required to redeem Bonds pursuant to Section 3.4 of the Indenture, as provided therein.

Section 8.05. [Reserved].

Section 8.06. Investment. Funds in the Accounts shall be invested in Permitted Investments upon the direction of the Borrower with the consent of the Controlling Person, as set forth in Section 4.8 of the Indenture. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the applicable Account and reinvested and applied as provided in the Indenture. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Controlling Person to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

Section 8.07. Security Interest in Accounts. The Borrower hereby assigns and pledges to the Issuer, and grants the Issuer a security interest in, as additional collateral security for the Borrower's obligations to the Issuer hereunder (and the Borrower acknowledges and agrees that the Issuer shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Issuer hereby directs the Trustee to hold all moneys in the Accounts (excluding any moneys paid in respect of the Reserved Rights) from time to time as assignee of the Issuer.

Section 8.08. Account Statements. The Trustee shall make available to the Borrower detailed monthly statements on or before the fifteenth (15th) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, the Trustee shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds.

Section 8.09. No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement. Any provisions governing the rights, immunities and protections of the Trustee under the Indenture are incorporated by reference into this Agreement as being applied to the Trustee in performing any of its duties hereunder.

ARTICLE IX CONSTRUCTION AND FUNDING OF ADVANCES

Section 9.01. Construction of Project Facilities; Final Completion. The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days following the Issue Date, and shall achieve Final Completion of such Work in accordance with the

Plans and Specifications on or before the Completion Date; *provided, however*, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion and upon delivery of such other information and funds as the Controlling Person may require in its sole discretion.

Section 9.02. Making The Advances. (a) At such time as the Borrower desires to obtain an advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Controlling Person, the Servicer and the Trustee. Each Requisition shall be submitted to the Controlling Person, the Servicer and the Trustee at least fifteen (15) Business Days prior to the date of the requested disbursement, and no more frequently than once each month (excluding the month in which the initial disbursement is requested). The Controlling Person shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have, and if the Controlling Person has not objected to any Requisition it has properly received on or before the date of the requested disbursement, the Requisition shall be deemed approved by the Controlling Person, and the Trustee shall be authorized to deposit the proceeds for the Purchaser's purchase of the Bonds related to the subject advance in the amount of the requested disbursement as set forth in (b) below; *provided that*, (i) in no event, shall a Requisition be approved or deemed approved on or after the 26th day of a month through the last day of each month and (ii) Requisitions shall be funded on the first Business Day on the month immediately succeeding the month in which the subject Requisition was approved.

(b) The Borrower and the Controlling Person hereby direct the Trustee to disburse the proceeds of each Requisition from the Project Fund to the Title Company for further disbursement or to such other party as directed in the Requisition. The Borrower and the Controlling Person may mutually direct the Trustee to deposit the proceeds of any such Requisition to an account set forth in such direction. [NTD – PLEASE CONFIRM FUNDS GENERALLY DISBURSED TO TITLE]

Section 9.03. Payments to Contractors; to Others. At its option during the existence of any Event of Default or Default, the Controlling Person may direct the Trustee to make any or all disbursements from the Project Fund: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due.

Section 9.04. Requisition. Each Requisition shall be in the form set forth on *Exhibit B* hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person prior to payment and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements of proceeds of the Bonds, will result in not less than ninety-five percent (95%) of all disbursements of proceeds of the Bonds having

been used to pay or reimburse the Borrower for Qualified Project Costs. The Trustee may conclusively rely upon an executed and approved Requisition without further investigation.

Section 9.05. Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be disbursed by the Trustee from the Project Fund are to be used. Subject to Sections 9.07 and 9.09(a) hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Sections 9.07 and 9.09(a) hereof, in no event shall the Controlling Person approve any Requisition in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any disbursements previously made by the Trustee from the Project Fund for such costs.

Section 9.06. Retainage. The Controlling Person shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No disbursement of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such disbursement is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant, if one has been retained.

Section 9.07. Contingency Reserve. The amount allocated to “contingency” in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the Controlling Person (provided, however, that amounts applied to changes as described in Section 9.09(a) shall be permitted without prior approval of the Controlling Person). The disbursement of a portion of the contingency reserve shall in no way prejudice the Controlling Person from directing the Trustee to withhold disbursement of any further portion of the contingency reserve.

Section 9.08. Stored Materials. The Controlling Person shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, *provided* that any such disbursement shall be subject to and shall be contingent upon the Controlling Person’s receiving satisfactory evidence that:

(a) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of ninety (90) days, or such longer period as is approved by the Controlling Person; and

(b) such materials are stored at the Project Facilities, or at such other site as the Controlling Person shall approve, and are insured and protected against theft and damage.

Section 9.09. Cost Overruns and Savings. (a) If the Borrower becomes aware of any change in the costs of the Work, the Borrower shall submit to the Controlling Person a completed Form AIA-G701 with respect to such change. In addition, if any change in the costs of the Work increases the projection of the costs reflected on the Development Budget by \$150,000 or more per individual change or \$300,000 in the aggregate changes (it being acknowledged that

notwithstanding anything contained herein to the contrary that changes below the foregoing amounts shall not require the consent of the Controlling Person or the Trustee and unused contingency may be used by the Borrower with respect to said changes), the Borrower shall immediately notify the Controlling Person in writing and promptly submit to the Controlling Person for its approval a revised Development Budget, together with the aforementioned completed Form AIA-G701 (receipt and approval by the Controlling Party of a Requisition form providing for a change order shall be deemed approval of such change order). If the Controlling Person otherwise becomes aware of any such increase in costs of the Work, the Controlling Person shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

(b) If the revised Development Budget indicates an increase in costs of the Work for the Project Facilities (in excess of the aggregate contingency amount and savings), no further Requisitions for the Work at the Project Facilities need be approved by the Controlling Person unless and until the Borrower has deposited with the Trustee any required funds necessary to cause the amount remaining on deposit in the Project Fund and any Required Equity Funds yet to be deposited with the Trustee to be sufficient to complete fully the construction of the Improvements in accordance with the Plans and Specifications to the extent applicable, and to pay all other Projected costs in connection with the Work.

(c) If the revised schedule indicates a decrease in costs of the Work for the Project Facilities, no savings may be reallocated by the Borrower unless and until the Borrower has furnished the Controlling Person and the Engineering Consultant, if any, with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full. At such time, such savings may be reallocated by the Borrower, with the consent of the Controlling Person, to other line items.

(d) The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Project Costs will be sufficient to pay all of the Project Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Project Costs as required herein, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement or under the Note.

Section 9.10. Right to Retain the Engineering Consultant. (a) The Controlling Person shall have the right to retain, at the Borrower's cost and expense, the Engineering Consultant to perform various services on behalf of the Controlling Person, including, without limitation, to make periodic inspections for the purpose of assuring that construction of the Improvements to date is in accordance with the Plans and Specifications, to advise the Controlling Person of the anticipated cost of and time for completion of construction of the Improvements and to review all construction contracts and subcontracts. In the event that the Controlling Person has not retained an Engineering Consultant, the construction monitor retained by the Investor Member, which is initially [Partner Engineering and Science, Inc.] (the "*Construction Monitor*"), may, but shall not be required to, perform all actions permitted to be performed by the Engineering Consultant hereunder, and, if

such actions are performed by the Construction Monitor, it shall be entitled to payment for such services as described herein.

(b) The fees of the Engineering Consultant during the performance of the construction shall be paid by the Borrower in accordance with Section 2.02(b) hereof.

(c) Except to the extent of gross negligence or willful misconduct, neither the Controlling Person nor the Majority Owner shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of construction of the Improvements. Neither the Controlling Person nor the Engineering Consultant assumes any obligation to the Borrower, the Managing Member or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

(d) The Borrower agrees to provide the Controlling Person with monthly construction reports prepared by the Construction Monitor within three (3) Business Days of the Borrower's receipt thereof.

Section 9.11. Inspections. The Borrower agrees to provide and cause to be provided to the Controlling Person and its authorized agents, at all times, facilities commonly made available by responsible general contractors for the inspection of the Improvements, and to afford full and free access to the Controlling Person and its authorized agents to all plans, drawings and records with respect to the construction of the Improvements. The Borrower further agrees to promptly send to the Controlling Person a copy of all construction inspection reports made by the Borrower's Architect or engineer.

Section 9.12. Initial Disbursement. The right of the Borrower to the initial disbursement from the Project Fund on the Issue Date shall be subject to the satisfaction of the following conditions precedent:

(a) The Borrower shall have delivered the items listed on Schedule 1 attached hereto;

(b) The Borrower shall have delivered evidence as to the obtaining of all approvals, permits and licenses which are then required, if any, or necessary for the construction of the Improvements at the Project Facilities, together with copies of all such approvals, permits and licenses or evidence that such permits or licenses are not required;

(c) The Borrower shall have delivered copies of the Borrower's contracts with the Architect and the Contractor, duly executed by the parties thereto, and to the extent applicable, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be, supplying labor or materials for the construction of the Project Facilities;

(d) The Borrower shall have delivered to the Controlling Person two (2) complete sets of the Plans and Specifications, together with evidence of their approval by all Governmental Authorities having jurisdiction;

(e) True and correct copies of all grading, foundation, building and all other construction permits, licenses and authorizations from all applicable Governmental Authorities or third parties necessary for the construction and/or rehabilitation of the Improvements and the operation of, and access to, the Project;

(f) [Reserved];

(g) The Borrower shall have delivered to the Controlling Person evidence as to:

(i) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;

(ii) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

(iii) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and

(iv) the obtaining of all Governmental Actions which are required, necessary or desirable for the construction of the Improvements and the access thereto;

(h) The deposits required under Section 4.1(c) of the Indenture shall have been made; and

(i) The Controlling Person and the Borrower shall have executed a closing statement for the Bonds in form and substance satisfactory to the Controlling Person and, if any portion of the disbursement shall be for hard costs of construction, a completed Requisition as described in Section 9.13(d)(i) hereof and the Engineering Consultant approval described in Section 9.13(d)(iii) hereof, if applicable.

Section 9.13. Subsequent Disbursements. The right of the Borrower to receive any subsequent disbursements from the Project Fund shall be subject to the satisfaction of the following conditions:

(a) The Borrower shall have delivered the items listed on Part B of Schedule 1 attached hereto.

(b) If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Security Instrument.

(c) There shall not be a continuing Event of Default or a Default.

(d) The Controlling Person shall have received:

(i) a completed Requisition in the form set forth on *Exhibit B* hereto, accompanied by the certificates, applications, invoices and other materials required thereby;

(ii) an endorsement to the Title Policy indicating no change in the state of title not approved by the Controlling Person;

(iii) if an Engineering Consultant has been retained by the Controlling Person, approval of the portion of the Requisition applicable to the Work for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the disbursement is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Bond proceeds and other available funds and funds projected to be deposited in the Project Fund established under the Indenture is adequate to complete construction of the Improvements in accordance with the Plans and Specifications; and

(iv) if no Engineering Consultant has been retained by the Controlling Person, the Controlling Person has received a monthly construction report from the Borrower or the Construction Monitor for the most recent 30-day period.

(e) Notwithstanding anything to the contrary set forth in this Agreement, no sums shall be disbursed until the Borrower has delivered a waiver or full, conditional or partial release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work supplied or materials provided and for which payment is requested, and with respect to all contractors, subcontractors, material men or others entitled to a lien for work done or materials provided and paid from any prior disbursement funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such work.

(f) The Controlling Person may withhold or refuse to approve any Requisition hereunder if any mechanic's lien is filed or notice of intention to record or file a mechanic's lien has been filed or given.

(g) If the Controlling Person has retained an Engineering Consultant, in addition to the conditions set forth in this Section 9.13, the Controlling Person's obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed, if any.

(h) If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after the completion of construction of the foundations of the Improvements, the Borrower shall deliver a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications together with, if requested by Controlling Person, a foundation endorsement to the Title Policy in for and substance acceptable to the Controlling Person.

(i) Except for the first installment, all installments of Required Equity Funds then due and payable shall have been deposited with the Trustee.

(j) No Material Change Order shall have been made without the written approval of the Controlling Person.

(k) Within five (5) days after receiving notice from the Controlling Person (or the Engineering Consultant, if any), the Borrower will commence or cause to be commenced the removal of all materials, whether worked or unworked, and all portions of the construction which the Controlling Person (or the Engineering Consultant, if any) may condemn as failing in a substantial way to conform with the Plans and Specifications, and will prosecute diligently or cause to be prosecuted diligently such removal. The Borrower further agrees to make good all portions of the construction and other materials damaged by such removal.

Section 9.14. Construction Information and Verification. From time to time, within ten (10) days after the written request of the Controlling Person, the Borrower shall deliver to the Controlling Person any and all of the following information and documents, to the extent applicable to the construction of the Project Facilities, that the Controlling Person may request, all in forms acceptable to the Controlling Person, as applicable:

(a) Current Plans and Specifications for the Improvements certified by the Architect as being complete and accurate, and a line item cost breakdown for the proposed construction and/or rehabilitation of the Improvements;

(b) A current, complete and correct list showing the name, address, telephone number and license information of each contractor, subcontractor and material supplier engaged in connection with the construction and/or rehabilitation of the Improvements, and the total dollar amount of each contract and subcontract (including any changes) and the scope of work involved, together with the amounts paid through the date of the list and all other information reasonably requested by Controlling Person;

(c) True and correct copies of the most current versions of all executed contracts and subcontracts with each party identified in the list described in clause (b) above, including any changes;

(d) Copies of (i) owner/architect/contractor project meeting minutes; (ii) requests for information (RFI), submittal logs, proposed change orders (PCO), and

change order logs; (iii) independent test results, (iv) quality inspection reports; and (v) anticipated cost reports, buy-out logs and Major Contracts;

(e) A construction schedule showing the progress of construction or rehabilitation, as the case may be, and the projected sequencing and completion times for uncompleted Work, all as of the date of the schedule;

(f) Any update to any item described above which the Borrower may have previously delivered to the Controlling Person; and

(g) The Borrower expressly authorizes the Controlling Person to contact Architect, Contractor or any contractor, subcontractor, material supplier, surety or any Governmental Authority to verify any information disclosed in accordance with this Section 9.14. The Controlling Person shall give notice to the Borrower of any such contacts, *provided* that neither the Controlling Person nor the Trustee shall incur any liability to the Borrower by reason of the failure to give such notice, and the Borrower's obligations under the Bond Documents shall not be affected in any manner by any failure to give such notice. The Construction Contract shall require the Contractor to disclose such information to the Trustee and the Controlling Person. Any defaulting architect, contractor, subcontractor, material supplier or surety shall be promptly replaced, and the Borrower shall promptly deliver all required information and documents to the Controlling Person and the Trustee regarding each replacement architect, contractor, subcontractor, material supplier and surety. The Controlling Person may disapprove any architect, contractor, subcontractor, material supplier, surety or other party whom the Controlling Person in its reasonable judgment may deem financially or otherwise unqualified, however, the absence of any such disapproval shall not constitute a representation of qualification.

Section 9.15. Effect of Approval. Approval of any Requisition by the Controlling Person shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the work, the quantity of the work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans and Specifications. Any inspection of the work that the Controlling Person may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the work shall be solely for the Controlling Person's information and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the information or protection of any right or interest of any person or entity other than the Controlling Person and the Majority Owner.

ARTICLE X MISCELLANEOUS

Section 10.01. Notices. All notices and other communications provided for hereunder shall be in writing and sent by electronic mail (with confirmed receipt) and by reputable overnight mail service or private delivery service at the respective addresses set forth in Section 10.4 of the Indenture. The parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in Section 10.4 of the Indenture. All notices shall, when sent as

aforesaid, be effective when received. A duplicate copy of each notice, certificate, request or other communication given under this Agreement to the Issuer, the Borrower or the Trustee shall also be given to the Controlling Person, the Servicer, and, following the Conversion Date, the Credit Provider.

Section 10.02. Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Controlling Person, the Majority Owner and the Credit Provider are express third party beneficiaries of this Agreement and the rights of the Trustee (as assignee of the Issuer) hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person. The Borrower and the Issuer intend that no person other than the parties hereto, the Issuer Indemnified Parties, the Majority Owner, the Controlling Person, the Credit Provider, the Trustee, and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.03. Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.04. Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.05. Costs, Expenses and Taxes. The Borrower agrees to pay on the Issue Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Issuer, the Trustee, the Controlling Person, the Majority Owner, the Servicer, the Dissemination Agent and the Credit Provider in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, if any, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Controlling Person, and the reasonable fees and expenses of counsel for the Majority Owner and the Controlling Person with respect thereto and with respect to advising the Majority Owner and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.06. Severability. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such

jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement.

Section 10.07. Interest Limitation. (a) As used hereunder, the term “Maximum Rate” shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Issuer in accordance with the applicable laws of the State of Colorado (or applicable United States federal law to the extent that such law permits Issuer to contract for, charge, take, receive or reserve a greater amount of interest than under Colorado law), taking into account all Charges (as defined below) made in connection with the transaction evidenced by the Notes and the other Bond Documents.

(b) As used hereunder, the term “Charges” shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Issuer in connection with the transactions relating to the Note and the other Bond Documents, which are treated as interest under applicable law.

Section 10.08. Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.09. Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the parties with respect to the subject matter hereof.

Section 10.10. Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Bond Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding, (ii) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the State and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.01 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements. THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HERewith.

Section 10.11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State without reference to its principles of conflicts of law.

Section 10.12. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.13. Nonrecourse. (a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Bond Documents, the Issuer agrees that, in connection with the exercise of any rights or remedies available to the Issuer under this Agreement or any of the other Bond Documents (other than the Environmental Indemnity and the other guaranty agreements of the Guarantors), the Issuer shall look solely to the enforcement of the lien and security interests created by this Agreement and the other Bond Documents and to the collateral and other security held by the Trustee.

(b) Notwithstanding the preceding subsection, the Borrower and the Guarantors shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the Issuer, the Trustee, the Majority Owner, the Controlling Person or the Bondholders as a result of the occurrence of any of the following events:

(i) the Borrower fails to pay to the Trustee upon demand after an Event of Default all Rents to which the Trustee is entitled under Section 2 of the Security Instrument and the amount of all security deposits collected by the Borrower from tenants then in residence. However, the Borrower will not be personally liable for any failure described in this Section 10.13(b)(i) if the Borrower is unable to pay to the Trustee all Rents and security deposits as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(ii) the Borrower fails to apply all insurance proceeds or casualty or condemnation proceeds as required by the Bond Documents. However, the Borrower will not be personally liable for any failure described in this Section 10.13(b)(ii) if the Borrower is unable to apply insurance or casualty or condemnation proceeds as required by the Bond Documents because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Project Facilities or its operation in accordance with the provisions of Section 6.08 or 6.09 of this Agreement;

(iv) the Borrower engages in any willful act of material waste of the Project Facilities;

(v) the Borrower or the Managing Member fails to comply with any provision of Section 6.11(b) hereof;

(vi) the occurrence of any of the following transfers (other than Permitted Transfers):

(A) any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Project Facilities and the Borrower has not complied with the provisions of this Agreement;

(B) a transfer of property by devise, descent or operation of law occurs upon the death of a natural person in violation of the requirements set forth in the Bond Documents;

(C) the Borrower grants an easement that does not meet the requirements set forth in the Bond Documents;

(D) The Borrower executes a tenant lease that does not meet the requirements set forth in the Bond Documents; and

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the Managing Member or the Guarantors;

(viii) the Borrower's misappropriation of funds or other Collateral; or

(ix) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, the Guarantors, or any of their Affiliates in bad faith, or any other action of any such Person that wrongfully delays, opposes, impedes, hinders, enjoins or otherwise interferes with or frustrates the efforts of the Trustee to exercise any rights and remedies available to the Trustee provided herein or in the other Bond Documents.

(c) The Borrower and the Guarantors shall have full recourse and personal liability for all of the Indebtedness (and the limitation on liability in the first sentence of Section 10.13(a) hereof shall be null and void) as a result of the occurrence of any of the following:

(i) a violation of Section 6.11(a), 6.12(b) or 6.13(c) hereof;

(ii) the Borrower's taking any action which adversely affects the excludability from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes, or the Borrower's omitting or failing to take any action required to maintain the excludability from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes;

(iii) the Borrower or the Managing Member fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower

or the Managing Member with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.01 hereof occurs (other than a transfer described in Section 10.13(b)(vi) above, for which the Borrower will have personal liability for any loss or damage); *provided, however*, that the Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the Managing Member;

(v) there was fraud or written material misrepresentation by the Borrower or any officer, director, partner, member or employee of the Borrower in connection with the application for or creation of the Indebtedness or there is fraud in connection with any request for any action or consent by the Issuer, the Trustee, the Controlling Person or the Bondholders;

(vi) the Borrower or the Managing Member voluntarily files for bankruptcy protection under the Bankruptcy Code;

(vii) the Borrower or the Managing Member voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(viii) the Project Facilities or any part of the Project Facilities becomes an asset in a voluntary bankruptcy or becomes subject to any voluntary reorganization, receivership, insolvency proceeding, or other similar voluntary proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(ix) an order of relief is entered against the Borrower or the Managing Member pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights in any involuntary bankruptcy proceeding initiated or joined in by a Related Party; or

(x) an involuntary bankruptcy or other involuntary insolvency proceeding is commenced against the Borrower or the Managing Member (by a party other than the Trustee or the owner of any Bonds) but only if the Borrower or the Managing Member, as applicable, has failed to use commercially reasonable efforts to dismiss such proceeding or has consented to such proceeding. “Commercially reasonable efforts” will not require any direct or indirect interest holders in the Borrower or the Managing Member to contribute or cause the contribution of additional capital to the Borrower or the Managing Member.

(d) The Borrower and, to the extent provided in the applicable Guaranties, the Guarantors shall have full recourse and personal liability for all of the following:

(i) the performance of and compliance with all of the Borrower’s obligations under Sections 5.12 and 6.14 of this Agreement (relating to

environmental matters) or the Borrower's failure to comply with the provisions of the Environmental Indemnity;

(ii) the costs of any audit under Section 6.08 of this Agreement;

(iii) any costs and expenses incurred by the Issuer, the Trustee, the Controlling Person and the Majority Owner in connection with the collection of any amount for which the Borrower is personally liable under this Section 10.13, including attorneys' fees and costs and the costs of conducting any independent audit of the Borrower's books and records to determine the amount for which the Borrower has personal liability

(iv) any amounts due to the Issuer in connection with the Reserved Rights; and

(v) the Borrower's indemnity obligations pursuant to Section 2.05 hereof or as set forth in any other Bond Documents.

(e) Further, nothing contained in this Section shall be deemed to limit, vary, modify or amend any obligation owed under any guaranty, master lease or indemnification agreement, including the Environmental Indemnity and the other guaranty agreements of the Guarantors, furnished in connection with financing of the acquisition, construction and equipping of the Project Facilities, recourse under which is not, by its terms, expressly limited in accordance with this Section 10.13.

(f) Notwithstanding anything to the contrary, the Issuer, the Trustee, the Controlling Person and the Holders shall not be deemed to have waived any right such Persons may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Borrower's and the Guarantors' Obligations under the Bond Documents or to require that all collateral shall continue to secure all Obligations under the Bond Documents.

Section 10.14. Publicity. The Borrower hereby authorizes the Controlling Person or the Majority Owner and their respective affiliates, without further notice or consent, to use the Borrower's and its affiliates' name(s), logo(s) and photographs related to the Project Facilities in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Controlling Person or the Majority Owner also may discuss at a high level the types of services and solutions the Controlling Person or the Majority Owner has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Controlling Person in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Controlling Person or the Majority Owner shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and the Controlling Person.

Section 10.15. Determinations by the Majority Owner and Controlling Person. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Controlling Person or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the Controlling Person or the Majority Owner under this 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 Controlling Person or the Majority Owner (or its designated representative) at its sole and absolute discretion. The Trustee may, and shall at the written direction of the Holders of all Outstanding Bonds, by separate instrument delegate, assign, transfer and set over unto the Controlling Person any or all of the rights, remedies, duties and obligations of the Trustee under this Agreement and the other Bond Documents, in which event the Controlling Person shall have each of the rights, remedies, duties and obligations delegated to it as if specifically named herein and in the other Bond Documents, as applicable, and shall be entitled to act in its own name, but if necessary in the name and stead of the Trustee, to enforce each of the remedies provided to the Trustee hereunder or under the other Bond Documents.

Section 10.16. Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and to the other Bond Documents, to make elections or take actions (or, as requested, to refrain from making elections or taking actions) related to the audit procedures involving the Borrower and/or its partners set forth in the Bipartisan Budget Act of 2015 so that the Borrower's members, equity holders and shareholders will be directly responsible for any audit adjustments, changes or modifications rather than the Borrower, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and the other Bond Documents and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents in connection with any of the foregoing and such approvals shall be in form satisfactory to the Controlling Person.

Section 10.17. Patriot Act. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Trustee will request documentation to verify its formation and existence as a legal entity. Furthermore, if required by 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 (the "*Patriot Act*"), the Trustee may request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Borrower covenants and agrees to provide documentation as reasonably requested or required by the Trustee to enable the Trustee to comply with the requirements of the Patriot Act.

Section 10.18. References to the Credit Provider. All provisions in this Agreement regarding consents, approvals, directions, waivers, appointments, requests or other actions by the

Credit Provider shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Credit Provider were not mentioned (i) if a Wrongful Dishonor has occurred and is continuing, or (ii) from and after the date on which the Credit Facility is declared to be null and void by final judgment of a court of competent jurisdiction; *provided, however*, that the payment of any amounts due to the Credit Provider pursuant to this Agreement shall continue in full force and effect. The foregoing shall not affect any other rights of the Credit Provider. All provisions in this Agreement relating to the rights of the Credit Provider shall be of no force and effect if the Credit Facility has terminated or expired in accordance with its terms and there are no Bonds in which the Credit Provider has a security interest and all amounts owing to the Credit Provider under the Reimbursement Agreement have been paid.

Section 10.19. Issuer Provisions.

(a) *Expenses.* The Borrower shall pay and indemnify the Issuer and the Trustee against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Trustee, without gross negligence) and arising out of or in connection with the Bond Documents. These obligations and those in Section 2.05 hereof shall remain valid and in effect notwithstanding repayment of the Loan hereunder or termination of this Agreement or the Indenture.

(b) *No Warranty by Issuer.* The Borrower recognizes that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT NOR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO REPRESENTATION, COVENANT, AGREEMENT OR WARRANTY, EXPRESS OR IMPLIED: (I) WITH RESPECT TO THE PROJECT OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, THEIR VALUE, DESIGN, CONDITION, HABITABILITY, WORKMANSHIP, QUALITY, CAPACITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY LEGAL REQUIREMENTS, LATENT DEFECTS OR THAT THE PROJECT WILL BE ADEQUATE OR SUFFICIENT FOR THE PURPOSES OF THE BORROWER; (II) WITH RESPECT TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT OR ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE BONDS, OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF; OR (III) WITH RESPECT TO THE PLANS AND SPECIFICATIONS TO CONSTRUCT THE PROJECT OR THE ADEQUACY OR SUFFICIENCY OF THE FINANCING. NOTHING IN THIS FINANCING AGREEMENT SHALL BE CONSTRUED AS REQUIRING THE ISSUER TO PROVIDE ANY FINANCING FOR THE PROJECT OTHER THAN THE PROCEEDS OF THE BONDS OR TO PROVIDE SUFFICIENT MONEYS FOR ALL OF THE COSTS OF THE PROJECT.

(c) *No Pecuniary Liability of the Issuer.* No agreements or provisions contained in the Indenture, this Agreement nor any agreement, covenant, or undertaking by the Issuer in connection with the Project or the delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from the Trust Estate and other funds and moneys and Security pledged and assigned hereunder (excluding the Reserved Rights). No failure of the Issuer to comply with any term, covenant, or agreement contained in the Bonds, this Agreement, the Indenture, or in any document executed by the Issuer in connection with the Project or the delivery of the Bonds, shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charge, except to the extent that the same can be paid or recovered from the Trust Estate (excluding the Reserved Rights).

(d) *No Recourse.* No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or any other Bond Document or any instrument or document executed and delivered by or on behalf of the Issuer in connection with the transactions contemplated hereby, against the Issuer or any successor body, as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or by any legal or equitable proceeding or otherwise and all such liability of the Issuer as such is hereby, expressly waived and released as a condition of and consideration for the adoption of the resolution authorizing the execution of the Bond Documents and the issuance of the Bonds and the delivery of other documents in connection with the Indenture and herewith.

(e) *Limitation on Liability of the Issuer's Officers, Employees, Etc.* The Borrower assumes all risks of the acts or omissions of the Issuer. The Issuer or its respective officers, directors, employees, counsel or agents shall not be liable or responsible for: (i) any acts or omissions of the Issuer; 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 Issuer 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 Issuer.

The Issuer or any of its respective officers, directors, employees, counsel or agents shall not 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 Issuer shall not be liable for any debts or claims accruing in favor of any such parties against the Borrower or others or against the Project. The Borrower is not and shall not be an agent of the Issuer for any purpose. The Issuer is a not joint venture partner with the Borrower in any manner whatsoever. Prior to default by the Borrower under this Agreement and the exercise of remedies granted herein, the Issuer 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 Issuer. Approvals granted by the Issuer for any matters covered under this 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 the Borrower.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their authorized representatives as of the date of execution thereof.

[SEAL]

CITY OF COLORADO SPRINGS, COLORADO

By: _____
Blessing Mobolade
Mayor

Attest:

By _____
Sarah B. Johnson
City Clerk

[Signature Page to Loan Agreement]

ROYAL PINE APARTMENTS LLC,
a Colorado limited liability company

By: DBG Royal Pine Apartments Investors LLC,
a Colorado limited liability company,
its managing member

By: _____
Eric Grodahl, Manager

EXHIBIT A-1

FORM OF SERIES 2025A-1 PROMISSORY NOTE

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

[\$[SERIES A-1 PAR] _____], 2025

FOR VALUE RECEIVED, Royal Pine Apartments LLC, a Colorado limited liability company (the “*Borrower*”), by this promissory note hereby promises to pay to the order of the City of Colorado Springs, Colorado, a municipal corporation duly organized and existing as a home-rule city under Article XX of the Constitution of the State of Colorado and the home rule charter of the City of Colorado Springs, Colorado (the “*Issuer*”) the principal sum of [SERIES A-1 PAR IN WORDS] (\$[SERIES A-1 PAR]), together with interest on the Outstanding principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the applicable rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office of Zions Bancorporation, National Association, a national banking association, in its capacity as trustee (the “*Trustee*”), or its successor as trustee under the Indenture of Trust dated as of [____], 2025 (as the same may be amended, modified or supplemented from time to time, the “*Indenture*”), by and between the Issuer and the Trustee.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Indenture.

Borrower shall pay monthly payments of interest, calculated at the applicable Note Interest Rate, in successive monthly installments commencing on the first Note Payment Date and continuing on each Note Payment Date thereafter until and including the [MATURITY DATE], at which time all unpaid principal of and interest on this Note shall be due and payable in full. Interest on this Note shall be computed on the basis of a 360 day year, comprised of twelve 30 day months.

Beginning on the Amortization Commencement Date and continuing thereafter on each Note Payment Date, in addition to the monthly interest payments, Borrower shall make monthly sinking fund principal payments in the amounts set forth on the applicable Amortization Schedule attached to the Indenture (as the same may be amended in accordance with the terms of the Indenture), which amounts shall be applied in accordance with the terms of the Indenture.

In addition to the foregoing, Borrower shall pay any additional amounts necessary to pay all principal of, premium, if any, and interest on, the Bonds as they become due, whether at

maturity, by acceleration, by optional, mandatory or mandatory sinking fund redemption (as such may be required under the Indenture) or otherwise.

This Note is subject to acceleration and prepayment as provided in the Indenture and the Loan Agreement dated as of [____], 2025 (as the same may be amended, modified or supplemented from time to time, the “*Loan Agreement*”), by and between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This promissory note is the “Note” referred to in the Loan Agreement.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s \$[SERIES A-1 PAR] Multifamily Housing Revenue Bonds (Royal Pine Apartments Project), Series 2025A-1 (the “*Bonds*”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation to the extent provided in Section 10.13 of the Loan Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Loan Agreement.

Presentation, demand, protest, notice of dishonor, notice of acceleration, notice of intent to demand or accelerate payment or maturity presentment for payment, notice of nonpayment, and grace and diligence in collecting amounts owed hereunder, are hereby expressly waived by the Borrower and all endorsers and Guarantors of this Note.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys’ fees in case of default on this Note, together with interest thereon at the Default Rate if applicable.

As used herein, the term “*Maximum Rate*” shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Issuer or Trustee in accordance with the applicable laws of the State of Colorado (or applicable United States federal law to the extent that such law permits Issuer or Trustee to contract for, charge, take, receive or reserve a greater amount of interest than under Colorado law), taking into account all Charges (as defined below) made in connection with the transaction evidenced by this Note and the other Bond Documents.

As used herein, the term “*Charges*” shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Issuer or Trustee in connection with the transactions relating to this Note and the other Bond Documents, which are treated as interest under applicable law.

Notwithstanding anything to the contrary contained herein or in any of the other Bond Documents, it is not the intention of Issuer or Trustee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This Note shall be governed by, and construed in accordance with, the laws of the State of Colorado, without regard to conflict of laws principles.

ROYAL PINE APARTMENTS LLC,
a Colorado limited liability company

By: DBG Royal Pine Apartments Investors LLC,
a Colorado limited liability company,
its managing member

By: _____
Eric Grodahl, Manager

ENDORSEMENT

Pay to the order of Zions Bancorporation, National Association, without recourse, as Trustee under the Indenture referred to in the within mentioned Loan Agreement, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

[SEAL]

CITY OF COLORADO SPRINGS, COLORADO

By: _____
Blessing Mobolade
Mayor

Attest:

By _____
Sarah B. Johnson
City Clerk

EXHIBIT A-2

FORM OF SERIES 2025A-2 PROMISSORY NOTE

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

[\$[SERIES A-2 PAR] _____], 2025

FOR VALUE RECEIVED, Royal Pine Apartments LLC, a Colorado limited liability company (the “*Borrower*”), by this promissory note hereby promises to pay to the order of the City of Colorado Springs, Colorado, a municipal corporation duly organized and existing as a home-rule city under Article XX of the Constitution of the State of Colorado and the home rule charter of the City of Colorado Springs, Colorado (the “*Issuer*”) the principal sum of [SERIES A-2 PAR IN WORDS] (\$[SERIES A-2 PAR]), together with interest on the Outstanding principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the applicable rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office of Zions Bancorporation, National Association, a national banking association, in its capacity as trustee (the “*Trustee*”), or its successor as trustee under the Indenture of Trust dated as of [____], 2025 (as the same may be amended, modified or supplemented from time to time, the “*Indenture*”), by and between the Issuer and the Trustee.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Indenture.

Borrower shall pay monthly payments of interest, calculated at the applicable Note Interest Rate, in successive monthly installments commencing on the first Note Payment Date and continuing on each Note Payment Date thereafter until and including the [____], at which time all unpaid principal of and interest on this Note shall be due and payable in full. Interest on this Note shall be computed on the basis of a 360 day year, comprised of twelve 30 day months.

Beginning on the Amortization Commencement Date and continuing thereafter on each Note Payment Date, in addition to the monthly interest payments, Borrower shall make monthly sinking fund principal payments in the amounts set forth on the applicable Amortization Schedule attached to the Indenture (as the same may be amended in accordance with the terms of the Indenture), which amounts shall be applied in accordance with the terms of the Indenture.

In addition to the foregoing, Borrower shall pay any additional amounts necessary to pay all principal of, premium, if any, and interest on, the Bonds as they become due, whether at

maturity, by acceleration, by optional, mandatory or mandatory sinking fund redemption (as such may be required under the Indenture) or otherwise.

This Note is subject to acceleration and prepayment as provided in the Indenture and the Loan Agreement dated as of [_____], 2025 (as the same may be amended, modified or supplemented from time to time, the “*Loan Agreement*”), by and between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This promissory note is the “Note” referred to in the Loan Agreement.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s \$[SERIES A-2 PAR] Multifamily Housing Revenue Bonds (Royal Pine Apartments Project), Series 2025A-2 (the “*Bonds*”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation to the extent provided in Section 10.13 of the Loan Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Loan Agreement.

Presentation, demand, protest, notice of dishonor, notice of acceleration, notice of intent to demand or accelerate payment or maturity presentment for payment, notice of nonpayment, and grace and diligence in collecting amounts owed hereunder, are hereby expressly waived by the Borrower and all endorsers and Guarantors of this Note.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys’ fees in case of default on this Note, together with interest thereon at the Default Rate if applicable.

As used herein, the term “*Maximum Rate*” shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Issuer or Trustee in accordance with the applicable laws of the State of Colorado (or applicable United States federal law to the extent that such law permits Issuer or Trustee to contract for, charge, take, receive or reserve a greater amount of interest than under Colorado law), taking into account all Charges (as defined below) made in connection with the transaction evidenced by this Note and the other Bond Documents.

As used herein, the term “*Charges*” shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Issuer or Trustee in connection with the transactions relating to this Note and the other Bond Documents, which are treated as interest under applicable law.

Notwithstanding anything to the contrary contained herein or in any of the other Bond Documents, it is not the intention of Issuer or Trustee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This Note shall be governed by, and construed in accordance with, the laws of the State of Colorado, without regard to conflict of laws principles.

ROYAL PINE APARTMENTS LLC,
a Colorado limited liability company

By: DBG Royal Pine Apartments Investors LLC,
a Colorado limited liability company,
its managing member

By: _____
Eric Grodahl, Manager

ENDORSEMENT

Pay to the order of Zions Bancorporation, National Association, without recourse, as Trustee under the Indenture referred to in the within mentioned Loan Agreement, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

[SEAL]

CITY OF COLORADO SPRINGS, COLORADO

By: _____
Blessing Mobolade
Mayor

Attest:

By _____
Sarah B. Johnson
City Clerk

EXHIBIT A-3

FORM OF SERIES 2025A-T PROMISSORY NOTE

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

[\$[SERIES A-T PAR] _____], 2025

FOR VALUE RECEIVED, Royal Pine Apartments LLC, a Colorado limited liability company (the “*Borrower*”), by this promissory note hereby promises to pay to the order of the City of Colorado Springs, Colorado, a municipal corporation duly organized and existing as a home-rule city under Article XX of the Constitution of the State of Colorado and the home rule charter of the City of Colorado Springs, Colorado (the “*Issuer*”) the principal sum of [SERIES A-T PAR AMOUNT IN WORDS] (\$[SERIES A-T PAR]), together with interest on the Outstanding principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the applicable rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office of Zions Bancorporation, National Association, a national banking association, in its capacity as trustee (the “*Trustee*”), or its successor as trustee under the Indenture of Trust dated as of [____], 2025 (as the same may be amended, modified or supplemented from time to time, the “*Indenture*”), by and between the Issuer and the Trustee.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Indenture.

Borrower shall pay monthly payments of interest, calculated at the applicable Note Interest Rate, in successive monthly installments commencing on the first Note Payment Date and continuing on each Note Payment Date thereafter until and including the [MATURITY DATE], at which time all unpaid principal of and interest on this Note shall be due and payable in full. Interest on this Note shall be computed on the basis of a 360 day year, comprised of twelve 30 day months.

In addition to the foregoing, Borrower shall pay any additional amounts necessary to pay all principal of, premium, if any, and interest on, the Bonds as they become due, whether at maturity, by acceleration, by optional, mandatory or mandatory sinking fund redemption (as such may be required under the Indenture) or otherwise.

This Note is subject to acceleration and prepayment as provided in the Indenture and the Loan Agreement dated as of [____], 2025 (as the same may be amended, modified or supplemented from time to time, the “*Loan Agreement*”), by and between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This promissory note is the “Note” referred to in the Loan Agreement.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s \$[SERIES A-T PAR] Multifamily Housing Revenue Bonds (Royal Pine Apartments Project), Series 2025A-T (Taxable) (the “Bonds”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation to the extent provided in Section 10.13 of the Loan Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Loan Agreement.

Presentation, demand, protest, notice of dishonor, notice of acceleration, notice of intent to demand or accelerate payment or maturity presentment for payment, notice of nonpayment, and grace and diligence in collecting amounts owed hereunder, are hereby expressly waived by the Borrower and all endorsers and Guarantors of this Note.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys’ fees in case of default on this Note, together with interest thereon at the Default Rate if applicable.

As used herein, the term “*Maximum Rate*” shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Issuer or Trustee in accordance with the applicable laws of the State of Colorado (or applicable United States federal law to the extent that such law permits Issuer or Trustee to contract for, charge, take, receive or reserve a greater amount of interest than under Colorado law), taking into account all Charges (as defined below) made in connection with the transaction evidenced by this Note and the other Bond Documents.

As used herein, the term “*Charges*” shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Issuer or Trustee in connection with the transactions relating to this Note and the other Bond Documents, which are treated as interest under applicable law.

Notwithstanding anything to the contrary contained herein or in any of the other Bond Documents, it is not the intention of Issuer or Trustee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This Note shall be governed by, and construed in accordance with, the laws of the State of Colorado, without regard to conflict of laws principles.

ROYAL PINE APARTMENTS LLC,
a Colorado limited liability company

By: DBG Royal Pine Apartments Investors LLC,
a Colorado limited liability company,
its managing member

By: _____
Eric Grodahl, Manager

ENDORSEMENT

Pay to the order of Zions Bancorporation, National Association, without recourse, as Trustee under the Indenture referred to in the within mentioned Loan Agreement, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

[SEAL]

CITY OF COLORADO SPRINGS, COLORADO

By: _____
Blessing Mobolade
Mayor

Attest:

By _____
Sarah B. Johnson
City Clerk

EXHIBIT B

FORM OF WRITTEN REQUISITION OF THE BORROWER

BORROWER: Royal Pine Apartments LLC

PROJECT: Royal Pine Apartments

REQUISITION No.: _____

In the Amount of \$_____ to be funded with the proceeds of the Bonds and
\$_____ to be funded with deposits in the Equity Account:

To: Zions Bancorporation, National Association
7390 N Academy Boulevard
Colorado Springs, CO 80920
Phone: (719) 594-7458
Attention: Vladimir Muñoz
Email: vladimir.munoz@zionsbank.com:

NewPoint Real Estate Investment Management LLC
1 Battery Park Place, Suite 600
New York, NY 10004
Attention: Robert Wrzosek – NewPoint REIM

NewPoint Real Estate Capital LLC
5800 Tennyson Parkway, Suite 200
Plano, TX 75024
Attention: Servicing Department

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower's Request for Payment attached to this Requisition:

AMOUNT	SOURCE	PAYABLE TO:
\$[_____]	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]
\$[_____]	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]
\$[_____]	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]

REQUISITION - CONTENTS AND ATTACHMENTS (TO BE PROVIDED TO THE CONTROLLING PERSON ONLY)

Borrower's Request for Payment
Borrower's Representations and Warranties
Updated Loan Balancing (Sources and Uses) & Monthly Requisition Spreadsheet
Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)
Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)
Pending Change Order and Change Order Log (dated)
Vendor Payee List or equivalent
Requisitions and Invoices Supporting Application
Reserved
Reserved
Lien Waivers, Conditional for the current Hard cost pay request
Lien Waivers, Unconditional for payment thru the prior period pay request
Stored Materials Log and documentation (e.g., insurance, bill of sale, invoices, photos) as Applicable
Current Project Schedule
Other Documents as Requested by the Trustee or Controlling Person

REPRESENTATIONS AND WARRANTIES

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Controlling Person under the terms of the Loan Agreement dated as of [____], 2025 (the "*Agreement*"), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.

2. Construction of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).

3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of construction of the Improvements by \$_____ in the aggregate, has notified the Engineering Consultant, if any, of such changes and, to the extent necessary, has received any and all necessary approvals from the Controlling Person.

4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Indenture of Trust dated as of [____], 2025, with respect to the Bonds.

5. All money requisitioned by the Borrower for construction of the Improvements and disbursed by the Trustee under previously approved Requisitions have been paid to the Contractor and, to the Borrower's best knowledge, all subcontractors, vendors and suppliers; all other funds

requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.

6. All of the information submitted to the Controlling Person and the Trustee in connection with this Requisition is true and accurate in all material respects as of the date of submission.

7. The representations and warranties set forth in the Bond Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date, except _____.

8. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantors under the terms of the Bond Documents, (ii) except as previously disclosed by the Borrower to the Controlling Person, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant, if any, of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements have not been constructed in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Bond Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Bond Documents are in full force and effect.

9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Agreement.

10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition, not less than 95% of amounts paid from proceeds of the Bonds have been applied to the payment of Qualified Project Costs.

11. Attached hereto are copies of lien waivers from all such contractors, subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Company. (Exclude from Requisition delivered to Trustee.)

12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Agreement.

The Borrower will provide a copy of each Payee's Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Trustee cannot process such disbursement request until the Trustee is in receipt of a valid Form W-9 From W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

With respect to this requested disbursement, the Borrower (i) certifies that it has reviewed any wire instructions set forth in this written disbursement direction to confirm such wire

instructions are accurate, (ii) agrees to indemnify and hold harmless the Trustee from and against any and all claim, demand, loss, liability, or expense sustained, including but not limited to attorney fees and expenses resulting directly or indirectly as a result of making the disbursement requested, and (iii) agrees they will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction.

Executed _____, 20__.

[SIGNATURE ON FOLLOWING PAGE]

ROYAL PINE APARTMENTS LLC,
a Colorado limited liability company

By: DBG Royal Pine Apartments Investors LLC,
a Colorado limited liability company,
its managing member

By: _____
Eric Grodahl, Manager

APPROVED BY:

NEWPOINT REAL ESTATE INVESTMENT
MANAGEMENT LLC, a Delaware limited liability company

By: _____

Name:

Title: Authorized Signatory

CONTRACTOR'S APPLICATION FOR PAYMENT

REQUISITIONS AND INVOICES

BORROWER'S REQUEST FOR PAYMENT

[ATTACH SPREADSHEETS IN FORM PROVIDED BY CONTROLLING PERSON]

LIEN WAIVERS

EXHIBIT C

MOLD/MILDEW ADDENDUM

This Mold and Mildew Addendum (the “*Addendum*”) dated _____, 20__ is attached to and made a part of the lease dated _____, 20__ (the “*Lease*”) by and between _____ (“*Lessor*”) and _____ (“*Resident*”) for unit number _____ (the “*Unit*”) in Royal Pine Apartments.

Resident acknowledges that it is necessary for Resident to provide appropriate climate control, keep the Unit clean, and take other measures to retard and prevent mold and mildew from accumulating in the Unit. Resident agrees to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, walls and other surfaces as soon as reasonably possible. Resident agrees not to block or cover any of the heating, ventilation or air- conditioning ducts in the Unit. Resident also agrees to immediately report to the management office: (i) any evidence of a water leak or excessive moisture in the Unit, as well as in any storage room, garage or other common area; (ii) any evidence of mold- or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (iii) any failure or malfunction in the heating, ventilation or air conditioning system in the Unit; and (iv) any inoperable doors or windows. Resident further agrees that Resident shall be responsible for damage to the Unit and Resident’s property as well as personal injury to Resident and Occupants resulting from Resident’s failure to comply with the terms of this Addendum.

A default under the terms of this Addendum shall be deemed a material default under the terms of the Lease, and Lessor shall be entitled to exercise all rights and remedies at law or in equity. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control. Any term that is capitalized but not defined in this Addendum that is capitalized and defined in the Lease shall have the same meaning for purposes of this Addendum as it has for purposes of the Lease.

Resident or Residents:
(all Residents must sign here)

Lessor:

Royal Pine Apartments LLC

Resident’s Signature

By: _____
Authorized Representative

Resident’s Name

Resident’s Unit No.

Resident’s Signature

Resident’s Name

Resident’s Unit No.

EXHIBIT D

ACCELERATION PREMIUM

The Acceleration Premium will be computed as follows:

(i) For any acceleration payment made prior to the First Optional Redemption Date, the “Acceleration Premium” will be whichever is the greater of subsections (A) and (B) below:

(A) 1.0% of the principal being accelerated; or

(B) the product obtained by multiplying:

(1) the principal being accelerated,
by

(2) the excess (if any) of the monthly weighted average of the Bond Interest Rate on the Bonds then Outstanding over the Assumed Reinvestment Rate,
by

(3) the Present Value Factor.

For purposes of determining the Acceleration Premium above, the following definitions will apply:

Monthly Note Rate: 1/12 of the weighted average of the Bond Interest Rate on the Bonds then Outstanding, expressed as a decimal calculated to 5 digits.

Acceleration Payment Date: the date of the application by Trustee or Controlling Person of collateral or security to a portion of the principal balance of the Note.

Assumed Reinvestment Rate: 1/12 of the yield rate expressed as a decimal to 2 digits, as of the close of the trading session that is 5 Business Days before the Acceleration Payment Date, found among the Daily Treasury Yield Curve Rates, commonly known as Constant Maturity Treasury (“CMT”) rates, with a maturity closest to the First Optional Redemption Date, as reported on the U.S. Department of the Treasury website. If no published CMT maturity matches the First Optional Redemption Date, Controlling Person will interpolate as a decimal to 2 digits the yield rate between (a) the CMT with a maturity closest to, but sooner than, the First Optional Redemption Date, and (b) the CMT with a maturity closest to, but after, the First Optional Redemption Date, as follows:

$$\left[\left(\frac{B-A}{D-C} \right) \times (E-C) \right] + A$$

A = yield rate for the CMT with a maturity sooner than the First Optional Redemption Date

B = yield rate for the CMT with a maturity after than the First Optional Redemption Date

C = number of months to maturity for the CMT maturity sooner than the First Optional Redemption Date

D = number of months to maturity for the CMT maturity after the First Optional Redemption Date

E = number of months remaining to the First Optional Redemption Date

If the U.S. Department of the Treasury ceases publication of the CMT rates, the Assumed Reinvestment Rate will equal the yield rate on the first U.S. Treasury security that is not callable or indexed to inflation and that matures after the First Optional Redemption Date.

The Assumed Reinvestment Rate may be a positive number, a negative number or zero.

If the Assumed Reinvestment Rate is a positive number or a negative number, Controlling Person will calculate the Acceleration Premium using such positive number or negative number, as appropriate, as the Assumed Reinvestment Rate in Section (B)(2) above and in the calculation of the Present Value Factor.

If the Assumed Reinvestment Rate is zero, Controlling Person will calculate the Acceleration Premium twice as set forth in (I) and (II) below and will average the results to determine the actual Acceleration Premium.

(I) Controlling Person will calculate the Acceleration Premium using an Assumed Reinvestment Rate of one basis point (+0.01%) in Section (B)(2) above and in the calculation of the Present Value Factor.

(II) Controlling Person will calculate the Acceleration Premium using an Assumed Reinvestment Rate of negative one basis point (-0.01%) in Section (B)(2) above and in the calculation of the Present Value Factor.

Present Value Factor: the factor that discounts to present value the costs resulting to Controlling Person from the difference in interest rates during the months remaining to

the First Optional Redemption Date, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{I - \left(\frac{I}{1 + ARR} \right)^n}{ARR}$$

n = the number of months remaining to the First Optional Redemption Date; *provided, however*, if an acceleration payment occurs on an Interest Payment Date, then the number of months remaining to the First Optional Redemption Date will be calculated beginning with the month in which such acceleration payment occurs and if such acceleration payment occurs on a Business Day other than an Interest Payment Date, then the number of months remaining to the First Optional Redemption Date will be calculated beginning with the month immediately following the date of such acceleration payment.

ARR = Assumed Reinvestment Rate

(ii) For any acceleration payment made after the First Optional Redemption Date, the “Acceleration Premium” will be 0.0% of the amount of principal being accelerated.

EXHIBIT E
DEVELOPMENT BUDGET

SCHEDULE 1

CONDITIONS TO DISBURSEMENTS FROM PROJECT FUND

A. *CONDITIONS TO INITIAL DISBURSEMENT.* The right of the Borrower to the initial disbursement shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. *Construction Documents.* Each of the Architect's Agreement and the Construction Contract shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Architect and the Contractor shall have duly executed and delivered to the Controlling Person a consent to the assignment of the Architect's Contract, the Engineer's Agreement and the Construction Contract in form and substance satisfactory to the Controlling Person.

2. *Validity of Liens.* The Security Instrument, the Assignment of Project Documents, and the Developer Fee Pledge shall be effective to create in the Trustee a legal, valid and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries of preserve such liens and security interests shall have been duly effected.

3. *Deliveries.* The following items or documents shall have been delivered to the Controlling Person by the Borrower and shall be in form and substance satisfactory to the Controlling Person.

(a) *Plans and Specifications.* Two complete sets of the Plans and Specifications and approval thereof by any necessary Governmental Authority, with a certification from the Architect that the Improvements to be constructed comply with all Legal Requirements and Governmental Actions and that the Construction Contract satisfactorily provides for the construction of the Improvements.

(b) *Title Policy.* The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together accurate copies of all documents listed as exceptions under such policy.

(c) *Other Insurance.* Duplicate originals or certified copies of all policies of insurance required hereunder to be obtained and maintained during the construction of the Improvements.

(d) *Evidence of Sufficiency of Funds.* Evidence that the proceeds of the Bonds, together with Required Equity Funds delivered to the Trustee after the Issue Date, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to complete the Improvements prior to the Completion Date and to carry the Project Facilities through to Conversion.

4. *Evidence of Access, Availability of Utilities, Project Approvals.* Evidence as to:

(a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;

(b) the availability of water supply and stone and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

(c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and

(d) the obtaining of all Project approvals which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions.

5. *Environmental Report.* An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Controlling Person, which report or reports shall indicate a condition of the Land and any existing improvements thereon in compliance with all Requirements and in all respects satisfactory to the Controlling Person in its sole discretion and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

6. *Soils Report.* A soils report for the Project Facilities prepared by a soils engineer approved by the Controlling Person, which report shall indicate that based upon actual surface and subsurface examination of the Project Facilities, the soils conditions are fully satisfactory for the proposed construction and operation of the Improvements and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely. A termite or other insect infestation report prepared by a firm approved by the Controlling Person, which report shall indicate that based upon actual inspection of the Project Facilities either (i) that no termite or other insect infestation at the Project Facilities, or (ii) that termite or insect infestation is present and recommended steps for extermination and remediation of the conditions at the Project Facilities, and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

7. *Survey and Taxes.* A Survey of the Land (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Issue Date.

8. *Deposit of Funds.* A portion of the initial installment of Required Equity Funds shall have been delivered to the Trustee and deposited in the Equity Account of the Project Fund.

9. *Requisition.* A Requisition complying with the provisions of this Agreement and the Indenture or a Closing Memorandum or settlement statement signed by the Borrower.

10. *Form Lease.* The standard form of lease to be used by the Borrower in connection with the Improvements.

11. *Engineering Consultant Report.* If applicable, the Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans and Specifications, (ii) the Plans and Specifications have been received and approved by each Governmental Authority to which the Plans and Specifications are required under applicable Legal Requirements to be submitted, (iii) the Construction Contract satisfactorily provides for the construction of the Improvements, and (iv) in the opinion of the Engineering Consultant, construction of the Improvements can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose in the Development Budget.

12. *Searches.* The Controlling Person shall have received searches from a recognized search firm (which shall be updated from time to time at Borrower's expense upon request by the Controlling Person) that searches of the public record disclosed (a) no conditional sales contracts, security agreements, chattel Deed of Trusts, leases of personalty, financing statements or title retention agreements which affect the collateral, (b) no bankruptcy filings on the part of any of the Borrower, the Managing Member, the Corporation and the Guarantors (collectively, the "*Obligors*"), and (c) no litigation with respect to the Project Facilities or any of the Obligors that would materially adversely affect the obligations of the Obligors hereunder.

13. *Mechanics' Liens.* In the event that for any reason the initial disbursement is not funded on the Issue Date, the Controlling Person may withhold or refuse to approve the initial disbursement if any mechanic's lien or notice of intention to record or file a mechanic's lien has been filed or given.

14. *Payment and Performance Bonds.* Payment and Performance Bonds shall be required for a Contractor in the full amount of the Construction Contract. The Borrower shall cause to be delivered a dual-obligee payment and performance bonds issued by a surety company or companies authorized to do business in the District and acceptable to the Controlling Person, and in form and content reasonably acceptable to the Controlling Person, in an amount not less than the full contract price of the Construction Contract; together with a dual obligee and modification rider naming the Trustee and in the form and substance acceptable to the Controlling Person which shall be attached thereto.

15. *Notices.* All notices required by any Governmental Authority under applicable Legal Requirements to be filed prior to commencement of construction of the Improvements shall have been filed.

16. *Appraisal.* The Controlling Person shall have received an Appraisal, in form and substance satisfactory to the Controlling Person.

17. *Performance; No Default.* The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of the initial disbursement, and on the date of the initial disbursement there shall exist no Event of Default.

18. *Representations and Warranties.* The representations and warranties made by the Obligors in the Bond Documents, the Developer Fee Pledge or the documents executed by the Guarantors or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all respects when made and shall be true and correct in all respects on the date of the initial disbursement.

19. *Proceedings and Documents.* All proceedings in connection with the transactions contemplated by this Agreement and the other Bond Documents shall be satisfactory to the Controlling Person and their counsel in form and substance, and the Controlling Person shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as they or their counsel may reasonably require.

B. *CONDITIONS TO SUBSEQUENT DISBURSEMENTS.* The right of the Borrower to draw each disbursement of funds after the initial disbursement on the Issue Date shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. *Prior Conditions Satisfied.* All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent disbursement.

2. *Performance; No Default.* The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date, there shall exist no Default or Event of Default.

3. *Representations and Warranties.* Each of the representations and warranties made by the Borrower in the Bond Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made and shall also be true and correct in all material respects on the Borrower on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Bond Documents).

4. *No Unrepaired Damage.* If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Security Instrument.

5. *Receipt by Controlling Person.* The Controlling Person shall have received:

(a) *Requisition.* A Requisition in meeting the requirements of this Agreement and the Indenture;

(b) *Endorsement to Title Policy.* At the time of each disbursement to update the date of and increase the amount of coverage by the amount of such disbursement, such endorsements (a “*Down Date Endorsement*”) shall be delivered by the Title Company, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any Bond proceeds disbursed from the Capitalized Interest Account of the Project Fund;

6. *Foundation Survey; Current Survey.* If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after completion of construction of the foundations of the Improvements, a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications, and from time to time. An updated Survey if required by the Title Company or the Controlling Person;

7. *Approval by Engineering Consultant.* If applicable, approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the construction of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of construction of the Improvements, stating the percentage of in-place construction of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the construction of the Improvements;

8. *Contracts.* Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Controlling Person.

9. *Mechanics’ Liens.* The Controlling Person may withhold or refuse to fund any disbursement hereunder if any mechanic’s lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, or if notice of intention to record or file any such lien has been received.

10. *Required Equity Funds.* Except for the first installment, all installments of Required Equity Funds which shall be then due and payable shall have been delivered to the Trustee and deposited in the Equity Account of the Project Fund.

11. *Release of Retainage.* If applicable, in addition to the conditions set forth in this Section, the Controlling Person's obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.

SCHEDULE 2
FORM OF FINAL COMPLETION CERTIFICATE

Date: _____, _____

Zions Bancorporation, National Association
7390 N Academy Boulevard
Colorado Springs, CO 80920
Phone: (719) 594-7458
Attention: Vladimir Muñoz
Email: vladimir.munoz@zionsbank.com
With copy to:
denvercorporatetrust@zionsbancorp.com:

NewPoint Real Estate Investment Management LLC
1 Battery Park Place, Suite 600
New York, NY 10004
Attention: Robert Wrzosek – NewPoint REIM

NewPoint Real Estate Capital LLC
5800 Tennyson Parkway, Suite 200
Plano, TX 75024
Attention: Servicing Department

Re: Royal Pine Apartments (the “*Project Facilities*”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to Zions Bancorporation, National Association, as trustee (the “*Trustee*”), and NewPoint Real Estate Investment Management LLC, a Delaware limited liability company, as controlling person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the “*Controlling Person*”), that “Final Completion” of the Project Facilities (as defined in the Indenture of Trust dated as of [____], 2025 (the “*Indenture*”) by and between the Trustee and the City of Colorado Springs, Colorado (the “*Issuer*”) has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of [____], 2025, between the undersigned and the Issuer (the “*Loan Agreement*”) have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

(Except as indicated, attachments to be provided to the Controlling Person only.)

The undersigned hereby represents and warrants that:

Attached hereto is an original, executed Architect's certificate in the form attached hereto as Exhibit A as required by clause (iv) of the definition of "Final Completion" contained in the Indenture.

Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project Facilities (the "*Permits*") as referenced in clause (ii) of the definition of "Final Completion" contained in the Indenture. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project Facilities as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.

Attached hereto is a complete schedule of all Punchlist Items referenced in clause (ii) of the definition of "Final Completion" contained in the Indenture. This schedule of Punchlist Items meets the requirements and limitations set forth in the Loan Agreement for Punchlist Items. The undersigned will promptly complete all Punchlist Items.

Attached are lien waivers required by clause (vii) of the definition of "Final Completion" contained in the Indenture.

Attached hereto is an update to the Title Policy insuring the Security Instrument in favor of the Trustee, subject only to Permitted Encumbrances, as required by clause (viii) of the definition of "Final Completion" contained in the Indenture.

Attached hereto is evidence of completion of the Environmental Completion Conditions.

Attached hereto is evidence of insurance meeting the requirements of Section 6.04 of the Loan Agreement.

Attached hereto is evidence of payment of all Impositions which are due and payable.

Attached hereto is an as-built ALTA/NSPS Survey, certified to the Trustee and the Controlling Person.

ROYAL PINE APARTMENTS LLC,
a Colorado limited liability company

By: DBG Royal Pine Apartments Investors LLC,
a Colorado limited liability company,
its managing member

By: _____
Eric Grodahl, Manager

Accepted and agreed to by:

NEWPOINT REAL ESTATE INVESTMENT
MANAGEMENT LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

SCHEDULE OF ATTACHMENTS TO COMPLETION CERTIFICATE

Architect's Completion Certificate

Occupancy Permits

Schedule of Punchlist Items

Lien Waivers

Endorsement to Title Policy

Insurance Certificates

Evidence of Payment of Impositions

Evidence of Satisfaction of Environmental Completion Conditions

EXHIBIT A

FORM OF ARCHITECT'S CERTIFICATE

ARCHITECT'S COMPLETION CERTIFICATE

Date: _____, _____

The undersigned, an architect duly licensed and registered in the State of Colorado has prepared final working plans and detailed specifications (the "*Plans and Specifications*") for Royal Pine Apartments LLC (the "*Borrower*") in connection with the construction of improvements on certain real property located at 4150 Royal Pine Drive, Colorado Springs, Colorado 80920, such improvements or project being known as Royal Pine Apartments (the "*Improvements*").

The undersigned hereby certifies to Zions Bancorporation, National Association and NewPoint Real Estate Investment Management LLC, a Delaware limited liability company, that, to the best of our knowledge, information and belief: (i) all of the Improvements and the Property have been completed in accordance with the Plans and Specifications, (ii) a [temporary] certificate of occupancy has been issued for the Project, *provided, however*, that there is no work remaining to be done that would impair or delay the permanent occupancy of the Project or any portion thereof and issuance of a permanent certificate of occupancy with respect to the Project, and other permits required for the continued use and occupancy of the Improvements have been issued with respect thereto by the governmental agencies having jurisdiction thereof], and (iii) the Improvements have been constructed in compliance with the Plans and Specifications and are in compliance with the requirements and restrictions of the governmental authorities having jurisdiction, including applicable zoning, building, environmental, fire, and health ordinances, rules and regulations, including without limitation, the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the design and construction requirements of the Fair Housing Act.

[ARCHITECT'S SIGNATURE BLOCK]

S2-6

[Signature Page to Architect's Completion Certificate]

SCHEDULE 3

FORM OF USE OF PROCEEDS COMPLIANCE CERTIFICATE

Date: _____, _____

Zions Bancorporation, National Association
7390 N Academy Boulevard
Colorado Springs, CO 80920
Phone: (719) 594-7458
Attention: Vladimir Muñoz
Email: vladimir.munoz@zionsbank.com
With copy to:
denvercorporatetrust@zionsbancorp.com

NewPoint Real Estate Investment Management LLC
1 Battery Park Place, Suite 600
New York, NY 10004
Attention: Robert Wrzosek – NewPoint REIM

NewPoint Real Estate Capital LLC
5800 Tennyson Parkway, Suite 200
Plano, TX 75024
Attention: Servicing Department

Re: Royal Pine Apartments (the “*Project Facilities*”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to Zions Bancorporation, National Association, as trustee (the “*Trustee*”), and NewPoint Real Estate Investment Management LLC, a Delaware limited liability company, as controlling person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the “*Controlling Person*”), that ninety-five percent (95%) or more of the Net Proceeds of the Bonds has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 145 of the Internal Revenue Code.

Attached hereto is a schedule of expenditures evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended. Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of [_____], 2025, between the Trustee and the Issuer.

WITNESS WHEREOF, the undersigned has duly executed this Use of Proceeds Compliance Certificate as of the day and year first above written.

ROYAL PINE APARTMENTS LLC,
a Colorado limited liability company

By: DBG Royal Pine Apartments Investors LLC,
a Colorado limited liability company,
its managing member

By: _____
Eric Grodahl, Manager

SCHEDULE OF ATTACHMENTS TO USE OF PROCEEDS COMPLIANCE CERTIFICATE

EVIDENCE OF USE OF PROCEEDS