

## Tab 3

### **VI. New Business - attachments**

- a.** “El Cid Apartments” – approval of Resolution #R-2020-01 for the issuance of not-to-exceed \$17.5M Multifamily Rental Housing Revenue Note, Series 2020 (El Cid Apartments)
  - i. Credit Underwriting Report
  - ii. Resolution #R-2020-01
- b.** Community Land Trust of Palm Beach County – Kirk Road project
  - i. Request from CLT of PBC for loan amendment
  - ii. Resolution #R-2020-02 – First Amendment
- c.** Presentation of multifamily bond application for “Gould House” and consideration of inducement resolution
  - i. Application
  - ii. Resolution #R-2020-03
- d.** Request from Housing Leadership Council of PBC
  - i. HLC letter

# **Housing Finance Authority of Palm Beach County**

*Credit Underwriting Report*

## **El Cid Apartments**

Multifamily Mortgage Revenue Note Program

Section A	Report Summary
Section B	Loan Conditions and HC Allocation Recommendation and Contingencies
Section C	Supporting Information and Schedules

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*Prepared by*

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

*Final Report*

*February 5, 2020*

**EL CID APARTMENTS**

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



**Recommendation**

Seltzer Management Group, Inc. ("SMG" or "Seltzer") recommends a Housing Finance Authority of Palm Beach County ("HFAPBC") Multifamily Tax-Exempt Loan ("TEL") of \$15,900,000 be awarded for rehabilitation/permanent financing (see Financing Structure below) for El Cid Apartments.

**DEVELOPMENT & SET-ASIDES**

Development Name: El Cid Apartments

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

Address: 315 Almeria Road

City: West Palm Beach Zip Code: 33405 County: Palm Beach County Size: Small

Development Category: Acquisition/Rehab Development Type: Mid-Rise (4 Stories)

Construction Type: Wood Frame

Demographic Commitment:  
 Primary: Elderly: 55+ or 62+ for 100% of the Units  
 Secondary: \_\_\_\_\_ for \_\_\_\_\_ of the Units

Unit Composition:  
 # of ELI Units: 0 ELI Units Are Restricted to \_\_\_\_\_ AMI, or less. Total # of units with PBRA? 72  
 # of Link Units: 0 Are the Link Units Demographically Restricted? No # of NHTF Units: 0

Bed Rooms	Bath Rooms	Units	Square Feet	AMI%	Low HOME Rents	High HOME Rents	Gross HC Rent	Utility Allow.	Net Restricted Rents	PBRA Contr Rents	Applicant Rents	Appraiser Rents	CU Rents	Annual Rental Income
0	1.0	10	361	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$165,000
0	1.0	22	413	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$363,000
0	1.0	6	381	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$99,000
0	1.0	3	402	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$49,500
0	1.0	3	513	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$49,500
0	1.0	3	405	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$49,500
0	1.0	3	330	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$49,500
1	1.0	3	634	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$59,040
1	1.0	3	716	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$59,040
1	1.0	3	579	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$59,040
1	1.0	2	601	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$39,360
1	1.0	4	592	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$78,720
1	2.0	7	678	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$137,760
1	1.0	1	650	Exmpt							\$1,450	\$894	\$0	
		73	34,685											\$1,257,960

Buildings: Residential - 1 Non-Residential - \_\_\_\_\_  
 Parking: Parking Spaces - 35 Accessible Spaces - 4

**MMRN CREDIT UNDERWRITING REPORT**

**SMG**

Set Asides:	Program	% of Units	# of Units	% AMI	Term (Years)
	MMRB	100.0%	72	60%	15
	HC	100.0%	72	60%	30

Absorption Rate 13 units per month for 5.6 months.

Occupancy Rate at Stabilization: Physical Occupancy 97.00% Economic Occupancy 95.15%  
 Occupancy Comments Fully Occupied / Reno with Tenants in place

DDA: No QCT: No Multi-Phase Boost: No QAP Boost: No  
 Site Acreage: 1.46 Density: 50.0000 Flood Zone Designation: X  
 Zoning: MF32 (Multifamily) Flood Insurance Required?: No

DEVELOPMENT TEAM		
Applicant/Borrower:	LIH El Cid, LP	% Ownership
General Partner	El Cid Affordable Housing Corp.	0.0010%
Limited Partner	El Cid West Palm Beach SLP, LLC	0.0090%
Limited Partner	Alliant Credit Facility II, LLC	99.9800%
Special LP	Alliant Credit Facility ALP II, LLC	0.0100%
Construction Completion Guarantor(s):		
CC Guarantor 1:	LIH El Cid, LP	
CC Guarantor 2:	El Cid Affordable Housing Corp	
CC Guarantor 3:	El Cid West Palm Beach SLP, LLC	
CC Guarantor 4:	LEDG Capital, LLC	
CC Guarantor 5:	Jacob Levy	
CC Guarantor 6:	KDG Partners, LLC	
Operating Deficit Guarantor(s):		
OD Guarantor 1:	LIH El Cid, LP	
OD Guarantor 2:	El Cid Affordable Housing Corp	
OD Guarantor 3:	El Cid West Palm Beach SLP, LLC	
OD Guarantor 4:	LEDG Capital, LLC	
OD Guarantor 5:	Jacob Levy	
OD Guarantor 6:	KDG Partners, LLC	
Note Purchaser	Freddie Mac	
Developer:	LEDG Capital, LLC	
General Contractor 1:	Wilshire Pacific Builders, LLC	
Management Company:	HSI Management, Inc.	
Const. Credit Enhancer:	Freddie Mac	
Perm. Credit Enhancer:	Freddie Mac	
Syndicator:	Alliant Capital, Ltd.	
Note Issuer:	Housing Finance Authority of Palm Beach County, Florida	
Architect:	Epic Engineering, Inc.	
Market Study Provider:	Specialty Valuation Group, Inc.	
Appraiser:	Colliers International Valuation & Advisory Services Inc.	

PERMANENT FINANCING INFORMATION						
	1st Source	2nd Source	3rd Source	4th Source	5th Source	Other
Lien Position	1st Mortgage					
Lender/Grantor	/ Freddie Mac					
Amount	\$15,900,000					
Underwritten Interest Rate	3.79%					
Loan Term	17.0					
Amortization	40.0					
Market Rate/Market Financing LTV	120.5%					
Restricted Market Financing LTV	91.4%					
Loan to Cost - Cumulative	65.7%					
Debt Service Coverage	1.039					
Operating Deficit & Debt Service Reserves	\$281,586.00					
# of Months covered by the Reserves	9.2					

Deferred Developer Fee	\$1,332,891
As-Is Land Value	\$1,300,000
As-Is Value (Land & Building)	\$17,100,000
Market Rent/Market Financing Stabilized Value	\$13,200,000
Rent Restricted Market Financing Stabilized Value	\$17,400,000
Projected Net Operating Income (NOI) - Year 1	\$842,731
Projected Net Operating Income (NOI) - 15 Year	\$1,055,824
Year 15 Pro Forma Income Escalation Rate	2.00%
Year 15 Pro Forma Expense Escalation Rate	3.00%
Note Structure	Private Placement - Tax-Exempt Loan
Housing Credit (HC) Syndication Price	\$0.925
HC Annual Allocation - Initial Award	\$5,959,200
HC Annual Allocation - Qualified in CUR	\$714,351
HC Annual Allocation - Equity Letter of Interest	\$699,718

CONSTRUCTION/PERMANENT SOURCES:				
Source	Lender	Construction	Permanent	Perm Loan/Unit
Local HFA Bonds	MMRN - HFAPBC / Greystone /	\$15,900,000	\$15,900,000	\$217,808.22
Deferred Costs - Other	El Cid Apartments	\$219,738	\$0	\$0.00
HC Equity	Alliant Capital	\$4,529,389	\$6,471,743	\$88,654.01
Deferred Developer	LEDG Capital	\$3,055,507	\$1,332,891	\$18,258.78
Net Operating Income	El Cid Apartments	\$501,011	\$501,011	\$6,863.16
<b>TOTAL</b>		\$24,205,645	\$24,205,645	\$331,584.18

**Financing Structure:**

The Applicant submitted an Application for HFAPBC MMRN. El Cid Apartments (“Development”) will receive an HFAPBC Tax-Exempt Loan (“TEL”) in the amount of \$15,900,000. For the construction and permanent financing of the Development, Greystone Servicing Company LLC (“Greystone”) will originate a first mortgage loan in the amount of \$15,900,000 to HFAPBC. The proceeds of the Greystone loan will be used by the HFAPBC to fund the loan to the Borrower. Through the Freddie Mac Targeted Affordable Housing program, Greystone will facilitate Freddie Mac’s purchase of the \$15,900,000 TEL.

**Changes from the Application:**

COMPARISON CRITERIA	YES	NO
Does the level of experience of the current team equal or exceed that of the team described in the application?	X	
Are all funding sources the same as shown in the Application?		1
Are all local government recommendations/contributions still in place at the level described in the Application?	X	
Is the Development feasible with all amenities/features listed in the Application?	X	
Do the site plans/architectural drawings account for all amenities/features listed in the Application?	X	
Does the Applicant have site control at or above the level indicated in the Application?	X	
Does the Applicant have adequate zoning as indicated in the Application?	X	
Has the Development been evaluated for feasibility using the total length of set-aside committed to in the Application?	X	
Have the Development costs remained equal to or less than those listed in the Application?		2
Is the Development feasible using the set-asides committed to in the Application?	X	
If the Development has committed to serve a special target group (e.g. elderly, large family, etc.), do the development and operating plans contain specific provisions for implementation?	X	
HOME ONLY: If points were given for match funds, is the match percentage the same as or greater than that indicated in the Application?	N/A	
HC ONLY: Is the rate of syndication the same as or greater than that shown in the Application?	X	
Is the Development in all other material respects the same as presented in the Application?		3

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

1. Changes to Funding Sources:
  - a. Deferred Reserve Funding in the amount of \$219,738 has been added as a construction period source.
  - b. Deferred Developer Fees have been added as a construction and permanent period source in the amounts of \$3,055,507 and \$1,332,891, respectively.
  - c. Net Operating income in the amount of \$501,011 has been added a construction and permanent period source.
2. Total Development Costs ("TDC") as stated in the application were \$23,279,000. TDC have increased to \$24,205,645, an increase of \$926,645 (approx. 3.98%).
3. The Application reflected the Development contains 72 units, but the Development has 73 units, of which of 72 units are restricted and 1 unit is an exempt manager's unit.

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

Strengths:

1. Senior Low-Income Housing Tax Credit ("LIHTC") properties in the Development's Primary Market Area ("PMA") utilized in the market study are operating with a weighted occupancy rate of 99.2%.
2. PMA demographics suggest a steadily growing senior population and household base, which will be of benefit to the Development.
3. The Development's overall capture rate as LIHTC with Section 8 assistance is 1.2% among income-qualified senior renter households, which is considered an excellent capture rate for a senior property.
4. The Development has received a 20-year Housing Assistance Payments ("HAP") renewal contract (HUD-93182) with rents that exceed market rents. This will provide affordable housing to tenants at a cost not to exceed 30% of their household income while providing increased revenue to the Development, improving its financial sustainability.
5. Although the Applicant and general partner are newly formed, the Developer and its principals, Jacob Levy and Dmitry Gourkine, have sufficient experience and financial resources to operate the proposed Development.

Other Considerations: None

Waiver Requests/Special Conditions: None

Additional Information:

1. Per the draft Amended and Restated Limited Partnership Agreement for the Applicant states an operating reserve in an amount equal to three months of operating expenses, replacement reserve and mandatory debt service or \$281,586 will be required. It will be funded from the last equity installment, which is scheduled not to occur before January 1, 2026. The Syndicator, Alliant Capital, Ltd. ("Alliant"), its affiliate, or designee, shall hold the reserve.

2. The Applicant has commented to provide the following features and/or amenities to the residents of El Cid free of charge:
- a. Computer Center
  - b. Health and Nutrition Classes
  - c. Tax Preparation
  - d. Voter Registration
  - e. Recreational and Educational Activities

Issues and Concerns: None

Recommendation:

SMG recommends the HFAPBC fund a TEL in the amount of \$15,900,000 to El Cid Apartments. This recommendation is based upon the assumptions detailed in the Report Summary (Section A) and Supporting Information and Schedules (Section B). The reader is cautioned to refer to these sections for complete information.

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

Prepared by:



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Credit Underwriter

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Cindy Highsmith  
Credit Underwriting Manager

## Overview

### Construction Financing Sources

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Construction Debt Service
First Mortgage	MMRN - HFAPBC / Greystone / Freddie Mac	\$17,500,000	\$15,900,000	\$15,900,000	3.79%	\$501,011
Deferred Reserve Fundin	El Cid Apartments	\$0	\$0	\$219,738	N/A	\$0
HC Equity	Alliant Capital	\$5,779,000	\$5,873,000	\$4,529,389		
Deferred Developer Fee	LEDG Capital	\$0	\$1,905,181	\$3,055,507		
Net Operating Income	El Cid Apartments	\$0	\$501,011	\$501,011		
<b>Total</b>		<b>\$23,279,000</b>	<b>\$24,179,192</b>	<b>\$24,205,645</b>		<b>\$501,011</b>

#### Proposed TEL / First Mortgage Financing:

The Applicant provided a term sheet from Greystone dated December 13, 2019. Greystone will arrange a tax-exempt rehabilitation/permanent loan to the HFAPBC in the amount of \$15,900,000, such that the HFAPBC can provide the Applicant a tax-exempt funding loan for rehabilitation/permanent financing in a like amount. The loan will then be purchased by Freddie Mac under the Freddie Mac Targeted Affordable Housing program (the "Program") and will be documented in accordance with the Program. The loan is anticipated to be fully funded at closing with a term of 17 years (commencing and amortizing at closing), amortizing over a 40-year period.

It is anticipated that the Development will maintain stabilized operations throughout the rehabilitation period, as the Development is currently occupied, stabilized and will be rehabilitated with most tenants remaining in place.

Per the term sheet, the interest rate will be fixed at closing and consist of the 10-year US Treasury rate (estimated at 1.80%) plus a spread of 1.99%. Seltzer added a 25 basis point (0.25%) underwriting cushion for an "all-in" rate of 3.79%.

#### Other Construction Sources of Funds:

Additional sources of funds for this Development during construction are Housing Credit equity in the amount of \$4,529,389, \$501,011 of net income from continued operations, and deferred Developer Fees in the amount of \$3,055,507. See the Permanent Financing section below for details.

**Permanent Financing Sources**

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Amort. Yrs.	Term Yrs.	Annual Debt
First Mortgage	MMRN - HFAPBC / Greystone / Freddie Mac	\$17,500,000	\$15,900,000	\$15,900,000	3.79%	40	17	\$772,690
HC Equity	Alliant Capital	\$5,779,000	\$5,873,000	\$6,471,743				
Def. Developer Fee	LEDG Capital	\$0	\$1,905,181	\$1,332,891				
Net Operating Income	El Cid Apartments	\$0	\$501,011	\$501,011				
<b>Total</b>		<b>\$23,279,000</b>	<b>\$24,179,192</b>	<b>\$24,205,645</b>				<b>\$772,690</b>

Proposed TEL / First Mortgage Financing:

See the construction financing section above for details.

Housing Credits Equity Investment:

The Borrower will apply to Florida Housing Finance Corporation ("FHFC") to receive 4% Housing Credits ("HC") directly from the United States Treasury in conjunction with tax-exempt financing. An HC calculation is contained in Exhibit 3 of this credit underwriting report.

Based upon a draft Amended and Restated Limited Partnership Agreement tentatively dated February 1, 2020, and a clarifying email from Alliant, Alliant and/or its assignee(s) will purchase a 99.99% interest in the Applicant and provide HC equity as follows:

Capital Contributions	Amount	Percent of Total	When Due
1st Installment	\$2,588,697	40.00%	at closing
2nd Installment	\$788,031	12.18%	30% completion; not before 4/1/2020
3rd Installment	\$788,031	12.18%	60% completion; not before 7/1/2020
4th Installment	\$364,630	5.63%	99% completion; not before 11/1/2020
5th Installment	\$1,660,768	25.66%	8609; not before 4/1/2021
6th Installment	\$281,586	4.35%	Not before 1/1/2026; to fund Operating Reserve
<b>Total</b>	<b>\$6,471,743</b>	<b>100.00%</b>	

Annual Tax Credits per Syndication Agreement:	\$699,718
Total HC Available to Syndicator (10 years):	\$6,996,480
Syndication Percentage (limited partner interest):	99.990%
Calculated HC Exchange Rate (per dollar):	\$0.925
Proceeds Available During Construction:	\$4,529,389

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

Other Permanent Sources of Funds:

In order to balance the sources and uses of funds after all loan proceeds and capital contributions have been received, the Development will contribute net operating income in the amount of \$501,011, and the Developer will have to defer \$1,332,891 of Developer Fees.



## Uses of Funds

CONSTRUCTION COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Accessory Buildings				\$0	
Demolition				\$0	\$0
Installation of Pre Fab Units				\$0	
New Rental Units				\$0	
Off-Site Work				\$0	\$0
Recreational Amenities				\$0	
Rehab of Existing Common Areas			\$180,860	\$2,478	
Rehab of Existing Rental Units	\$8,404,000	\$3,185,093	\$3,017,644	\$41,338	
Site Work				\$0	
Swimming Pool				\$0	
Furniture, Fixture, & Equipment				\$0	
Hard Cost Contingency - in Constr. Cont.				\$0	
Constr. Contr. Costs subject to GC Fee	\$8,404,000	\$3,185,093	\$3,198,504	\$43,815	\$0
General Conditions		\$191,106	\$191,910	\$2,629	
Overhead		\$67,524	\$63,970	\$876	
Profit		\$202,572	\$191,910	\$2,629	
Builder's Risk Insurance			\$27,348	\$375	
General Liability Insurance		\$54,694	\$27,347	\$375	
Payment and Performance Bonds		\$36,463	\$36,463	\$499	
Contract Costs not subject to GC Fee				\$0	
Total Construction Contract/Costs	\$8,404,000	\$3,737,452	\$3,737,452	\$51,198	\$0
Hard Cost Contingency		\$318,509	\$318,509	\$4,363	
PnP Bond paid outside Constr. Contr.				\$0	
Fees for LOC used as Constr. Surety				\$0	
Demolition paid outside Constr. Contr.				\$0	
FF&E paid outside Constr. Contr.				\$0	
<b>Total Construction Costs:</b>	<b>\$8,404,000</b>	<b>\$4,055,961</b>	<b>\$4,055,961</b>	<b>\$55,561</b>	<b>\$0</b>

## Notes to the Construction Costs:

- The Applicant has provided an unexecuted AIA Document A102-2017 Standard Form of Agreement between Owner and Contractor (WPB) where the basis of payment is the Cost of the Work plus a Fee with a Guaranteed Maximum Price ("GMP") dated November 22, 2019. The contract is in the amount of \$3,737,452 and calls for achievement of substantial completion no later than December 31, 2020, with a penalty of \$100 per day thereafter that substantial completion hasn't been reached. Ten (10%) percent retainage will be withheld on all work performed throughout construction. The GMP has allowance items totaling \$40,000, and itemized below.

## Allowances in the Construction Contract

• Community Area	\$15,000
• Community Area - Wiring/Electrical	\$10,000
• Business Center	\$15,000
Total	\$40,000

Final payment will be made by the Applicant to the Contractor when (1) the Contractor has fully performed the GMP, except for the Contractor's responsibility to correct work as provided in Article

12 of the GMP, and to satisfy other requirements, if any, which extend beyond final payment, (2) the Contractor has submitted a final accounting for the cost of the work and a final Application for Payment, and (3) a final Certificate for Payment has been issued by the Architect. Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

2. SMG received the General Contractors Certification of Requirements indicating an understanding of GC conditions per 67-21, F.A.C. ("Rule").
3. General Contractor fees as stated are within the 14% maximum per the Rule.
4. Builder's Risk, General Liability Insurance, and the cost to obtain a Payment and Performance Bond are within the GMP.
5. The hard cost contingency is 8.52% of the construction contract amount, which is within the 15% limit per the Rule. The hard cost contingency is outside of the GC Contract and is not reflected on the schedule of values.
6. Greystone engaged a Pre-Construction Analysis ("PCA") from Global Reality Services Group ("GRS"). Complete results are set forth in Section C of this credit underwriting report.

GENERAL DEVELOPMENT COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Accounting Fees		\$15,000	\$15,000	\$205	\$7,500
Appraisal		\$6,500	\$6,500	\$89	
Architect's and Planning Fees				\$0	
Architect's Fee - Green Initiative				\$0	
Architect's Fee - Landscape				\$0	
Architect's Fee - Site/Building Design		\$100,000	\$68,860	\$943	
Architect's Fee - Supervision		\$50,000		\$0	
Building Permits		\$100,000	\$100,000	\$1,370	
Builder's Risk Insurance				\$0	
Capital Needs Assessment/Rehab				\$0	
Engineering Fees			\$68,859	\$943	
Environmental Report		\$10,000	\$10,000	\$137	
Federal Labor Standards Monitoring				\$0	
FHFC Administrative Fees			\$64,292	\$881	\$64,292
FHFC Application Fee			\$3,000	\$41	\$3,000
FHFC Credit Underwriting Fee			\$12,908	\$177	\$12,908
FHFC Compliance Fee		\$21,900	\$117,537	\$1,610	\$117,537
FHFC Other Processing Fee(s)				\$0	
Impact Fee				\$0	
Lender Inspection Fees / Const Admin				\$0	
Green Building Cert. (LEED, FGBC, NGBS)				\$0	
Home Energy Rating System (HERS)				\$0	
Insurance				\$0	
Legal Fees - Organizational Costs				\$0	
Local Subsidy Underwriting Fee				\$0	
Market Study		\$2,500	\$2,500	\$34	\$2,500
Marketing and Advertising				\$0	
Plan and Cost Review Analysis				\$0	
Property Taxes				\$0	
Soil Test				\$0	
Survey		\$35,000	\$35,000	\$479	\$7,000
Tenant Relocation Costs		\$36,500	\$36,500	\$500	
Title Insurance and Recording Fees		\$25,000	\$25,000	\$342	
Traffic Study				\$0	
Utility Connection Fees				\$0	
Soft Cost Contingency		\$62,568	\$28,298	\$388	
Other: <a href="#">Credit Reports</a>		\$1,000		\$0	
<b>Total General Development Costs:</b>	<b>\$0</b>	<b>\$465,968</b>	<b>\$594,254</b>	<b>\$8,140</b>	<b>\$214,737</b>

*Notes to the General Development Costs:*

1. Architect's Fees - Site/Building Design and Engineering Fees each reflect 50% of the contract amount of \$137,719 with Epic Engineering, P.C. ("Epic") dated August 23, 2019.
2. The FHFC Administrative Fee is based on 9% of the recommended annual allocation of HC. The FHFC Application Fee is reflective of the application fee for 4% HC. FHFC Credit Underwriting Fees are based on 2019 contractual amounts. FHFC Compliance Fees are the HC compliance fees and are based on a final allocation date of December 31, 2021.

3. Tenant Relocation Costs are based on the estimate provided by the Applicant. The rehabilitation is anticipated to be done with tenants in place. Temporary displacement of tenants will take place when extraordinary circumstances occur where tenants may need to be moved to other units that have previously been rehabilitated.
4. Soft cost contingency has been limited to 5% per Rule.
5. Other General Development Costs are based on the Borrower's estimates, which appear reasonable.

FINANCIAL COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Construction Loan Closing Costs				\$0	
Construction Loan Interest		\$501,011	\$501,011	\$6,863	\$0
Construction Loan Servicing Fees				\$0	
Permanent Loan Application Fee			\$18,400	\$252	\$18,400
Permanent Loan Underwriting Fee				\$0	\$0
Permanent Loan Subsidy Layering Rev.				\$0	\$0
Permanent Loan Commitment Fee				\$0	\$0
Permanent Loan Origination Fee		\$159,000	\$159,000	\$2,178	\$159,000
Permanent Loan Closing Costs				\$0	\$0
Permanent Loan Interest				\$0	\$0
Permanent Loan Servicing Fee				\$0	\$0
FHFC Note Servicing Fee				\$0	\$0
Local HFA Note Application Fee				\$0	\$0
Local HFA Note Underwriting Fee		\$25,000	\$18,000	\$247	\$18,000
Local HFA Note Subsidy Layering Rev.				\$0	\$0
Local HFA Note Origination Fee				\$0	\$0
Local HFA Note Commitment Fee				\$0	\$0
Local HFA Note Fiscal Agent Fee				\$0	\$0
Local HFA Note Cost of Issuance		\$431,926	\$431,926	\$5,917	\$431,926
Local HFA Note Closing Costs				\$0	\$0
Local HFA Note Interest				\$0	\$0
Local HFA Note Servicing Fee				\$0	\$0
Local HFA Legal - Tax Counsel		\$75,000	\$75,000	\$1,027	\$75,000
Local HFA Legal - Borrower's Counsel		\$50,000	\$50,000	\$685	\$50,000
Local HFA Legal - Issuer's Counsel				\$0	\$0
Local HFA Legal - Lender's Counsel				\$0	\$0
Local HFA Legal - U/W's Counsel				\$0	\$0
Legal Fees - Financing Costs		\$90,000	\$90,000	\$1,233	\$45,000
Forward Rate Lock Fee				\$0	
Placement Agent/Underwriter Fee				\$0	
Initial TEFRA Fee				\$0	\$0
FHA MIP (Prepayment)				\$0	
FHA Exam Fee				\$0	
NIBP Commitment Fee				\$0	
Other: <a href="#">Financing Contingency</a>		\$38,346		\$0	
Other: <a href="#">Escrow Fees</a>		\$75,000		\$0	\$0
<b>Total Financial Costs:</b>	<b>\$0</b>	<b>\$1,445,283</b>	<b>\$1,343,337</b>	<b>\$18,402</b>	<b>\$797,326</b>
<b>Dev. Costs before Acq., Dev. Fee &amp; Reserves</b>	<b>\$8,404,000</b>	<b>\$5,967,212</b>	<b>\$5,993,552</b>	<b>\$82,103</b>	<b>\$1,012,063</b>

*Notes to the Financial Costs:*

1. Construction Loan Interest reflects the Borrower's estimate of interest during the construction period, which appears reasonable.
2. Permanent Loan Application Fee is equal to 0.10% of the loan amount plus a flat \$2,500 fee, in accordance with the Greystone LOI December 13, 2019.
3. Permanent Loan Origination Fee is equal to 1% of the loan amount, in accordance with the Greystone LOI.

4. Local HFA Note Underwriting Fee reflects the actual cost for Seltzer to perform underwriting services.
5. Local HFA Bond financing costs include all Costs of Issuance related to the Tax-Exempt Loan. This includes all issuer fees, financial advisor fees, bond counsel fees, and all other fees.
6. All other financial costs are based on the Applicant's estimate which appears reasonable.

NON-LAND ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Brokerage Fees - Building				\$0	
Building Acquisition Cost	\$11,900,000	\$11,900,000	\$13,415,000	\$183,767	
Developer Fee on Non-Land Acq. Costs			\$2,146,400	\$29,403	
<b>Total Non-Land Acquisition Costs:</b>	<b>\$11,900,000</b>	<b>\$11,900,000</b>	<b>\$15,561,400</b>	<b>\$213,170</b>	<b>\$0</b>

*Notes to the Non-Land Acquisition Costs:*

1. Per the Assignment and Assumption of Purchase and Sale Agreement dated January 14, 2020, the Applicant assumes the right to purchase the Development for \$14,875,000, under the terms found in the Purchase and Sale Agreement dated April 18, 2019, and the First Amendment to Purchase and Sale Agreement dated July 23, 2019, between the Seller (Gator El Cid Partners, LLLP) and LEDG Capital, LLC ("LEDG Capital").
2. The appraised "as is" restricted value is \$17,100,000, which supports the purchase price.
3. In accordance with FHFC's eligible basis calculation methodology for acquisition, \$13,415,000 is reflected as HC eligible Non-Land Acquisition Costs. The remainder of the purchase price (\$1,460,000) is allocated to land.
4. The Developer Fee Building Acquisition is calculated as 18% of Building Acquisition Costs.

DEVELOPER FEE ON NON-ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Developer Fee - Unapportioned		\$3,055,507	\$909,107	\$12,454	
DF to fund Operating Debt Reserve				\$0	
DF to Brokerage Fees - Land				\$0	
DF to Excess Land Costs				\$0	
DF to Excess Bldg Acquisition Costs				\$0	
DF to Consultant Fees				\$0	
DF to Guaranty Fees				\$0	
<b>Total Other Development Costs:</b>	<b>\$0</b>	<b>\$3,055,507</b>	<b>\$909,107</b>	<b>\$12,454</b>	<b>\$0</b>

*Notes to the Other Development Costs:*

1. Developer Fee is within 18% of the Development's construction cost, exclusive of land acquisition costs and reserves, as required per Rule.

LAND ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
Brokerage Fees - Land				\$0	\$0
Land Acquisition Cost				\$0	\$0
Land	\$2,975,000	\$2,975,000	\$1,460,000	\$20,000	\$1,460,000
Land Lease Payment				\$0	\$0
Land Carrying Costs				\$0	\$0
<b>Total Acquisition Costs:</b>	<b>\$2,975,000</b>	<b>\$2,975,000</b>	<b>\$1,460,000</b>	<b>\$20,000</b>	<b>\$1,460,000</b>

*Notes to the Land Acquisition Costs:*

1. The Land Acquisition Cost (\$1,460,000) reflects the land value according to the Palm Beach County Property Appraiser.

RESERVE ACCOUNTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
ACC Reserve (Lender)				\$0	\$0
ACC Reserve (Syndicator)				\$0	\$0
Operating Deficit Reserve (Lender)				\$0	\$0
Operating Deficit Reserve (Syndicator)		\$281,472	\$281,586	\$3,857	\$281,586
Debt Service Coverage Reserve (Lender)				\$0	\$0
Debt Service Coverage Reserve (Syndicator)				\$0	\$0
Replacement Reserves (Lender)				\$0	\$0
Replacement Reserves (Syndicator)				\$0	\$0
Reserves - Start-Up/Lease-up Expenses				\$0	\$0
Reserves - Working Capital				\$0	\$0
<b>Total Reserve Accounts:</b>	<b>\$0</b>	<b>\$281,472</b>	<b>\$281,586</b>	<b>\$3,857</b>	<b>\$281,586</b>

*Notes to Reserve Accounts:*

1. Operating Deficit Reserve (Syndicator) – As detailed in the draft Amended and Restated Limited Partnership Agreement dated February 1, 2020, an operating reserve in an amount equal to the greater of three months of operating expenses, required debt service payments and required reserve payments or \$281,586, shall be maintained throughout the compliance period (30 years).

At the end of the compliance period, any remaining balance of the ODR less amounts that may be permitted to be drawn (which includes Deferred Developer Fee and reimbursements for authorized member/partner and guarantor loan(s) pursuant to the operating/partnership agreement), will be used to pay HFAPBC loan debt; if there is no HFAPBC loan debt on the proposed Development at the end of the compliance period, any remaining balance shall be used to pay any outstanding HFAPBC fees. If any balance is remaining in the ODR after the payments above, the amount should be placed in a Replacement Reserve account for the Development. In no event shall the payments of amounts to the Applicant or the Developer from the Reserve Account cause the Developer Fee or General Contractor Fee to exceed the applicable percentage limitations provided for in the Rule. Any and all terms and conditions of the ODR must be acceptable to HFAPBC, its Servicer and its Legal Counsel.

TOTAL DEVELOPMENT COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs - CUR	Cost Per Unit	HC Ineligible Costs - CUR
<b>TOTAL DEVELOPMENT COSTS:</b>	<b>\$23,279,000</b>	<b>\$24,179,191</b>	<b>\$24,205,645</b>	<b>\$331,584</b>	<b>\$2,753,649</b>

*Notes to the Total Development Costs:*

1. Total Development Costs have increased by \$926,645 (approximately 3.98%) since the time of application. Due to the lack of development budget detail provided in the application, Seltzer is unable to opine as to which specific development costs have increased since submission of the application.



## Operating Pro forma

OPERATING PRO FORMA		ANNUAL	PER UNIT	
INCOME	Gross Potential Rental Income	\$1,257,960	\$17,232	
	Other Income:			
	Miscellaneous	\$4,500	\$62	
	Gross Potential Income	\$1,262,460	\$17,294	
	Less:			
	Economic Loss - Percentage: 0.8%	(\$10,728)	(\$147)	
	Physical Vacancy Loss - Percentage: 3.0%	(\$37,874)	(\$519)	
Collection Loss - Percentage: 1.0%	(\$12,625)	(\$173)		
<b>Total Effective Gross Revenue</b>		\$1,201,234	\$16,455	
EXPENSES	Fixed:			
	Real Estate Taxes	\$6,916	\$95	
	Insurance	\$29,200	\$400	
	Variable:			
	Management Fee - Percentage: 4.0%	\$48,049	\$658	
	General and Administrative	\$14,600	\$200	
	Payroll Expenses	\$97,090	\$1,330	
	Utilities	\$121,180	\$1,660	
	Marketing and Advertising	\$0	\$0	
	Maintenance and Repairs	\$18,250	\$250	
	Grounds Maintenance and Landscaping	\$6,205	\$85	
	Resident Programs	\$0	\$0	
	Contract Services	\$0	\$0	
	Other - Turnover Expenses	\$9,490	\$130	
	Reserve for Replacements	\$18,250	\$250	
	<b>Total Expenses</b>		\$369,230	\$5,058
	<b>Net Operating Income</b>		\$832,003	\$11,397
<b>Debt Service Payments</b>				
	First Mortgage - MMRN - HFAPBC / Greystone / Freddie Mac	\$772,690	\$10,585	
	All Other Mortgages -	\$0	\$0	
	First Mortgage Fees - MMRN - HFAPBC / Greystone / Freddie Mac	\$28,350	\$388	
	All Other Mortgages Fees -	\$0	\$0	
<b>Total Debt Service Payments</b>		\$801,040	\$10,973	
<b>Cash Flow After Debt Service</b>		\$30,964	\$424	

Debt Service Coverage Ratios		
	DSC - First Mortgage plus Fees	1.039
	DSC - All Mortgages and Fees	1.039
Financial Ratios		
	Operating Expense Ratio	30.7%
	Break-Even Ratio	92.9%

Notes to the Operating Pro forma and Ratios:

- The HFAPBC Bond program and 4% Housing Credits program will both impose rent restrictions. El Cid Apartments is projected to achieve 2019 Maximum Allowable HC Rents published by Florida Housing on all units based upon the appraiser's estimate of achievable rents per comparable properties surveyed. Seltzer utilized a 2019 Utility Allowance Chart for multifamily apartments in Palm Beach County reflecting electric as the only utility and an effective date of July 22, 2019. The tenant will be responsible for general electricity and the Applicant will pay for common area expenses, water, sewer, and trash removal.

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

MSA/County: West Palm Beach – Boca Raton HMFA; Miami-Fort Lauderdale – West Palm Beach MSA / Palm Beach County

Bed Rooms	Bath Rooms	Units	Square Feet	AMI%	Low HOME Rents	High HOME Rents	Gross HC Rent	Utility Allow.	Net Restricted Rents	PBRA Contr Rents	Applicant Rents	Appraiser Rents	CU Rents	Annual Rental Income
0	1.0	10	361	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$165,000
0	1.0	22	413	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$363,000
0	1.0	6	381	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$99,000
0	1.0	3	402	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$49,500
0	1.0	3	513	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$49,500
0	1.0	3	405	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$49,500
0	1.0	3	330	60%			\$879	\$52	\$827	\$1,375	\$1,175	\$1,375	\$1,375	\$49,500
1	1.0	3	634	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$59,040
1	1.0	3	716	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$59,040
1	1.0	3	579	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$59,040
1	1.0	2	601	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$39,360
1	1.0	4	592	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$78,720
1	2.0	7	678	60%			\$941	\$59	\$882	\$1,640	\$1,450	\$1,640	\$1,640	\$137,760
1	1.0	1	650	Exmpt							\$1,450	\$894	\$0	
		73	34,685											\$1,257,960

- Miscellaneous income as estimated by the Appraiser includes any other income from the property including revenues from vending machines, application fees, late fees, pet fees, damage fees, laundry income, and other miscellaneous sources. The conclusion is based on the higher aspect of the historical and budgeted operations, which is lower than the expense comparable set (summarized on the following page).
- The Appraiser estimates a stabilized physical vacancy rate of 3.00%, collection loss of 1.00%, and economic loss of 0.8% for an economic occupancy of 95.15% and a physical occupancy rate of 97.00%.
- Real estate tax expense as estimated by the Appraiser includes all local, county, and state property tax levies, including special assessments. Please refer to the Assessments and Taxes section for additional details
- Insurance expense as estimated by the Appraiser includes all premiums and costs incurred for insurance covering structures, public liability, rental value, and equipment. The conclusion is based on the historical and budgeted expenses and the comparable data.
- Per the Property Management Agreement between the Applicant and HSI Management, Inc. ("HSI") dated January 29, 2020, HSI will receive payment for its services equal to three percent (2.67%) of

the total collected gross receipts from the Development per month. In addition, the HSI shall receive 1.33% of the total collected gross receipts from the Development as an Incentive Management Fee ("Incentive"). Such Incentive shall be payable quarterly and shall only be paid out of surplus cash flow.

7. Maintenance and Repairs as estimated by the Appraiser include the cost of to repair and maintain building mechanical systems and structural components, including any applicable elevator systems. The As-Is conclusion is based on the historical expenses, and the comparable data. The As-Renovated conclusion is based on the budget, which includes cost savings from the proposed renovation, and is supportable based on the comparable data. Note the historicals and budget include turnover costs within the repairs line.
8. Other operating expense estimates are based on comparable properties and are supported by the appraisal.
9. Per the draft Amended and Restated Limited Partnership Agreement, the replacement reserve amount shall be \$300 per unit per year. The reserve amount shall increase 3% per year, starting in year 11, unless required earlier by Alliant.
10. A 15-year income and expense projection shows increasing debt service coverage. This projection is attached to this report as Exhibit 1.

**Section B**

**Supporting Information and Schedules**

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**Additional Development and Third Party Information**

**Appraised Value:** The market value of the fee simple interest in the subject property is \$13,200,000 as if complete and stabilized, based on market rents and market financing, as reported in the full narrative appraisal dated January 16, 2020, with a valuation date of August 2, 2019, performed by Colliers International Valuation & Advisory Services, LLC. (“Colliers”). Ryan Tolle, MAI and P.J. Cusmano, are State Certified General Real Estate Appraisers, Florida License Nos. RZ 3416 and RZ 2436, respectively. Based on the market value of the property, the loan-to-value ratio (“LTV”) for the first mortgage debt is 120.5%.

The appraised value as if renovated and stabilized and based on restricted rents and market financing terms is estimated at \$17,400,000. The LTV ratio for the first mortgage debt based on this value is 91.4%.

The Appraiser estimated the “as is” value of the Development based on restricted rents to be \$17,100,000, which supports the purchase price of \$14,875,000.

The appraisal did not include a separate land value. Therefore, Seltzer relied upon the Palm Beach County Property Appraiser, which valued the land at \$1,300,000.

**Market Study:** Seltzer received a separate Market Study on the subject property completed by Specialty Valuation Group, Inc. (“SVG”) dated December 19, 2019.

The subject is an existing senior (ages 62 and older) apartment property in the El Cid neighborhood of West Palm Beach in Palm Beach County, Florida. Currently the subject property operates with a Housing Assistance Payment (“HAP”) contract through the HUD Section 8 program and is 100% occupied. The property also has a waiting list of approximately 200 households with households dating back to 2015. The subject property will be renovated using the Low-Income Housing Tax Credit program and will continue to operate with a Section 8 subsidy for all 72 units. Rent and income levels will be restricted to 60% or less of the Area Median Income (“AMI”) level. Per the rent roll, the subject offers 51 studio units and 21 one-bedroom units, and it will continue to target senior (ages 62 and older) households with one or two persons. Note that seven one-bedroom units have two bathrooms.

The subject’s Primary Market Area (“PMA”) includes much of West Palm Beach, as well as portions of surrounding communities including Royal Palm Estates, Lake Clarke Shores, and Palm Springs. The City Place and downtown West Palm Beach neighborhoods are in the PMA in central West Palm Beach, within less than 2.0 miles of the subject. In general, most residents of the subject originate from the West Palm Beach area

and nearby suburbs according to the property manager. The PMA encompasses approximately 44 square miles. The boundaries of the PMA include Roebuck Road, a canal, Lake Magnolia, and 36th Street to the north, the Intracoastal Waterway to the east, 10th Avenue North to the south, and Military Trail, Forest Hill Boulevard, Jog Road, and the Florida Turnpike to the west. The Secondary Market Area is Palm Beach County. SVG noted that there are no FHFC Guarantee Fund developments within the subject's PMA.

For the comparable analysis, SVG identified and surveyed 13 comparable rental properties containing a total of 1,959 units. A total of 12 of the 13 properties are from within the PMA, while one senior comparable, Riverview House, is just south of the PMA in Lake Worth. Eight surveyed properties include age-restricted LIHTC units and five comparables are market rate properties. The 1,959 total surveyed units have an overall occupancy rate of 96.2% (3.8% vacancy rate).

All of the surveyed comparable LIHTC properties are age-restricted. Most of the surveyed senior LIHTC properties also operate with project-based subsidies, allowing renters to pay just 30% of their adjusted gross income in rent. One of the comparables also has 54 market rate units. The 54 market rate units are not considered in the analysis of affordable comparable properties.

The eight surveyed properties with LIHTC units have 1,022 total units (including 54 market rate units at Windsor Park), with a total of 968 LIHTC units. There are eight total LIHTC unit vacancies, or a LIHTC units vacancy rate of just 0.8% overall. This indicates high demand for LIHTC units, particularly units with subsidy. For the 474 non-subsidized LIHTC units surveyed, the vacancy rate is also low at 1.7%. No property has a high vacancy rate. Most managers indicated they keep waiting lists and overall senior apartment demand is significant in this somewhat costly rental market in comparison to many other metro areas in the nation.

The affordable senior properties utilized in SVG's comparable analysis are performing very well with limited vacancies and a 0.8% overall vacancy rate for the LIHTC senior units.

SVG estimates an absorption rate of 15 units per month at the proposed LIHTC rents, which would yield an absorption period of approximately 4.5 to five months to reach 9.60% stabilized occupancy with all units requiring LIHTC program qualifications.

After analyzing the PMA, there is evidence of sufficient demand for LIHTC senior rental housing. The overall LIHTC-only capture rate is 4.7% among income-eligible senior renter households, which is very good and considered achievable for a renovated senior property with achievable

LIHTC rents that will be substantial values compared to achievable market rents and a generally competitive amenities package. However, the subject has small unit sizes and that was factored into our rent conclusions. The penetration rate is moderate at 18.7% and is considered achievable based on the performance of the PMA's senior properties, the projected senior demographic growth, the area's median income and rent growth, and the fact that there are only a limited number of vacancies at the existing senior LIHTC units surveyed in the market.

SVG notes that the subject will obtain maximum allowable 2019 HC rents. Per FHFC requirements, market rents are to exceed restricted rents by a minimum of 10%. SVG estimates the overall weighted average market rent is 23.4% greater than estimated average restricted rent.

**Environmental Report:**

Partner Engineering and Science, Inc. ("Partner") performed a Phase I Environmental Site Assessment ("ESA") in accordance with ASTM Standard Practice E1527-13 and 40 CFR Part 312. The ESA was issued November 26, 2019 and states a site inspection was performed on November 13, 2019.

Partner's ESA revealed no evidence of any Recognized Environmental Condition ("REC"), Controlled REC ("CREC"), Historical REC ("HREC"), or environmental issues in connection with the subject property. Based on the conclusions of Partner's assessment, Partner recommends no further investigation of the subject property at this time.

Based on original date of construction of the building (1926/1927) and previously performed surveys of the property, Lead-Based Paint ("LBP") and Asbestos-Containing Materials ("ACM") are present on-site. No direct evidence of a release of hazardous materials was identified on the subject property from 1927 through July 2019

LBP and ACM Operations and Maintenance ("O&M") Plans were prepared by Partner on August 26, 2019. Partner recommends adherence to the ACM and LBP O&M Plans.

**Soil Test Report:**

Existing properties undergoing rehabilitation with no new construction do not typically require soils tests.

**Capital Needs Assessment:**

SMG is in receipt of a Capital Needs Assessment ("CNA") from Global Realty Services Group, Inc. ("GRS"), dated December 20, 2019.

The PCR was prepared in general conformance with ASTM E2018-15 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process, and Fannie Mae Instructions for Performing A Multifamily Property Condition Assessment, Form 4099 – Version 2.1, dated 4.16, and Fannie Mae Guide Part IIIA – Base

Underwriting Requirements (April 2015). The purpose of GRS' assessment was to observe and document readily-visible materials and building system defects that might significantly affect the value of the property, and determine if conditions exist which may have a significant impact on the continued operating of the facility during the evaluation period.

A site reconnaissance was conducted July 30, 2019. Site reconnaissance conducted during GRS' assessment was limited to accessible areas of the Development and specific tenant spaces identified within the PCR.

Critical Repairs include repairs and replacements that significantly impact habitability, value, income or marketability and that must be corrected before the transaction will proceed. GRS identified no necessary critical repairs.

Life Safety Repairs include repairs that may impact the health or safety of residents, employees, or visitors. GRS identified the need for two Life Safety Repairs (Carbon Monoxide Detectors and open Fire Code Violations) that GRS estimates will cost \$7,555 to complete.

GRS also provided a 12-year replacement reserve analysis in the PCR. Replacement reserve costs are typically defined as predictable and in some instances to be recurring within a specified future period. Based on the 12-year replacement reserve projection prepared by GRS in the Pre-Construction Analysis noted below, the property will need to fund reserves in the amount equal to \$120,710 or \$139.71 per unit per year in inflated dollars (3% per year inflation factor). Seltzer has utilized the \$300 minimum requirement per Rule 67-21.

Pre-Construction Analysis:

SMG has received a Pre-Construction Analysis ("PCA") from GRS dated December 20, 2019. The purpose of the PCA was to review the major aspects of the Development ascertained from available construction drawings, specifications, budgets, and correspondence pursuant to the rehabilitation of El Cid Apartments. GRS notes that the trade cost breakdown appears to provide sufficient detail for accurate evaluation of work completed. Partner states that a certification from the Architect was provided that certifies that the plans and specs will comply with and conform to requirements of Fair Housing and Section 504.

A draft Agreement (AIA Document A101-2017), dated November 22, 2019, between the Applicant and Contractor, Wilshire Pacific Builders, LLC ("WPB") was provided to GRS for the El Cid rehabilitation totaling \$3,737,452 or \$88.31 per square foot of gross building area (42,324 total gross square feet) and approximately \$47,310 per unit (73 total apartments). GRS estimated costs are \$3,809,496 or \$90.01 per square foot of gross building area and approximately \$48,221 per apartment, a



variance of roughly 1.9%. It is GRS' opinion that the overall project hard cost budget is comparable to similar multifamily building renovation costs, and can be considered representative of expected costs for a property renovation of this type and scope in the West Palm Beach, FL location.

A detailed Project Schedule for the Development prepared by WPB and was provided for review. According to the proposed schedule, construction is expected to begin by January 2, 2020, and completion is scheduled by December 25, 2020. The Contract requires completion by December 31, 2020, which is in agreement with the schedule. It is GRS' opinion that the approximate 12-month construction period allocated appears reasonable and achievable for the work planned barring significant unforeseen delays.

Upon completing a review of the project documents provided for our review, it appears that the plans are limited and minimal for this project, and the specifications are considered adequate for pricing, scheduling, and planning. GRS Group recommends further architectural details and specifications, as well as inclusion of mechanical, electrical and plumbing documents be provided to the construction team prior to project start. Documents submitted for permit review should be signed and sealed by the designer of record.

Based on our review of documents provided and on-line research, GRS Group believes the project team, including developer, Architect, and the General Contractor, are adequately qualified, experienced, and capable to complete the planned project. However, financial capacity of the Contractor is unknown at this time.

Site Inspection:

Lina Arcila of Seltzer Management Group, Inc. conducted a site visit on January 6, 2020 for El Cid Apartments. The Development consists of 72 Mid-Rise restricted Apartments (and one exempt/manager unit). The property is located in Palm Beach County.

The immediate surrounding area consists of small retail/commercial businesses, schools, parks and residential apartments/houses. South of the site there are parks, restaurants, senior communities, churches, the Palm Beach Zoo, residential homes and apartment complexes. On the West side of site there are highways A1A, Florida Turnpike and I-95. The Palm Beach International Airport is also on west of site. On the East side of site, there are residential homes, the intracoastal waterway and the West Palm Beach. North of site there are residential homes, hotels, museums, cemeteries, the Palm Beach Convention Center and the Palm Beach Atlantic University.

There is an affordable elderly tax credit community (Pinnacle Palms) within four miles of site and two family tax credit properties (Azalea Place and Malibu Bay) within another five miles of site.

There does not appear to be any apparent adverse conditions that would negatively affect this development or impair the property's ability to attract tenants.

**Borrower Information**

Applicant/Borrower Name: LIH El Cid, LP (“Applicant”)

Applicant/Borrower Type: Florida Limited Partnership

Ownership Structure: The Applicant is a Florida Limited Partnership registered with the State of Florida on August 5, 2019. A copy of the Limited Partnership Agreement (“LPA”) dated August 23, 2019, was provided to SMG.

As confirmed in the LPA, the General Partner of the Applicant with a 0.005% ownership interest is El Cid Affordable Housing Corp. (“El Cid GP” or “General Partner”), a Florida Not For Profit Corporation registered with the State of Florida to transact business on August 1, 2019. As a Not For Profit Corporation, El Cid GP is governed by a Board of Directors. A copy of El Cid GP’s Bylaws effective August 1, 2019, was provided for review.

The Limited Partner of the Applicant, with 99.995% ownership, is El Cid West Palm Beach SLP, LLC (“El Cid SLP”). El Cid SLP is a Florida Limited Liability Company that registered with the State of Florida on July 24, 2019. Per the Operating Agreement dated July 24, 2019, lists LEDG Capital, LLC (“LEDG Capital”), a Nevada Limited Liability Company, as the sole member of El Cid SLP.

LEDG Capital is owned by Jacob Levy, KDG Partners, LLC (“KDG Partners”), and Dmitry Gourkine, with ownership interests of 50%, 50%, and 0%, respectively. LEDG Capital is also the Developer entity for the El Cid rehabilitation.

KDG Partners is a Washington Limited Liability Company owned by Dmitry Gourkine and Kathleen Arthur, with ownership interests of 51% and 49%, respectively.

Per the draft Amended and Restated Limited Partnership Agreement dated February 1, 2020, Alliant’s 99.99% purchase of the partnership will be held between Alliant Credit Facility II, LLC (Investor Limited Partner) and Alliant Credit Facility ALP, LLC (Administrative Limited Partner), with ownership interests of 99.98% and 0.01%, respectively.

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Seattle, WA 98117

Federal Employer ID: 84-2713693

Experience: The Applicant, El Cid GP, and El Cid SLP are single-purpose entities, created for the purpose of acquiring, developing, and operating El Cid

Apartments. While LEDG Capital was recently formed the experience of the two partners, Jacob Levy and Dmitry Gourkine, in affordable housing goes back almost fifteen years. Mr. Levy joined Levy Affiliated Holdings, LLC in 2014 and since that time the company's multifamily portfolio has grown from 225 to 1,565 units. Mr. Levy has developed 20 low-income multifamily developments consisting of nearly 2,500 units. These developments are located primarily in California, with other developments located in Hawaii, Louisiana, Texas and Florida.

## Credit Evaluation:

The Applicant, El Cid GP, and El Cid SLP are single-purpose entities, created for the purpose of acquiring, developing, and operating El Cid Apartments and do not have financial records, credit history or development experience.

An ACRAnet tri-merge credit report on Jacob Levy dated November 14, 2019, reflects 10 trade lines (active and closed) with a total outstanding balance in the high 4 figures. There is minimal slow-pay history and no record of collections, tax liens, or judgments.

A business credit report for LEDG Capital dated January 30, 2020, reflects 1 trade line with a total outstanding balance of \$200. There is no slow-pay history and no record of collections, tax liens, or judgments.

A business credit report on KDG Partners dated January 30, 2020, reflects no trade lines (active or closed), no slow-pay history and no record of collections, tax liens, or judgments.

## References:

Bank and business references for Jacob Levy and LEDG Capital reflected satisfactory business relationships.

Seltzer has received savings and checking account statements for Jacob Levy evidencing cash in the low seven figures.

## Financial Statements:

*Jacob Levy:*

Cash and Equivalents:	\$ 1,201,756
Total Assets:	\$11,018,677
Total Liabilities:	\$ 13,297
Equity:	\$16,082,933

Financial data is from an unaudited financial statement dated January 2020, and certified as true and correct by Jacob Levy. Assets other than cash consist of interest in affordable housing, commercial real estate, and an interest in WPB. Liabilities consist of various credit cards. SMG has reviewed Jacob Levy's Form 1040s for 2017 and 2018.

*LEDG Capital:*

Cash and Equivalents:	\$ 1,727,439
Total Assets:	\$55,713,675
Total Liabilities:	\$54,054,495
Equity:	\$ 1,659,180

Financial data is from an unaudited financial statement dated December 27, 2019, and certified as true and correct by Jacob Levy. Assets other than cash consist of notes receivables, consolidated investments, contingent assets, escrow pending, and properties pending. Liabilities consist of loans payable consolidated liabilities, contingent liabilities, and notes payable. SMG has reviewed LEDG Capital's 2018 Tax Return (form 1065).

## Contingent Liabilities:

The Applicant, El Cid GP, and El Cid SLP are single-purpose entities, created for the purpose of acquiring, developing, and operating El Cid Apartments and do not have contingent liabilities.

SMG received a Statement of Financial and Credit Affairs for Jacob Levy with a schedule of contingent liabilities as of December 2019, in which it was disclosed that Jacob Levy has contingent liabilities in the approximate amount of \$96.8 million.

SMG received a schedule of contingent liabilities as of January 2020 for LEDG Capital, in which it was disclosed that LEDG Capital has contingent liabilities in the approximate amount of \$80.4million.

## Summary:

Based upon the information provided, with the support of MTD's parent company, Levy Affiliated Holdings, Jacob Levy appears to have the experience and financial resources to develop, rehabilitate and operate the Subject Development.

**Guarantor Information**

Guarantor Name: LIH El Cid, LP, El Cid Affordable Housing Corp, El Cid West Palm Beach SLP, LLC, LEDG Capital, LLC, KDG Partners, LLC, and Jacob Levy, an individual

Contact Information: Jacob Levy  
Telephone: (310) 883-7900  
E-Mail: [jacob@ledgcapital.com](mailto:jacob@ledgcapital.com)

Address: 9129 23<sup>rd</sup> Avenue NW  
Seattle, WA 98117

Nature of the Guarantee: The Guarantors will sign standard LCHFA Construction Completion, Environmental Indemnity, Recourse Obligation and Operating Deficit Guaranties. The Construction Completion Guaranty will be released upon 100% lien-free completion as approved by the Loan Servicer.

For the MMRN Loan, Guarantors are to provide the standard LCHFA Operating Deficit Guaranty. If requested in writing by Applicant, the Loan Servicer will consider a recommendation to release the Operating Deficit Guaranty if all conditions are met, including achievement of a 1.15x Debt Service Coverage (“DSC”) Ratio on the MMRB Loan, as determined by the LCHFA or its agent and 90% occupancy and 90% of the Gross Potential Rental Income, net of Utility Allowances, if applicable, for a period of 12 consecutive months, all certified by an independent Certified Public Accountant (“CPA”). The calculation of the DSC Ratio shall be made by LCHFA or the Loan Servicer. Notwithstanding the above, the Operating deficit Guaranty shall not terminate earlier than three (3) years following the final Certificate of Occupancy (“C/O”).

Financial Statements: Please refer to the Borrower Information section of this Credit Underwriting Report.

Contingent Liabilities: Please refer to the Borrower Information section of this Credit Underwriting Report.

Summary: Collectively the principals of the Applicant appear to have the financial resources necessary to support the Applicant by acting as Guarantors for the Subject Development.

**Syndicator Information**

Syndicator Name:	Alliant Capital, Inc. ("Alliant")
Contact Person:	Ana Gallardo Vice President, Acquisitions
	Telephone: (818) 668-2841
	E-Mail: <a href="mailto:ana.gallardo@alliantcapital.com">ana.gallardo@alliantcapital.com</a>
Headquarter Address:	340 Royal Poinciana Way, Suite 338 Palm Beach, FL 33480
Experience:	Alliant was founded in 1997 to assist in meeting America's critical need for affordable rental housing by structuring and syndicating investments utilizing the Low Income Housing Tax Credit program. Alliant is consistently among the top ten sponsors in syndication volume and has an unparalleled track record of success. Alliant maintains strong and lasting relationships with investors, developers, lenders and state housing agencies. Alliant has invested in excess of 990 developments comprising over 99,000 LIHTC units. In its 21 year history, Alliant has syndicated over 100 institutional tax credit funds that have raised over \$7.4 billion in investor equity. With offices nationwide and a dedicated, growing team of experienced and well-trained commercial real estate, legal, and tax professionals, Alliant provides the highest level of fully integrated real estate and investment support services.
Financial Statements:	Alliant provided an audited financial statement dated December 31, 2018. Assets primarily consist of cash and cash equivalents, restricted cash, receivables, and investments in affordable housing limited partnerships. Liabilities consist of accounts payable, notes payable, other liabilities, and capital contributions payable. Alliant notes a net worth in the mid-nine figures.
Summary:	Alliant has demonstrated that it has the experience and financial strength to serve as the syndicator for this Development.

**General Contractor Information**

General Contractor Name: Wilshire Pacific Builders, LLC (“WPB”)

Type: A California Limited Liability Company

Contact Persons: James “Jim” Brundage

Telephone: (480) 298-0743

E-mail: jbrundage@wilshirepacific.com

Principal Address: 2350 Germann Road, Suite 31  
Chandler, AZ 85286

Experience: WPB was formed as a California limited liability company on August 25, 2016, and registered as a foreign limited liability company with the State of Florida on May 15, 2018. WPB specializes in the rehabilitation of multifamily residential housing developments.

Jim Brundage is the President of WPB. Since the company’s inception, Jim Brundage has overseen the construction and renovation of all multifamily units. He has been involved in affordable housing and the multifamily housing industries for over 30 years, with an aggregate contract value exceeding \$400 million.

WPB provided a completed list of construction projects that reflects the construction of four multifamily developments in 2017 and 2018, ranging from 80 units to 186 units. This experience, along with the experience of WPB’s principals through other firms, is adequate for the proposed rehabilitation of Magnolia Terrace.

Florida Certified General Contractor’s license No. CGC1526545 is in the name of James Brundage and WPB. The license expires August 31, 2020.

Credit Evaluation: A business credit report, compiled with data from Equifax, Experian, and Dun & Bradstreet, for WPB dated November 14, 2019 reflected an acceptable credit history. There is a minimal amount of slow pay history, and no UCC filings, collections, bankruptcies, judgments, or tax liens.

Business References: Business references for WPB are satisfactory.

Financial Statements: Not applicable since WPB will provide a Payment and Performance Bond equal to 100% of the GC Contract.

Contingent Liabilities: Not applicable since WPB will provide a Payment and Performance Bond equal to 100% of the GC Contract.

Surety: WPB provided a signed Bonding Capacity Letter from Alliant Insurance Services, Inc. (“Alliant”) dated October 31, 2019. In the letter Alliant states that Argonaut Insurance Company is prepared to provide surety support to WPB up to \$10,000,000 per project, and \$75,000,000 on



aggregate. Argonaut Insurance Company is rated A (Excellent), with a Financial Size Category rating of XIV (\$1.5 Billion to \$2 Billion) by A.M. Best Company, meeting FHFC Rule.

**Summary:**

The Applicant provided Seltzer a copy of an unexecuted construction contract dated November 22, 2019, between the Owner and WPB, where the basis for payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price in the amount of \$3,737,452. Receipt of an executed construction contract is a condition to close. WPB also provided an executed General Contractor Certification of Requirements, whereby the General Contractor acknowledges and commits to adhere to all requirements related to a General Contractor as published within Florida Administrative Code 67-21.

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

**Property Manager Information**

Property Manager Name: HSI Management, Inc. ("HSI")

Type: A Georgia For-Profit Corporation, authorized to transact business in the State of Florida

Contact Information: Douglas C. Trivers, President and CFO  
Telephone: (770) 952-2253  
Email: dtrivers@hsimanagement.com

Address: 1000 Parkwood Circle, SE Suite 320  
Atlanta, Georgia 30339

Experience: HSI was founded in 1970 and is an affiliate of the American Opportunity Foundation ("AOF"). AOF is a 501(c)(3) nonprofit corporation. HSI provides a full array of services, ranging from marketing, leasing, management plans, collection of rents, evictions, maintenance services, repairs, compliance services, budgets, and accounting services. Currently HSI manages 14 properties containing more than 2,000 units under multiple programs. HSI is experienced with HUD Section 8, HC and tax-exempt Bond program restrictions in Georgia, Louisiana, Alabama, and Texas.

Management Agreement: Applicant provided SMG with an unexecuted Property Management Agreement, and Amendment to the Property management Agreement, between Applicant and HSI dated January 29, 2020. The agreement is for a period of one (1) year, ending the 28<sup>th</sup> day of February in the year 2021. The agreement shall automatically renew on a year-to-year basis thereafter until terminated by either party. HSI will receive payment for its services equal to three percent (2.67%) of the total collected gross receipts from the Development per month. In addition, the HSI shall receive 1.33% of the total collected gross receipts from the Development as an Incentive Management Fee ("Incentive"). Such Incentive shall be payable quarterly and shall only be paid out of surplus cash flow.

Management Plan: Applicant provided a Management Plan for the Development that appears satisfactory.

Summary: The selection of HSI must be approved by the HFAPBC. Continued approval is subject to ongoing satisfactory performance.

**Exhibit 1**  
**El Cid Apartments**  
**15 Year Income and Expense Projection**

FINANCIAL COSTS:		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
<b>OPERATING PRO FORMA</b>																
INCOME	Gross Potential Rental Income	\$1,257,960	\$1,283,119	\$1,308,782	\$1,334,957	\$1,361,656	\$1,388,889	\$1,416,667	\$1,445,001	\$1,473,901	\$1,503,379	\$1,533,446	\$1,564,115	\$1,595,397	\$1,627,305	\$1,659,852
	Other Income:															
	Miscellaneous	\$4,500	\$4,590	\$4,682	\$4,775	\$4,871	\$4,968	\$5,068	\$5,169	\$5,272	\$5,378	\$5,485	\$5,595	\$5,707	\$5,821	\$5,938
	Washer/Dryer Rentals	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Cable/Satellite Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Gross Potential Income	\$1,262,460	\$1,287,709	\$1,313,463	\$1,339,733	\$1,366,527	\$1,393,858	\$1,421,735	\$1,450,170	\$1,479,173	\$1,508,757	\$1,538,932	\$1,569,710	\$1,601,105	\$1,633,127	\$1,665,789
	Less:															
Economic Loss - Percentage:																
Physical Vacancy Loss - Percentage: 3.0%	(\$37,874)	(\$38,631)	(\$39,404)	(\$40,192)	(\$40,996)	(\$41,816)	(\$42,652)	(\$43,505)	(\$44,375)	(\$45,263)	(\$46,168)	(\$47,091)	(\$48,033)	(\$48,994)	(\$49,974)	
Collection Loss - Percentage: 1.0%	(\$12,625)	(\$12,877)	(\$13,135)	(\$13,397)	(\$13,665)	(\$13,939)	(\$14,217)	(\$14,502)	(\$14,792)	(\$15,088)	(\$15,389)	(\$15,697)	(\$16,011)	(\$16,331)	(\$16,658)	
<b>Total Effective Gross Revenue</b>	<b>\$1,211,962</b>	<b>\$1,236,201</b>	<b>\$1,260,925</b>	<b>\$1,286,143</b>	<b>\$1,311,866</b>	<b>\$1,338,104</b>	<b>\$1,364,866</b>	<b>\$1,392,163</b>	<b>\$1,420,006</b>	<b>\$1,448,406</b>	<b>\$1,477,374</b>	<b>\$1,506,922</b>	<b>\$1,537,060</b>	<b>\$1,567,802</b>	<b>\$1,599,158</b>	
EXPENSES	Fixed:															
	Real Estate Taxes	\$6,916	\$7,123	\$7,337	\$7,557	\$7,784	\$8,018	\$8,258	\$8,506	\$8,761	\$9,024	\$9,295	\$9,573	\$9,861	\$10,156	\$10,461
	Insurance	\$29,200	\$30,076	\$30,978	\$31,908	\$32,865	\$33,851	\$34,866	\$35,912	\$36,990	\$38,099	\$39,242	\$40,420	\$41,632	\$42,881	\$44,168
	Variable:															
	Management Fee - Percentage: 4.0%	\$48,049	\$49,448	\$50,437	\$51,446	\$52,475	\$53,524	\$54,595	\$55,687	\$56,800	\$57,936	\$59,095	\$60,277	\$61,482	\$62,712	\$63,966
	General and Administrative	\$14,600	\$15,038	\$15,489	\$15,954	\$16,432	\$16,925	\$17,433	\$17,956	\$18,495	\$19,050	\$19,621	\$20,210	\$20,816	\$21,441	\$22,084
	Payroll Expenses	\$97,090	\$100,003	\$103,003	\$106,093	\$109,276	\$112,554	\$115,931	\$119,408	\$122,991	\$126,680	\$130,481	\$134,395	\$138,427	\$142,580	\$146,857
	Utilities	\$121,180	\$124,815	\$128,560	\$132,417	\$136,389	\$140,481	\$144,695	\$149,036	\$153,507	\$158,112	\$162,856	\$167,741	\$172,774	\$177,957	\$183,296
	Marketing and Advertising	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Maintenance and Repairs	\$18,250	\$18,798	\$19,361	\$19,942	\$20,541	\$21,157	\$21,791	\$22,445	\$23,119	\$23,812	\$24,526	\$25,262	\$26,020	\$26,801	\$27,605
	Grounds Maintenance and Landscaping	\$6,205	\$6,391	\$6,583	\$6,780	\$6,984	\$7,193	\$7,409	\$7,631	\$7,860	\$8,096	\$8,339	\$8,589	\$8,847	\$9,112	\$9,386
	Resident Programs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Other-Pest Control	\$9,490	\$9,775	\$10,068	\$10,370	\$10,681	\$11,002	\$11,332	\$11,672	\$12,022	\$12,382	\$12,754	\$13,136	\$13,530	\$13,936	\$14,354
Reserve for Replacements	\$18,250	\$18,250	\$18,250	\$18,250	\$18,250	\$18,250	\$18,250	\$18,250	\$18,250	\$18,250	\$18,250	\$18,798	\$19,361	\$19,942	\$20,541	\$21,157
<b>Total Expenses</b>	<b>\$369,230</b>	<b>\$379,717</b>	<b>\$390,066</b>	<b>\$400,717</b>	<b>\$411,676</b>	<b>\$422,954</b>	<b>\$434,560</b>	<b>\$446,503</b>	<b>\$458,794</b>	<b>\$471,442</b>	<b>\$485,006</b>	<b>\$498,966</b>	<b>\$513,332</b>	<b>\$528,117</b>	<b>\$543,333</b>	
<b>Net Operating Income</b>	<b>\$842,731</b>	<b>\$856,484</b>	<b>\$870,858</b>	<b>\$885,427</b>	<b>\$900,190</b>	<b>\$915,149</b>	<b>\$930,306</b>	<b>\$945,659</b>	<b>\$961,212</b>	<b>\$976,964</b>	<b>\$992,368</b>	<b>\$1,007,956</b>	<b>\$1,023,728</b>	<b>\$1,039,685</b>	<b>\$1,055,824</b>	
DSC	<b>Debt Service Payments</b>															
	First Mortgage - MMRN - HFAPBC / Greystone / Freddie Mac	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690	\$772,690
	All Other Mortgages -	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	First Mortgage Fees - MMRN - HFAPBC / Greystone / Freddie Mac	\$28,350	\$28,090	\$27,821	\$27,541	\$27,250	\$26,948	\$26,634	\$26,309	\$25,970	\$25,619	\$25,254	\$24,875	\$24,481	\$24,072	\$23,648
	All Other Mortgages Fees -	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Debt Service Payments</b>	<b>\$801,040</b>	<b>\$800,780</b>	<b>\$800,510</b>	<b>\$800,230</b>	<b>\$799,940</b>	<b>\$799,638</b>	<b>\$799,324</b>	<b>\$798,998</b>	<b>\$798,660</b>	<b>\$798,308</b>	<b>\$797,943</b>	<b>\$797,564</b>	<b>\$797,171</b>	<b>\$796,762</b>	<b>\$796,337</b>	
<b>Cash Flow After Debt Service</b>	<b>\$41,692</b>	<b>\$55,704</b>	<b>\$70,348</b>	<b>\$85,196</b>	<b>\$100,251</b>	<b>\$115,512</b>	<b>\$130,982</b>	<b>\$146,661</b>	<b>\$162,552</b>	<b>\$178,655</b>	<b>\$194,425</b>	<b>\$210,392</b>	<b>\$226,558</b>	<b>\$242,923</b>	<b>\$259,487</b>	
<b>Debt Service Coverage Ratios</b>																
	DSC - First Mortgage plus Fees	1.052	1.070	1.088	1.106	1.125	1.144	1.164	1.184	1.204	1.224	1.244	1.264	1.284	1.305	1.326
	DSC - All Mortgages and Fees	1.052	1.070	1.088	1.106	1.125	1.144	1.164	1.184	1.204	1.224	1.244	1.264	1.284	1.305	1.326
<b>Financial Ratios</b>																
	Operating Expense Ratio	30.5%	30.7%	30.9%	31.2%	31.4%	31.6%	31.8%	32.1%	32.3%	32.5%	32.8%	33.1%	33.4%	33.7%	34.0%
	Break-Even Ratio	92.9%	91.8%	90.8%	89.8%	88.8%	87.9%	86.9%	86.0%	85.2%	84.3%	83.5%	82.8%	82.0%	81.3%	80.6%

## COMPLETENESS AND ISSUES CHECKLIST

DEVELOPMENT NAME: El Cid Apartments

DATE: February 5, 2020

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

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

agent.		
12. Credit authorizations; verifications of deposits and mortgage loans.	Satis.	
13. Management Agreement and Management Plan.	Satis.	
14. Firm commitment from the credit enhancer or private placement purchaser, if any.	N/A	
15. Firm commitment letter from the syndicator, if any.	Satis.	
16. Firm commitment letter(s) for any other financing sources.	Satis.	
17. Updated sources and uses of funds.	Satis.	
18. Draft construction draw schedule showing sources of funds during each month of the construction and lease-up period.	Satis.	
19. Fifteen-year income, expense, and occupancy projection.	Satis.	
20. Executed general construction contract with "not to exceed" costs.	Satis.	4
21. HC ONLY: 15% of the total equity to be provided prior to or simultaneously with the closing of the construction financing.	Satis.	
22. Any additional items required by the credit underwriter.	Satis.	

## NOTES AND APPLICANT'S RESPONSES:

1. Receipt and satisfactory review of an updated PCA that incorporates the modifications made to the Schedule of Values in the GC Contract or a statement from GRS that the modifications made have no impact to the conclusions in the PCA.
2. Receipt and satisfactory review of updated (within 90 days of MMRB closing) financial statements for Guarantors with proper certifications.
3. Resumes were not provided for all of the principals in this transaction, but there was sufficient experience reflected in the resumes provided to provide a recommendation.
4. Receipt and Satisfactory review of a fully executed GC Contract with costs and conditions not materially different than what was underwritten.

## HC Allocation Calculation

Section I: Qualified Basis Calculation	
Development Cost	\$24,205,645
Less Land Cost	(\$1,460,000)
Less Federal Funds	\$0
Less Other Ineligible Cost	(\$1,293,649)
Less Disproportionate Standard	\$0
Acquisition Eligible Basis	\$15,561,400
Rehabilitation Eligible Basis	\$5,890,596
Total Eligible Basis	\$21,451,996
Applicable Fraction	100.00%
DDA/QCT Basis Credit	100.00%
Acquisition HC Percentage	3.33%
Rehabilitation HC Percentage	3.33%
Annual HC on Acquisition	\$518,195
Annual HC on Rehabilitation	\$196,157
Annual Housing Credit Allocation	\$714,351

### Notes to the Qualified Basis Calculation:

1. Other Ineligible Costs primarily include a portion of accounting fees, an estimated portion of survey expenses associated with a land survey, FHFC administrative, underwriting, application and HC compliance fees, legal fees from financing, Market Study, permanent loan application fee, permanent loan origination fee, HFAPBC underwriting fees, HFAPBC Tax Counsel, title and recording, HFAPBC cost of issuance, and required reserves.
2. The Borrower committed to a set aside of 100%. Therefore, SMG has utilized an Applicable Fraction of 100.00%.
3. The Development is not located in a Qualified Census Tract or Difficult Development Area, therefore, no basis credit has been applied to the Eligible Basis.
4. A Housing Credit Percentage of 3.33% is used based on a rate of 3.18% as of the January 2020 for 4% credits plus 15 basis points.

<b>Section II: Gap Calculation</b>	
Total Development Cost (Including Land and Ineligible Costs)	\$24,205,645
Less Mortgages	(\$15,900,000)
Less Grants	\$0
Equity Gap	\$8,305,645
Percentage to Investment Partnership	99.99%
HC Syndication Pricing	\$0.925
HC Required to Meet Gap	\$8,979,974
Annual HC Required	\$897,997

*Notes to the Gap Calculation:*

1. Mortgages include the First Mortgage TEL provided by Greystone.
2. HC Syndication Pricing and Percentage to Investment Partnership are based upon the draft Amended and Restated Limited Partnership Agreement initially dated February 1, 2020.

<b>Section III: Tax-Exempt Bond 50% Test</b>	
Total Depreciable Cost	\$21,451,996
Plus Land Cost	\$1,460,000
Aggregate Basis	\$22,911,996
Tax-Exempt Bond Amount	\$15,900,000
Less Debt Service Reserve	\$0
Less Proceeds Used for Costs of Issuance	\$0
Plus Tax-exempt GIC earnings	\$0
Tax-Exempt Proceeds Used for Building and Land	\$15,900,000
Proceeds Divided by Aggregate Basis	69.40%

*Notes to 50% Test:*

1. SMG estimates the Tax-Exempt MMRN amount to be 69.40% of Depreciable Development Costs plus Land Acquisition Costs. If, at the time of Final Cost Certification, the Tax-Exempt Loan Amount is less than 50%, developer fees will have to be reduced by an amount to ensure compliance with the 50% Test. That may, in turn, result in a reduction to HC Equity.

<b>Section IV: Summary</b>	
HC per Qualified Basis	\$714,351
HC per Gap Calculation	\$897,997
Annual HC Recommended	\$714,351

*Notes to the Summary:*

1. The Annual HC Recommended is limited by the Qualified Basis calculation.



**El CID Apartments**  
315 Almeria Rd  
West Palm Beach, FL 33405

**SUBSTANTIAL REHABILITATION PROJECT**

**SCOPE OF REHABILITATION**

December 03, 2019

**WORK WRITE-UP**

This Work Write-Up identifies the repairs that are required to place the property in conformance with applicable local standards, sound operating condition, and program and project objectives.

The quantities for required repairs reflect approximate quantities of materials based on visual observations by the inspecting team and are based also on drawings and other information provided by the Sponsor and Property Manager.

This Work Write-Up has been prepared by Wilshire Pacific Builders.

**A. APARTMENT UNITS INTERIORS**

1. Replace all unit entry door hardware: Deadbolt with non-keyed lever.
2. Kitchen Cabinets, Countertops, Sinks, and Faucets: Demo all kitchen cabinets and tops and install new wood faced kitchen cabinets with plywood boxes, standard pulls, solid surface countertops with stainless steel, self rimming sinks, Lo Flow faucets. All cabinet and countertop materials to be constructed of low VOC materials. Finishes to include interior paint, minor drywall repairs and stucco patching at new HVAC units.
3. Bathroom Cabinets, Countertops, Lavatories, and Lavatory Fixtures: Demo all bath tops and associated components. Install new bathroom wood faced cabinets with plywood boxes, standard pulls, accessories, medicine cabinets and countertops in all apartments with an integral solid surface top and single lever, Lo Flow bath lavatory faucets, rear mount, Lo Flow flush toilet and wax ring. All cabinet and countertop materials to be constructed of low VOC material. Finishes to include interior paint, and minor drywall repairs.
4. Common areas renovations to Community Area (Sitting room), Business Center, corridors and laundry (3). Include finishes, floor, paint, light fixtures and make all necessary cosmetic repairs.
5. Install new angle stops, ¼ turn type and stainless-steel braided supply lines.
6. Remove existing window mounted AC units and install new split system AC units with new rooftop condenser units and new wall mounted heat pump. New condensate line sets will need to be routed as to not be visible from entry side of building (Almeria Road), S. Olive Avenue to the East, and Belvedere Road, from parking lot.
7. Upgrade units to be accessible type units. Include framing, drywall, paint to entire unit, doors and hardware, plumbing, new HVAC unit with stucco patching and drywall repair, electrical, cabinetry, shelving and trim, solid surface countertops, fiber glass tubs, wall hung sink, grab bars, angle mirror, finish carpentry, appliances and vinyl plank and vinyl base throughout including bedrooms.
8. Remove existing flooring and prep the surface for a level installation of flooring in standard units. Install vinyl flooring and rubber base throughout all units in Kitchens, Living Area, and Bathrooms. Install vinyl plank flooring throughout units except bedrooms.
9. Install new gas ranges at standard unit kitchens. 20" (w) x 26.5" (d)". White Finish. Removal of existing Range Hood and Replacement with new to be determined.

10. Install new Energy Star refrigerators (w)24" X (d) 28.6" X (h) 59.8"at standard unit kitchens. White finish.
11. Paint all interior bath and kitchen walls, ceilings, doors and trim in all units using no VOC paints. Prep drywall for paint included.
12. Install 10-year sealed battery type smoke detectors at Bedrooms and hard-wired smoke/CO detectors at hallway.
13. Install new GFCI receptacles at existing locations and at new locations in all kitchens.
14. Install GFCI receptacles at bathroom existing locations. 1 per bathroom.
15. Install new LED light fixtures at existing locations. Locations include; kitchen, living room, hallway, bedroom, corridors, closet, vanity.
16. Remove and replace all ceiling fans. Connect to existing wiring at all locations. White finish.
17. Abate asbestos containing material necessary to perform renovation work only. Provide 3<sup>rd</sup> party clearances required by administrative authority.

## **B. APARTMENT BUILDINGS EXTERIOR AND SITE**

1. Repair damaged, cracked stucco of locations of new AC Units, and existing doors. Prep, caulk, and paint all exterior of building including metal railings.
2. Paint all exterior of building, repair or replace awnings at back of building.
3. Re-roof existing roof system with TPO roof system foe entire roof. Replace damaged facia. Include new metal trim and flashing.
4. Make concrete repairs to walks, and curbs to achieve path of travel upgrades between the parking lot, common areas and accessible units.
5. Parking upgrades to include restripe parking areas with signage per each HC parking space.
6. Add Circuits to Existing Unit Electrical panels as needed.
7. Install new LED Lights at existing entry and corridor locations of building.

8. Install landscape upgrades with planting, irrigation and BBQ, and site equipment.
9. Install new sign with throughout site including common areas. Install unit signage at front door location. Include signage with braille at accessible units and common areas.

RESOLUTION NO. 2020-01

A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA (THE "AUTHORITY"), AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$17,500,000 HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA, IN A TAX-EXEMPT GOVERNMENT LOAN REPRESENTING A FUNDING LOAN EVIDENCED BY A MULTIFAMILY HOUSING REVENUE NOTE, SERIES 2020 (EL CID APARTMENTS) (THE "GOVERNMENTAL NOTE"), WHEREBY GREYSTONE SERVICING COMPANY LLC WILL BE THE PURCHASER OF THE GOVERNMENTAL NOTE; PROVIDING FOR CERTAIN DETAILS WITH RESPECT TO SUCH GOVERNMENTAL NOTE; APPOINTING A FISCAL AGENT WITH RESPECT TO THE GOVERNMENTAL NOTE; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FUNDING LOAN AGREEMENT BY AND AMONG THE AUTHORITY, GREYSTONE SERVICING COMPANY LLC, AS THE INITIAL FUNDING LENDER AND U.S. BANK NATIONAL ASSOCIATION, AS FISCAL AGENT; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT LOAN AGREEMENT BY AND AMONG THE AUTHORITY, LIH EL CID, LP, AS THE BORROWER AND THE FISCAL AGENT; APPROVING THE FORM OF PROJECT NOTE EVIDENCING THE BORROWER'S OBLIGATIONS TO REPAY THE GOVERNMENTAL LOAN MADE BY THE AUTHORITY WITH THE PROCEEDS RECEIVED FROM THE SALE OF THE GOVERNMENTAL NOTE; APPROVING THE FORM OF THE SECURITY INSTRUMENT SECURING THE FUNDING LOAN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF THE ASSIGNMENT OF SECURITY INSTRUMENT; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LAND USE RESTRICTION AGREEMENT; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE GUARANTY AND ENVIRONMENTAL INDEMNITY AGREEMENT; DETERMINING THE NEED FOR A NEGOTIATED PRIVATE SALE OF THE GOVERNMENTAL NOTE; ACCEPTING THE CREDIT UNDERWRITING REPORT; AUTHORIZING THE PROPER OFFICERS TO DO ALL THINGS NECESSARY OR ADVISABLE, INCLUDING THE EXECUTION AND DELIVERY OF ANY APPLICABLE ANCILLARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE FOR THIS RESOLUTION.

**WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida (the "Board"), has heretofore enacted an ordinance, as amended, creating the Housing Finance Authority of Palm Beach County, Florida (the "Authority"), pursuant to the provisions of Part IV of Chapter 159, Florida Statutes, as amended and supplemented (the "Act"); and

**WHEREAS**, the Board has heretofore adopted a resolution declaring a need for the Authority to function in order to alleviate the shortage of housing and capital for investment in housing within Palm Beach County, Florida (the "County"); and

**WHEREAS**, the Authority, pursuant to the Act, may make a governmental loan (the “Governmental Loan”) in the principal amount of not to exceed \$17,500,000 evidenced by its Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) (the “Governmental Note”) to be used by the Borrower (as defined below) to pay a portion of the costs of the acquisition and rehabilitation of a multifamily rental housing development located in the City of West Palm Beach, Florida, known as “El Cid” (the “Project”); and

**WHEREAS**, the proceeds received by the Authority from Greystone Servicing Company LLC, as the purchaser of the Governmental Note and as the Initial Funding Lender (as defined below) will be loaned (the “Project Loan”) to LIH El Cid, LP, a Florida limited partnership (together with its successors and assigns, the “Borrower”) to finance a portion of the Project pursuant to the terms and provisions of that certain Project Loan Agreement expected to be dated as of February 1, 2020 (the “Project Loan Agreement”), by and among the Authority, U.S. Bank National Association as fiscal agent (the “Fiscal Agent”) and the Borrower in substantially the form attached hereto as Exhibit “A”; and

**WHEREAS**, Greystone Servicing Company LLC (herein, the “Initial Funding Lender”) will provide the funds to the Authority with respect to the Governmental Loan, evidenced by the Governmental Note pursuant to the terms and provisions of that certain Funding Loan Agreement expected to be dated as of February 1, 2020 (the “Funding Loan Agreement”) by and among the Initial Funding Lender, the Authority and the Fiscal Agent, in substantially the form attached hereto as Exhibit “B”; and

**WHEREAS**, the Project Loan shall be made pursuant to the Project Loan Agreement and the repayment obligations of the Borrower will be evidenced by that certain Borrower Promissory Note from the Borrower payable to the Authority (the “Borrower Note”) in substantially the form attached hereto as Exhibit “C” and will be secured by a Multifamily Mortgage, Assignment of Rents and Security Agreement (the “Security Instrument”) in substantially the form attached hereto as Exhibit “D” from the Borrower to the Authority; and

**WHEREAS**, pursuant to that certain Assignment of Security Instrument, in substantially the form attached hereto as Exhibit "E" (the "Security Instrument Assignment"), the Authority will assign (other than certain unassigned rights) its right in the Borrower Note and Security Instrument to the Initial Funding Lender; and

**WHEREAS**, the Authority desires to authorize the execution and delivery of a Land Use Restriction Agreement expected to be dated as of February 1, 2020, by and among the Borrower, the Fiscal Agent and the Authority in substantially the form presented at this meeting and attached hereto as Exhibit "F," which agreement evidences certain restrictions placed on the use and occupancy of the Project as required under the Act and the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Restriction Agreement"); and

**WHEREAS**, the Governmental Note will be issued pursuant to the terms and provisions of the Funding Loan Agreement; and

**WHEREAS**, the Authority desires to authorize the execution and delivery of a Fee Guaranty and Environmental Indemnity Agreement expected to be dated as of February 1, 2020 from the Borrower and the other indemnitors named therein to the Authority and Fiscal Agent relating to the Governmental Note and the financing of the Project in substantially the form presented at this meeting and attached hereto as Exhibit "G" (the "Indemnity Agreement"); and

**WHEREAS**, the Authority desires to authorize the execution of such other documents deemed necessary and to be in acceptable forms as determined by its Bond Counsel and counsel to the Authority.

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA:**

**Section 1: Recitals.** That the foregoing recitals stated above are hereby found by the Authority to be true and correct and incorporated into this Resolution.

**Section 2: Definitions.** That in addition to the terms defined above, the words and terms referred to in Article I of the Funding Loan Agreement, unless a different meaning clearly

appears from the context, shall have the same meanings in this Resolution as in the Funding Loan Agreement.

**Section 3: Authorization of the Governmental Note.** That, for the purpose of providing funds to make the Governmental Loan to the Borrower to finance a portion of the costs of the Project, there is hereby authorized by the Authority, the Governmental Loan to be evidenced by the Governmental Note in the aggregate principal amount of not exceeding SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$17,500,000).

**Section 4: Security for the Governmental Note.** That the Governmental Note will be a limited obligation of the Authority. The principal of, or redemption price and interest on, the Governmental Note will be payable solely as provided in the Funding Loan Agreement. Neither the members of the Authority nor any person executing the Governmental Note shall be liable personally on the Governmental Note by reason of the issuance thereof. The Governmental Note will not be a debt of the Authority, the County, the State of Florida (the "State") or any other political subdivision thereof, and neither the faith and credit nor the taxing power of the County, the State or any other political subdivision thereof will be pledged to the payment of the principal of, or redemption price and interest on, the Governmental Note. The Authority has no taxing power.

**Section 5: Approval and Execution of Project Loan Agreement.** That the form of the Project Loan Agreement relating to the Governmental Loan (the "Project Loan Agreement") presented at this meeting (and attached hereto as Exhibit "A") expected to be dated as of February 1, 2020, by and among the Authority, the Fiscal Agent and the Borrower is hereby approved and adopted by the Authority, together with such changes, modifications and deletions as may be deemed necessary and appropriate. The Chairperson (or, in the absence of the Chairperson, the Vice Chairperson or any other member of the Authority in the absence of the Vice Chairperson) is hereby authorized to execute and deliver on behalf of the Authority the Project Loan Agreement, and the Secretary (or, in the absence of the Secretary, any



Assistant Secretary) of the Authority is authorized to affix the seal of the Authority and attest to the execution of the Project Loan Agreement in the form presented to this meeting together with such changes, modifications and deletions as the officer of the Authority executing the same may deem necessary and appropriate with the advice of Bond Counsel and counsel to the Authority, such execution and delivery to be conclusive evidence of the approval and authorization thereof by the Authority.

**Section 6: Appointment of Fiscal Agent.** That U.S. Bank National Association, having its designated office in Fort Lauderdale, Florida, is hereby appointed Fiscal Agent, under the Funding Loan Agreement, Project Loan Agreement, the Restriction Agreement, the Indemnity Agreement and any of the other documents relating to the financing of the Project.

**Section 7: Approval and Execution of the Funding Loan Agreement.** That the form of the Funding Loan Agreement (the "Funding Loan Agreement") expected to be dated as of February 1, 2020, by and among the Authority, the Initial Funding Lender and the Fiscal Agent in substantially the form presented at this meeting (and attached hereto as Exhibit "B") is hereby approved and authorized by the Authority, together with such changes, modifications and deletions as may be deemed necessary and appropriate. The Chairperson (or, in the absence of the Chairperson, the Vice Chairperson or any other member of the Authority in the absence of the Vice Chairperson) is hereby authorized to execute and deliver on behalf of the Authority the Funding Loan Agreement and the Governmental Note and the Secretary (or, in the absence of the Secretary, any Assistant Secretary) of the Authority is hereby authorized to affix the seal of the Authority and attest to the execution of the Funding Loan Agreement and the Governmental Note in the forms presented to this meeting together with such changes, modifications and deletions as the officer of the Authority executing the same may deem necessary and appropriate with the advice of Bond Counsel and counsel to the Authority, such execution and delivery to be conclusive evidence of the approval and authorization thereof of the Authority.

**Section 8: Details of the Governmental Note.** That the proceeds of the Governmental Note, together with any other moneys received by the Fiscal Agent or the Title Company from the Borrower or any tax credit investor, shall be applied, the Governmental Note shall mature in the year, be payable in the amounts, bear interest at such rate or rates, and be subject to redemption, all as provided in the Funding Loan Agreement. The Authority hereby authorizes, pursuant to the provisions of the Funding Loan Agreement, the use of the proceeds of the Governmental Note to make the Governmental Loan to the Borrower and for the Borrower to pay a portion of the costs of the Project therefrom. The execution of the Funding Loan Agreement and Indemnity Agreement shall constitute approval of such terms as set forth in this Section 8.

**Section 9: Approval of Form of the Borrower Note and Security Instrument.** That the form of the Borrower Note given to the Authority and assigned to the Fiscal Agent and the form of Security Instrument (with respect to the Borrower Note) in favor of the Authority and assigned to the Fiscal Agent, in substantially the forms presented at this meeting and attached hereto as Exhibit "C" and Exhibit "D," respectively, both expected to be dated as of the date the Governmental Note is issued, to evidence and secure the Borrower's obligations under the Project Loan Agreement and the Authority's obligations to the Initial Funding Lender under the Funding Loan Agreement are hereby approved and adopted by the Authority, together with such changes, modifications and deletions as may be deemed necessary and appropriate.

**Section 10: Approval of Security Instrument Assignment.** That the form of the Security Instrument Assignment with respect to the Borrower Note in substantially the form presented at this meeting and attached hereto as Exhibit "E," expected to be dated the date of issuance of the Governmental Note, from the Authority in favor of the Fiscal Agent with respect to the Governmental Loan is hereby approved and adopted by the Authority, together with such changes, modifications and deletions as may be deemed necessary and appropriate. The Chairperson (or, in the absence of the Chairperson, the Vice Chairperson or any other member

of the Authority in the absence of the Vice Chairperson) is hereby authorized to execute and deliver on behalf of the Authority, and the Secretary (or, in the absence of the Secretary, any Assistant Secretary) of the Authority is hereby authorized to affix the seal of the Authority and attest to the execution of the Security Instrument Assignment in the form presented to this meeting together with such changes, modifications, and deletions as the officer of the Authority executing the same may deem necessary and appropriate with the advice of Bond Counsel and counsel to the Authority, such execution and delivery to be conclusive evidence of the approval and authorization thereof of the Authority.

**Section 11: Approval and Execution of the Land Use Restriction Agreement.**

That the form of the Land Use Restriction Agreement with attached Freddie Mac Rider (collectively, the "Restriction Agreement") in substantially the form presented at this meeting (and attached hereto as Exhibit "F"), expected to be dated as of February 1, 2020, by and among the Authority, the Fiscal Agent and the Borrower, is hereby approved and adopted by the Authority, together with such changes, modifications and deletions as may be deemed necessary and appropriate. The Chairperson (or, in the absence of the Chairperson, the Vice Chairperson or any other member of the Authority in the absence of a Vice Chairperson) is hereby authorized to execute and deliver on behalf of the Authority, and the Secretary (or, in the absence of the Secretary, any Assistant Secretary) of the Authority is hereby authorized to affix the seal of the Authority and attest to the execution of the Restriction Agreement in the form presented to this meeting together with such changes, modifications and deletions as the officer of the Authority executing the same may deem necessary and appropriate with the advice of Bond Counsel and counsel to the Authority, such execution and delivery to be conclusive evidence of the approval and authorization thereof of the Authority.

**Section 12: Approval and Execution of Fee Guaranty and Environmental Indemnity Agreement.** That the form of the Fee Guaranty and Environmental Indemnity Agreement (the "Indemnity Agreement") in substantially the form presented at this meeting (and

attached hereto as Exhibit "G"), expected to be dated as of February 1, 2020, by and among the Authority, the Fiscal Agent, the Borrower and the other indemnitors named therein, is hereby approved and adopted by the Authority, together with such changes, modifications and deletions as may be deemed necessary and appropriate. The Chairperson (or, in the absence of the Chairperson, the Vice Chairperson or any other member of the Authority in the absence of a Vice Chairperson) is hereby authorized to execute and deliver on behalf of the Authority, and the Secretary (or, in the absence of the Secretary, any Assistant Secretary) of the Authority is hereby authorized to affix the seal of the Authority and attest to the execution of the Indemnity Agreement in the form presented to this meeting together with such changes, modifications and deletions as the officer of the Authority executing the same may deem necessary and appropriate with the advice of Bond Counsel and counsel to the Authority, such execution and delivery to be conclusive evidence of the approval and authorization thereof of the Authority.

**Section 13: Negotiated Private Sale of the Governmental Note Authorized.** That, based on market conditions and the uniqueness of the program by which the Governmental Note is funded and issued, the Authority hereby finds that it is necessary and in the best interest of the Authority that the Governmental Note be sold on a negotiated basis directly to the Initial Funding Lender.

**Section 14: Credit Underwriting Report.** That the Authority accepts the credit underwriting report (herein the "CUR") prepared by Seltzer Management Group, Inc. ("Seltzer") attached hereto as Exhibit "H," subject to any open or unresolved issues constituting closing conditions specified in the CUR being satisfied prior to the closing of the Governmental Note as evidenced by either (i) an email from Seltzer confirming satisfaction of such conditions or (ii) a written waiver of any unsatisfied conditions by the Initial Funding Lender and the tax-credit investor of the Borrower.

**Section 15: Ancillary Documents.** That any ancillary documents relating to the Governmental Loan or Governmental Note (herein, the "Ancillary Documents") in the forms

approved by the Executive Director, counsel to the Authority and Bond Counsel are hereby authorized and the Chairperson or, in the absence of the Chairperson, the Vice Chairperson or any other member of the Authority in the absence of a Vice Chairperson, is hereby authorized to execute and deliver such Ancillary Documents for which the Authority is a party on behalf of the Authority and the Secretary (or, in the absence of the Secretary, any Assistant Secretary) of the Authority is hereby authorized to affix the seal of the Authority (if required) and attest (if required) to the execution of any Ancillary Documents in the forms approved by the Executive Director, counsel to the Authority and Bond Counsel, together with such changes, modifications and deletions as the officer of the Authority executing the same may deem necessary and appropriate with the advice of Bond Counsel and counsel to the Authority, such execution and delivery to be conclusive evidence of the approval and authorization thereof of the Authority.

**Section 16: Agreement of Authority.** That all covenants, stipulations, obligations and agreements contained in this Resolution, in the Project Loan Agreement, the Funding Loan Agreement, the Indemnity Agreement, the Restriction Agreement and any other agreements to which the Authority is a party and which have been hereby approved by the Authority, shall be deemed to be the covenants, stipulations, obligations and agreements of the Authority and all such covenants, stipulations, obligations and agreements shall be binding upon the Authority.

**Section 17: No other Rights Conferred.** That, except as herein otherwise expressly provided, nothing in this Resolution or in the Project Loan Agreement, the Funding Loan Agreement, the Indemnity Agreement, or the Restriction Agreement, expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation other than the Authority, the Fiscal Agent, the Borrower, the Initial Funding Lender, as the purchaser of the Governmental Note and its permitted assigns, issued under the provisions of this Resolution and the Funding Loan Agreement, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, the Project Loan Agreement, the Funding Loan Agreement, the Indemnity Agreement, the Restriction Agreement or any other agreements to which the

Authority is a party and which have been approved by the Authority or any provision thereof; this Resolution, the Project Loan Agreement, the Funding Loan Agreement, the Indemnity Agreement or the Restriction Agreement and all of its provisions being intended to be and being for the sole and exclusive benefit of the Authority, the Fiscal Agent, the Borrower and the Initial Funding Lender and its assigns, issued under the provisions of this Resolution, the Funding Loan Agreement, the Indemnity Agreement, the Restriction Agreement, the Project Loan Agreement and any other agreements approved by the Authority and to which the Authority is a party, as applicable.

**Section 18: Severability.** That, in case any one or more of the provisions of this Resolution, or of the Project Loan Agreement, the Funding Loan Agreement, the Indemnity Agreement, the Restriction Agreement or the Governmental Note issued hereunder, or of any other agreements to which the Authority is a party and which have been approved by the Authority, shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any of the other provisions of this Resolution or of the Project Loan Agreement, or of the Funding Loan Agreement, the Indemnity Agreement, or of the Restriction Agreement, or of said Governmental Note, or of any other documents approved by the Authority and to which the Authority is a party, but this Resolution, the Funding Loan Agreement, the Project Loan Agreement, the Indemnity Agreement, the Restriction Agreement, the Governmental Note and any other agreements approved by the Authority and to which the Authority is a party shall be construed and enforced as if such illegal or invalid provision or provisions had not been contained therein.

**Section 19: Further Actions.** That the Chairperson, the Vice Chairperson, the Secretary of the Authority and the other members of the Authority, the Executive Director, the Authority's general counsel or Bond Counsel, are hereby authorized and directed to do all acts and things required of them by the provisions of the Credit Underwriting Report, the Governmental Note, the Project Loan Agreement, the Funding Loan Agreement, the Indemnity

Agreement, the Restriction Agreement, and the other documents herein approved and also to do all acts and things required of them by the provisions of this Resolution, including, but not limited to, the execution of such other documents that may be required for the better securing of the Governmental Note or as a condition precedent for the issuance of the Governmental Note.

**Section 20: Headings Not Part of this Resolution.** That any headings preceding the texts of the several sections of this Resolution shall be solely for convenience of reference and shall not form a part of this Resolution, nor shall they affect its meaning, construction or effect.

**Section 21: Resolution Effective.** That this Resolution shall take effect immediately upon its adoption.

**ADOPTED** this 14<sup>th</sup> day of February, 2020.

(SEAL)

**HOUSING FINANCE AUTHORITY OF  
PALM BEACH COUNTY, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairperson/Vice Chairperson

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Secretary/Assistant Secretary

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Name: Morris G. (Skip) Miller, Esq.  
Title: General Counsel

## EXHIBITS TO RESOLUTION

Exhibit A	--	Form of Project Loan Agreement
Exhibit B	--	Form of Funding Loan Agreement
Exhibit C	--	Form of Borrower Note
Exhibit D	--	Form of Security Instrument
Exhibit E	--	Form of Security Instrument Assignment
Exhibit F	--	Form of Land Use Restriction Agreement
Exhibit G	--	Form of Indemnity Agreement
Exhibit H	--	Credit Underwriting Report

47864784v5/007132.019900



**EXHIBIT "A"**

**PROJECT LOAN AGREEMENT – TEL (Immediate)**

**FIXED RATE**

**(Revised 9-30-2019)**

**among**

**HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA,  
as Governmental Lender**

**U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent**

**and**

**LIH EL CID, LP,  
as Borrower**

**Relating to**

**EL CID APARTMENTS  
315 Almeria Road, West Palm Beach, Florida 33405**

**Original Project Loan Principal Amount: \$ \_\_\_\_\_**

**Dated as of February 1, 2020**

**All of the right, title and interest of the Housing Finance Authority of Palm Beach County, Florida (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to U.S. Bank National Association, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of February 1, 2020 by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.**

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**PROJECT LOAN AGREEMENT – TEL (Immediate)**

**FIXED RATE**

**(Revised 9-30-2019)**

**THIS PROJECT LOAN AGREEMENT** (this “**Project Loan Agreement**”) is made and entered into as of February 1, 2020, by and among the **HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA** (the “**Governmental Lender**”), a public body corporate and politic created, organized and existing under the laws of the State of Florida (the “**State**”), **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, duly organized and existing under the laws of the United States of America (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “**Fiscal Agent**”), and **LIH EL CID, LP**, a limited partnership duly organized and existing under the laws of the State (together with its successors and assigns permitted hereunder, the “**Borrower**”).

**RECITALS**

**A.** Pursuant to Part IV of Chapter 159, Florida Statutes, as amended and supplemented, Sections 2-181 through 2-191 Code of Ordinances of Palm Beach County, Florida and other applicable provisions of Florida law (the “**Act**”) and this Project Loan Agreement, the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the original principal amount of \$ \_\_\_\_\_ (the “**Project Loan**”) to provide for the financing of a multifamily rental housing development located at 315 Almeria Road, West Palm Beach, Florida 33405, known as El Cid Apartments (the “**Project**”).

**B.** The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the loan in the original principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”) made to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Funding Loan Agreement**”), by and among Greystone Servicing Company LLC, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the Governmental Lender and the Fiscal Agent. The Funding Loan is being originated and funded by the Initial Funding Lender and is evidenced by the Governmental Lender’s Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments), dated February \_\_, 2020 (together with all riders and addenda thereto, the “**Governmental Note**”) delivered by the Governmental Lender to the Initial Funding Lender.

**C.** The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”), has entered into a commitment with the Initial Funding Lender dated February \_\_, 2020 (the “**Freddie Mac Commitment**”) whereby Freddie Mac has agreed to purchase the Funding Loan upon the satisfaction of the conditions set forth in the Freddie Mac Commitment (the “**Freddie Mac Purchase Date**”). On the Freddie Mac Purchase Date, the Initial Funding Lender will assign to Freddie Mac all of its rights and interest in the Governmental Note, the Funding Loan Agreement, the Continuing Covenant Agreement and the other Financing Documents (as such terms are herein defined).

**D.** The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition and rehabilitation of the Project.

**E.** The Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Multifamily Note dated February \_\_, 2020 (together with all riders and modifications thereto, the "**Project Note**") delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**F.** To secure the Borrower's obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of the date hereof (the "**Security Instrument**") with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**G.** On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans (in such capacity and any successor in such capacity, the "**Funding Lender Representative**"). Greystone Servicing Company LLC (the "**Servicer**") will act as initial servicer for the Loans on behalf of the Funding Lender Representative.

**H.** The Borrower is also entering into a Continuing Covenant Agreement dated as of the date hereof with the Initial Funding Lender (the "**Continuing Covenant Agreement**"), which sets forth various other requirements with respect to the Project, and which agreement is being assigned to Freddie Mac on the Freddie Mac Purchase Date.

**NOW, THEREFORE,** for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

*"Event of Default"* means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

*"Fee Component"* means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the initial principal amount of the Funding Loan on an annual basis or in the case of the Governmental Lender expressed as a percentage of the original principal amount of the Funding Loan on an annual basis.

*"Investor Partner"* means, collectively or individually, Alliant Credit Facility II, LLC, [or Alliant Credit Facility ALP II, LLC], a Florida limited liability company, its permitted successors and assigns.

“*Project Loan Agreement*” means this Project Loan Agreement, together with any amendments hereto.

“*Project Loan Amortization Schedule*” means the Project Loan Amortization Schedule attached as Schedule 1 to the Project Note.

“*Project Loan Payment*” means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Note and this Project Loan Agreement.

“*Project Loan Payment Date*” means (A) the first day of each calendar month, commencing March 1, 2020, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

“*Servicing Fee*” means the ordinary fee payable to the Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to \_\_\_\_ basis points (0.\_\_\_\_%) of the outstanding principal balance of the Project Loan, computed on the basis of a [360-day year and the actual number of days elapsed].

“*Taxes*” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Project Loan Agreement; the term “heretofore” means before the date of execution of this Project Loan Agreement; and the term “hereafter” means after the date of execution of this Project Loan Agreement.

## ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01 Representations, Warranties and Covenants of the Governmental Lender.** The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) The Governmental Lender is a public body corporate and politic created, duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) The Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. The execution and delivery of the Governmental Note and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those that cannot be obtained until after the Delivery Date, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending against the Governmental Lender or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the

Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document; (iv) questions the tax-exempt status of the Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificate or the Tax Regulatory Agreement, the Governmental Lender will promptly notify in writing the Fiscal Agent, the Servicer, the Borrower and the Funding Lender Representative of such noncompliance and will, at the request of the Funding Lender Representative, but at the expense of the Borrower, subject to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Project Loan Agreement, the Tax Certificate and the Tax Regulatory Agreement.

It is expressly acknowledged that the Governmental Lender 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 Governmental Note, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 *Representations, Warranties and Covenants of the Borrower.*** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) The Borrower is a Florida limited partnership duly organized, validly existing and in good standing under the laws of the state in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents to which it is a party, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and



the other Financing Documents to which it is a party. All corporate partners, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All corporate partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of rehabilitation of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) Reserved.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note.

(h) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the rehabilitation of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(i) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(j) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(k) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(l) Since the Borrower is a limited partnership, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests other than as set forth in the Borrower's limited partnership agreement. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional ownership interests if such units are issued in accordance with all applicable securities laws.

(m) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(n) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(o) To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(p) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project.

(q) The Project is located wholly within the city limits of the City of West Palm Beach, Florida.

(r) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Governmental Note. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(s) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(t) The Borrower will have a fee simple interest in the land and improvements on the Project, subject only to liens permitted under the Security Instrument.

(u) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it

understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

**Section 2.03 *Representations and Warranties of the Fiscal Agent.*** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) The Fiscal Agent is a national banking association duly organized and existing under the laws of the United States. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 *Arbitrage and Rebate Fund Calculations.*** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 *Tax Covenants of the Borrower.*** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Note to be included in gross income of the Funding Lender, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, 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 tax-exempt status of the Governmental Note;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Governmental Note to be "arbitrage bonds" within the meaning of Section 148 of the Code; and

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, Bond Counsel, the Fiscal Agent, the Funding Lender Representative and the Servicer.

(f) The full amount of each disbursement of proceeds of the Project Loan will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Governmental Note (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Governmental Note (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Tax Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement or the Tax Regulatory Agreement;

(j) No proceeds of the Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Funding Loan, will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used

for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

### **ARTICLE III THE PROJECT LOAN**

**Section 3.01 *Conditions to Funding the Project Loan.*** On the Delivery Date, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance with Section 2.11 of the Funding Loan Agreement and Section 3.03 hereof. The proceeds of the Funding Loan shall be disbursed by the Fiscal Agent pursuant to the Closing Memorandum to make the Project Loan on behalf of the Governmental Lender, provided that no authorization for the disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Project Note and the Governmental Lender shall have endorsed the Project Note to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the Recorder’s Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent; and

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Servicer.

**Section 3.02 *Terms of the Project Loan; Servicing.***

(a) The Project Loan shall (i) be evidenced by the Project Note; (ii) be secured by the Security Instrument; (iii) be in the original principal amount of \$\_\_\_\_\_ ; (iv) bear interest as provided in the Project Note; (v) provide for principal and interest payments in accordance with the Project Note; and (vi) be subject to optional and mandatory

prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Note.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The initial Servicer of the Loans is Greystone Servicing Company LLC who shall service the Loans pursuant to the terms of the Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Servicer services the Loans, the Borrower shall make all payments in connection with the Project Loan to the Servicer, and the Servicer will (i) retain the allocable portion of the monthly Servicing Fee for its own account, (ii) remit to the Funding Lender all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, together, with any other amounts due to the Funding Lender, (iii) remit to the Fiscal Agent the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent, and (iv) remit to the Governmental Lender the Governmental Lender Fee, together with any other amounts due to the Governmental Lender. During a period in which there is no Servicer, all notices to be sent to the Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan, (iv) the *Guide* is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (v) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the *Guide*.

**Section 3.03 Initial Deposits.** On the Delivery Date proceeds of the Funding Loan in the amount of \$\_\_\_\_\_ shall be deposited in the Project Account of the Project Loan Fund [and \$\_\_\_\_\_ shall be transferred from the Project Account to the Cost of Issuance Fund]. The Borrower will, from the Borrower Equity Deposit, deposit with the Fiscal Agent the sum of (i) \$\_\_\_\_\_ for credit to the Cost of Issuance Fund; and (ii) \$\_\_\_\_\_ for credit to the Borrower Equity Account of the Project Loan Fund. The Borrower will deposit with the Servicer the sum of \$\_\_\_\_\_ as the Initial Debt Service Deposit. On the Delivery Date, proceeds of the Funding Loan in the amount of \$\_\_\_\_\_ shall be deposited with the Title Company to be



disbursed pursuant to the Settlement Statement. Amounts in the Project Loan Fund shall be disbursed as provided herein and in Section 4.02 of the Funding Loan Agreement. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 4.02 of the Funding Loan Agreement.

The Borrower shall pay all costs of closing the Loans through the Fiscal Agent and to the extent such amounts deposited with the Fiscal Agent, the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

**Section 3.04 Pledge and Assignment to Fiscal Agent.** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

**Section 3.05 Investment of Funds.** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

**Section 3.06 Damage; Destruction and Eminent Domain.** If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

**Section 3.07 Enforcement of Financing Documents.** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

## ARTICLE IV LOAN PAYMENTS

**Section 4.01 Payments Under the Project Note; Independent Obligation of Borrower.**

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with premium, if

applicable), acceleration or otherwise. To ensure such timely payment, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Note, provided that in all events payments made by the Borrower under and pursuant to the Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Project Note or any provision of the Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Project Note or such provision of the Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Note.

(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Project Note shall be made in immediately available funds to the Servicer on each Project Loan Payment Date or such other date when such payment is due; provided, however, such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer

may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 *Additional Payments Under the Project Note and this Project Loan Agreement.***

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Note include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, an initial financing fee in an amount equal to \$\_\_\_\_\_, together with all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Servicer, its commitment fees and application fees, together with all third party and out of pocket expenses of the Servicer (including but not limited to the fees and expenses of counsel to the Servicer, if any) in connection with the Loans.

(iv) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$1,750.00, together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Note.

(v) To the Fiscal Agent, the Ordinary Fiscal Agent's Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(vi) To the Governmental Lender, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time.

(vii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(viii) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(ix) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(x) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xi) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

**Section 4.04 *Prepayment.***

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Project Note.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to pay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, as provided in the Project Note.

(c) **Defeasance of the Funding Loan.** In addition, prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “**Defeasance Notice**”) to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “**Defeasance Date**”). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 *Borrower’s Obligations Upon Prepayment.*** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

**Section 4.06 *Limits on Personal Liability.***

(a) Except as otherwise set forth in Section 9 of the Project Note and subsection 4.06(b) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any Partner of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys’ fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and each of the Borrower's general partners: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under subsections (b)(ii), (b)(iv), (b)(v), and (b)(vi) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Project Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

## **ARTICLE V SPECIAL COVENANTS OF BORROWER**

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Funding Loan Agreement Provisions.*** The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 *Reserved.***

**Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.***

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has

occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Funding Lender Representative.

**Section 5.08 *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.07 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the Default Rate.

**Section 5.09 *Notice of Certain Events.*** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the

Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.12 Tax Regulatory Agreement.** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of this Project Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

**Section 5.13 Damage, Destruction and Condemnation.** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

**Section 5.14 Obligation of the Borrower To Rehabilitate the Project.** The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the acquisition, rehabilitation, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of such acquisition, rehabilitation, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower or any other person if for any reason the Project is not completed.



**Section 5.15 Filing of Financing Statements.** The Borrower shall file or record or cause to be filed or recorded on the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

## ARTICLE VI INDEMNIFICATION

### **Section 6.01 Indemnification.**

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the “**Indemnified Parties**”), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, “**Losses**”), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, rehabilitation or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in

respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Note or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Note necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Governmental Note or allegations (or regulatory inquiry) that interest on the Governmental Note is includable in gross income for federal income tax purposes, other than when a substantial user holds the Governmental Note;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Note to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) **Procedures.** 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 such Indemnified Party, shall assume the investigation

and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all reasonable expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which review and approval shall not be unreasonably delayed or withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Security Instrument and the Tax Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

(e) The rights of the Indemnified Parties under this Project Loan Agreement shall be in addition to any other rights and remedies of the Indemnified Parties under any of the other Financing Documents.

**Section 6.02 *Limitation With Respect to the Funding Lender.*** Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

**ARTICLE VII**  
**EVENTS OF DEFAULT AND REMEDIES**

**Section 7.01 *Events of Default.*** The following shall be “**Events of Default**” under this Project Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Project Loan Agreement, the Project Note or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Note and the Security Instrument, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative’s sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative’s judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer

or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

**Section 7.03 No Remedy Exclusive.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair

any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) initiate or take any action which would reasonably be expected to have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or

(iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the

occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Section 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;

(ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Section 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a "Related Indemnified Party") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof and the other Financing Documents, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent's right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not reasonably be expected to cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 Assumption of Obligations.** In the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Note, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

**Section 7.08 Investor Partner's Cure Rights.** The Investor Partner shall have the right, but not the obligation, to cure any Event of Default for which a cure right is expressly granted to the Borrower but only on the same terms and subject to the same limitations as are imposed on the Borrower.

## **ARTICLE VIII MISCELLANEOUS**

### **Section 8.01 Notices.**

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Investor Partner or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Investor Partner or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative; a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer; and a duplicate copy of each notice or other communication given hereunder by any party to the Borrower shall be given to the Investor Partner.



The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Project Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative, the Investor Partner and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

**Section 8.02 *Concerning Successors and Assigns.*** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

**Section 8.03 *Governing Law.*** This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America. Venue shall be in Palm Beach County, Florida.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Governmental Lender (at the expense of the Borrower), the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

**Section 8.06 *Captions.*** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

**Section 8.07 *Severability.*** The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 Counterparts.** This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 Amounts Remaining in Loan Payment Fund or Other Funds.** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 Effective Date and Term.** This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

**Section 8.11 Cross References.** Any reference in this Project Loan Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement, an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

**Section 8.12 Funding Lender Representative and Servicer as Third-Party Beneficiaries.** The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Project Loan Agreement.

**Section 8.13 Reserved.**

**Section 8.14 Non-Liability of Governmental Lender.** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or prepayment premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender’s sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment premium) and

interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Note.

**Section 8.16 *Capacity of the Fiscal Agent.*** The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

**Section 8.17 *Reliance.*** The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the parties hereto have executed this Project Loan Agreement and the Governmental Lender has caused its corporate seal to be affixed hereto and to be attested, all as of the date first set forth above.

**HOUSING FINANCE AUTHORITY OF  
PALM BEACH COUNTY, FLORIDA**, as  
the Governmental Lender

[S E A L]

By: \_\_\_\_\_  
Name: Gary P. Eliopoulos  
Title: Chairperson

ATTEST:

By: \_\_\_\_\_  
Name: Robin B. Henderson  
Title: Secretary

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO EL CID APARTMENTS LOAN AGREEMENT]

**U.S. BANK NATIONAL ASSOCIATION,**  
as Fiscal Agent

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Assistant Vice President

[FISCAL AGENT’S SIGNATURE PAGE TO EL CID APARTMENTS LOAN AGREEMENT]

**LIH EL CID, LP**, as Borrower

By: El Cid Affordable Housing Corp., a Florida  
not-for-profit corporation, its General Partner

By: \_\_\_\_\_  
Name: Thomas J. Null  
Title: President

[BORROWER'S SIGNATURE PAGE TO EL CID APARTMENTS LOAN AGREEMENT]

47864585v7/007132.019900

**EXHIBIT “B”**

**FUNDING LOAN AGREEMENT – TEL (Immediate)**

**FIXED RATE**

**(Revised 9-30-2019)**

**among**

**GREYSTONE SERVICING COMPANY LLC,  
as Initial Funding Lender**

**HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA,  
as Governmental Lender**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent**

**Relating to**

**EL CID APARTMENTS**

**Address: 315 Almeria Road, West Palm Beach, Florida 33405**

**Original Funding Loan Principal Amount: \$ \_\_\_\_\_**

**Dated as of February 1, 2020**



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## FUNDING LOAN AGREEMENT – TEL (Immediate)

### FIXED RATE

(Revised 9-30-2019)

**THIS FUNDING LOAN AGREEMENT** (this “**Funding Loan Agreement**”), is made and entered into as of February 1, 2020, by and among **GREYSTONE SERVICING COMPANY LLC**, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the **HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA** (the “**Governmental Lender**”), a public body corporate and public created, organized and existing under the laws of the State of Florida (the “**State**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, duly organized and operating under the laws of the United States of America, having a designated corporate trust office in Fort Lauderdale, Florida, as Fiscal Agent (the “**Fiscal Agent**”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

### RECITALS

**A.** Pursuant to Part IV of Chapter 159, Florida Statutes, as amended and supplemented, Sections 2-181 through 2-191 Code of Ordinances of Palm Beach County, Florida and other applicable provisions of Florida law (the “**Act**”) and the Project Loan Agreement dated as of February 1, 2020 (the “**Project Loan Agreement**”) by and among the Governmental Lender, the Fiscal Agent and LIH El Cid, LP, a limited partnership duly organized and existing under the laws of the State of Florida (the “**Borrower**”), the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the original principal amount of \$\_\_\_\_\_ (the “**Project Loan**”) to provide a portion of the financing of a multifamily rental housing development located at 315 Almeria Road, West Palm Beach, Florida 33405, known as El Cid (the “**Project**”).

**B.** The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the separate loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the original principal amount of \$\_\_\_\_\_ (the “**Funding Loan**”) and, together with the Project Loan, the “**Loans**”). The Funding Loan is being originated and funded by the Initial Funding Lender hereunder and is evidenced by the Governmental Lender’s Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) dated February \_\_\_, 2020 in the form attached hereto as Exhibit A (together with all riders and addenda thereto, the “**Governmental Note**”) delivered by the Governmental Lender to the Initial Funding Lender.

**C.** The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”), has entered into a commitment with the Initial Funding Lender dated [February \_\_\_, 2020] (the “**Freddie Mac Commitment**”) whereby Freddie Mac has agreed to purchase the Funding Loan upon the date of satisfaction of the conditions set forth in the Freddie Mac Commitment (the “**Freddie Mac Purchase Date**”). On the Freddie Mac Purchase Date, the Initial Funding Lender will assign to Freddie Mac all of its rights and interest in the Governmental Note, this Funding Loan Agreement, the Continuing Covenant Agreement and the other Financing Documents (as such terms are herein defined).

**D.** The Borrower has agreed to use the proceeds of the Project Loan to finance a portion of the costs of the acquisition and rehabilitation of the Project and to pay certain closing costs with respect to the Loans.

**E.** The Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Multifamily Note dated February \_\_, 2020 (together with all riders and modifications thereto, the "**Project Note**") delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**F.** To secure the Borrower's obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of the date hereof (the "**Security Instrument**") with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**G.** On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans (in such capacity and any successor in such capacity, the "**Funding Lender Representative**"). Greystone Servicing Company LLC (the "**Servicer**") will act as initial servicer for the Loans on behalf of the Funding Lender Representative.

**H.** The Borrower is also entering into a Continuing Covenant Agreement dated as of the date hereof with the Initial Funding Lender (the "**Continuing Covenant Agreement**"), which sets forth various other requirements with respect to the Project, and which agreement will be assigned to Freddie Mac on the Freddie Mac Purchase Date.

**I.** The Governmental Lender has determined that all things necessary to make the Funding Loan and to issue the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent all in accordance with this Funding Loan Agreement and such Governmental Note will be a valid, binding and legal limited obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, Prepayment Premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

**J.** The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

**NOW, THEREFORE**, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“*Act*” means collectively, Part IV of Chapter 159, Florida Statutes, as amended and supplemented, Sections 2-181 through 2-191 Code of Ordinances of Palm Beach County, Florida and other applicable provisions of Florida law.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Assignment*” means the Assignment of Security Instrument dated as of the date hereof by the Governmental Lender assigning its interest in the Security Instrument to the Fiscal Agent.

“*Authorized Officer*” means (a) when used with respect to the Governmental Lender, the Chairperson or Vice-Chairperson of the Governmental Lender and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, the general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

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

“*Bond Counsel*” means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion with respect to the Governmental Note, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

“*Borrower*” means LIH El Cid, LP, a Florida limited partnership, or any of its permitted successors or assigns, as owner of the Project.

“*Borrower Equity Account*” means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“*Borrower Equity Deposit*” means \$ \_\_\_\_\_, which shall be comprised of sources other than the proceeds of the Project Loan.

“*Business Day*” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“*Certificate of the Governmental Lender*” and “*Request of the Governmental Lender*” mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“*Closing Memorandum*” means the memorandum delivered to the Fiscal Agent, Governmental Lender, the Borrower and the Initial Funding Lender setting forth the sources and uses of all moneys deposited with the Fiscal Agent and Title Company on the Delivery Date.

“*Code*” means the Internal Revenue Code of 1986, as amended and supplemented, and the regulations promulgated thereunder.

“*Continuing Covenant Agreement*” means the Continuing Covenant Agreement dated as of the date hereof by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“*Cost*,” “*Costs*” or “*Costs of the Project*” means costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with United States Treasury Regulations Section 1.103-8(a)(1), (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Note, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in United States Treasury Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being rehabilitated or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), “*Cost*,” “*Costs*” or “*Costs of the Project*” shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or rehabilitating the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example,

intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, rehabilitation or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Costs of Issuance*” means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender and the Governmental Lender’s counsel, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel, (d) the Servicer and the Servicer’s counsel, (e) the Funding Lender and the Funding Lender’s counsel (including both the Initial Funding Lender and Freddie Mac, as assignee thereof on the Freddie Mac Purchase Date), and (f) Borrower’s counsel attributable to the funding of the Loans and the Borrower’s financial advisor, if any, and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

“*Costs of Issuance Deposit*” means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal \$\_\_\_\_\_ and shall be comprised of sources other than the proceeds of the Project Loan.

“*Default Rate*” means the lower of (i) the Interest Rate otherwise in effect notwithstanding the default plus [four percent (4%)] per annum or (ii) the maximum rate allowed by law.

“*Delivery Date*” means February \_\_\_, 2020, the date of the funding of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

“*Determination of Taxability*” shall mean, (a) a final determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation which has become effective or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination unless otherwise extended by the Funding Lender and Governmental Lender.



“*Electronic Notice*” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

“*Event of Default*” or “*event of default*” means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“*Extraordinary Services*” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

“*Extraordinary Fiscal Agent’s Fees and Expenses*” means all those reasonable fees, expenses and reimbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof during any Rebate Year for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

“*Fair Market Value*” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“*Financing Documents*” means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Certificate, the Project Loan Documents and all other documents or instruments evidencing, securing or relating to the Loans.

“*Fiscal Agent*” means U.S. Bank National Association and its successors hereunder.

“*Freddie Mac*” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

“*Freddie Mac Commitment*” means the commitment from Freddie Mac to the Initial Funding Lender pursuant to which Freddie Mac has agreed to purchase the Funding Loan, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“*Freddie Mac Purchase Date*” means the date Freddie Mac purchases the Funding Loan from the Initial Funding Lender upon satisfaction of the conditions set forth in the Freddie Mac Commitment.

“*Funding Lender*” means any Person who is the holder of the Governmental Note.

“*Funding Lender Representative*” means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender, and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

“*Funding Loan*” means the loan in the original principal amount of \$\_\_\_\_\_ made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

“*Funding Loan Amortization Schedule*” means the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note.

“*Government Obligations*” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“*Governmental Lender*” means Housing Finance Authority of Palm Beach County, Florida, a public body corporate and politic, created, organized and existing under the laws of the State.

“*Governmental Lender Fee*” means the ongoing fee of the Governmental Lender in connection with the making of the Project Loan equal to fifteen (15) basis points of the original principal amount of the Funding Loan payable in arrears on each February 1 and August 1, commencing on August 1, 2020.

“*Governmental Note*” means the Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) dated the Delivery Date, issued by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Guide*” means the Freddie Mac Multifamily Seller/Service Guide, as the same may be amended, modified or supplemented from time to time.

“*Initial Debt Service Deposit*” means an amount equal to the sum of (i) the interest payable on the Funding Loan, and (ii) the ongoing fees payable with respect to the Project Loan (as

provided in Section 4.02 of the Project Loan Agreement), in each case for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

“*Initial Funding Lender*” means Greystone Servicing Company LLC, as initial holder of the Governmental Note.

“*Interest Payment Date*” means (i) the first day of each calendar month, commencing [March] 1, 2020, (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

“*Interest Rate*” means the interest rate of \_\_\_\_% per annum; provided during the continuance of any Event of Default hereunder, the Interest Rate shall be the Default Rate.

“*Investment Income*” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“*Investor Partner*” means the entity defined as such in the Project Loan Agreement and its successors and assigns.

“*Loans*” means, together, the Project Loan and the Funding Loan.

“*Loan Payment Fund*” means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Loan Prepayment Fund*” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Maturity Date*” means the maturity date of the Funding Loan set forth in Section 2.01(b) hereof.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Net Proceeds*” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“*Notes*” means, together, the Project Note and the Governmental Note.

“*Ordinary Fiscal Agent’s Fees and Expenses*” means the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to (and shall not exceed) \$2,500.00 and shall be payable semi-annually in advance on the Delivery Date and each August 1 and February 1 commencing August 1, 2020 and thereafter.

“*Paying Agent*” means the Person designated to make payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan, to the Funding Lender pursuant to Section 2.12 hereof. The initial Paying Agent shall be the Servicer.

“*Person*” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“*Pledged Security*” shall have the meaning given to that term in Section 2.02 hereof.

“*Prepayment Premium*” shall mean any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to the amount payable by the Borrower under Section 10 of the Project Note in connection with a prepayment of the Project Loan.

“*Principal Office of the Fiscal Agent*” means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

“*Project*” means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as El Cid Apartments located at 315 Almeria Road, West Palm Beach, Florida 33405, including the real estate described in the Security Instrument.

“*Project Account*” means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“*Project Loan*” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the original principal amount of \$ \_\_\_\_\_, as evidenced by the Project Note.

“*Project Loan Agreement*” means the Project Loan Agreement dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, as amended, supplemented or restated from time to time.

“*Project Loan Documents*” means the Security Instrument, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“*Project Loan Fund*” means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“*Project Note*” means the Multifamily Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Project

Loan, which Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Qualified Investments*” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/”A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody’s or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the “highest rating” shall mean a rating of at least “VMIG-1”/”A-1+” for obligations with less than one year maturity; at least “Aaa”/”VMIG-1”/”AAA”/”A-1+” for obligations with a maturity of one year or greater but less than three years; and at least “Aaa”/”AAA” for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

“*Rating Agency*” means Moody’s or S&P, as applicable, or any successor rating service thereof.

“*Rebate Analyst*” means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making any arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

“*Rebate Fund*” means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Rebate Year*” means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Governmental Note.

“*Requisition*” means, with respect to the Project Loan Fund, the requisition in the form of *Exhibit E* to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of *Exhibit D* to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

“*Resolution*” means Resolution No. 2020-01 adopted by the Governmental Lender on February 14, 2020 authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

“*Responsible Officer*” means any officer of the Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of the Fiscal Agent and the trusts created hereunder.

“*Revenue Fund*” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Revenues*” means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Note or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

“*Security Instrument*” means the Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of the date hereof, by the Borrower, granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Project Loan and related obligations, which Security Instrument has been assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment as security for the Funding Loan, as the same may be amended, supplemented or restated.

“*S&P*” means Standard & Poor’s Global Ratings, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Servicer*” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. Initially, the Servicer shall be Greystone Servicing Company LLC.

“*Settlement Sheet*” means the settlement sheet prepared by the Title Company and executed by the Borrower setting forth the various funds to be collected and disbursed by the Title Company on the Delivery Date.

“*State*” means the State of Florida.

“*Tax Certificate*” means, collectively, the Governmental Lender’s Certificate as to Arbitrage and Certain Other Tax Matters executed by the Governmental Lender, the Arbitrage Rebate Agreement executed by the Governmental Lender, the Fiscal Agent and the Borrower on the Delivery Date and the Borrower’s Proceeds Certificate, all of which shall be dated the Delivery Date.

“*Tax Regulatory Agreement*” means that certain Land Use Restriction Agreement dated as of February 1, 2020 among the Governmental Lender, the Fiscal Agent and the Borrower.

“*Title Company*” means First American Title Insurance Company, the title company for purposes of the Loans.

“*Transferee Representations Letter*” has the meaning set forth in Section 2.08 hereof.

“*Unassigned Rights*” means all of the rights of the Governmental Lender and its officers, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices, to inspect the Project and the books and records of the Borrower and the right to enforce such rights.

“*Window Period*” means the three (3) consecutive month period prior to the Maturity Date.

**Section 1.02 Interpretation.** The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the

singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

## **ARTICLE II THE FUNDING LOAN**

### **Section 2.01 *Terms.***

(a) The Funding Loan shall be originated and funded on the Delivery Date in the original principal amount of \$\_\_\_\_\_ with funds provided to the Governmental Lender by the Initial Funding Lender. The proceeds of the Funding Loan shall be deposited by the Initial Funding Lender with the Fiscal Agent on the Delivery Date on behalf of the Governmental Lender and shall be disbursed in accordance with the Closing Memorandum. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

(b) The Funding Loan shall bear interest payable on each Interest Payment Date at the Interest Rate and shall mature on March 1, 2037, subject to scheduled monthly principal payments as provided in Section 2.01(c) below and optional and mandatory prepayment prior to maturity as provided in Article III hereof. Interest on the Funding Loan shall be [computed on the basis of a 360-day year and the actual number of days elapsed.]

(c) The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(d) Payment of principal of, premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Funding Lender (unless otherwise directed by the Funding Lender).

(e) Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(f) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the



Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

**Section 2.02 Pledged Security.** To secure the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Note, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the “**Pledged Security**”) for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Note, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

Further, the foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.06, 4.11, 4.12 and 4.13 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan

Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement to be and shall remain in full force and effect.

**Section 2.03 *Limited Obligations.*** The Governmental Note and the interest thereon shall not be deemed to constitute or to create in any manner an indebtedness or obligation of the State or any county, municipality or other political subdivision thereof, and will not constitute or result in the creation of an indebtedness of the State or any county, municipality or other political subdivision thereof, but shall be limited obligations of the Governmental Lender payable solely from the Pledged Security pledged therefor, and neither the faith and credit nor the taxing power of the State or any county, municipality or other political subdivision thereof is pledged to the payment of the principal of or the interest on the Governmental Note. The Governmental Lender has no taxing power.

**Section 2.04 *Funding Loan Agreement Constitutes Contract.*** In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

**Section 2.05 *Form and Execution.*** The Governmental Note shall be in substantially the form attached as *Exhibit A*. The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Chairperson or Vice Chairperson of the Governmental Lender, and attested by the manual or facsimile signature of the Secretary or Assistant Secretary of the Governmental Lender, sealed with an impression of the seal of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

**Section 2.06 *Authentication.*** The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in *Exhibit A*, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

**Section 2.07 *Mutilated, Lost, Stolen or Destroyed Governmental Note.*** In the event the Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in *Exhibit A* in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal

Agent with indemnity satisfactory to each of them. In the event where the Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.08 *Registration; Transfer of Funding Loan; Transferee Representations Letter.***

(a) The Funding Loan shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loan and any transfers of the Funding Loan as provided herein. The Funding Loan shall initially be registered to the Initial Funding Lender, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “Qualified Transferee”) that delivers a letter to the Fiscal Agent substantially in the form attached hereto as *Exhibit C* setting forth certain representations with respect to such Qualified Transferee (the “Transferee Representations Letter”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. In the event there is an offering document with respect to such sale or transfer, it shall contain a statement to the effect that no information contained therein has been supplied or verified by the Governmental Lender. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loan.

**Section 2.09 *[Reserved]*.**

**Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Note.*** Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, receipt by the Fiscal Agent of the following:

(a) executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement, that certain Fee Guaranty and Environmental Agreement by and among the Governmental Lender, the Fiscal Agent, and the indemnitors named therein, and the Tax Certificate;

(b) an opinion of counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) [IF FISCAL AGENT IS DISBURSING LOAN PROCEEDS: the proceeds of the Funding Loan from the original funding thereof by the Initial Funding Lender] OR [IF TITLE COMPANY IS DISBURSING LOAN PROCEEDS:];

(d) the executed Project Note and an endorsement of the Project Note by the Governmental Lender in favor of the Fiscal Agent;

(e) a copy of the executed Security Instrument, the Assignment and the Continuing Covenant Agreement;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the State and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) a certified copy of the Resolution;

(i) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial Funding Lender upon funding to the Fiscal Agent of the full amount of the Funding Loan;

(j) receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement; and

(k) receipt by the Fiscal Agent of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as Exhibit C.

**Section 2.11 *Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.***

(a) The Fiscal Agent shall establish, maintain and hold in trust and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Project Account and a Borrower Equity Account. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) The proceeds of the Funding Loan shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date to be disbursed in accordance with the Closing Memorandum. Amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below and Section 4.02 hereof. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Governmental Lender shall cause the Borrower to deliver from sources other than the Loans, (i) to the Fiscal Agent, on or prior to the Delivery Date, the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund and the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account, and (ii) to the Servicer the Initial Debt Service Deposit. The Fiscal Agent shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Loans.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the Fiscal Agent shall disburse the proceeds thereof as provided in the Closing Memorandum. The Fiscal Agent shall make further disbursements of amounts in the Project Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof; provided that prior to making any such disbursements, \$\_\_\_\_\_ of proceeds of the Project Loan shall be transferred by the Fiscal Agent to the Cost of Issuance Fund without need of requisition therefor.

**Section 2.12 *Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees.***

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower directly to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee collected from the Borrower and shall remit the Governmental Lender Fee to the Governmental Lender and shall remit the Ordinary Fiscal Agent's Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in

accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Governmental Note is sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Note and all fees due hereunder and under the Project Loan Agreement are being made to the Servicer in accordance with this Section 2.12 and no Event of Default has occurred and is continuing of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding Lender Representative. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

### ARTICLE III PREPAYMENT OF THE FUNDING LOAN

#### **Section 3.01 *Prepayment of the Funding Loan Prior to Maturity.***

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in the Project Note.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Note), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to Section 10(b) of the Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory payment as a result thereof; or

(ii) in part, on the Interest Payment Date next following the completion of the rehabilitation of the Project, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof.

**Section 3.02 *Notice of Prepayment.*** Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02.

#### **ARTICLE IV REVENUES AND FUNDS**

**Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.*** The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund and the accounts therein established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which the monies therein shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund; and

(f) Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

**Section 4.02 *Project Loan Fund.***

(a) Deposit. The Fiscal Agent shall deposit the portion of the proceeds of the Funding Loan into the Project Account of the Project Loan Fund as provided in Section 2.11(b) hereof. The Fiscal Agent shall deposit the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Note), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of paying Costs of the Project. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. The Fiscal Agent shall make disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer). The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions and provisions of the Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which an Event of Default has occurred and is then continuing under the Loans or any Financing Document (notice of which



Event of Default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such an Event of Default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund and all accounts therein.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Project Loan Fund following completion of the rehabilitation of the Project in accordance with the Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax exempt status of the Governmental Note; provided, that any amounts in the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the rehabilitation of the Project in accordance with the Continuing Covenant Agreement have been satisfied, evidenced by an instrument signed by the Funding Lender Representative, and provided no Event of Default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

#### **Section 4.03 *Application of Revenues.***

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent on the Delivery Date, which shall be applied in accordance with the provisions of Sections 2.11 and 4.02 hereof; (ii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund;

(iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.12 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:** to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to the Funding Loan Amortization Schedule); and

**SECOND:** to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other than any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all of the Funding Loan pursuant to Section 3.01(a); and (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

(d) Subject to Section 2.12 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04 Application of Loan Payment Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 Application of Loan Prepayment Fund.** Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 Administration Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Project Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give written notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon

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

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

**Section 4.07 [Reserved].**

**Section 4.08 *Investment of Funds.*** The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. In the absence of written direction from the Borrower, the Fiscal Agent shall invest amounts on deposit in the funds and accounts established under this Funding Loan Agreement in Government Obligations or in investments of the type described in subparagraph (g) of the definition of Qualified Investments which shall have the same maturity and other restrictions as set forth above. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Governmental Lender acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender the right to receive brokerage confirmations of the security transactions as they occur, to the extent

permitted by law, the Governmental Lender specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

**Section 4.09 [Reserved].**

**Section 4.10 Accounting Records.** The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.11 Amounts Remaining in Funds.** After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.12 Rebate Fund; Compliance with Tax Certificate.** The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within 55 days of the end of each fifth Rebate Year, the Borrower shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatable Arbitrage**”).

Pursuant to Section 2.04 of the Project Loan Agreement, the Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within 55 days of the end of each fifth Rebate Year, the Fiscal Agent, at the expense of the Borrower, shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

Within 55 days of the end of each fifth Rebate Year, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

(i) Not later than 60 days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and

(ii) Not later than 60 days after the payment in whole of the Funding Loan, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Project Loan Agreement and this Section 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loan and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower such records concerning the

investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

**Section 4.13 *Cost of Issuance Fund.*** The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of Exhibit D to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

**Section 4.14 *Reports From the Fiscal Agent.*** The Fiscal Agent shall, on or before the fifteenth (15<sup>th</sup>) day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (a) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (b) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (c) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (d) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

**ARTICLE V**  
**GENERAL COVENANTS AND REPRESENTATIONS**

**Section 5.01 *Payment of Principal and Interest.*** The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning hereof and thereof.

**Section 5.02 *Performance of Covenants.*** The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Note and in all proceedings pertaining thereto.

**Section 5.03 *Instruments of Further Assurance.*** The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, within its powers, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender hereunder. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative, the Borrower and the Servicer in writing of the occurrence of any of the following:

- (a) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (b) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (c) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (d) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or



(e) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Project Books.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior written notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(a) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(b) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an "arbitrage bond" under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the "**Regulations**") or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Funding Loan will be excluded from the gross income for federal income tax purposes, of the Funding Lender pursuant to the Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent’s Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Governmental Note to be classified as an “arbitrage bond” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, or the Rebate Analyst. To the extent such directions are not consistent, the Fiscal Agent shall seek advice from Bond Counsel which will be at the expense of the Borrower. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, or the Rebate Analyst and complies with the provisions applicable to the Fiscal Agent set forth in the Tax

Certificate. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Governmental Note to become an “arbitrage bond,” then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower or the Funding Lender Representative regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Governmental Note from becoming an “arbitrage bond,” and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

**Section 5.08 *Representations and Warranties of the Governmental Lender.*** The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a public body corporate and politic duly created, organized and validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Note and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance against the Governmental Lender prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors’ rights generally and the application of equitable principles.

## **ARTICLE VI DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER**

**Section 6.01 *Events of Default.*** Each of the following shall be an event of default with respect to the Funding Loan (an “Event of Default”) under this Funding Loan Agreement:

(a) failure to pay the principal of, Prepayment Premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof is given to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an “Event of Default” under the Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer, the Borrower and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

**Section 6.02 Acceleration; Other Remedies Upon Event of Default.** Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender (but solely from the Pledged Security) or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of

the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

(a) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loan and to require the Governmental Lender (at the expense of the Borrower) to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(b) by pursuing any available remedies under the Project Loan Agreement, the Tax Regulatory Agreement or any other Financing Document;

(c) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(d) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

**Section 6.03 *Funding Lender Representative Control of Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole

and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

**Section 6.04 *Waiver by Governmental Lender.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Note shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

**FIRST:** to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

**SECOND:** to the Funding Lender, unpaid principal of and premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Note shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, Prepayment Premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

(e) Any moneys remaining after the application as provided in this Section 6.05 shall be paid to the Governmental Lender to the extent of any unpaid fees or expenses incurred by the Governmental Lender.

**Section 6.06 Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

**Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Note.** All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Note or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

**Section 6.08 [Reserved].**

**Section 6.09 Termination of Proceedings.** In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.10 Waivers of Events of Default.** The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their

former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.***

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other Project Loan Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Project Note to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 *Substitution.*** Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Note and the Security Instrument for a new Project Note and Security Instrument, evidencing and securing a new loan (the "New Project Loan"), which may be executed by a person other than the Borrower (the "New Borrower"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New



Project Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

## ARTICLE VII CONCERNING THE FISCAL AGENT

**Section 7.01 *Standard of Care.*** The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

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

**Section 7.02 *Reliance Upon Documents.*** Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties, including any Electronic Notice as permitted hereunder or under the Project Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful

misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 7.02(k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Fiscal Agent shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Fiscal Agent shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of acting as Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender

Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement, the Tax Regulatory Agreement and the Arbitrage Rebate Agreement which forms a part of the Tax Certificate and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Note. There will be no offering document.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 *Use of Proceeds.*** The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

**Section 7.04 *[Reserved]*.**

**Section 7.05 *Trust Imposed.*** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 *Compensation of Fiscal Agent.*** The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any

property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Fiscal Agent's Fees and Expenses or, if applicable, the Extraordinary Fiscal Agent's Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any Person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Note or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Note or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

**Section 7.07 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred

to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

**Section 7.09 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.10 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.11 *Appointment of Successor Fiscal Agent.***

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created

in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within thirty (30) days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.12 *Concerning Any Successor Fiscal Agent.*** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Funding Lender.

**Section 7.13 *Successor Fiscal Agent.*** In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

**Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.*** It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the

Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;



(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co- fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co- fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co- fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co- fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co- fiscal agent or separate fiscal agent;

(d) any co- fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co- fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co- fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co- fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co- fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co- fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co- fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Notice of Certain Events.*** The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16 [Reserved].**

**Section 7.17 *Filing of Financing Statements.*** The Fiscal Agent shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Funding Loan pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions.

**Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

**ARTICLE VIII  
AMENDMENTS OF CERTAIN DOCUMENTS**

**Section 8.01 *Amendments to this Funding Loan Agreement.*** Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.*** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative.

**Section 8.03 *Opinion of Bond Counsel Required.*** No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note, the Security Instrument or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel (which may be Bond Counsel) acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Funding Loan Agreement and

is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

**ARTICLE IX**  
**SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT**

**Section 9.01 *Discharge of Lien.*** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

(a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or

(b) prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or

(c) by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of the Governmental Lender, the Fiscal Agent, the Servicer and the Rebate Analyst, if any, and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Borrower the estate hereby conveyed, and assign and deliver to the Borrower any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest and premium, if any, on the Governmental Note, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

Prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation (except as limited by the provisions of Section 5.07(a)(iv) hereof), the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable Governmental Obligations (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any

reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes (except as limited by the provisions of Section 5.07(a)(iv) hereof); and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender, the Governmental Lender and the Servicer under the Financing Documents have been fully paid.

**Section 9.02 *Discharge of Liability on Funding Loan.*** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article III provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 *Payment of Funding Loan After Discharge of Funding Loan Agreement.*** Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Note remaining unclaimed for three (3) years after the maturity or earlier payment date shall be reported and disposed of by the Fiscal Agent in accordance with applicable law, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

**ARTICLE X  
INTENTIONALLY OMITTED**

**ARTICLE XI  
MISCELLANEOUS**

**Section 11.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement.

**Section 11.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 11.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

**Section 11.04 *Notices.***

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business

Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA  
100 Australian Avenue, Suite 410  
West Palm Beach, FL 33406  
Attention: David Brandt  
Email: dbrandt@pbcgov.org  
Telephone: (561) 233-3652

With a copy to: GREENSPOON MARDER LLP  
CityPlace Tower  
525 Okeechobee Blvd., Suite 900  
West Palm Beach, FL 33401  
Attention: Morris G. (Skip) Miller, Esq.  
Email: skip.miller@gmlaw.com  
Telephone: (561) 838-4556

The Fiscal Agent: U.S. BANK NATIONAL ASSOCIATION  
500 W. Cypress Creek Road, Suite 460  
Ft. Lauderdale, FL 33309  
Attention: Amanda Kumar  
Email: amanda.kumar@usbank.com  
Telephone: (954) 938-2475

The Borrower: LIH EL CID, LP  
c/o LEDG Capital, LLC  
1200 5<sup>th</sup> Avenue, Suite 1825  
Seattle, WA 98101  
Attention: Chris Lischke  
Email: chris@ledgcapital.com  
Telephone: (314) 749-2038

with a copy to: NELSON MULLINS BROAD AND CASSEL  
390 North Orange Avenue, Suite 1400  
Orlando, FL 32801  
Attention: Hollie Croft  
Email: hollie.croft@nelsonmullins.com  
Telephone: (407) 839-4239

Funding Lender  
Representative  
(as of Freddie Mac  
Purchase Date):

FEDERAL HOME LOAN MORTGAGE CORPORATION  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: [mfla@freddiemac.org](mailto:mfla@freddiemac.org)  
Telephone: (703) 714-4177

with a copy to:

FEDERAL HOME LOAN MORTGAGE CORPORATION  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: [joshua\\_schonfeld@freddiemac.com](mailto:joshua_schonfeld@freddiemac.com)  
Telephone: (703) 903-2000

Initial Funding Lender  
and Servicer:

GREYSTONE SERVICING COMPANY LLC  
1100 Abernathy Road NE  
Building 500, Suite 900  
Atlanta, GA 30328  
Attention: Steven Mumford  
Email: [steven.mumford@greyco.com](mailto:steven.mumford@greyco.com)  
Telephone: \_\_\_\_\_

Investor Partner:

ALLIANT ASSET MANAGEMENT COMPANY, LLC  
21600 Oxnard Street, Suite 1200  
Woodland Hills, CA 91367  
Attn: General Counsel  
Email:  
Telephone: (818) 668-2828

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer, and a duplicate copy of each notice or other communication given hereunder by any party to the Borrower shall also be given to the Investor Partner.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative, the Investor Partner and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written

request from the Funding Lender Representative and the Servicer for any such information or other communication.

#### **Section 11.05 *Funding Lender Representative***

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Freddie Mac Purchase Date, Freddie Mac shall be the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of Exhibit B hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

**Section 11.06 *Payments Due on Non-Business Days*** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.



**Section 11.07 Counterparts.** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.08 Laws Governing Funding Loan Agreement.** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles and venue shall lie in Palm Beach County, Florida.

**Section 11.09 No Recourse.** No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

**Section 11.10 Successors and Assigns.** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**HOUSING FINANCE AUTHORITY OF  
PALM BEACH COUNTY, FLORIDA**, as  
Governmental Lender

[S E A L]

By: \_\_\_\_\_  
Name: Gary P. Eliopoulos  
Title: Chairperson

ATTEST:

By: \_\_\_\_\_  
Name: Robin B. Henderson  
Title: Secretary

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO EL CID FUNDING LOAN AGREEMENT]

**GREYSTONE SERVICING COMPANY  
LLC, as Initial Funding Lender**

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

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO EL CID FUNDING LOAN AGREEMENT]

**U.S. BANK NATIONAL ASSOCIATION,**  
as Fiscal Agent

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Assistant Vice President

[FISCAL AGENT'S SIGNATURE PAGE TO EL CID FUNDING LOAN AGREEMENT]

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE NOTE  
SERIES 2020  
(EL CID APARTMENTS)

US \$ \_\_\_\_\_

February \_\_, 2020

FOR VALUE RECEIVED, the undersigned, HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of GREYSTONE SERVICING COMPANY LLC (the “**Funding Lender**”), and its assigns, the principal sum of \_\_\_\_\_ Million \_\_\_\_\_ Thousand Dollars (US \$ \_\_\_\_\_), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of February 1, 2020 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), among the Funding Lender, the Obligor and U.S. Bank National Association (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the original principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to LIH El Cid, LP (the “**Borrower**”) pursuant to the Project Loan Agreement dated as of February 1, 2020 (the “**Project Loan Agreement**”), among the Obligor, the Borrower and the Fiscal Agent.

1. **Defined Terms.** As used in this Note, (i) the term “Funding Lender” means the holder of this Note, and (ii) the term “Indebtedness” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note or the Funding Loan Agreement. “Event of Default” and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing March 1, 2020, interest on this Note at the rate of \_\_\_% per annum (or such higher rate of interest borne by the Funding Loan upon any default) (the “**Interest Rate**”) on the outstanding principal balance of this Note, and shall also pay interest on this Note at the Interest Rate on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an “**Interest Payment Date**”). Interest on this Note shall be computed on the basis of a 360-day year and the actual number of days elapsed.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on March 1, 2037 (the “**Maturity Date**”) and in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon, or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender’s discretion. Neither the Funding Lender’s acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender’s right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the “**Maximum Interest Rate**”). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Florida (the “**Property Jurisdiction**”).

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the “**Default Rate**”) equal to the lesser of (i) the Interest Rate otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate.

15. **Limited Obligation.** This Note and the interest thereon shall not be deemed to constitute or to create in any manner an indebtedness or obligation of the State or any county, municipality or other political subdivision thereof, and will not constitute or result in the creation of an indebtedness of the State or any county, municipality or other political subdivision thereof, but shall be limited obligations of the Governmental Lender payable solely from the Pledged

Security pledged therefor, and neither the faith and credit nor the taxing power of the State or any county, municipality or other political subdivision thereof is pledged to the payment of the principal of or the interest on the Note. The Obligor has no taxing power.

[Signature page follows]



IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed by the manual or facsimile signature of its Chairperson/Vice Chairperson and attested by the manual or facsimile signature of its Secretary/Assistant Secretary.

**HOUSING FINANCE AUTHORITY OF  
PALM BEACH COUNTY, FLORIDA**, as  
Governmental Lender

[S E A L]

By: \_\_\_\_\_  
Name: Gary P. Eliopoulos  
Title: Chairperson

ATTEST:

By: \_\_\_\_\_  
Name: Robin B. Henderson  
Title: Secretary

**CERTIFICATE OF AUTHENTICATION**

This Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

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

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Authorized Signer

**SCHEDULE 1**  
**FUNDING LOAN AMORTIZATION SCHEDULE**

**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF FUNDING LENDER REPRESENTATIVE**

U.S. Bank National Association  
500 W. Cypress Creek Road, Suite 460  
Ft. Lauderdale, FL 33309  
Attention: Amanda Kumar

LIH El Cid, LP  
c/o LEDG Capital, LLC  
1200 5<sup>th</sup> Avenue, Suite 1825  
Seattle, WA 98101

Housing Finance Authority of Palm Beach County, Florida  
100 Australian Avenue, Suite 410  
West Palm Beach, FL 33406  
Attention: David Brandt

Greystone Servicing Company LLC  
1100 Abernathy Road NE  
Building 500, Suite 900  
Atlanta, GA 30328

Re: El Cid Apartments

Ladies and Gentlemen:

The undersigned is the holder (the “**Funding Lender**”) of the Housing Finance Authority of Palm Beach County, Florida Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) dated February \_\_, 2020 (the “**Governmental Note**”) delivered pursuant to the Funding Loan Agreement dated as of February 1, 2020 (the “**Funding Loan Agreement**”), among Greystone Servicing Company LLC, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the Housing Finance Authority of Palm Beach County, Florida (the “**Governmental Lender**”) and U.S. Bank National Association (the “**Fiscal Agent**”). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be \_\_\_\_\_. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME

SIGNATURE

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FEDERAL HOME LOAN MORTGAGE CORPORATION**

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

## EXHIBIT C

### FORM OF TRANSFEREE REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

Housing Finance Authority of Palm Beach County, Florida  
100 Australian Avenue, Suite 410  
West Palm Beach, FL 33406

U.S. Bank National Association  
500 W. Cypress Creek Road, Suite 460  
Ft. Lauderdale, FL 33309

Re: El Cid Apartments

Ladies and Gentlemen:

The undersigned (the “Funding Lender”) hereby acknowledges receipt of the Multifamily Note dated February \_\_\_, 2020 (the “Governmental Note”) delivered pursuant to the Funding Loan Agreement dated as of [DATE] (the “Funding Loan Agreement”), among Greystone Servicing Company LLC, in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the Housing Finance Authority of Palm Beach County, Florida (the “Governmental Lender”) and U.S. Bank National Association (the “Fiscal Agent”). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan. The Initial Funding Lender is in the business of originating, acquiring and owning, for its own account, tax-exempt bonds, notes or loans relating to the financing or refinancing of multifamily housing projects.

2. The Funding Lender is an “accredited investor” under Regulation D of the Securities Act of 1933 (the “Act”) or a “qualified institutional buyer” under Rule 144(a) of said Act (such “accredited investor” or “qualified institutional buyer”, a “Qualified Transferee”), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise

dispose of all or any part of its interests in the Funding Loan (except as set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least "A" or better [INSERT FOR SELLER/SERVICER PURCHASER LETTER.]; provided, further, however, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to the Federal Home Loan Mortgage Corporation ("Freddie Mac") pursuant to the commitment dated [\_\_\_\_\_] (the "Freddie Mac Commitment").

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the State of Florida or any political subdivision thereof [and that the Governmental Lender has no taxing power], (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Florida or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan. The Initial Funding Lender and Freddie Mac have received copies of the Financing Documents.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan and the security therefor, and other material factors affecting the security and payment of the Funding Loan. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**[SIGNATURE BLOCK]**

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



**EXHIBIT D**

**COSTS OF ISSUANCE REQUISITION  
(Cost of Issuance Fund)**

U.S. Bank National Association, as Fiscal Agent

Re: El Cid Apartments

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of February 1, 2020, by and among Greystone Servicing Company LLC, in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the Housing Finance Authority of Palm Beach County, Florida, as Governmental Lender, and U.S. Bank National Association, as Fiscal Agent, securing the Governmental Lender’s Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) dated February \_\_, 2020 (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of LIH El Cid, LP, a limited partnership duly organized and existing under the laws of the State of Florida (the “**Borrower**”), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

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

Date of Requisition: \_\_\_\_\_

**LIH EL CID, LP**, as Borrower

By: El Cid Affordable Housing Corp., a  
Florida not-for-profit corporation, its  
General Partner

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

**EXHIBIT E**

**PROJECT LOAN FUND REQUISITION  
(Project Loan Fund)**

U.S. Bank National Association, as Fiscal Agent

Re: El Cid Apartments

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of February 1, 2020, by and among Greystone Servicing Company LLC, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the Housing Finance Authority of Palm Beach County, Florida (the “**Governmental Lender**”) and U.S. Bank National Association, as Fiscal Agent (the “**Fiscal Agent**”), securing the Governmental Lender’s Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) dated February \_\_, 2020 (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ \_\_\_\_\_ from the Project Account

\$ \_\_\_\_\_ from the Borrower Equity Account

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.

2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to \_\_\_\_\_, 20\_\_).

3. The undersigned certifies that:

a. the conditions precedent to disbursement set forth in the Continuing Covenant Agreement have been satisfied;

b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and the Continuing Covenant Agreement;

c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan

Fund and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;

d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;

e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;

f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

g. with respect to amounts from the Project Account of the Project Loan Fund, not less than 95% of the sum of:

- (A) the amounts requisitioned by this Requisition; plus
- (B) all amounts previously requisitioned and disbursed from the Project Account of the Project Loan Fund;

have been or will be applied by Borrower to pay the Costs of the Project;

h. Borrower is not in default under the Project Loan Agreement, the Continuing Covenant Agreement or any other Project Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;

i. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Note or pay debt service with respect to the Loans; and

j. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

4. Estimated costs of completing the uncompleted Repairs (as defined in the Continuing Covenant Agreement) as of the date of this Requisition: \_\_\_\_\_.

5. Percent of the Repairs completed as of the date this request: \_\_\_\_\_%

6. The Borrower certifies that monthly occupancy for the month preceding this Requisition was \_\_\_\_\_, as indicated by the **attached rent roll** which is true, correct and complete.

7. The Borrower certifies that net operating income for the month preceding this Requisition was \_\_\_\_\_, as indicated by the **attached operating statement**.

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

Date: \_\_\_\_\_

**LIH EL CID, LP**, as Borrower

By: El Cid Affordable Housing Corp., a Florida not-for-profit corporation, its General Partner

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

**APPROVED:**

**GREYSTONE SERVICING COMPANY LLC**,  
as Initial Funding Lender

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

47864547v8/007132.019900

**EXHIBIT “C”**

Freddie Mac Loan Number: 500153353  
Property Name: El Cid Apartments

**PROJECT NOTE – TEL (Immediate)**

**FIXED RATE**

**(Revised 9-30-2019)**

US \$14,909,000.00

January \_\_, 2020

FOR VALUE RECEIVED, the undersigned, **LIH EL CID, LP**, a Florida limited partnership (together with such party’s or parties’ successors and assigns, the “**Borrower**”), jointly and severally (if more than one), promises to pay to the order of **HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA**, a public body corporate and politic created pursuant to the laws of the State of Florida (the “**Governmental Lender**”), and its assigns, the principal sum of FOURTEEN MILLION NINE HUNDRED NINE THOUSAND AND 00/100 DOLLARS (US \$14,909,000.00), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Project Note (this “**Project Note**”) is being delivered pursuant to that certain Project Loan Agreement dated as of January \_\_, 2020 among the Governmental Lender, **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States (the “**Fiscal Agent**”) and Borrower (together with any and all amendments, modifications, supplements and restatements, the “**Project Loan Agreement**”) pursuant to which the Governmental Lender has made a mortgage loan in the principal amount of this Project Note to Borrower (the “**Project Loan**”), and this Project Note is entitled to the benefits of the Project Loan Agreement and is subject to the terms, conditions and provisions thereof. The Project Loan was funded from the separate loan (the “**Funding Loan**”) incurred by the Governmental Lender pursuant to the Funding Loan Agreement dated as of January \_\_ 2020 (the “**Funding Loan Agreement**”) by and among **GREYSTONE SERVICING COMPANY LLC**, a Delaware limited liability company, as the Initial Funding Lender, the Governmental Lender and the Fiscal Agent. This Project Note shall be deemed to be fully advanced as of the Closing Date.

**1. Defined Terms.**

(a) As used in this Project Note:

“**Base Recourse**” means a portion of the Indebtedness equal to 0% of the original principal balance of this Project Note.

“**Business Day**” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or

obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“**Closing Date**” means the date hereof, which is the date of initial funding of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

“**Default Rate**” means an annual interest rate equal to 4 percentage points above the Interest Rate. However, at no time will the Default Rate exceed the Maximum Interest Rate.

“**First Project Loan Payment Date**” means the first day of the first calendar month following the Closing Date.

“**Holder**” means the holder from time to time of this Project Note.

“**Indebtedness**” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Project Note or the Project Loan Agreement.

“**Interest Rate**” means the annual interest rate of [\_\_\_\_] %.

“**Lockout Period**” means the period from and including the date of this Project Note until but not including February 1, 2030.

“**Maximum Interest Rate**” means the rate of interest which results in the maximum amount of interest allowed by applicable law.

“**Prepayment Premium Period**” means the period from and including the date of this Project Note until but not including the first day of the Window Period.

“**Project Loan Payment Date**” is defined in Section 2 of this Project Note.

“**Property Jurisdiction**” means the State of Florida.

“**Scheduled Maturity Date**” means February 1, 2037.

“**Security Instrument**” means the multifamily mortgage, deed to secure debt or deed of trust effective as of the effective date of this Project Note from Borrower to or for the benefit of Governmental Lender and its assigns and securing this Project Note, as amended, modified or supplemented from time to time.

“**Window Period**” means the 3 consecutive calendar month period immediately prior to the Scheduled Maturity Date. If the first day of the Window Period falls on a day which is not a Business Day, then with respect to payments made under Section 10, the “Window Period” will begin on the Business Day immediately preceding the scheduled first day of the Window Period.

“**Yield Maintenance Period**” means the period from and including the date of this Project Note until but not including August 1, 2036.

(b) Other capitalized terms used but not defined in this Project Note shall have the meanings given to such terms in the Project Loan Agreement, the Funding Loan Agreement or the Continuing Covenant Agreement.

**2. Payments of Principal and Interest.** Borrower shall pay on the first calendar day of each month commencing on the First Project Loan Payment Date, interest at the Interest Rate on the outstanding principal balance of this Project Note, and shall also pay interest on this Project Note at the Interest Rate in the event of an optional or mandatory prepayment or acceleration of all or a part of the Project Loan pursuant to this Project Note or the Project Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Project Note subject to prepayment (each such date for payment a “**Project Loan Payment Date**”). Interest under this Project Note will be computed, payable and allocated on the basis of a 360-day year [consisting of twelve 30-day months][and the actual number of days elapsed].

Borrower shall pay the outstanding principal of this Project Note in full on the Scheduled Maturity Date and in monthly installments on each date set forth on the Project Loan Amortization Schedule attached as Schedule 1 to this Project Note in an amount equal to the corresponding amounts set forth thereon, or at such earlier times and in such amounts as may be required in the event of an optional or mandatory prepayment or acceleration of the Project Loan pursuant to this Project Note or the Project Loan Agreement.

In addition to the foregoing, Borrower shall make payments hereunder in respect of the Project Loan at such times and in such amounts as are sufficient to pay, when due (whether at stated maturity, upon prepayment before maturity, upon acceleration of stated maturity or otherwise), the principal of and premium, if any, and interest on the Funding Loan at any time outstanding. To ensure timely payment, Servicer shall collect from Borrower, and Borrower shall provide to Servicer, the foregoing payments two (2) Business Days prior to the respective Project Loan Payment Date; provided, unless the Closing Date is the first day of a calendar month, the Servicer shall collect from Borrower and Borrower shall provide to Servicer on the Closing Date, interest for the period beginning on the Closing Date and ending on and including the last day of such calendar month. Except as provided in this paragraph and in Section 10, accrued interest will be payable in arrears.

Any regularly scheduled monthly installment of principal and interest payable pursuant to this Section 2 that is received by Holder before the date on which it is due will be deemed to have been received on the due date for the purpose of calculating interest due.

**3. Payment of Fees and Expenses; Other Required Payments.** Borrower shall also pay fees and expenses under Section 4.02 of the Project Loan Agreement, rebate amounts under Sections 2.04 and 4.03 of the Project Loan Agreement and indemnification amounts under Section 6.01 of the Project Loan Agreement and Section 10.02 of the Continuing Covenant Agreement, as well as any other amounts owed by the Borrower under the Financing Documents, when due and in accordance with the terms and provisions set forth therein.



**4. Manner of Payment; Deficiencies.** All payments under this Project Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Project Loan Agreement. In the event of any deficiency in the funds available under the Funding Loan Agreement for payment of the principal of, premium, if any, or interest on the Funding Loan when due, Borrower shall immediately pay the amount of the deficiency to the Fiscal Agent upon notice of the deficiency from the Governmental Lender, Servicer or the Fiscal Agent. Borrower shall be obligated to pay the deficiency regardless of the reason for the deficiency, including any deficiency resulting from any shortfall in payments made or to be made by Borrower under this Project Note, any loss due to a default under any investment held by the Fiscal Agent, a change in value of any such investment or otherwise.

**5. Application of Partial Payments.** If at any time Holder receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Holder may apply the amount received to amounts then due and payable in any manner and in any order determined by Holder, in Holder's discretion. Borrower agrees that neither Holder's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Holder's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

**6. Security.** The Indebtedness is secured by, among other things, the Security Instrument. Reference is made to the Security Instrument and the Project Loan Agreement for other rights of Holder with respect to collateral for the Indebtedness.

**7. Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, any prepayment premium payable under Section 10 of this Project Note, and all other amounts payable under this Project Note and any other Financing Document, shall at once become due and payable, at the option of Holder, without any prior Notice to Borrower (except if notice is required by applicable law, then after such notice). Holder may exercise this option to accelerate regardless of any prior forbearance. For purposes of exercising such option, Holder will calculate the prepayment premium as if prepayment occurred on the date of acceleration. If prepayment occurs thereafter, Holder will recalculate the prepayment premium as of the actual prepayment date.

**8. Default Rate.** So long as (a) any monthly installment under this Project Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Project Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the lesser of the Default Rate or the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Scheduled Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Scheduled Maturity Date at the lesser of the Default Rate or the Maximum Interest Rate. Borrower also acknowledges that its failure to make timely payments will cause Holder to incur additional expenses in servicing and processing the Project Loan, that, during the time that any monthly installment under this Project Note is delinquent, Holder will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Holder's ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower

also acknowledges that, during the time that any monthly installment under this Project Note is delinquent or any other Event of Default has occurred and is continuing, Holder's risk of nonpayment of this Project Note will be materially increased and Holder is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Project Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Project Note, of the additional costs and expenses Holder will incur by reason of Borrower's delinquent payment and the additional compensation Holder is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

## **9. Limits on Personal Liability.**

(a) Except as otherwise provided in this Section 9, none of Borrower, SPE Equity Owner, or any member or limited partner of Borrower will have any personal liability under this Project Note, the Project Loan Agreement or any other Financing Document for the repayment of the Indebtedness or for the performance of or compliance with any other obligations of Borrower under the Financing Documents, and Holder's only recourse for the satisfaction of the Indebtedness and the performance of such obligations will be Holder's exercise of its rights and remedies with respect to the Project and to any other collateral held by Holder as security for the Indebtedness. This limitation on Borrower's liability will not limit or impair Holder's enforcement of its rights against any Guarantor of the Indebtedness or any Guarantor of any other obligations of Borrower.

(b) Borrower will be personally liable to Holder for the amount of the Base Recourse, plus any other amounts for which Borrower has personal liability under this Section 9.

(c) In addition to the Base Recourse, Borrower will be personally liable to Holder for the repayment of a further portion of the Indebtedness equal to any loss or damage suffered by Holder as a result of the occurrence of any of the following events:

(i) Borrower fails to pay to Holder upon demand after an Event of Default all Rents to which Holder is entitled under Section 3 of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this Section 9(c)(i) if Borrower is unable to pay to Holder all Rents and security deposits as required by the Security Instrument because of a valid order issued in, or an automatic stay applicable because of, a bankruptcy, receivership, or similar judicial proceeding.

(ii) Borrower fails to apply all Insurance proceeds and Condemnation proceeds as required by the Continuing Covenant Agreement. However, Borrower will not be personally liable for any failure described in this Section 9(c)(ii) if Borrower is unable to apply Insurance or Condemnation proceeds as required by the Continuing Covenant Agreement because of a valid order issued in, or an automatic stay applicable because of, a bankruptcy, receivership, or similar judicial proceeding.

(iii) Either of the following occurs:

(A) Borrower fails to deliver the statements, schedules and reports required by Section 6.07 of the Continuing Covenant Agreement and Holder exercises its right to audit those statements, schedules and reports.

(B) An Event of Default has occurred and is continuing, and Borrower fails to deliver all books and records relating to the Mortgaged Property or its operation in accordance with the provisions of Section 6.07 of the Continuing Covenant Agreement.

(iv) Borrower fails to pay when due in accordance with the terms of the Continuing Covenant Agreement the amount of any item below marked “Deferred”; provided however, that if no item is marked “Deferred”, this Section 9(c)(iv) will be of no force or effect.

[Collect] Property Insurance premiums or other Insurance premiums,

[Collect] Taxes or payments in lieu of taxes (PILOT)

[Deferred] Water and sewer charges (that could become a lien on the Mortgaged Property)

[N/A] Ground Rents

[Deferred] Assessments or other charges (that could become a lien on the Mortgaged Property)

(v) Borrower engages in any willful act of material waste of the Mortgaged Property.

(vi) Borrower fails to comply with any provision of Section 6.13(a)(iii) through (xxvi) of the Continuing Covenant Agreement or any SPE Equity Owner fails to comply with any provision of Section 6.13(b)(iii) through (v) of the Continuing Covenant Agreement (subject to possible full recourse liability as set forth in Section 9(f)(ii)).

(vii) Any of the following Transfers occurs:

(A) Any Person that is not an Affiliate creates a mechanic’s lien or other involuntary lien or encumbrance against the Mortgaged Property and Borrower has not complied with the provisions of the Continuing Covenant Agreement.

(B) A Transfer of property by devise, descent or operation of law occurs upon the death of a natural person and such Transfer does not meet the requirements set forth in the Continuing Covenant Agreement.

(C) Borrower grants an easement that does not meet the requirements set forth in the Continuing Covenant Agreement.

(D) Borrower executes a Lease that does not meet the requirements set forth in the Continuing Covenant Agreement.

(viii) Reserved.

(ix) through (xx) are Reserved.

(xxi) Borrower or any officer, director, partner, member or employee of Borrower makes an unintentional written material misrepresentation in connection with (1) the application for or creation of the Indebtedness or (2) any action or consent of Holder; provided that the assumption will be that any written material misrepresentation was intentional and the burden of proof will be on Borrower to prove that there was no intent.

(xxii) through (xxxiv) are Reserved.

(d) In addition to the Base Recourse, Borrower will be personally liable to Holder for all of the following:

(i) Borrower will be personally liable for the performance of all of Borrower's obligations under Sections 6.12, 10.02(b) and 10.02(e) of the Continuing Covenant Agreement.

(ii) Borrower will be personally liable for the costs of any audit under Section 6.07 of the Continuing Covenant Agreement.

(iii) Borrower will be personally liable for any costs and expenses incurred by Holder in connection with the collection of any amount for which Borrower is personally liable under this Section 9, including Attorneys' Fees and Costs and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(iv) through (viii) are reserved.

(ix) Borrower will be personally liable for any fees, costs, or expenses incurred by Holder in connection with Borrower's termination of any agreement for the provision of services to or in connection with the Mortgaged Property, including cable, internet, garbage collection, landscaping, security, and cleaning.

(x) Reserved.

(xi) Reserved.

(e) All payments made by Borrower with respect to the Indebtedness and all amounts received by Holder from the enforcement of its rights under the Project Loan Agreement and the other Financing Documents will be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(f) Notwithstanding the Base Recourse, Borrower will become personally liable to Holder for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default:

(i) Borrower fails to comply with Section 6.13(a)(i) or (ii) of the Continuing Covenant Agreement or any SPE Equity Owner fails to comply with Section 6.13(b)(i) or (ii) of the Continuing Covenant Agreement.

(ii) Borrower fails to comply with any provision of Section 6.13(a)(iii) through (xxvi) of the Continuing Covenant Agreement or any SPE Equity Owner fails to comply with any provision of Section 6.13(b)(iii) through (v) of the Continuing Covenant Agreement 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 Borrower or any SPE Equity Owner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code.

(iii) A Transfer that is an Event of Default under Section 7.01 of the Continuing Covenant Agreement occurs, other than a Transfer set forth in Section 9(c)(vii) above (for which Borrower will have personal liability for Holder's loss or damage); provided, however, that Borrower will not have any personal liability for a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company.

(iv) There was fraud or intentional written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with (1) the application for or creation of the Indebtedness, (2) on-going financial or other reporting requirements or information required by the Loan Documents, or (3) any action or consent of Holder.

(v) Borrower or any SPE Equity Owner voluntarily files for bankruptcy protection under the Bankruptcy Code.

(vi) Borrower or any SPE Equity Owner 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.

(vii) The Mortgaged Property or any part of the Mortgaged Property 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.

(viii) An order of relief is entered against Borrower or any SPE Equity Owner 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.

(ix) An involuntary bankruptcy or other involuntary insolvency proceeding is commenced against Borrower or any SPE Equity Owner (by a party other than Holder) but only if Borrower or such SPE Equity Owner 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 Borrower or any SPE Equity Owner to contribute or cause the contribution of additional capital to Borrower or any SPE Equity Owner.

(x) through (xiii) are Reserved.

(xiv) In the event that any of the interest payable on the Funding Loan is deemed included in any Funding Lender’s (other than a Funding Lender who is a “substantial user” of the Project or a “related person” with respect thereto, each as defined in Section 147(a) of the Internal Revenue Code of 1986) gross income for federal income tax purposes as a result of any action or failure to act by Borrower or any person or entity acting on behalf of Borrower (including, but not limited to, the manager of the Mortgaged Property).

(g) For purposes of Sections 9(f) and (h), the term “**Related Party**” will include all of the following:

(i) Borrower, any Guarantor or any SPE Equity Owner.

(ii) Any Person that holds, directly or indirectly, any ownership interest (including any shareholder, member or partner) in Borrower, any Guarantor or any SPE Equity Owner or any Person that has a right to manage Borrower, any Guarantor or any SPE Equity Owner.

(iii) Any Person in which Borrower, any Guarantor or any SPE Equity Owner has any ownership interest (direct or indirect) or right to manage.

(iv) Any Person in which any partner, shareholder or member of Borrower, any Guarantor or any SPE Equity Owner has an ownership interest or right to manage.

(v) Any Person in which any Person holding an interest in Borrower, any Guarantor or any SPE Equity Owner also has any ownership interest.

(vi) Any creditor (as defined in the Bankruptcy Code) of Borrower that is related by blood, marriage or adoption to Borrower, any Guarantor or any SPE Equity Owner.

(vii) Any creditor (as defined in the Bankruptcy Code) of Borrower that is related to any partner, shareholder or member of, or any other Person holding an interest in, Borrower, any Guarantor or any SPE Equity Owner.

(h) If Borrower, any Guarantor, any SPE Equity Owner or any Related Party has solicited creditors to initiate or participate in any proceeding referred to in Section 9(f),

regardless of whether any of the creditors solicited actually initiates or participates in the proceeding, then such proceeding will be considered as having been initiated by a Related Party.

(i) In addition to the Base Recourse, Borrower will be personally liable for the following obligations under the Project Loan Agreement:

(i) Borrower's obligations to the Governmental Lender and the Fiscal Agent under subsections (b)(ii), (b)(iv), (b)(v), and (b)(vi) of Section 4.02 of the Project Loan Agreement;

(ii) Borrower's tax and indemnification obligations under Sections 2.05 and 6.01 of the Project Loan Agreement;

(iii) Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of the Project Loan Agreement and the Tax Certificate; and

(iv) Borrower's obligation to pay legal fees and such expenses under Section 7.04 of the Project Loan Agreement.

(j) To the extent that Borrower has personal liability under this Section 9, Holder may, to the fullest extent permitted by applicable law, exercise its rights against Borrower personally without regard to whether Holder has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any Guarantor, or pursued any other rights available to Holder under this Project Note, the Project Loan Agreement, any other Financing Document, or applicable law. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

#### **10. Voluntary and Involuntary Prepayments During the Prepayment Premium Period; Prepayment Premium.**

(a) Any receipt by Holder of principal due under this Project Note prior to the Scheduled Maturity Date, other than principal required to be paid in monthly installments pursuant to the Project Loan Amortization Schedule, constitutes a prepayment of principal under this Project Note. Without limiting the foregoing, any application by Holder, prior to the Scheduled Maturity Date, of any proceeds of collateral or other security to the repayment of any portion of the unpaid principal balance of this Project Note constitutes a prepayment under this Project Note.

(b) This Project Note, together with accrued interest hereon, and together with prepayment premium (to the extent provided in Section 10(c) below), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) the application of any Insurance proceeds or Condemnation award to the prepayment of the Project Loan as required under the Continuing Covenant Agreement; or

(ii) in whole, upon the occurrence of a Determination of Taxability; or

(iii) in part, on the Interest Payment Date next following the completion of the rehabilitation of the Project, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to the Funding Loan Agreement to pay down the Funding Loan; or

(iv) [IF APPLICABLE: in part, in the event Borrower is required to make a Loan Equalization Payment in an amount equal to the amount prepaid by Borrower pursuant to the Continuing Covenant Agreement][OTHERWISE: Intentionally Omitted].

(c) Borrower may not voluntarily prepay any portion of the principal balance of this Project Note during the Lockout Period. Except as provided in Section 10(d), a prepayment premium will be due and payable by Borrower in connection with any prepayment of principal under this Project Note during the Prepayment Premium Period. The prepayment premium will be computed as follows:

(i) For any prepayment made during the Yield Maintenance Period, the prepayment premium will be whichever is the greater of Sections 10(c)(i)(A) and (B) below:

(A) 1.0% of the amount of principal being prepaid; or

(B) the product obtained by multiplying:

(1) the amount of principal being prepaid or accelerated,

*by*

(2) the excess (if any) of the Monthly Project Note Rate over the Assumed Reinvestment Rate,

*by*

(3) the Present Value Factor.

For purposes of Section 10(c)(i)(B), the following definitions will apply:

**Monthly Project Note Rate:** 1/12 of the Interest Rate, expressed as a decimal calculated to 5 digits.

**Prepayment Date:** in the case of a voluntary prepayment, the date on which the prepayment is made; in the case of the application by Holder of



collateral or security to a portion of the principal balance, the date of such application.

**Assumed Reinvestment Rate:** 1/12 of the yield rate expressed as a decimal to 2 digits, as of the close of the trading session which is 5 Business Days before the Prepayment Date, found among the Daily Treasury Yield Curve Rates, commonly known as Constant Maturity Treasury (“CMT”) rates, with a maturity equal to the remaining Yield Maintenance Period, as reported on the U.S. Department of the Treasury website. If no published CMT maturity matches the remaining Yield Maintenance Period, Holder will interpolate as a decimal to 2 digits the yield rate between (a) the CMT with a maturity closest to, but shorter than, the remaining Yield Maintenance Period, and (b) the CMT with a maturity closest to, but longer than, the remaining Yield Maintenance Period, as follows:

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

A = yield rate for the CMT with a maturity shorter than the remaining Yield Maintenance Period

B = yield rate for the CMT with a maturity longer than the remaining Yield Maintenance Period

C = number of months to maturity for the CMT maturity shorter than the remaining Yield Maintenance Period

D = number of months to maturity for the CMT maturity longer than the remaining Yield Maintenance Period

E = number of months remaining in the Yield Maintenance Period

In the event 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 which is not callable or indexed to inflation and which matures after the expiration of the Yield Maintenance Period.

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, Holder will calculate the prepayment premium using such positive number or negative number, as appropriate, as the Assumed

Reinvestment Rate in 10(c)(i)(B)(2) and in the calculation of the Present Value Factor.

If the Assumed Reinvestment Rate is zero, Holder will calculate the prepayment premium twice as set forth in (I) and (II) below and will average the results to determine the actual prepayment premium.

- (I) Holder will calculate the prepayment premium using an Assumed Reinvestment Rate of one basis point (+0.01%) in Section 10(c)(i)(B)(2) and in the calculation of the Present Value Factor.
- (II) Holder will calculate the prepayment premium using an Assumed Reinvestment Rate of negative one basis point (-0.01%) in Section 10(c)(i)(B)(2) and in the calculation of the Present Value Factor.

**Present Value Factor:** the factor that discounts to present value the costs resulting to Holder from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

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

**n** = the number of months remaining in Yield Maintenance Period; provided, however, if a prepayment occurs on a Scheduled Project Loan Payment Date, then the number of months remaining in the Yield Maintenance Period will be calculated beginning with the month in which such prepayment occurs and if such prepayment occurs on a Business Day other than a Scheduled Project Loan Payment Date (as defined below), then the number of months remaining in the Yield Maintenance Period will be calculated beginning with the month immediately following the date of such prepayment.

**ARR** = Assumed Reinvestment Rate

- (ii) For any prepayment made after the expiration of the Yield Maintenance Period but during the remainder of the Prepayment Premium Period, the prepayment premium will be 1.0% of the amount of principal being prepaid.

(d) Notwithstanding any other provision of this Section 10, no prepayment premium will be payable with respect to (i) any scheduled principal payment in accordance with the Project Loan Amortization Schedule, (ii) any prepayment made during the Window Period, (iii) any mandatory prepayment occurring under Section 10(b)(i) hereof as a result of the application

of any Insurance proceeds or Condemnation award under the Continuing Covenant Agreement; [or] (iv) any prepayment under Section 10(b)(iii) hereof following the completion of the rehabilitation of the Project, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) Funding Loan Agreement[IF APPLICABLE: ; or (v) a prepayment under Section 10(b)(iv) hereof in connection with a Loan Equalization Payment].

(e) After the expiration of the Lockout Period, Borrower may voluntarily prepay all of the unpaid principal balance of this Project Note on the first day of a calendar month (a “Scheduled Project Loan Payment Date”) so long as Borrower designates the date for such prepayment in a written notice from Borrower to Holder given at least 30 days prior to the date of such prepayment. If a Scheduled Project Loan Payment Date falls on a day which is not a Business Day, then with respect to payments made under this Section 10 only, (A) the term “Scheduled Project Loan Payment Date” will mean the Business Day immediately preceding the Scheduled Project Loan Payment Date and (B) the calculation of any required prepayment premium will be made as if the prepayment had actually been made on the Scheduled Project Loan Payment Date.

(f) Notwithstanding Section 10(e) above, after the expiration of the Lockout Period, Borrower may voluntarily prepay all of the unpaid principal balance of this Project Note on a Business Day other than a Scheduled Project Loan Payment Date if Borrower provides Holder with the written notice set forth in Section 10(d) and meets the other requirements set forth in this Section 10(f). Borrower acknowledges that Holder has agreed that Borrower may prepay principal on a Business Day other than a Scheduled Project Loan Payment Date only because Holder will deem any prepayment received by Holder on any day other than a Project Loan Payment Date to have been received on the Scheduled Project Loan Payment Date immediately following such prepayment and Borrower will be responsible for all interest and any required prepayment premium that would have been due if the prepayment had actually been made on the Scheduled Project Loan Payment Date immediately following such prepayment.

(g) Unless otherwise expressly provided in the Financing Documents, Borrower may not voluntarily prepay less than all of the unpaid principal balance of this Project Note. In order to voluntarily prepay all of the principal of this Project Note, Borrower must also pay to Holder, together with the amount of principal being prepaid, (i) all accrued and unpaid interest due under this Project Note, (ii) all other fees and amounts due under the Financing Documents at the time of such prepayment, plus (iii) any prepayment premium calculated pursuant to Section 10(c).

(h) Unless Holder agrees otherwise in writing, a permitted or required prepayment of less than the unpaid principal balance of this Project Note will not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments.

(i) Borrower recognizes that any prepayment of any of the unpaid principal balance of this Project Note, whether voluntary or involuntary or resulting from an Event of Default by Borrower, will result in Holder’s incurring loss, including reinvestment loss, additional expense and frustration or impairment of Holder’s ability to meet its commitments to third parties. Borrower agrees to pay to Holder upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of

such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth in Section 10(c) of this Project Note represents a reasonable estimate of the damages Holder will incur because of a prepayment. Borrower further acknowledges that the lockout and prepayment premium provisions of this Project Note are a material part of the consideration for the Loan, and that the terms of this Project Note are in other respects more favorable to Borrower as a result of Borrower's voluntary agreement to the prepayment premium provisions.

(j) Reserved.

(k) Reserved.

(l) Reserved.

**11. Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower must pay all expenses and costs, including Attorneys' Fees and Costs incurred by Holder as a result of any default under this Project Note or in connection with efforts to collect any amount due under this Project Note, or to enforce the provisions of any of the other Financing Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. Borrower acknowledges and agrees that, in connection with each request by Borrower under this Project Note or any Financing Document, Borrower must pay all reasonable Attorneys' Fees and Costs and expenses incurred by Holder, regardless of whether the matter is approved, denied or withdrawn.

**12. Forbearance.** Any forbearance by Holder in exercising any right or remedy under this Project Note, the Project Loan Agreement, or any other Financing Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Holder of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Holder's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Holder of any security for Borrower's obligations under this Project Note shall not constitute an election by Holder of remedies so as to preclude the exercise of any other right or remedy available to Holder.

**13. Waivers.** Borrower and all endorsers and Guarantors of this Project Note and all other third-party obligors waive presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness.

**14. Loan Charges.** Neither this Project Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the Maximum Interest Rate. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for

in any other Financing Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Holder in excess of the permitted amounts will be applied by Holder to reduce the unpaid principal balance of this Project Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Project Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Project Note.

**15. Commercial Purpose.** Borrower represents that Borrower is incurring the Indebtedness solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household, or agricultural purposes.

**16. Counting of Days.** Any reference in this Project Note to a period of “days” means calendar days, not Business Days, except where otherwise specifically provided.

**17. Governing Law.** This Project Note shall be governed by the law of the Property Jurisdiction.

**18. Captions.** The captions of the Sections of this Project Note are for convenience only and shall be disregarded in construing this Project Note.

**19. Address for Payment; Notices; Written Modifications.**

(a) All payments due under this Project Note shall be payable at the principal office designated by the Servicer, or such other place as may be designated by written notice to Borrower from or on behalf of Holder.

(b) All Notices, demands, and other communications required or permitted to be given pursuant to this Project Note will be given in accordance with Section 8.01 of the Project Loan Agreement.

(c) Any modification or amendment to this Project Note will be ineffective unless in writing and signed by the party sought to be charged with such modification or amendment; provided, however, in the event of a Transfer under the terms of the Continuing Covenant Agreement that requires Funding Lender’s consent, any or some or all of the Modifications to Multifamily Project Note set forth in Exhibit A to this Project Note may be modified or rendered void by Funding Lender at Funding Lender’s option, by Notice to Borrower and the transferee, as a condition of Funding Lender’s consent.

**20. Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Project Note shall be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies which shall arise under or in relation to this Project Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such

litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Project Note is intended to limit any right that Holder may have to bring any suit, action, or proceeding relating to matters arising under this Project Note in any court of any other jurisdiction.

**21. WAIVER OF TRIAL BY JURY. BORROWER AND HOLDER EACH (a) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS HOLDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**22. [Reserved].**

**23. Assignment.** Borrower acknowledges that this Project Note is being assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**24. State-Specific Provisions.** State-specific provisions, if any, are included on Schedule 2 to this Project Note.

**25. Attached Riders.** The following Riders are attached to this Project Note:

Name of Rider	Date Revised
Rider to Project Note TEL – Tax Credit Properties	9-30-2019
Rider to Project Note TEL – Regulatory Agreement Default Recourse	9-30-2019
Rider to Project Note TEL – Recycled Borrower and/or Recycled SPE Equity Owner TEL	9-30-2019
Rider to Project Note TEL – Tax Exemption or Abatement – Recourse for Loss	9-30-2019
Rider to Project Note TEL – Legal Non-Conforming Property	9-30-2019

**26. Attached Schedules and Exhibits.** The following Schedules and Exhibits, if marked with an “X” in the space provided, are attached to this Project Note:

- Schedule 1 Project Loan Amortization Schedule
- Schedule 2 State Specific Provisions for Project Note
- Exhibit A Modifications to Project Note

27. Reserved.

28. Reserved.

29. Reserved.

30. Reserved.

31. Reserved.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, and in consideration of Governmental Lender's agreement to lend Borrower the principal amount set forth above, Borrower has signed and delivered this Project Note under seal or has caused this Project Note to be signed and delivered under seal by its duly authorized representative.

**BORROWER:**

**LIH EL CID, LP**, a Florida limited partnership

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

Borrower's Employer ID No. \_\_\_\_\_



**ASSIGNMENT**

Pay to the order of U.S. Bank National Association, a national banking association, without recourse or warranty, as Fiscal Agent under the Funding Loan Agreement referred to in the attached Note.

**HOUSING FINANCE AUTHORITY OF  
PALM BEACH COUNTY, FLORIDA**, a  
public body corporate and politic created  
pursuant to the laws of the State of Florida

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

**RIDER TO PROJECT NOTE - TEL**

**TAX CREDIT PROPERTIES**

**(Revised 9-30-2019)**

The following changes are made to the Project Note which precedes this Rider:

A. Section 9(c)(xiv) is restated as follows:

- (xiv) A default, event of default, or breach (however such terms may be defined in the Tax Credit Regulatory Agreement) occurs after the expiration of any applicable notice and/or cure periods under the Tax Credit Regulatory Agreement.

**RIDER TO PROJECT NOTE - TEL**

**REGULATORY AGREEMENT DEFAULT RECOURSE**

**(Revised 9-30-2019)**

The following changes are made to the Project Note which precedes this Rider:

A. Section 9(c)(xiii) is restated as follows:

- (xiii) A default, event of default, or breach (however such terms may be defined in the Regulatory Agreement) occurs after the expiration of any applicable notice and/or cure periods under the Regulatory Agreement.

**RIDER TO PROJECT NOTE - TEL**

**RECYCLED BORROWER AND/OR RECYCLED SPE EQUITY OWNER**

**(Revised 9-30-2019)**

The following changes are made to the Project Note which precedes this Rider:

A. Section 9(c)(ix) is restated as follows:

- (ix) Any of the Underwriting Representations or Separateness Representations set forth in Sections 5.40(a) and (b) of the Continuing Covenant Agreement are false or misleading in any material respect.

**RIDER TO PROJECT NOTE - TEL**

**TAX EXEMPTION OR ABATEMENT - RECOURSE FOR LOSS**

**(Revised 9-30-2019)**

The following changes are made to the Project Note which precedes this Rider:

A. Section 9(c)(xx) is deleted and replaced with the following:

- (xx) Borrower fails to comply with the requirements of Section 6.38 of the Continuing Covenant Agreement, and as a result the Tax Abatement is terminated.

**RIDER TO PROJECT NOTE - TEL**  
**LEGAL NON-CONFORMING PROPERTY**

**(Revised 9-30-2019)**

The following changes are made to the Project Note which precedes this Rider:

A. Section 9(c)(x) is deleted and replaced with the following:

- (x) A casualty occurs affecting the Mortgaged Property and which results in loss or damage to Holder because of either of the following:
  - (A) (1) the Mortgaged Property is legally non-conforming under the applicable zoning laws, ordinances and/or regulations in the Property Jurisdiction (“**Zoning Code**”), (2) the affected Improvements cannot be rebuilt to their pre-casualty condition under the terms of the Zoning Code, and (3) the Property Insurance proceeds available to Holder under the terms of the Continuing Covenant Agreement are insufficient to repay the Indebtedness in full.
  - (B) Borrower fails to commence and diligently pursue completion of any Restoration within the time frame required by the Zoning Code and any permits issued pursuant to the Zoning Code which are necessary to allow the Restoration to the pre-casualty condition described in Section 9(c)(x)(A)(2).

**Schedule 1**

**Project Loan Amortization Schedule**

**SCHEDULE 2**

**STATE SPECIFIC PROVISIONS FOR PROJECT NOTE**

**OPTIONS, AND HAVE BORROWER INITIAL, AS APPLICABLE]**

<b>Property Jurisdiction</b>	<b>State-Specific Provision(s)</b>
<b>Florida</b>	None



**EXHIBIT "D"**

THIS INSTRUMENT PREPARED BY,  
RECORDED AND RETURN TO:  
(Print Name of Attorney)

Azer Akhtar, Esq.  
Ballard Spahr LLP  
1909 K Street, NW, 12th Floor  
Washington, DC 20006-1157

(Reserved)

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**[INSERT APPLICABLE LEGEND REGARDING STATE OF FLORIDA  
DOCUMENTARY STAMP TAXES AND NON-RECURRING INTANGIBLE TAXES]**

**MULTIFAMILY MORTGAGE,  
ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**

**FLORIDA**

**(Revised 3-1-2014)**

Freddie Mac Loan Number: 500153353  
Property Name: El Cid Apartments

**MULTIFAMILY MORTGAGE,  
ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**

**FLORIDA**

**(Revised 3-1-2014)**

THIS MULTIFAMILY MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (“**Instrument**”) is made to be effective this \_\_\_\_\_ day of January, 2020, between **LIH EL CID, LP**, a limited partnership organized and existing under the laws of the State of Florida, whose address is 1200 5th Avenue, Seattle, Washington 98101, as mortgagor (“**Borrower**”), and **HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA**, a public body corporate and politic created pursuant to the laws of the State of Florida, whose address is 100 Australian Avenue, Suite 410, West Palm Beach, Florida 33406, as mortgagee (“**Lender**”). Borrower’s organizational identification number, if applicable, is A19000000326.

**RECITAL**

Borrower is indebted to Lender in the principal amount of \$14,909,000.00, as evidenced by Borrower’s Multifamily Note payable to Lender dated as of the date of this Instrument, and maturing on February 1, 2037 (“**Maturity Date**”).

**AGREEMENT**

TO SECURE TO LENDER the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Agreement or any other Loan Document, Borrower mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in Palm Beach County, State of Florida and described in Exhibit A attached to this Instrument.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property, has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender’s interest in the Mortgaged Property (“**Schedule of Title Exceptions**”). Borrower covenants that Borrower will warrant and defend

generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

## UNIFORM COVENANTS

(Revised 9-30-2019)

**Covenants.** In consideration of the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

- 1. Definitions.** The following terms, when used in this Instrument (including when used in the above recitals), will have the following meanings and any capitalized term not specifically defined in this Instrument will have the meaning ascribed to that term in the Loan Agreement:

“**Attorneys’ Fees and Costs**” means (a) fees and out-of-pocket costs of Lender’s and Loan Servicer’s attorneys, as applicable, including costs of Lender’s and Loan Servicer’s in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (b) costs and fees of expert witnesses, including appraisers; (c) investigatory fees; and (d) the costs for any opinion required by Lender pursuant to the terms of the Loan Documents.

“**Borrower**” means all Persons identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

“**Business Day**” means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

“**Event of Default**” means the occurrence of any event described in Section 8.

“**Fixtures**” means all property owned by Borrower which is attached to the Land or the Improvements so as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

**“Governmental Authority”** means any board, commission, department, agency or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, or the use, operation or improvement of the Mortgaged Property, or over Borrower.

**“Ground Lease”** means the lease described in the Loan Agreement pursuant to which Borrower leases the Land, as such lease may from time to time be amended, modified, supplemented, renewed and extended.

**“Improvements”** means the buildings, structures, improvements now constructed or at any time in the future constructed or placed upon the Land, including any future alterations, replacements and additions.

**“Indebtedness”** means the principal of, interest at the fixed or variable rate set forth in the Note on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 7 to protect the security of this Instrument.

**“Land”** means the land described in Exhibit A.

**“Leasehold Estate”** means Borrower’s interest in the Land and any other real property leased by Borrower pursuant to the Ground Lease, if applicable, including all of the following:

- (a) All rights of Borrower to renew or extend the term of the Ground Lease.
- (b) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.
- (c) Borrower’s right or privilege to terminate, cancel, surrender, modify or amend the Ground Lease.
- (d) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances with respect to the Ground Lease.

**“Leases”** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

**“Lender”** means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Note.

**“Loan Agreement”** means the Multifamily Loan and Security Agreement executed by Borrower in favor of Lender and dated as of the date of this Instrument, as such agreement may be amended from time to time.

**“Loan Documents”** means the Note, this Instrument, the Loan Agreement, all guaranties, all indemnity agreements, all collateral agreements, UCC filings, O&M Programs, the MMP and any other documents now or in the future executed by Borrower, any guarantor or any other Person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

**“Loan Servicer”** means the entity that from time to time is designated by Lender or its designee to collect payments and deposits and receive Notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives Notice to the contrary, the Loan Servicer is the entity identified as “Lender” in the first paragraph of this Instrument.

**“Mortgaged Property”** means all of Borrower’s present and future right, title and interest in and to all of the following:

- (a) The Land, or, if Borrower’s interest in the Land is pursuant to a Ground Lease, the Ground Lease and the Leasehold Estate.
- (b) The Improvements.
- (c) The Fixtures.
- (d) The Personalty.
- (e) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.
- (f) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement.
- (g) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the

Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof.

- (h) All contracts, options and other agreements for the sale of the Land, or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations.
- (i) All proceeds from the conversion, voluntary or involuntary, of any of the items described in subsections (a) through (h) inclusive into cash or liquidated claims, and the right to collect such proceeds.
- (j) All Rents and Leases.
- (k) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument.
- (l) All Imposition Reserve Deposits.
- (m) All refunds or rebates of Impositions by Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated).
- (n) All tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits.
- (o) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.
- (p) If required by the terms of Section 4.05 of the Loan Agreement, all rights under the Letter of Credit and the Proceeds, as such Proceeds may increase or decrease from time to time.
- (q) If the Note provides for interest to accrue at a floating or variable rate and there is a Cap Agreement, the Cap Collateral.

“**Note**” means the Multifamily Note or Notes (including any Amended and Restated Note(s), Consolidated, Amended and Restated Note(s), or Extended and Restated Note(s)) executed by Borrower in favor of Lender and dated as of the date of this Instrument, including all schedules, riders, allonges and addenda, as such Multifamily Note(s) may be amended, modified and/or restated from time to time.

“**Notice**” or “**Notices**” means all notices, demands and other communication required under the Loan Documents, provided in accordance with the requirements of Section 11.03 of the Loan Agreement.

“**Person**” means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

“**Personalty**” means all of the following:

- (a) Accounts (including deposit accounts) of Borrower related to the Mortgaged Property.
- (b) Equipment and inventory owned by Borrower, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form) and computer equipment (hardware and software).
- (c) Other tangible personal property owned by Borrower which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures).
- (d) Any operating agreements relating to the Land or the Improvements.
- (e) Any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.
- (f) All other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority.
- (g) Any rights of Borrower in or under letters of credit.

**“Property Jurisdiction”** means the jurisdiction in which the Land is located.

**“Rents”** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due or to become due, and deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

**“Taxes”** means all taxes, assessments, vault rentals and other charges, if any, whether general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a Lien on the Land or the Improvements.

## **2. Uniform Commercial Code Security Agreement.**

- (a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, for the purpose of securing Borrower’s obligations under this Instrument and to further secure Borrower’s obligations under the Note, this Instrument and other Loan Documents, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, **“UCC Collateral”**), and by this Instrument, Borrower grants to Lender a security interest in the UCC Collateral. To the extent necessary under applicable law, Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest.
- (b) Unless Borrower gives Notice to Lender within 30 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Borrower will not (i) change its name, identity, structure or jurisdiction of organization; (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Mortgaged Property is stored, held or located.
- (c) If an Event of Default has occurred and is continuing, Lender will have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately



or together, and in any order, without in any way affecting the availability of Lender's other remedies.

- (d) This Instrument also constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture, if permitted by applicable law.

### **3. Assignment of Rents; Appointment of Receiver; Lender in Possession.**

- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents.
  - (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower.
  - (ii) Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only.
  - (iii) For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents will not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on Rents in favor of Lender, which Lien will be effective as of the date of this Instrument.
- (b)
  - (i) Until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Reserve Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Reserve Deposits), tenant improvements and other capital expenditures.
  - (ii) So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to Section 3(b)(i) may be retained by

Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument.

- (iii) After the occurrence of an Event of Default, and during the continuance of such Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. From and after the occurrence of an Event of Default, and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents will automatically terminate and Lender will without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower will pay to Lender upon demand all Rents to which Lender is entitled.
  - (iv) At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant will be obligated to inquire further as to the occurrence or continuance of an Event of Default. No tenant will be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender will be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower will not interfere with and will cooperate with Lender's collection of such Rents.
- (c) If an Event of Default has occurred and is continuing, then Lender will have each of the following rights and may take any of the following actions:
- (i) Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of Repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable.
  - (ii) Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral

or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law.

- (iii) If Borrower is a housing cooperative corporation or association, Borrower hereby agrees that if a receiver is appointed, the order appointing the receiver may contain a provision requiring the receiver to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Reserve Deposits, it being acknowledged and agreed that the Indebtedness is an obligation of Borrower and must be paid out of maintenance charges payable by Borrower's tenant shareholders under their proprietary leases or occupancy agreements.
- (iv) Lender or the receiver, as the case may be, will be entitled to receive a reasonable fee for managing the Mortgaged Property.
- (v) Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower will surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and will deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents.
- (vi) If Lender takes possession and control of the Mortgaged Property, then Lender may exclude Borrower and its representatives from the Mortgaged Property.

Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

- (d) If Lender enters the Mortgaged Property, Lender will be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's gross negligence or willful misconduct, Lender will not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under

Section 3(c), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

- (e) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes will become an additional part of the Indebtedness as provided in Section 7.
- (f) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument will not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

#### **4. Assignment of Leases; Leases Affecting the Mortgaged Property.**

- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
  - (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only.
  - (ii) For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases will not be deemed to be a part of the Mortgaged Property.
  - (iii) However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on the Leases in favor of Lender, which Lien will be effective as of the date of this Instrument.
- (b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower will have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, and during the continuance of such Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and

authority under Leases will automatically terminate. Borrower will comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

- (c)
  - (i) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements.
  - (ii) The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) will not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses.
  - (iii) Except to the extent of Lender's gross negligence or willful misconduct, Lender will not be liable in any way for any injury or damage to person or property sustained by any Person or Persons in or about the Mortgaged Property.
  - (iv) Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender will not be obligated for any of the following:
    - (A) Lender will not be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease).
    - (B) Lender will not be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property.
    - (C) Lender will not be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower will constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and will be that of Borrower, prior to such actual entry and taking of possession.
- (d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately will have all rights,

powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

- (e) Borrower will, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect.
- (f) If Borrower is a cooperative housing corporation or association, notwithstanding anything to the contrary contained in this Instrument, so long as Borrower remains a cooperative housing corporation or association and is not in breach of any covenant of this Instrument, Lender consents to the following:
  - (i) Borrower may execute leases of apartments for a term in excess of 2 years to a tenant shareholder of Borrower, so long as such leases, including proprietary leases, are and will remain subordinate to the Lien of this Instrument.
  - (ii) Borrower may surrender or terminate such leases of apartments where the surrendered or terminated lease is immediately replaced or where Borrower makes its best efforts to secure such immediate replacement by a newly-executed lease of the same apartment to a tenant shareholder of Borrower. However, no consent is given by Lender to any execution, surrender, termination or assignment of a lease under terms that would waive or reduce the obligation of the resulting tenant shareholder under such lease to pay cooperative assessments in full when due or the obligation of the former tenant shareholder to pay any unpaid portion of such assessments.

**5. Prepayment Premium.** Borrower will be required to pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

**6. Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized will constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument, the Note and all other Loan Documents will remain unchanged.

**7. Protection of Lender's Security; Instrument Secures Future Advances.**

- (a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including all of the following:
  - (i) Lender may pay Attorneys' Fees and Costs.
  - (ii) Lender may pay fees and out-of-pocket expenses of accountants, inspectors and consultants.
  - (iii) Lender may enter upon the Mortgaged Property to make Repairs or secure the Mortgaged Property.
  - (iv) Lender may procure the Insurance required by the Loan Agreement.
  - (v) Lender may pay any amounts which Borrower has failed to pay under the Loan Agreement.
  - (vi) Lender may perform any of Borrower's obligations under the Loan Agreement.
  - (vii) Lender may make advances to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a Prior Lien.
- (b) Any amounts disbursed by Lender under this Section 7, or under any other provision of this Instrument that treats such disbursement as being made under this Section 7, will be secured by this Instrument, will be added to, and become part of, the principal component of the Indebtedness, will be immediately due and payable and will bear interest from the date of disbursement until paid at the Default Rate.
- (c) Nothing in this Section 7 will require Lender to incur any expense or take any action.

**8. Events of Default.** An Event of Default under the Loan Agreement will constitute an Event of Default under this Instrument.

9. **Remedies Cumulative.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument, the Loan Agreement or any other Loan Document or afforded by applicable law or equity, and each will be cumulative and may be exercised concurrently, independently or successively, in any order. Lender's exercise of any particular right or remedy will not in any way prevent Lender from exercising any other right or remedy available to Lender. Lender may exercise any such remedies from time to time and as often as Lender chooses.
10. **Waiver of Statute of Limitations, Offsets, and Counterclaims.** Borrower waives the right to assert any statute of limitations as a bar to the enforcement of the Lien of this Instrument or to any action brought to enforce any Loan Document. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations under this Instrument will be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Loan Documents.
11. **Waiver of Marshalling.**
- (a) Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender will have the right to determine the order in which any or all of the Mortgaged Property will be subjected to the remedies provided in this Instrument, the Note, the Loan Agreement or any other Loan Document or applicable law. Lender will have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies.
  - (b) Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.
12. **Further Assurances; Lender's Expenses.**
- (a) Borrower will deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents or in connection with Lender's consent rights under Article VII of the Loan Agreement.



- (b) Borrower acknowledges and agrees that, in connection with each request by Borrower under this Instrument or any Loan Document, Borrower will pay all reasonable Attorneys' Fees and Costs and expenses incurred by Lender, including any fees payable in accordance with any request for further assurances or an estoppel certificate pursuant to the Loan Agreement, regardless of whether the matter is approved, denied or withdrawn. Any amounts payable by Borrower under this Instrument or under any other Loan Document will be deemed a part of the Indebtedness, will be secured by this Instrument and will bear interest at the Default Rate if not fully paid within 10 days of written demand for payment.
13. **Governing Law; Consent to Jurisdiction and Venue.** This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, will be governed by the laws of the Property Jurisdiction. Borrower agrees that any controversy arising under or in relation to the Note, this Instrument or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have jurisdiction over all controversies that may arise under or in relation to the Note, any security for the Indebtedness or any other Loan Document. Borrower irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 13 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.
14. **Notice.** All Notices, demands and other communications under or concerning this Instrument will be governed by the terms set forth in the Loan Agreement.
15. **Successors and Assigns Bound.** This Instrument will bind the respective successors and assigns of Borrower and Lender, and the rights granted by this Instrument will inure to Lender's successors and assigns.
16. **Joint and Several Liability.** If more than one Person signs this Instrument as Borrower, the obligations of such Persons will be joint and several.
17. **Relationship of Parties; No Third Party Beneficiary.**
- (a) The relationship between Lender and Borrower will be solely that of creditor and debtor, respectively, and nothing contained in this Instrument will create any other relationship between Lender and Borrower. Nothing contained in this Instrument will constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.
- (b) No creditor of any party to this Instrument and no other Person will be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the

generality of the preceding sentence, (i) any arrangement (“**Servicing Arrangement**”) between Lender and any Loan Servicer for loss sharing or interim advancement of funds will constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower will not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

**18. Severability; Amendments.**

- (a) The invalidity or unenforceability of any provision of this Instrument will not affect the validity or enforceability of any other provision, and all other provisions will remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument.
- (b) This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought; provided, however, that in the event of a Transfer prohibited by or requiring Lender’s approval under Article VII of the Loan Agreement, some or all of the modifications to the Loan Documents (if any) may be modified or rendered void by Lender at Lender’s option by Notice to Borrower and the transferee(s).

**19. Construction.**

- (a) The captions and headings of the Sections of this Instrument are for convenience only and will be disregarded in construing this Instrument. Any reference in this Instrument to a “Section” will, unless otherwise explicitly provided, be construed as referring to a Section of this Instrument.
- (b) Any reference in this Instrument to a statute or regulation will be construed as referring to that statute or regulation as amended from time to time.
- (c) Use of the singular in this Instrument includes the plural and use of the plural includes the singular.
- (d) As used in this Instrument, the term “including” means “including, but not limited to” and the term “includes” means “includes without limitation.”
- (e) The use of one gender includes the other gender, as the context may require.
- (f) Unless the context requires otherwise any definition of or reference to any agreement, instrument or other document in this Instrument will be construed as referring to such agreement, instrument or other document as from time to time

amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in this Instrument).

- (g) Any reference in this Instrument to any person will be construed to include such person's successors and assigns.

20. **Subrogation.** If, and to the extent that, the proceeds of the loan evidenced by the Note, or subsequent advances under Section 7, are used to pay, satisfy or discharge a Prior Lien, such loan proceeds or advances will be deemed to have been advanced by Lender at Borrower's request, and Lender will automatically, and without further action on its part, be subrogated to the rights, including Lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

#### **END OF UNIFORM COVENANTS; STATE-SPECIFIC PROVISIONS FOLLOW**

**21-30. Reserved.**

31. **Acceleration; Remedies; Waiver Of Permissive Counterclaims.** At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by Florida law or provided in this Instrument, the Loan Agreement or in any other Loan Document. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs and costs of documentary evidence, abstracts and title reports. Borrower waives any and all rights to file or pursue permissive counterclaims in connection with any legal action brought by Lender under this Instrument, the Note or any other Loan Document.
32. **Release.** Upon payment of the Indebtedness, Lender will release this Instrument. Borrower will pay Lender's reasonable costs incurred in releasing this Instrument.
33. **Future Advances.** Lender may from time to time, in Lender's discretion, make optional future or additional advances (collectively, "**Future Advances**") to Borrower, except that at no time will the unpaid principal balance of all indebtedness secured by the Lien of this Instrument, including Future Advances, be greater than an amount equal to 200% of the original principal amount of the Note as set forth on the first page of this Instrument plus accrued interest and amounts disbursed by Lender under Section 7 or any other provision of this Instrument or the other Loan Documents that treats a disbursement by Lender as being made under Section 7. All Future Advances will be made, if at all, within 20 years after the date of this Instrument, or within such lesser period that may in the future be provided by law as a prerequisite for the sufficiency of actual or record notice of Future Advances as against the rights of creditors or subsequent purchasers for value. Borrower will, immediately upon request by Lender, execute and deliver to Lender a promissory note evidencing each Future Advance together with a notice of such Future Advance in recordable form. All promissory notes evidencing Future Advances will be secured, pari

passu, by the Lien of this Instrument, and each reference in this Instrument to the Note will be deemed to be a reference to all promissory notes evidencing Future Advances.

**34. WAIVER OF TRIAL BY JURY.**

(a) **BORROWER AND LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY.**

(b) **BORROWER AND LENDER EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**35. Attached Riders.** The following Riders are attached to this Instrument:

**NONE**

**36. Attached Exhibits.** The following Exhibits, if marked with an "X" in the space provided, are attached to this Instrument:

<input checked="" type="checkbox"/>	Exhibit A	Description of the Land (required)
<input checked="" type="checkbox"/>	Exhibit B	Modifications to Instrument
<input type="checkbox"/>	Exhibit C	Ground Lease Description (if applicable)

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**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

**EXHIBIT B**

**MODIFICATIONS TO INSTRUMENT**

The following modifications are made to the text of the Instrument that precedes this Exhibit:

None.

**EXHIBIT "E"**

Freddie Mac Loan Number: 500153353  
Property Name: El Cid Apartments

Recording Requested By, and  
When Recorded Return To:

Azer Akhtar, Esq.  
Ballard Spahr LLP  
1909 K Street, NW, 12th Floor  
Washington, DC 20006-1157

**ASSIGNMENT OF SECURITY INSTRUMENT - TEL**

**(Revised 9-30-2019)**

FOR VALUABLE CONSIDERATION, **HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA**, a public body corporate and politic created pursuant to the laws of the State of Florida ("**Assignor**"), having its principal place of business at 100 Australian Avenue, Suite 410, West Palm Beach, Florida 410, hereby assigns, grants, sells and transfers to **U.S. BANK NATIONAL ASSOCIATION**, a national bank association duly organized and existing under the laws of the United States, as Fiscal Agent ("**Assignee**"), having its principal place of business at \_\_\_\_\_, and Assignee's successors, transferees and assigns forever, all of the right, title and interest of Assignor in and to the Multifamily Mortgage, Assignment of Rents and Security Agreement dated January \_\_, 2020, entered into by **LIH EL CID, LP**, a limited partnership organized and existing under the laws of the State of Florida ("**Borrower**") for the benefit of Assignor, securing an indebtedness of Borrower to Assignor in the principal amount of \$14,909,000.00 previously recorded in the land records of Palm Beach County, Florida at \_\_\_\_\_ ("**Security Instrument**"), which indebtedness is secured by the property described in Exhibit A attached to this Assignment and incorporated into it by this reference.

Together with the Note or other obligation described in the Security Instrument and all obligations secured by the Instrument now or in the future.



IN WITNESS WHEREOF, Assignor has executed this Assignment on \_\_\_\_\_, \_\_\_\_\_, 2020, to be effective as of the date of the Security Instrument.

Signed, sealed and delivered in the presence of:

**ASSIGNOR:**

**HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA**, a public body corporate and politic created pursuant to the laws of the State of Florida

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of January, 2020 by \_\_\_\_\_, \_\_\_\_\_ for **HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA**, a public body corporate and politic created pursuant to the laws of the State of Florida. He/she is personally known to me or has produced a driver license as identification.

\_\_\_\_\_  
Printed Name:  
Notary Public

My Commission expires: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

**EXHIBIT “F**

PREPARED BY AND RETURN TO:

Stephen D. Sanford, Esq.  
Greenberg Traurig, P.A.  
777 S. Flagler Drive, Suite 300E  
West Palm Beach, FL 33401

Property Appraisers Parcel  
Identification (Folio) Number:

**LAND USE RESTRICTION AGREEMENT**

**among**

**HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA,  
as the Governmental Lender**

**and**

**U.S. BANK NATIONAL ASSOCIATION  
as the Fiscal Agent**

**and**

**LIH EL CID, LP,  
as the Borrower**

**Relating to**

**\$ \_\_\_\_\_  
HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE NOTE, SERIES 2020  
(EL CID APARTMENTS)**

**DATED AS OF FEBRUARY 1, 2020**

## LAND USE RESTRICTION AGREEMENT

**THIS LAND USE RESTRICTION AGREEMENT** (including the attached Freddie Mac Rider) (the “Agreement”), dated as of February 1, 2020, is by and among the HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA, a public body corporate and politic created pursuant to the laws of the State of Florida (together with its permitted successors and assigns, the “Governmental Lender” or the “Authority”), U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States with its designated corporate trust office in Fort Lauderdale, Florida, as Fiscal Agent (together with its permitted successors and assigns, the “Fiscal Agent”), pursuant to that certain Funding Loan Agreement among the Authority, Greystone Servicing Company LLC, as initial funding lender (the “Funding Lender”) and the Fiscal Agent entered into as of February 1, 2020 (the “Funding Loan Agreement”), authorizing and securing the Housing Finance Authority of Palm Beach County, Florida, Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) (herein, the “Governmental Note”) and LIH EL CID, LP, a Florida limited partnership (together with its permitted successors and assigns, the “Borrower”).

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

#### Preamble

**WHEREAS**, the Authority has been created and organized pursuant to and in accordance with the provisions of the Florida Housing Finance Authority Law, Chapter 159, Part IV, Florida Statutes, as amended, for the purpose, among others, of financing the costs of residential projects that will provide decent, safe and sanitary housing for persons and families of low, moderate and middle income in Palm Beach County, Florida (the “County”); and

**WHEREAS**, the Borrower has submitted a bond application and therein has requested that the Authority issue its Governmental Note and loan the proceeds therefrom to the Borrower (the “Project Loan”) pursuant to the terms and provisions of the Project Loan Agreement (as hereinafter defined) to finance a portion of the costs of the acquisition and rehabilitation of the Project (as hereinafter defined); and

**WHEREAS**, it is intended that the interest on the Governmental Note be excludable from gross income for federal income tax purposes; and

**WHEREAS**, to assure continued compliance with the Code and the Act (as such terms are herein defined), the Authority, the Borrower and the Fiscal Agent hereby enter into this Agreement; and

**WHEREAS**, this Agreement is subject to the terms and provisions of the attached Freddie Mac Rider.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Authority, the Fiscal Agent and the Borrower hereby agree as follows:

**Section 1: Definitions and Interpretation.** Any capitalized term not otherwise defined in the recitals set forth above or as defined below shall have the meaning ascribed to such term in the Funding Loan Agreement or the Project Loan Agreement, as the case may be. The following terms shall have the respective meanings set forth below:

“Act” shall mean Chapter 159, Part IV, Florida Statutes, as amended or supplemented, Sections 2-181 through 2-191 Code of Ordinances of Palm Beach County, Florida and other applicable provisions of Florida law.

“Certificate of Continuing Program Compliance” shall mean the certificate, substantially in the form attached as Exhibit D hereto, as such form may be revised by the Authority from time to time and provided to the Borrower if so revised, which certificate is required to be delivered by the Borrower to the Authority and the Fiscal Agent pursuant to Section 5(e) hereof.

“Closing Date” shall mean February \_\_, 2020.

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

“County” shall mean Palm Beach County, Florida.

“De Minimis Early Expenditures” means costs of issuance of the Governmental Note and any expenditures (but with respect to such expenditures, not in total in excess of the lesser of \$100,000 and 5% of the proceeds of the Governmental Note) that would be Qualified Project Costs but for the requirement as to timing of the expenditure.

“Eligible Persons” shall mean persons or families determined by the Authority to be of low, moderate or middle income and “eligible persons” under the Act and under the Authority’s guidelines, as applicable, which determination includes, but is not limited to, an income limit which shall not exceed 150% of the median family income for the County, adjusted for family size; provided such income limit shall not apply to any person living in a rental unit who is at least 65 years old. Since 100% of the units in the Project are required to be occupied by Low-Income Tenants, the term “Eligible Persons” shall not be applicable under this Agreement.

“Governmental Lender Fee” shall mean the amount of fifteen (15) basis points of the original amount of the Funding Loan payable in arrears on each August 1 and February 1 commencing August 1, 2020 and shall be payable until the end of the Qualified Project Period.

“Income Certification” shall mean a Tenant Income Certification substantially in the form of Exhibit C hereto, as such form may be revised by the Authority from time to time and in any event containing the information as may be required by applicable written rules, rulings, policies, procedures, regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

“Land” shall mean the real property (exclusive of any buildings thereon) for the Project described in Exhibit A attached hereto.

“Low-Income Tenant” shall mean a person or family having an income not exceeding 60% of area median income, as determined in accordance with the requirements of the Code in a manner consistent with determinations of lower income families and area median gross income under Section 8 of the U.S. Housing Act of 1937, including adjustments for family size. The occupants of a residential rental unit shall not be considered to be Low-Income Tenants if all the occupants are students (as limited by Section 42(i)(3)(D) of the Code which provides exceptions if one or more of these students is receiving certain kinds of assistance or student is entitled to file a joint return under Section 6013 of the Code). The method of determining Low-Income Tenants in effect on the date of issue of the Governmental Note will be determinative even if such method is subsequently changed. The applicable income limits are found at [HUDUSER.gov](http://HUDUSER.gov) on the dataset page on the Multifamily Tax Subsidy Income Limit link.

“Preliminary Expenditures” means any preliminary expenditures that would otherwise qualify as Qualified Project Costs (but for the timing of the expenditures) up to an amount not in excess of 20 percent of the aggregate issue price of the Governmental Note. Potential Preliminary Expenditures include architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction.

“Project” shall mean the Land and the buildings, structures, facilities and equipment now or hereafter comprising the 72 unit multifamily residential rental housing project known as “El Cid” owned by the Borrower, located at 315 Almeria Road, West Palm Beach, Florida 33405, the acquisition and rehabilitation of which Project is to be financed, in part, with the proceeds of the Project Loan.

“Project Costs” shall mean with respect to the Project, to the extent authorized by the Act and the Code, all costs, fees and expenses incurred by the Borrower with respect to the acquisition and rehabilitation of the Project, including, without limitation, costs for the planning of housing and improvements, the acquisition of property, the removal or demolition of existing structures and the rehabilitation of housing, related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultants, accounting and legal services, other expenses necessary or incident to determining the feasibility of the housing development, contractors’ and the Borrower’s overhead and supervision fees and costs, costs of insurance and real estate taxes during rehabilitation, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made with respect to the Project), interest accrued during rehabilitation and for a reasonable period thereafter and all other costs approved by Qualified Tax Counsel; provided, however, that for Project Costs to be reimbursed from proceeds of the Project Loan such costs must be incurred no earlier than 60 days prior to June 15, 2019 or must be De Minimis Costs or Preliminary Expenditures.

“Project Loan Agreement” shall mean that certain Project Loan Agreement by and among the Authority, the Fiscal Agent and the Borrower dated as of February 1, 2020, and relating to the Project Loan.

“Project Manager” shall mean \_\_\_\_\_.

“Qualified Project Costs” shall mean the Project Costs of the Project that (i) were paid or incurred by the Borrower no earlier than sixty (60) days prior to August 9, 2019 (“Official Intent”), or (ii) are Preliminary Expenditures, or (iii) De Minimis Early Expenditures (other than costs of issuance of the Governmental Note) and (in each case) are chargeable to the Borrower’s capital account for such Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Borrower, or but for the proper election by the Borrower, to deduct those amounts (including fees or other costs relating to the financing of such Project and interest on indebtedness eligible for capitalization under Sections 263A and 266 of the Code, but only to the extent that such fees, costs, and interest are properly allocable to the financing of “qualified costs”); and were not paid or incurred by the Borrower or a “related person” (within the meaning of Section 1.103-11 of the Regulations) more than 60 days prior to the date the Authority expressed its Official Intent with respect to the issuance of the Governmental Note to finance the Project (within the meaning of Section 103-8(a)(5) of the Regulations).

“Qualified Project Period” shall mean the period beginning the first day on which at least ten percent (10%) of the residential rental units in the Project first are occupied (as certified in writing by the Borrower to the Authority and the Fiscal Agent) and ending on the latest of (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are occupied (as certified in writing by the Borrower to the Authority and the Fiscal Agent); (b) the first day on which none of the respective Governmental Note or other tax-exempt private activity bonds (as defined in the Code) issued with respect to the Project are outstanding; and (c) the termination date of the housing assistance payments contract, including the initial term and any renewal thereof, if the Project is funded under Section 8 of the United States Housing Act of 1937, as amended. The Borrower is authorized to use Exhibit E attached hereto to evidence the foregoing.

“Qualified Tax Counsel” shall mean Greenberg Traurig, P.A. or an attorney or firm of attorneys that is acceptable to the Authority, the Borrower and the Funding Lender and is of nationally recognized standing with respect to the issuance of debt by states and their political subdivisions.

“Regulations” shall mean the regulations promulgated or proposed by the United States Department of the Treasury pursuant to the Code and applicable to the Project, as amended from time to time.

“State” shall mean the State of Florida.

Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and

vice versa, when appropriate. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

**Section 2: Acquisition, Rehabilitation, Completion and Operation of the Project.**

The Borrower hereby represents, covenants and agrees separately with respect to Project, that:

(a) The Borrower has incurred a substantial binding obligation to commence acquisition and rehabilitation of the Project within the applicable period set forth in Regulation 1.148-2(e)(2), pursuant to which the Borrower is obligated to expend an amount equal to at least five percent (5%) of the “net sale proceeds” of the Governmental Note.

(b) The Borrower reasonably expects that the total cost of acquisition and rehabilitation of the Project will be approximately [\_\_\_\_\_]. Less than 25% of the proceeds of the Project Loan properly allocable to the Project will be used (directly or indirectly) to acquire the Land.

(c) The Borrower has or will commence the rehabilitation of the Project as soon as practicable after the Closing Date, and will proceed with due diligence to complete the same.

(d) The Borrower reasonably expects to complete the rehabilitation of the Project and to expend the full amount of the proceeds of the Project Loan by not later than three (3) years following the Closing Date.

(e) The Borrower hereby further represents, covenants and agrees that: at least ninety five percent (95%) of the proceeds of the Project Loan properly allocable to the Project shall be applied to pay or reimburse the Borrower for the payment of Qualified Project Costs, and that one hundred percent (100%) of the proceeds of the Project Loan properly allocable to the Project shall be applied to pay or reimburse the Borrower for the payment of Project Costs.

(f) The Borrower shall submit to the Fiscal Agent prior to or upon the date of each disbursement of the Project Loan, a statement certifying that the full amount of such disbursement will be applied to pay or reimburse the Borrower for the payment of Project Costs and that ninety five percent (95%) of such disbursement will be applied to pay or reimburse the Borrower for the payment of Qualified Project Costs. The Written Requisition attached to the Funding Loan Agreement as Exhibit E shall satisfy this paragraph.

(g) The Borrower reasonably expects and covenants to meet the requirements of Section 147(d) of the Code regarding use of proceeds to acquire and rehabilitate the Project. To that effect, none of the proceeds of the Project Loan will be used to acquire any property (or an interest therein) unless the first use of such property is pursuant to such acquisition (within the meaning of Section 147(d)(1) of the Code); provided, however, that such proceeds may be used to finance the acquisition of property (or an interest therein) where the “first use” of such property is



not pursuant to such acquisition if rehabilitation expenditures with respect to the Project or exceed fifteen percent (15%) of the portion of the cost of acquiring the buildings in the Project (and equipment therein or related thereto) financed with such proceeds. For purposes of this paragraph, the term “rehabilitation expenditures” has the same meaning given the term in Section 147(d)(3) of the Code and, thus, does not include, among other things, any expenditures incurred more than two years after the later of the date the Governmental Note is issued, or the date on which the property was acquired, or the expenditures attributable to the enlargement of an existing building nor any expenditures described within Section 47(c)(2)(B) of the Code. Expenditures to rehabilitate a building include expenditures to rehabilitate equipment or to replace equipment with equipment having substantially the same function, but only if the equipment was part of an integrated operation contained in the building prior to its acquisition by the Borrower. References to equipment in parenthesis refer only to equipment which is functionally related and subordinate to and is purchased with an existing building.

(h) The Borrower does not own any buildings or structures that are proximate to the Project, other than those buildings or structures comprising the Project, that are being financed pursuant to a common plan under which the Project is also being financed.

(i) Upon the completion of the Project, the Borrower shall submit to the Authority and the Fiscal Agent a certificate of completion substantially in the form attached hereto as Exhibit B containing the following: (i) the Borrower’s statement that the Project has been substantially completed and is ready and available for occupancy and that at least one unit in the Project has been initially occupied as of a specified date (“Completion Date”), (ii) the Borrower’s statement, of the aggregate amount of disbursements of the Project Loan, properly allocable to the Project up to and including the Completion Date; (iii) the Borrower’s certification that not less than ninety five percent (95%) of the net proceeds of the Project Loan properly allocable to the Project have been applied to pay or reimburse the Borrower for the payment of Qualified Project Costs and that one hundred percent (100%) of the proceeds have been applied to pay or reimburse the Borrower for the payment of Project Costs. A form of completion certificate is attached hereto as Exhibit B. The certificate delivered by the Borrower shall also document compliance with the rehabilitation requirements of Section 147(d) of the Code with respect to the Project.

**Section 3: Residential Rental Property.** The Authority and the Borrower hereby declare their understanding and intent that, during the term of this Agreement, the Project is to be owned, managed and operated, as a “project for residential rental property” as such phrase is utilized in Section 142(d) of the Code and as a “qualifying housing development” as defined in Section 159.603(6), Florida Statutes. To that end, the Borrower hereby represents, covenants, warrants and agrees with respect to the Project that:

(a) The Project will be acquired and rehabilitated for the purpose of providing multifamily “residential rental property” as such phrase is used in Section 142(d) of the Code, (ii) the Borrower shall own the entire Project for federal tax purposes, and (iii) the Project shall be owned, managed and operated as a multifamily residential rental property comprised of a building or structure or several buildings or structures containing similarly constructed units, together with any functionally related and subordinate facilities and no other facilities, in accordance with Section 142(d) of the Code and Sections 1.103-8(b)(4) and 1.103-8(a)(3) of the Regulations (as

modified by Section 142(d) of the Code), and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) The Project will comprise one or more similarly constructed residential rental units, each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family, including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(c) None of the residential rental units with respect to the Project will at any time be utilized on a transient basis or will be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or trailer park.

(d) All of the residential rental units will be similarly constructed and will be rented or available for rent on a continuous basis to members of the general public and, except as provided above, or as otherwise required under any Section 8 assistance under the United States Housing Act of 1937, as amended, or the Borrower will not give preference to any particular class or group in renting the units in the Project except to the extent that residential rental units are required to be rented to Low-Income Tenants. Low-Income Tenants will have equal access to and enjoyment of all common facilities of the Project.

(e) The Land with respect to the Project consists of a parcel of real property or parcels of real property that are contiguous except for the interposition of a road, street, stream, other water body or similar property, and the Project comprises buildings, structures and facilities that are proximate and financed pursuant to a common plan.

(f) The Borrower or any related person (within the meaning of the Code) shall not occupy any of the residential rental units in the Project; provided, however, that the Borrower may occupy a unit in a building or structure that contains five or more units if the Borrower or a related person is a resident manager or other necessary employee (e.g., maintenance and security personnel).

(g) In the case of a “mixed-use” project wherein part of the building or structure, together with any facilities functionally related and subordinate thereto, contains one or more similarly constructed residential rental units that in the aggregate, meet the Low-Income Tenant occupancy requirements of Section 4 of this Agreement (the “residential rental units”) and the rest of the building is devoted to use unrelated to such units (the “nonqualifying property”), the term “residential rental project” shall mean only the residential rental units and the other portions of the Project allocable to such units, including the allocable portion of the property benefiting both the residential rental units and the nonqualifying property (e.g., the common elements), and all property benefiting only the residential rental units. The allocation of the costs of the common elements shall be made according to a method that properly reflects the proportionate benefit derived, directly or indirectly, by the residential rental units and the nonqualifying property.

(h) If the Project is receiving Section 8 assistance, the Borrower will comply with all Section 8 requirements in administering these restrictions.

The requirements of this Section 3 shall terminate for the Project at the end of the Qualified Project Period, except as otherwise provided in Section 10 hereof.

**Section 4: Low-Income Tenants and Eligible Persons.** The Borrower hereby represents, warrants and covenants with respect to the Project as follows:

(a) At all times during the Qualified Project Period, not less than one hundred percent (100%) of the completed units shall be occupied (or held available for occupancy) by Low-Income Tenants.

(b) If at any time applicable during the Qualified Project Period, those residential rental units that are not occupied by Low-Income Tenants and are available for rental to tenants other than Low-Income Tenants in accordance with Section 4(a) hereof will be rented to or available for rent by Eligible Persons.

(c) The determination of whether the income of a resident or residents of a residential rental unit exceeds the applicable income limit shall be made at least annually on the basis of the current income of such resident or residents. For purposes of paragraphs (a), (b) and (c) of this Section 4, a unit occupied by an individual or family who at the commencement of the occupancy of such unit is a Low-Income Tenant (or, if applicable, Eligible Person) shall be counted as occupied by a Low-Income Tenant (or, if applicable, Eligible Person) during such individual's or family's tenancy in such residential rental unit, even though such individual or family ceases to be a Low-Income Tenant (or, if applicable, Eligible Person) unless the income of this individual or family, after adjustment for family size, exceeds 140 percent of the applicable income limit, if after such determination, but before the next determination, any residential rental unit of comparable or smaller size in the building (within the meaning of Section 42 of the Code) in which such person or family resides is occupied by a new resident whose income exceeds the applicable income limit. In addition, a residential rental unit that was occupied by a Low-Income Tenant (or, if applicable, Eligible Person) shall be counted as occupied by a Low-Income Tenant (or, if applicable, Eligible Person) until it is reoccupied for a period in excess of thirty-one (31) days, at which time the unit shall be considered to be occupied by a Low-Income Tenant (or, if applicable, Eligible Person) only if the individual or family then occupying the unit satisfies the definition of a Low-Income Tenant (or, if applicable, Eligible Person).

(d) Leases shall provide for termination and eviction if a tenant has certified that he or she is a Low-Income Tenant, and has failed to so qualify, at the time of commencement of the occupancy. The form of lease to be utilized by the Borrower in renting all residential rental units in the Project shall be subject to the Authority's approval. The lease must comply with all applicable Section 8 requirements if the Project is receiving a subsidy pursuant to Section 8 of the United States Housing Act of 1937.

**Section 5: Reporting Requirements.** The Borrower covenants, with respect to the Project:

(a) During the Qualified Project Period, the Borrower shall obtain from each Low-Income Tenant, at the time of such tenant's initial occupancy in the Project, an Income Certification dated immediately prior to the initial occupancy of such Low-Income Tenant in the Project, in the form and containing the information required by Section 1.167(k)-3(b) of the Regulations, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code. Attached hereto as Exhibit C is the form of the initial Income Certification to be used by the Borrower. The Borrower shall give written notice to the Authority if it intends to use a different Income Certification found acceptable by Qualified Tax Counsel.

(b) During the period commencing on the date that the first residential rental unit in the Project is occupied and continuing until the end of the Qualified Project Period, the Borrower shall obtain from each Low-Income Tenant or, if applicable, Eligible Person residing in the Project, at the time of such person's or family's initial occupancy in the Project, and on an annual basis thereafter, an Income Certification acceptable to the Authority. Notwithstanding the foregoing annual income recertifications shall not be required if 100% of the units are occupied by Low-Income Tenants or by tenants counted as Low-Income Tenants pursuant to Section 4(c) herein.

(c) The Borrower shall file, or shall cause the Property Manager to file, with the Authority and the Fiscal Agent (but only if the Authority is not in existence and no entity has been appointed to perform compliance monitoring hereunder), not later than the fifteenth (15<sup>th</sup>) day of each month, copies of the Income Certifications specified in Sections 5(a) and (b) hereof obtained by the Borrower during the previous month.

(d) The Borrower shall maintain, or cause the Property Manager to maintain, complete and accurate records pertaining to the incomes of (as of the date of initial occupancy of each tenant) and rentals charged to Low-Income Tenants and Eligible Persons residing in the Project, and during business hours shall permit, upon five (5) Business Days' written notice to the Borrower, any duly authorized representative of the Authority, of the Funding Lender, of the Servicer, if any, or of the Fiscal Agent to inspect the books and records of the Borrower pertaining to the incomes of and rentals charged to all tenants residing in the Project. The Fiscal Agent shall not be required to inspect the incomes or rental records maintained by the Borrower.

(e) The Borrower shall prepare and submit, or shall cause the Property Manager to prepare and submit, to the Authority not later than the fifteenth (15<sup>th</sup>) day of each month, rent rolls and a Certificate of Continuing Program Compliance executed by the Borrower in the form attached hereto as Exhibit D. The Borrower shall provide a copy of each Certificate of Continuing Program Compliance to the Fiscal Agent at the same time such certificate is required to be provided to the Authority if the Fiscal Agent has previously requested in writing that the Borrower do so.

(f) To the extent required by law, the Borrower will certify annually to the Secretary of the Treasury (with a copy to the Authority) whether or not the Project continues to satisfy the requirements imposed by Sections 2, 3, 4, 5 and 6(b) of this Agreement. Not later than each March 15 during the Qualified Project Period, the Borrower will submit to the Authority a

draft of the completed Internal Revenue Code Form 8703 – Annual Certification of a Residential Rental Project or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Project continues to meet the requirements of Section 142(d) of the Code. On or before each March 31 during the Qualified Project Period the Borrower will submit such completed form to the Secretary of the Treasury with a copy provided to the Authority.

(g) The Borrower covenants that it will, on the Closing Date, complete and deliver, to the Authority and the Fiscal Agent, the Certificate attached hereto as Exhibit E regarding the commencement of the Qualified Project Period.

(h) The Borrower covenants to provide to the Authority copies of its audited financial statements within 120 days after each fiscal year of the Borrower commencing with the Borrower’s fiscal year ended December 31, 2020, through the Qualified Project Period.

**Section 6: Tax-Exempt Status of Notes.**

(a) The Authority hereby represents, covenants and agrees as follows:

(i) That it will not knowingly take or fail to take or permit any action to be taken that would adversely affect the exclusion from gross income under Section 103 of the Code of the interest on the Governmental Note and, if it should take or permit any such action, the Authority shall take all lawful actions that it can take to rescind such actions promptly upon having knowledge thereof;

(ii) that it may not make any advance (i) which would cause the amount of net proceeds of the Governmental Note used to finance costs of issuance to exceed two percent (2%) of the sale proceeds of the Governmental Note or (ii) which is for costs other than Qualified Project Costs unless, immediately after such advance, at least ninety five percent (95%) of all advances, taking into account costs of issuing the Governmental Note as costs which are not Qualified Project Costs, shall have been applied to finance Qualified Project Costs, provided that, with respect to the use of an advance, the Authority may conclusively rely on the Borrower’s certification as to the use of the proceeds of such advance; and

(iii) that the Authority will take such action or actions (at the expense of the Borrower), as may be necessary in the opinion of Qualified Tax Counsel, to comply fully with all applicable rules, rulings, regulations, policies, procedures or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 142(d) of the Code.

(b) The Borrower hereby covenants, represents and agrees as follows:

(i) That the Borrower will not knowingly take or fail to take or permit any action to be taken which would adversely affect the exclusion from gross income of the interest on the Governmental Note under Section 103 of the Code, and, if it should take or permit any such action, the Borrower shall take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof;

(ii) that the Borrower, in order to preserve the exclusion from gross income under Section 103 of the Code of interest on the Governmental Note, shall not, without the written consent of the Authority, request any advance (a) which would cause the amount of net proceeds of the Governmental Note used to finance costs of issuance to exceed two percent (2%) of the sale proceeds on the Governmental Note or (b) which is for costs other than Qualified Project Costs unless, immediately after such advance, at least ninety five percent (95%) of all advances and the outstanding principal amount of the Governmental Note, taking into account costs of issuing the Governmental Note as costs which are not Qualified Project Costs to the extent paid for with the Governmental Note, shall have been applied to finance Qualified Project Costs; and

(iii) that the Borrower will take such action or actions as may be necessary in the opinion of Qualified Tax Counsel, to comply fully with all applicable rules, rulings, regulations, policies, procedures or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 142(d) of the Code affecting the Project and the Project Loan.

**Section 7: Fair Housing Laws.** The Borrower will comply with all fair housing laws, rules, regulations or orders applicable to the Project.

**Section 8: Covenants to Run with the Land.** The covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land for the Project and, except as provided in Section 10 hereof, shall pass to and be binding upon the Borrower's assigns and successors in title to the Land or the Project; provided, however, that upon the termination of this Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Except as provided in Section 10 hereof, each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Project are conveyed, all of such covenants, reservations and restrictions shall run to the Project. Borrower, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Authority to enforce this Agreement.

**Section 9: Indemnification of Authority and Fiscal Agent.** The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Authority and the Fiscal Agent and its officers, directors, officials, agents, representatives and employees from and against (i) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees, in connection with the Project Loan, or the Project except for the payment of principal and interest on the Project Loan, or the Governmental Note; (ii) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding specified in (i) above brought thereon and (iii) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with the enforcement of the provisions of this Agreement. In the event that any action or proceeding is brought against the Authority or the Fiscal Agent or any of its officers, directors, officials, agents, representatives or employees with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the

indemnified party (which notice shall be timely given so as to not prejudice the rights of the Borrower), shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. Any indemnified party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel, provided that the applicable indemnified party shall make a good faith effort to notify the Borrower of the engagement of such separate counsel and is provided a good faith estimate of the probable costs associated therewith. The Borrower's obligations under this Section 9 shall exist only for its own acts and omissions (including those of its agents, contractors, servants, employees and licensees), whether or not the right to indemnification arises after a change in ownership of the Project, and the Borrower shall not be liable for the acts or omissions of any other successor during such time that such successor is the owner of the Project provided such successor has agreed to be bound by the provisions of this Section 9 applicable to the Borrower. Notwithstanding the foregoing, the Borrower's obligation to indemnify the Authority and Fiscal Agent shall not apply to actions arising from the gross negligence or willful misconduct of the Authority or the Fiscal Agent.

**Section 10: Term.**

(a) Subject to the rights of the Authority and the Fiscal Agent pursuant to Section 9 hereof, this Agreement shall remain in full force and effect with respect to the Project separately until the expiration of the "Term of this Agreement," which shall occur upon the expiration of the Qualified Project Period, it being expressly agreed and understood that the provisions of this Agreement may survive the termination of the Project Loan Agreement and the Funding Loan Agreement if repayment of the Project Loan occurs prior to the later of such events. Upon the termination of this Agreement with respect to the Project, upon request of any party hereto, the Authority, the Fiscal Agent (if not earlier removed), the Borrower and any successor party hereto shall execute a recordable document prepared by the Authority or its counsel (at the expense of the Borrower) further evidencing such termination; provided, however, that if any Governmental Note (or any obligation refunding the same) remains outstanding, the party requesting execution of such a document shall deliver to the party so requested an opinion of Qualified Tax Counsel to the effect that this Agreement has expired and that the exclusion of interest on the Governmental Note (or the refinancing obligations) will not be adversely affected by the removal of this Agreement of record. Notwithstanding anything contained in this Agreement or any other document relating to the Governmental Note (collectively, the "Loan Documents") to the contrary, the Borrower covenants to pay the Governmental Lender Fee until the end of the Qualified Project Period. Notwithstanding the foregoing, the Fiscal Agent shall no longer be a party to this Agreement when the Governmental Note (or any debt obligation of the Governmental Lender refunding the Governmental Note) has been paid in full.

(b) Notwithstanding Section 10(a), the terms and provisions of this Agreement (other than Section 9, to the extent applicable) shall, subject to the provisions of the last sentence in this Section 10(b), automatically terminate with respect to the Project in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure or transfer of title by deed in lieu of foreclosure to an entity other than the Borrower or a related person (within the meaning of the Code) of the Borrower, change in a federal law or an action of a federal authority after the date the Governmental Note are issued which prevents compliance with the covenants expressed herein, or

condemnation or similar event (as determined by the Authority upon the advice of Qualified Tax Counsel), but only if, within a reasonable period, either (i) the Governmental Note is redeemed and paid in full and all obligations under the Project Loan Agreement are paid in full, or (ii) amounts received as a consequence of such event are applied to provide a project that meets and is subject to the requirements of the Code and applicable Regulations thereunder. In such event, upon the request of the Borrower and at the expense of the Borrower, the parties hereto shall execute an appropriate document in recordable form prepared by the Authority or its counsel to evidence such automatic termination, but the failure to execute or record such document shall not affect the automatic termination. This Section 10(b) shall not apply (and the restrictions contained in Sections 3 and 4 shall thereafter apply) to the Project in the event that, subsequent to any involuntary noncompliance as described in this Section 10(b) but prior to the expiration of the Term of this Agreement, an obligor on the acquired purpose investment (as defined in Section 1.148-1(b) of the Regulations) or a related person (as defined in Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for tax purposes.

(c) Notwithstanding any other provisions of this Agreement, this entire Agreement, or any of the provisions or Sections hereof may be terminated with the written consent of the Authority if there shall have been received an opinion of Qualified Tax Counsel delivered to the Authority, the Borrower, the Fiscal Agent, Freddie Mac and Funding Lender that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Governmental Note.

**Section 11: Correction of Noncompliance.** The failure of the Borrower to comply with any of the provisions of either Section 3 or 4 of this Agreement shall not be deemed a default hereunder unless such failure has not been corrected within a period of sixty (60) days following the date that any of the parties hereto received written notice of such failure, unless additional time to cure or correct such failure to comply has been requested by the Borrower and has been granted by the Authority. Not later than the Business Day next succeeding the day on which the Fiscal Agent or the Authority learns of such failure, the Fiscal Agent or the Authority shall attempt with reasonable diligence to notify the Borrower of such failure by telephonic communication to be confirmed in writing. Borrower's general partner and Borrower's Investor Partner shall have the right, but not the obligation, to cure any default and the Authority and/or Fiscal Agent agree to accept such performance as if it were undertaken by Borrower itself.

**Section 12: Modification of Tax Covenants.** To the extent any amendments, modifications or changes to the Regulations or the Code shall, in the written opinion of Qualified Tax Counsel filed with the Authority and the Fiscal Agent, impose requirements upon the ownership, occupancy or operation of the Project different than those imposed by the Regulations or the Code and stated herein, this Agreement shall be amended and modified in accordance with such requirements to the extent necessary to maintain the tax-exempt status of the Governmental Note. The parties hereto agree to execute, deliver, and record, if applicable, any and all documents or instruments necessary in the opinion of and in the form approved by Qualified Tax Counsel to effectuate the intent of this Section 12.

**Section 13: Reliance.** The Authority and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by the other parties to the Project Loan Documents and all past, present and future owners of the Governmental Note



interested in the legality and validity of the Governmental Note and in the exemption from federal income taxation of the interest on the Governmental Note. In performing their duties and obligations hereunder, the Authority and the Fiscal Agent may rely upon statements and certificates of the Borrower and the Low-Income Tenants that are believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project.

**Section 14: Fiscal Agent to Monitor Compliance.** The Fiscal Agent, when directed by the Authority in writing to receive reports, certifications and other documents, shall examine all such reports, certifications and other documents then required to be delivered to the Fiscal Agent hereunder and shall notify the Authority and the Borrower promptly if any such documents contain evidence or any indication of non-compliance with the requirements of this Agreement. In addition, and, if applicable as set forth in Section 5 hereof, the Fiscal Agent, when directed by the Authority in writing, shall deliver to the Authority on or prior to the twenty-fifth day of each month a statement as to (i) whether the Fiscal Agent has received the Income Certifications and the Certificate of Continuing Program Compliance required to be delivered by the Borrower by the fifteenth day of such month and (ii) whether any of the information contained in such documents indicates that the Borrower has failed to comply with any of the requirements contained in this Agreement. Initially the Authority assumes responsibility, acting through its agents or contractors, to monitor the Borrower's compliance with this Agreement and therefore shall not require the Fiscal Agent to receive such reports, certificates and other documents other than the Certificate of Continuing Compliance.

**Section 15: Uniformity; Common Plan.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project.

**Section 16: Transfer of Project; Covenants to Run with the Land.** The Borrower covenants with respect to the Project as follows:

(a) Except as specifically authorized pursuant and subject to the terms and provisions of the Project Loan Documents, the Borrower shall not (a) sell, lease, exchange, assign, convey, transfer or otherwise dispose (collectively, a "Disposition") of all or substantially all of the Project or (b) place any mortgage lien, assignment of leases and rents or security interests on or pertaining to the Project, without in each instance the prior written consent of the Authority. The Authority shall not unreasonably withhold its written consent to a Disposition, as long as the requirements of this Section 16 are fully satisfied. It is expressly agreed that, in connection with determining whether to grant or withhold such consent, the Authority may (but is not obligated to), among other things: (i) consider the creditworthiness of the party to whom such Disposition will be made (the "Proposed New Owner") and such party's management ability with respect to the Project; (ii) consider the compliance history of the Proposed New Owner with respect to any other multifamily projects owned by the Proposed New Owner; (iii) consider whether or not the security for repayment of the Project Loan and other payment obligations under the Project Loan Agreement and other Project Loan Documents, and the performance of the covenants and other obligations under this Agreement (without regard to whether the Governmental Note is outstanding) or the Authority's ability to enforce its rights, remedies and recourses with respect to such security or performance will be impaired in any way or to any degree by the proposed Disposition; (iv) require that the Authority be reimbursed for all reasonable costs and expenses

incurred by the Authority, to the extent applicable, in connection with investigating the creditworthiness and management ability of the party to whom such Disposition will be made in determining whether the Authority's security will be impaired by the proposed Disposition; (v) require the payment of all payment obligations of the Borrower under the Project Loan Agreement, including but not limited to accrued obligations not yet payable and, in the event of a Disposition in connection with a redemption of the Governmental Note prior to the termination of the Qualified Project Period, an undertaking by the Proposed New Owner to pay the Government Lender Fee for the balance of the Qualified Project Period in the manner and means satisfactory to the Authority; (vi) require the payment of the Authority's reasonable attorneys' fees and expenses in connection with such Disposition; (vii) require the express, unconditional assumption of all payment obligations and all performance obligations under this Agreement and to the extent same remain in effect, the Project Loan Agreement, and any other document, agreement or instrument evidencing or securing the Borrower's obligations under the Project Loan Agreement by the party to whom such Disposition will be made (with or without the release of the transferor Borrower from liability for such obligations), which assumption shall be in form and substance satisfactory to the Authority and its counsel, and require the recording of such assumption document; (viii) require the execution of modification agreements, supplemental mortgage documents, financing statements and such other documents, agreements and instruments as the Authority or its counsel may require, and (ix) require endorsements to any existing Authority's or Fiscal Agent's title insurance policies insuring the Authority's or the Funding Lender's liens and security interests covering the Project. The Authority may, in its discretion, release the Borrower from liability under this Agreement without releasing the Borrower from liability under any other agreement relating to the Project and may limit any such release from liability to events and occurrences arising after such Disposition, whether or not the Authority has knowledge of prior events or occurrences creating such liability at the time of the Disposition.

(b) The restrictions contained in Section 16(a) shall not be applicable to any of the following: (i) any sale, transfer, assignment, encumbrance or addition, deletion or exchange of interests in the Borrower, including, but not limited to, the partner interests of the Borrower, provided such sale, transfer, assignment, encumbrance or addition does not constitute a change in ownership of the Project for federal income tax purposes which would adversely affect the exclusion from gross income of the Governmental Note, as certified in writing by the Borrower to the Authority and the Fiscal Agent; (ii) grants of utility-related easements and governmental easements and any other construction easement or service-related leases or easements, such as laundry service leases or television cable easements, over portions of the Project, provided, however, the same are granted in the ordinary course of business in connection with the operation of the Project as contemplated by this Agreement; (iii) leases of apartment units to tenants, including Low-Income Tenants and Eligible Persons, in accordance with the requirements of this Agreement or lease if a manager unit; (iv) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof; (v) the placing of a subordinate mortgage lien, assignment of leases and rents or security interests on or pertaining to the Project if made expressly subject and subordinate to this Agreement and the Project Loan Documents and provided that such subordinate mortgage lien, assignment of leases and rents or security interests is permitted by the Security Instrument; or (vi) any change in allocations or preferred return of capital, depreciation or losses or any final adjustment in capital accounts (all of which may be freely transferred or adjusted by the Borrower pursuant to the Borrower's creation documents), (vii) transfer to or in lieu of foreclosure; provided that such

change does not result in a change in ownership of the Project for federal income tax purposes; provided, however, the Authority may require the mortgagee or any Person acquiring the Project through foreclosure or by deed in lieu of foreclosure to assume expressly and unconditionally all payment obligations (in the same manner as provided in the Project Loan Agreement with respect to the Borrower) and all performance obligations under this Agreement, and the Project Loan Agreement relating to the Project and any other document, agreement or instrument evidencing or securing the Borrower's obligations under the Project Loan Agreement by the mortgagee or Person acquiring the Project, which assumption shall be in form and substance satisfactory to the Authority and its counsel, and require the recording of such assumption document. Any transfer of the partners' interests in the Borrower or removal and replacement of the Borrower's general partner pursuant to the Borrower's partnership agreement shall not be considered a change in ownership under this section.

(c) The covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, except as provided in Section 10 hereof, shall pass to and be binding upon the Borrower's assigns, and successors in title to the Land or the Project; provided, however, that upon the termination of this Agreement in accordance with the terms hereof, said covenants, reservations and restrictions shall expire. Except as provided in Section 10 hereof, each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Project are conveyed, all such covenants, reservations and restrictions shall run to each portion of the Project.

(d) In connection with any Disposition under paragraph (a) above or any transfer or other section addressed in Section 16(b)(i) above other than a transfer of partner interests, in addition to the Authority, the Fiscal Agent and the Initial Funding Lender shall be entitled to require the Borrower to cause an opinion of Qualified Tax Counsel to be delivered to them to the effect that the proposed transfer of the Project will not adversely affect the exclusion of interest on the Governmental Note from the gross income of the holders thereof for federal income tax purposes.

**Section 17: Burden and Benefit.** The Authority, the Fiscal Agent and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Borrower's legal interest in the Land and the Project is rendered less valuable thereby. The Authority, the Fiscal Agent and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project by Low-Income Tenants and Eligible Persons, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Governmental Note is to be issued.

**Section 18: Remedies; Enforceability.** If a violation of any of the provisions hereof occurs or is attempted and continues beyond the expiration of any applicable cure or grace period, the Authority and its successor and assigns may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, to compel specific

performance hereunder to recover monetary damages caused by such violation or attempted violation. The provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Borrower or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or similar breach or violation hereof at any later time or times. With the exception of the obligations of the Borrower to the Authority and the Fiscal Agent set forth in Section 9 of this Agreement, the liability of the Borrower under this Agreement is and shall be limited to the interest of the Borrower in the Project, it being specifically understood and agreed that neither the Borrower nor the partners comprising the Borrower shall not have any personal liability with respect to the obligations of the Borrower set forth herein, and that any party seeking to enforce personal liability against the Borrower shall look only to said interest of the Borrower for the satisfaction of such liability.

Notwithstanding anything contained in this Agreement to the contrary, the Authority, the Fiscal Agent or any person under their control shall not exercise any remedies or direct any proceeding hereunder other than to enforce rights of specific performance hereunder, provided that such enforcement shall not include seeking monetary damages.

Property Manager or the Investor Partner shall have the right, but not the obligation, to cure any violation under this Agreement and the Authority and/or Fiscal Agent agree to accept such performance as it were undertaken by the Borrower.

**Section 19: Governing Law.** This Agreement shall be governed by the laws of the State and venue shall be in Palm Beach County, Florida.

**Section 20: Filing.** This Agreement shall be duly recorded in the Office of the Clerk of the Circuit Court for Palm Beach County, Florida prior to the recording of the Security Instrument.

**Section 21: Amendments.** This Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties hereto and duly recorded in the Office of the Clerk of the Circuit Court for Palm Beach County, Florida. The Authority's consent to any such amendment, revision or termination shall be given only in accordance with the Funding Loan Agreement.

**Section 22: Notice.** Any written notice required or permitted to be given hereunder shall be given by (i) personal delivery, (ii) registered U.S. mail or (iii) registered expedited service at the addresses set forth below or at such other addresses as may be specified in writing by the parties hereto. Any such notice shall be deemed received on (i) the date of delivery, if given by personal delivery or by expedited delivery service, or (ii) upon the earlier of the third (3rd) Business Day after the date of mailing or upon actual receipt, if sent by registered U.S. mail.

Governmental Lender: HOUSING FINANCE AUTHORITY OF PALM BEACH  
COUNTY, FLORIDA  
100 Australian Avenue, Suite 410  
West Palm Beach, FL 33406  
Attention: David Brandt, Executive Director  
Email: [dbrandt@pbcgov.org](mailto:dbrandt@pbcgov.org)  
Telephone: (561) 233-3652

With a copy to: GREENSPOON MARDER LLP  
CityPlace Tower  
525 Okeechobee Blvd., Suite 900  
West Palm Beach, FL 33401  
Attention: Morris G. (Skip) Miller, Esq.  
Email: [skip.miller@gmlaw.com](mailto:skip.miller@gmlaw.com)  
Telephone: (561) 838-4556

The Fiscal Agent: U.S. BANK NATIONAL ASSOCIATION  
500 W. Cypress Creek Road, Suite 460  
Ft. Lauderdale, FL 33309  
Attention: Amanda Kumar  
Email: [Amanda.kumar@usbank.com](mailto:Amanda.kumar@usbank.com)  
Telephone: (954) 938-2475

Borrower: LIH EL CID, LP  
c/o LEDG Capital, LLC  
1200 5th Avenue, Suite 1825  
Seattle, Washington 98101  
Attention: Chris Lischke  
Email: [chris@ledgcapital.com](mailto:chris@ledgcapital.com)  
Telephone: (314) 749-2038

with a copy to: NELSON MULLINS BROAD AND CASSEL  
390 North Orange Avenue  
Orlando, FL 32801  
Attention: Hollie Croft  
Email: [hollie.croft@nelsonmullins.com](mailto:hollie.croft@nelsonmullins.com)  
Telephone: (407) 839-4239

with a copy to: ALLIANT ASSET MANAGEMENT COMPANY, LLC  
21600 Oxnard Street, Suite 1200  
Woodland Hills, CA 91367  
Attn: General Counsel  
Telephone: (818) 668-2828

with a copy to: BOCARSLY EMDEN COWAN ESMAIL & ARNDT LLP  
633 West Fifth Street, 64<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attn: Kyle Arndt, Esq.  
Email: [karndt@bocarsly.com](mailto:karndt@bocarsly.com)  
Telephone: (213) 239-8048

**Section 23: Severability.** If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**Section 24: Multiple Counterparts.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

**Section 25: Fees and Expenses of Fiscal Agent.** The Borrower agrees to pay the reasonable fees and expenses of the Fiscal Agent.

[Signature pages follow]

[LAND USE RESTRICTION AGREEMENT --  
EL CID APARTMENTS]

IN WITNESS WHEREOF, the Authority, the Fiscal Agent and the Borrower have executed this Agreement by duly authorized representatives, all as of the date first written hereinabove.

**HOUSING FINANCE AUTHORITY OF  
PALM BEACH COUNTY, FLORIDA**, as  
Governmental Lender

[S E A L]

By: \_\_\_\_\_  
Name: Gary P. Eliopoulos  
Title: Chairperson

ATTEST:

By: \_\_\_\_\_  
Name: Robin B. Henderson  
Title: Secretary

**U.S. BANK NATIONAL  
ASSOCIATION**, as Fiscal Agent

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Assistant Vice President

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**LIH EL CID, LP**, as Borrower

By: El Cid Affordable Housing Corp., a  
Florida not-for-profit corporation, its  
General Partner

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA                    )  
  )SS:  
COUNTY OF PALM BEACH         )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of February, 2020, by Gary P. Eliopoulos and Robin B. Henderson, known to me to be the same persons whose names are subscribed to the foregoing instrument as Chairperson and Secretary, respectively, of the Housing Finance Authority of Palm Beach County, Florida (the “Authority”) appeared before me this day in person and acknowledged that they, being thereunto duly authorized, signed, sealed with the seal of said Authority, and delivered the said instrument as the free and voluntary act of said Authority and as their own free and voluntary act, for the uses and purposes therein set forth and who are personally known to me or who have produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_



STATE OF FLORIDA        )  
                                  )SS:  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of February, 2020, by Amanda Kumar, known to me to be the same person whose name is subscribed to the foregoing instrument as an Assistant Vice President of U.S. Bank National Association, appeared before me this day in person and acknowledged that she, being thereunto duly authorized, signed, sealed with the seal of said bank and delivered the said instrument as the free and voluntary act of said bank and as her own free and voluntary act, for the uses and purposes therein set forth. She is personally known to me or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF FLORIDA                    )  
  )SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of February, 2020, by \_\_\_\_\_, as \_\_\_\_\_ of El Cid Affordable Housing, Inc., a Florida not-for-profit corporation, the general partner of LIH El Cid, LP, a Florida limited partnership, on behalf of the company. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_

## FREDDIE MAC RIDER

This Freddie Mac Rider (the “Rider”) is attached to and forms a part of the LAND USE RESTRICTION AGREEMENT (the “Regulatory Agreement”), dated as of February 1, 2020, by and among the HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA (the “Governmental Lender”), U.S. BANK NATIONAL ASSOCIATION, as fiscal agent (together with any successor in such capacity, the “Fiscal Agent”), and LIH EL CID, LP (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “Borrower”).

1. **Definitions.** Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

“**Freddie Mac**” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States.

“**Funding Lender**” means the holder of the Governmental Note, initially Greystone Servicing Company LLC and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

“**Funding Loan Agreement**” means the Funding Loan Agreement dated as of February 1, 2020 by and among the Governmental Lender, the Initial Funding Lender set forth therein and the Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

“**Governmental Note**” means the \$ \_\_\_\_\_ Housing Finance Authority of Palm Beach County, Florida Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) dated February \_\_, 2020 delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

“**Project Loan**” means the loan to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Fiscal Agent.

“**Project Loan Agreement**” means the Project Loan Agreement dated as of February 1, 2020, among the Borrower, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreement may from time to time be amended or supplemented.

“**Project Loan Documents**” means the Security Instruments, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“**Project Note**” means the Project Note, including applicable addenda, to be executed by the Borrower in favor of the Governmental Lender, evidencing the Borrower’s financial obligations under the Project Loan, and to be endorsed by the Governmental

Lender, without recourse, to the order of the Fiscal Agent, as the same may be amended, modified, supplemented or restated from time to time.

“**Security Instrument**” means the Multifamily Mortgage, Assignment of Rents and Security Agreement, together with all riders thereto, securing the Project Note, to be executed by the Borrower with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

“**Servicer**” means Greystone Servicing Company LLC, or any successor Servicer selected by Freddie Mac.

2. **Applicability.** The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. **Indemnification.** Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender’s liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. **Sale or Transfer.** Restrictions on sale or transfer of the Project or of any interest in the Borrower, Governmental Lender and/or Fiscal Agent consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted

by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

5. **Enforcement.** Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument. No Person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. **Notice of Violations.** Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Borrower, the Servicer, if any, and the Funding Lender, inform the Borrower, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. **Amendments.** The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. **Fees; Penalties.** The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement and the Seller Note, other than those set forth in Sections 2 through 5 of the Regulatory Agreement, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in

the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. **Notices.** Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

GREYSTONE SERVICING COMPANY LLC  
1100 Abernathy Road NE  
Building 500, Suite 900  
Atlanta, GA 30328  
Attention: Steven Mumford  
Email: [steven.mumford@greyco.com](mailto:steven.mumford@greyco.com)  
Telephone: (678) 495-9808

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: [mfla@freddiemac.com](mailto:mfla@freddiemac.com)  
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel – Multifamily  
Legal Division  
Email: [Joshua\\_schonfeld@freddiemac.com](mailto:Joshua_schonfeld@freddiemac.com)  
Telephone: (703) 903-2000

**EXHIBIT A**

**LEGAL DESCRIPTIONS OF EL CID APARTMENTS**

All that certain real property situated in Palm Beach County, Florida, described as follows:

## EXHIBIT B

### FORM OF CERTIFICATE CONCERNING COMPLETION OF THE EL CID APARTMENTS

THIS CERTIFICATE is being executed pursuant to the provisions of the Land Use Restriction Agreement, dated as of February 1, 2020, and recorded in the Public Records of Palm Beach County, Florida (the "County"), in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, (the "Agreement"), among the Housing Finance Authority of Palm Beach County, Florida (the "Authority"), U.S. Bank National Association (the "Fiscal Agent") and LIH El Cid, LP (the "Borrower") in connection with the financing, in part, by the Authority of the acquisition and rehabilitation of the El Cid Apartments (the "Project") in the City of West Palm Beach, Florida located on real property described on Exhibit "A" of the Agreement, through the issuance of the Authority's \$ \_\_\_\_\_ Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) (the "Governmental Note").

The Borrower hereby certifies as follows:

1. The Project has been substantially completed and is ready and available for occupancy and at least one unit in the Project has been initially occupied as of \_\_\_\_\_, 20\_\_\_\_.
2. The use of the Project Loan and other sources of funds for the Project Cost budget as a final allocation of proceeds for purposes of Regulation § 1.148-6(d) of the aggregate amount of disbursements of the Project Loan up to and including the Completion Date were as follows:

See Schedule A



3. Not less than ninety five percent (95%) of net proceeds of the Governmental Note have been applied to pay or reimburse the Borrower for the payment of Qualified Project Costs and one hundred percent (100%) of the proceeds of the Governmental Note have been applied to pay or reimburse the Borrower for the payment of the Project Costs.

**LIH EL CID, LP**, as Borrower

By: El Cid Affordable Housing, Inc., a  
Florida not-for-profit corporation, its  
General Partner

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA        )  
  )SS:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of El Cid Affordable Housing, Inc., a Florida not-for-profit corporation, the general partner of LIH El Cid, LP, a Florida limited partnership, on behalf of the company. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_

**SCHEDULE A**

**Project Costs and Sources Allocation**

[Attached spreadsheet reflecting allocation of sources of funds and allocation to Project Costs]

**EXHIBIT C**

**INCOME CERTIFICATION**

The undersigned hereby (certify) (certifies) that:

1. This Income Certification is being delivered in connection with the undersigned's application for occupancy of Apartment # \_\_\_\_\_ in El Cid Apartments, West Palm Beach, Palm Beach County, Florida.

2. List all the occupants of the apartment, the relationship (if any) of the various occupants, their ages, and indicate whether they are students (for this purpose, a student is any individual who has been, or will be, a full-time student at an educational institution during each of five calendar months of the year in which this application is submitted, other than correspondence school, with regular facilities and students).

	<b>Occupant</b>	<b>Relationship</b>	<b>Age</b>	<b>Student (Yes or No)</b>
(a)				
(b)				
(c)				
(d)				
(e)				

3. Are any of the students listed in paragraph 2:

- (1) a student and receiving assistance under title IV of the Social Security Act,
- (2) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of Title IV of the Social Security Act, or
- (3) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or entirely by full-time students if such students are; or
- (4) a single head of household parent who lives with her/his children who are such parent's dependents, or
- (5) married and files a joint return.

Yes \_\_\_\_\_ No \_\_\_\_\_

4. The total anticipated income for each person listed in paragraph 2 above including the head of the family and spouse (even if temporarily absent) during the 12-month period commencing with the date occupancy will begin includes:

the full amount, before any payroll deductions, of wages, salaries, overtime, commissions, fees, tips, bonuses and other compensation for personal services; net income from operation of a business or profession; withdrawals of cash or assets from the operation of a business or profession; interest and dividends and other net income from real or personal property; the full amount of periodic payments from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic payments; payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay; public assistance income, where payments include amounts specifically designated for shelter and utilities; period and determinable allowances such as alimony and child support, and regular contributions or gifts from persons not residing in the dwelling; all regular and special pay and allowances of members of the Armed Forces and any earned income tax credit to the extent it exceeds income tax liability:

but shall exclude:

temporary, or non-recurring income (including sporadic or irregular gifts); amounts which are specifically for reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payment (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment; special pay to a family member exposed to hostile fire; amounts received in other publicly assisted programs which are specifically for reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; payments received pursuant to participation in ACTION volunteer programs; and income from the employment of children (including foster children) under the age of 18 years;

is as follows:

	<b>Occupant</b>	<b>Anticipated Annual Income</b>
(a)		\$ _____
(b)		\$ _____
(c)		\$ _____
(d)		\$ _____
(e)		\$ _____
	Total	\$ _____

5. If any of the occupants listed in paragraph 2 above has any savings, bonds, equity in real property, or other form of capital investment (but do not include necessary items such as

furniture or automobiles, and the value of a trust fund assuming the trust is not revocable by or under the control of any member of the household)<sup>1</sup>, enter the following amounts:

- (a) the total value of all such assets owned by all such persons:

\$ \_\_\_\_\_,

- (i) a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD: (applicable passbook savings rate \_\_\_\_\_ %):

\$ \_\_\_\_\_,

- (ii) the amount of income expected to be derived from such assets in the 12-month period commencing with the occupancy of the unit:

\$ \_\_\_\_\_, and

- (b) the amount of such income in 5(a)(ii) which is included in 4.

6. RESIDENT'S STATEMENT: The information on this form is to be used to determine maximum income for eligibility. I/we have provided, for each person set forth in paragraph 2, (i) if the owner/Borrower is seeking to qualify such persons as "Low-Income Tenants" (as defined in the Land Use Restriction Agreement by and among the Housing Finance Authority of Palm Beach County, Florida (the "Authority"), the Fiscal Agent and the owner/Borrower, either (a) an Employer's Verification of current anticipated annual income, if the occupant is currently employed, or (b) if the occupant is currently unemployed, an unemployed applicant affidavit or such other evidence of current anticipated income as is acceptable to the Authority and is consistent with income determinations under Section 8 of the United States Housing Act of 1937, as amended, or (ii) if the owner/Borrower is seeking to qualify such persons as "Eligible Persons" (as defined in the Regulatory Agreement), either (a) an Employer's Verification of current anticipated annual income' if the occupant is currently employed, an unemployed applicant affidavit or (b) if the occupant is currently unemployed, such other evidence of current anticipated income as is acceptable to the Authority and is consistent with income determinations under Section 8 of the United States Housing Act of 1937, as amended, or (c) copies of their most recent Federal income tax return, if a return was filed for the most recent year. I/We certify that the statements above are true and complete to the best of my/our knowledge and belief on the date hereof and are given under the penalty of perjury. In the event this Income Certification is executed more than five (5) days prior to the date I/we intend to occupy the unit, I/we hereby agree to update and recertify the accuracy of the information herein provided as of the date I/we first occupy the unit.

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<sup>1</sup> Include the value over and above actual consideration received, except in a foreclosure or bankruptcy, of any asset disposed of for less than fair market value within two years of the date of this Income Certification. A disposition as part of a separation or divorce settlement will not be considered to be for less than fair market value if applicant receives important consideration not measurable in dollar terms.

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA                    )  
   )SS:  
 COUNTY OF PALM BEACH         )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 NOTARY PUBLIC, STATE OF \_\_\_\_\_  
 My commission expires \_\_\_\_\_

7. OWNER/BORROWER'S STATEMENT: The family or individual(s) named in paragraph 2 of this Income Certification is/are eligible under the provisions of the Regulatory Agreement, to live in a unit in the Project, and, based upon the aggregate anticipated annual income from paragraph 4 and, if applicable, the greater of the amounts stated in paragraph 5(a)(i) or 5(a)(ii) less the amount shown in paragraph 5(b), which in the aggregate will be \$\_\_\_\_\_. The family or individual(s) constitute(s):

- (a) A Low-Income Tenant (current maximum income adjusted for a family size of \_\_\_\_\_ is \$\_\_\_\_\_)
- (b) An Eligible Person other than a Low-Income Tenant (current maximum income is \$\_\_\_\_\_)

\_\_\_\_\_  
Signature of Owner/Borrower's  
Authorized Representative

\_\_\_\_\_  
Date

STATE OF FLORIDA                    )  
  ) SS  
COUNTY OF PALM BEACH        )

The foregoing paragraph 7 was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_

[Remainder of page intentionally left blank]

8. If this Income Certification was executed by me/us more than five (5) days prior to my/our occupancy of the unit, I/we hereby update and recertify the accuracy of the information herein provided as of \_\_\_\_\_, \_\_\_\_\_ and state:

- (a) No additional information required to be provided to make this Income Certification true and correct on the date of this certification; or
- (b) The following information is provided to update the information previously provided in this Income Certification:

STATE OF FLORIDA                    )  
  ) SS  
COUNTY OF PALM BEACH        )

The foregoing paragraph 8 was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ . He/she is personally known to me or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_



9. OWNER/BORROWER'S STATEMENT: The family or individual(s) named in paragraph 2 of this Income Certification have, pursuant to paragraph 6 hereof, updated and recertified the information heretofore provided as specifically set forth in paragraph 8 hereof.

\_\_\_\_\_  
Signature of Owner/Borrower's Date  
Authorized Representative

STATE OF FLORIDA                    )  
  ) SS  
COUNTY OF PALM BEACH         )

The foregoing paragraph 9 was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ . He/she is personally known to me or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_

[Remainder of page intentionally left blank]

## INFORMATION CONCERNING INCOME CERTIFICATION

In order for interest on the Authority's multifamily mortgage revenue note to qualify as an "exempt facility bond" under Section 142(d) of the Internal Revenue Code, forty percent (40%) of the units in each multifamily residential project must be occupied by Low-Income Tenants. In addition, unless the Authority imposes a greater set aside, State law requires that at least sixty percent (60%) of the units in such project be occupied by eligible persons. The purpose of the Income Certification (the "Certification") is to assist in determining whether the occupants of a particular unit are Low-Income Tenants for federal tax purposes or income-eligible for State law purposes.

Paragraph 2 of the Certification asks the occupants to list their names, relationship, ages, and whether they are students. Paragraph 3 of the Certification asks whether any of the students listed in paragraph 2 are able to file a joint return for federal income tax purposes (i.e., are they married). Paragraph 4 of the Certifications asks each occupant to list his/her anticipated annual income, as defined. Finally, paragraph 5 asks the occupants to estimate the value of all "capital investments" (excluding "necessary items"), the estimated amount of income expected to be derived from these "capital investments," and the amount of income (that has already been included in paragraph 4 of the Certification) expected to be derived from those "capital investments."

The information provided in paragraphs 2 through 5 of the Certification should be sufficient to determine whether an individual(s) or the family constitutes a Low-Income Tenant for federal income tax purposes, and whether the individual(s) or the family constitutes an eligible tenant for State law purposes, if applicable.

The Regulations provide that the occupants of a unit shall not be considered of "low or moderate income" if all of the occupants are students determined using rules similar to Section 42(i)(3)(D) of the Code (i.e., the low income housing tax credit student rule which is set forth in the Certification). Thus, if paragraph 2 of the Certification indicates that all of the occupants are students, and if paragraph 3 of the Certification indicates that none of the students meet the listed exceptions, the occupants, are not Low-Income Tenants even if the occupants have no income. It should be noted, however, that even though the occupants may not qualify as Low-Income Tenants for federal income tax purposes, they may, in fact, qualify as "eligible tenants" for State purposes.

Assuming the occupants of the units are not all non-qualifying students, the next step in filing out the Certification is to determine the "anticipated annual income" of the occupants of the unit for the "certification year." The "certification year is the twelve-month period of time that begins on the date the unit is first occupied. Thus, if the Certification is completed before the prospective tenants move in, the occupants are required to recertify the Certification not more than five days prior to the date they actually move into the unit so that you may determine whether they continue to qualify as Low-Income Tenants.

All payments from all sources received by the family head (even if temporarily absent) and each additional member of the family household excluding only the income from employment of children (including foster children) under the age of 18 years that are members of the household should be included in "anticipated annual income." For example, if a 17-year old son or daughter

has a part- or full-time job that pays \$5,000 per year and has income from bank deposits of \$100 per year, only the \$100 should be listed. Paragraph 2 of the Certification indicates the various relationships of the occupants in a household and their ages.

Once the anticipated annual income in paragraph 4 of the Certification has been totaled, you should determine whether the occupants have “capital investments,” including capital investments of any children in the family, of more than \$5,000 listed in paragraph 5(a) of the Certification. If the “capital investments” exceed \$5,000, “anticipated annual income” will be the sum of the amount totaled in paragraph 4 of the Certification the greater of, if any, (a) the actual amount of income in paragraph 5(b), minus the amount of income enumerated in paragraph 5(c), if any, or (b) the “imputed amount of income” minus the amount of income enumerated in paragraph 5(c), if any. The “imputed amount of income” is the value of the assets listed in paragraph 5(a) of the Certification multiplied by the “current passbook savings rate” as determined by the United States Department of Housing and Urban Development. (The “current passbook savings rate” will vary from time to time and will first be available around January 1 of each year; if the “current passbook savings rate” is unavailable, you should multiply the value of the assets by 10%). For example, if the prospective occupants list assets of \$7,000 in paragraph 5(a) of the Certification, and the “current passbook savings rate” is 3%, the “imputed amount of income” is \$210.

The “anticipated annual income” of paragraph 4 of the Certification plus, if the capital investments exceed \$5,000, the necessary adjustments of paragraph 5 of the Certification, as discussed in the preceding paragraph, should be entered in the blank in paragraph 8 of the Certification. If the amount entered into the blank in paragraph 8 of the Certification does not exceed sixty percent (60%) of the median gross income for the area, the occupants qualify as Low-Income Tenants and paragraph 7(a) of the Certification should be checked. If the amount entered in the blank in paragraph 7 of the Certification exceeds sixty percent (60%) of the median gross income of the area, the occupants do not qualify as Low-Income Tenants. In such case, the occupants still may qualify as “eligible tenants” for State law purposes and paragraph 7(b) of the Certification should be checked if they so qualify.

The Low-Income Tenants requirement must be met for the “Qualified Project Period.” Thus, forty percent (40%) of the units must be occupied by occupants qualifying as Low-Income Tenants beginning at the time when at least ten percent (10%) of the units are first occupied. For example, if a project contains 100 units, the low-income restrictions need not be met until at least 10 units have been occupied. However, as soon as at least 10 units have been occupied, 4 units must actually be occupied by Low-Income Tenants, i.e., it is not sufficient that 4 units are reserved for Low-Income Tenants.

It should be noted that a unit occupied by an individual or family who at the commencement of such occupancy is a Low-Income Tenant is treated as occupied by such an individual or family during their occupancy of such unit, unless the income of this individual or family, after adjustment for family size, exceeds 140 percent of the applicable income limit, if after such determination, but before the next determination, any residential unit of comparable or smaller size in the Project are occupied by a new resident whose income exceeds the applicable income-limit. Further, if a tenant has occupied a unit for a length of time and decides to add a roommate, the “anticipated annual income” of the new tenant when he/she first occupies the unit, and the “anticipated annual

income” of the existing tenant when he/she first occupied the unit must be aggregated to determine whether the unit may continue to be certified as being occupied by a Low-Income Tenant. If, however, the occupants of a unit move into another unit in the Project, the second unit will be treated as occupied by a Low-Income Tenant only if the occupant qualified as a Low-Income Tenant at the time of the move. Moreover, if a Low-Income Tenant moves out of a unit, such unit is treated as occupied by a Low-Income Tenant until reoccupied at which time the character of the unit shall be determined.

Finally, if in paragraph 6 of the Certification an occupant is unable to provide an Employer Verification because he/she is currently unemployed, such occupant must provide such evidence of income as would be acceptable to prove income under Section 8 of the United States Housing Act of 1937, as amended, or such occupant may not be included as a Low-Income Tenant; such occupant may nevertheless be included as an eligible tenant (assuming her/her anticipated income is within the applicable limits) if such tenant provides his/her most recent federal income tax return or other proof of income that would be acceptable evidence under guidelines applicable to Section 8 of the United States Housing Act of 1937, as amended.

Information regarding acceptable evidence of income for unemployed individuals acceptable under Section 8 guidelines will be provided from time to time by the Authority, as available.

**EXHIBIT D**

**HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA**

**CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE**

WITNESSETH that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the undersigned, having borrowed certain funds through the HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA (the "Authority") for the purpose of financing the cost of acquiring, renovating and equipping EL CID APARTMENTES, a multifamily rental housing project (the "Project"), does hereby certify that such Project is in continuing compliance with the Land Use Restriction Agreement (herein, the "Regulatory Agreement") executed by the undersigned and filed in the official public records of Palm Beach County, Florida (including the requirement that all units be and remain rental units), that an Income Certification has been submitted for each new tenant in such Project since the filing of the last such certification and that the same are true and correct to the best of the undersigned's knowledge and belief. As of the date of this Certificate, the following percentages of the residential units in the Project are occupied by Low-Income Tenants (as such term is defined in the Regulatory Agreement), Eligible Persons (as such term is defined in the Regulatory Agreement who are not also Low-Income Tenants), Market Rate Tenants (tenants who are neither Low-Income Tenants or Eligible Persons), Non-Revenue Units and Vacant Units:

Total number of units available for occupancy as of \_\_\_\_\_.

	<u>Percentage</u>	<u>Number</u>
Low-Income Tenants	_____ %	
Eligible Persons	_____ %	
Market Rate Tenants	_____ %	
Non-Revenue Units	_____ %	
Vacant Units	_____ %	
TOTAL	100%	

(Type or Print)

Name of Owner/Borrower

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

Total Number of Studio Units	Number of Occupied by Low-Income Tenants	% of Studio Units Occupied by Low-Income Tenants
------------------------------	---	---

(A)_____	(B)_____	(B/A)_____
----------	----------	------------

Total Number of 1-Bedroom Units	Number of Occupied by Low-Income Tenants	% of 1-Bedroom Units Occupied by Low-Income Tenants
------------------------------------	---	---

(A)_____	(B)_____	(B/A)_____
----------	----------	------------

## EXHIBIT E

### FORM OF CERTIFICATE CONCERNING COMMENCEMENT AND TERMINATION OF QUALIFIED PROJECT PERIOD EL CID APARTMENTS

THIS CERTIFICATE is being executed pursuant to the provisions of the Land Use Restriction Agreement, dated as of February 1, 2020, and recorded in the Public Records of Palm Beach County, Florida (the "County"), in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Agreement), among the Housing Finance Authority of Palm Beach County, Florida (the "Authority"), U.S. Bank National Association (the "Fiscal Agent") and LIH El Cid, LP (the "Borrower") in connection with the financing, in part, by the Authority of the El Cid Apartments (the "Project") in the City of West Palm Beach, Florida located on real property described on Exhibit "A" of the Agreement, through the issuance of the Authority's \$ \_\_\_\_\_ Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) (the "Governmental Note").

The period for which the restrictions set forth in the Agreement are applicable to the Development is referred to as the "Qualified Project Period" and is defined in the Agreement as follows:

"Qualified Project Period" shall mean the period beginning the first day on which at least ten percent (10%) of the residential rental units in the Project first are occupied (as certified in writing by the Borrower to the Authority, the Servicer, if any, the Funding Lender, and the Fiscal Agent) and ending on the latest of (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are occupied (as certified in writing by the Borrower to the Authority, the Servicer, if any, the Funding Lender and the Fiscal Agent); (b) the first day on which the Governmental Note or other tax-exempt private activity bonds (as defined in the Code) issued with respect to the Project and properly allocable to the Project are outstanding; and (c) the termination date of the housing assistance payments contract, including the initial term and any renewal thereof, if the Project is funded under Section 8 of the United States Housing Act of 1937, as amended.

To evidence the Qualified Project Period with respect to the Project, the Borrower certifies to the following:

1. The Governmental Note in the aggregate amount of \$ \_\_\_\_\_ was issued on February \_\_, 2020.
2. The first day on which at least ten percent (10%) of the units in the Project were first occupied was on \_\_\_\_\_.
3. The date of initial occupancy of any unit in the Project was on \_\_\_\_\_.

Prior to the recording of this Certificate in the land records of the County, the Borrower has supplied the Authority with documentation to establish the facts relating to the Project set forth in this Certificate, which documentation has been found satisfactory to all parties. Nothing in this Certificate is intended to modify the requirement that all units in the Project be rented as residential rental property for the term during which the Governmental Note are outstanding.

IN WITNESS WHEREOF, the Borrower has caused this Certificate to be executed by its duly authorized representative, and the Authority has caused this Certificate to be accepted by its duly authorized representative as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**HOUSING FINANCE AUTHORITY OF  
PALM BEACH COUNTY, FLORIDA**, as  
Governmental Lender

[S E A L]

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

ATTEST:

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

**U.S. BANK NATIONAL  
ASSOCIATION**, as Fiscal Agent

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Assistant Vice President

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**LIH EL CID, LP**, as Borrower

By: El Cid Affordable Housing, Inc., a  
Florida not-for-profit corporation, its  
General Partner

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_



STATE OF FLORIDA                    )  
  )SS:  
COUNTY OF PALM BEACH         )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the same persons whose names are subscribed to the foregoing instrument as Chairperson and Secretary, respectively, of the Housing Finance Authority of Palm Beach County, Florida (the “Authority”) appeared before me this day in person and acknowledged that they, being thereunto duly authorized, signed, sealed with the seal of said Authority, and delivered the said instrument as the free and voluntary act of said Authority and as their own free and voluntary act, for the uses and purposes therein set forth. They are personally known to me or have produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF FLORIDA                    )  
  )SS:  
COUNTY OF BROWARD                )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Amanda Kumar, known to me to be the same person whose name is subscribed to the foregoing instrument as an Assistant Vice President of U.S. Bank National Association, appeared before me this day in person and acknowledged that she, being thereunto duly authorized, signed, sealed with the seal of said bank and delivered the said instrument as the free and voluntary act of said bank and as her own free and voluntary act, for the uses and purposes therein set forth. She is personally known to me or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of El Cid Affordable Housing, Inc., a Florida corporation, the General Partner of LIH El Cid, LP, a Florida limited partnership, on behalf of the company. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My commission expires \_\_\_\_\_

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## EXHIBIT "G"

### FEE GUARANTY AND ENVIRONMENTAL INDEMNITY AGREEMENT

THIS FEE GUARANTY AND ENVIRONMENTAL INDEMNITY AGREEMENT (herein the "Agreement") is made and entered into on February 1, 2020, by and among the HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA, a public body corporate and politic of the State of Florida (together with its successors and assigns, the "Governmental Lender"), U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States and having a designated corporate trust office located in Fort Lauderdale, Florida (together with its permitted successors and assigns, the "Fiscal Agent"), LIH EL CID, LP, a Florida limited partnership (together with its permitted successors and assigns, the "Owner"), EL CID AFFORDABLE HOUSING, INC., a Florida not-for-profit corporation, as general partner (together with its permitted successors and assigns, the "GP"), EL CID WEST PALM BEACH SLP, LLC, a Florida limited liability company, LEDG Capital, LLC, a Nevada limited liability company and KDG Partners, LLC, a Washington limited liability company, and JACOB LEVY, an individual (each individually, including the Owner, referred to herein as an "Indemnitor" and collectively referred to as the "Indemnitors").

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

**WHEREAS**, pursuant to the terms and provisions of that certain Project Loan Agreement dated as of February 1, 2020 (the "Project Loan Agreement"), by and among the Governmental Lender, the Owner and the Fiscal Agent, the Governmental Lender shall make a project loan in the initial principal amount of \$\_\_\_\_\_ (the "Project Loan") and shall loan the proceeds received therefrom to the Owner pursuant to the terms of such Project Loan Agreement to be used for the purpose of financing a portion of the costs of the Project (as such term is defined in the Project Loan Agreement) located on the property described on Exhibit A attached hereto (the "Property"); and

**WHEREAS**, pursuant to the terms and provisions of that certain Funding Loan Agreement dated as of February 1, 2020 (the "Funding Loan Agreement"), by and among the Governmental Lender, the initial funding lender named therein and the Fiscal Agent, the Governmental Lender intends to issue its Multifamily Housing Revenue Note, Series 2020 (El Cid Apartments) in the aggregate principal amount of \$\_\_\_\_\_ (the "Governmental Note") to generate the proceeds necessary to make the Project Loan; and

**WHEREAS**, in connection with the issuance of the Project Loan, the Owner shall enter into that certain Land Use Restriction Agreement, dated as of February 1, 2020 (the "Restriction Agreement"), by and among the Owner, the Governmental Lender and the Fiscal Agent; and

**WHEREAS**, the Restriction Agreement requires the Owner to set aside and rent a number of units in the Project financed with the Project Loan to low-income tenants as required by the Internal Revenue Code of 1986, as amended, during the Qualified Project Period (as such term is defined in the Restriction Agreement); and

**WHEREAS**, for as long as the Restriction Agreement shall remain in effect, the Owner is obligated to pay to the Governmental Lender, an annual fee of equal to 15 basis points of the initial principal amount of the Project Loan per annum (\$\_\_\_\_\_), payable semi-

annually in arrears on each August 1 and February 1 commencing August 1, 2020, for the period commencing from the herein defined Effective Date; and

**WHEREAS**, as a condition of the Governmental Lender making the Project Loan and loaning the proceeds to the Owner, the Governmental Lender requires the Indemnitors to enter into this Agreement for the benefit of the Governmental Lender and the Fiscal Agent; and

**WHEREAS**, any capitalized term used herein and not otherwise defined shall have the meaning ascribed to such term in the Funding Loan Agreement, the Restriction Agreement or Project Loan Agreement, as applicable.

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. Indemnification.**

A. Notwithstanding any other provision in any of the Financing Documents to the contrary, the Indemnitors, hereby agree, on a joint and several basis, to indemnify and hold harmless the Governmental Lender and the Fiscal Agent, their respective officers, employees, agents, successors and assigns (collectively, the “Indemnified Parties” and, individually, an “Indemnified Party”) from and against all claims, demands, losses, costs, fines, penalties, judgments, suits, proceedings, orders, forfeitures, damages (including, without limitation, consequential damages suffered by a third party claimant) and expenses of every kind and nature whatsoever, whether joint or several, that arise out of or relate to any Hazardous Materials (as herein defined) at, on, in, under, affecting, emanating or otherwise related to any portion of the Project.

The foregoing indemnity includes, but is not limited to, the following: reasonable out-of-pocket attorneys’ and consultants’ fees and court costs (including those incurred at the appellate level); all actual out-of-pocket costs of removing, remediating, and implementing corrective action required by due applicable governmental authority with respect to, abating or otherwise responding to Hazardous Materials relating to the Project; costs incurred to avoid the imposition of, or to discharge, a lien on the Project arising out of any environmental law, regulation, order or cleanup; all actual out-of-pocket costs of determining whether the Project is, and causing the Property to be, in compliance with all applicable environmental laws, regulations and orders; and all actual out-of-pocket costs associated with claims for injury to persons, property or natural resources.

For purposes herein, “Hazardous Material” means (i) any “hazardous substance” defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601(14), as amended from time to time, or any so-called “superfund” or “superlien” law, including the judicial interpretation thereof, (ii) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33), as amended from time to time, (iii) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260, (iv) any petroleum, including crude oil or any fraction thereof, (v) any natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, (vi) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910, as amended from time to time, and (vii) any other substance, regardless of physical form, that is subject to any other law or other past, present or future requirement of any governmental authority regulating, relating to, or imposing obligations,

liability or standards of conduct concerning the protection of human health, plant life, animal life, natural resources, property or the reasonable enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy, from whatever source; provided however that the term "Hazardous Materials" shall not apply to substances in quantities that are generally recognized to be appropriate to normal residential uses and to the maintenance of property of a size and use comparable to the Property.

B. In the event that any Indemnified Party receives notice that any action or proceeding has been brought against such Indemnified Party with respect to which indemnity may be sought hereunder, such Indemnified Party shall, as a condition of such indemnification, give written notice thereof to any of the Indemnitors within 30 days after receipt of such notice. The Indemnitors, upon timely written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnitors, subject to the approval of the Indemnified Party, which approval shall not be unreasonably withheld in such party's reasonable discretion, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Governmental Lender and the Fiscal Agent shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not unreasonably be conditioned, delayed or denied. In the event of a conflict of interest either between any of the Indemnitors and any Indemnified Party or among any Indemnified Parties, each Indemnified Party with respect to which such conflict of interest exists shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Indemnitors shall pay the reasonable fees and expenses of such separate counsel; provided, however, that unless such separate counsel is employed under the circumstances described above, the Indemnitors shall not be required to pay the fees and expenses of such separate counsel.

C. Notwithstanding any transfer of the Project to another owner in accordance with the provisions of the Restriction Agreement and the other Financing Documents, the Indemnitors shall remain obligated to indemnify each Indemnified Party pursuant to this Agreement with respect to acts and occurrences which arose during the Owner's ownership of the Project and until such transfer is made in accordance with the terms of the Project Loan Agreement and the Restriction Agreement, but not thereafter.

D. Except as otherwise provided herein, the obligations of the Indemnitors under this Agreement shall survive, and shall in no way be limited, impaired or otherwise affected by the foreclosure of the Project or acceptance by any Person of a deed in lieu of foreclosure and shall be independent of the obligations of the Owner to the Governmental Lender and the Fiscal Agent under the Restriction Agreement and Project Loan Agreement.

E. Any amount claimed hereunder, accompanied by appropriate backup information by an Indemnified Party and an explanation of the amounts claimed, not paid by the Indemnitors within thirty (30) days after written demand from such Indemnified Party shall bear interest at the prime rate of U.S. Bank National Association, plus 2.00%.

F. The liability of the Indemnitors under this Section 1 shall in no way be limited, impaired or otherwise affected by, and Indemnitors hereby consent to and agree to be bound by, any amendment or modification of the provisions of the Restriction Agreement or

Project Loan Agreement made with the consent of the Owner in accordance with the terms thereof, provided that such amendment or modification does not increase the total obligation guaranteed without the consent of the Guarantors. In addition, except as otherwise provided herein, the liability of the Indemnitors under this Section 1 shall in no way be limited, impaired or otherwise affected by (i) any extensions of time for or waivers of performance of any covenants or obligations set forth in the Restriction Agreement or any of the other Financing Documents, (ii) any sale, assignment or transfer of the Project, (iii) the release of the Owner or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Restriction Agreement or any of the other Loan Documents or by operation of law, the Governmental Lender's or the Fiscal Agent's voluntary act, or otherwise, or (iv) any delay or omission by the Governmental Lender or the Fiscal Agent in its choice of remedies under the Restriction Agreement or any of the other Financing Documents, which with the passage of time and events may or may not prove to have been the best choice to maximize recovery by the Governmental Lender or the Fiscal Agent at the lowest cost to the Indemnitors, it being understood that such choice of remedies will necessarily be and should properly be a matter of business judgment.

G. To the extent allowed by law, each of the Indemnitors hereby waives (i) any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (ii) any defense, right of set-off or other claim which any Indemnitor may have against any Indemnified Party, provided that any amounts received by an Indemnified Party under any policy of environmental liability insurance will be set off against the liability of the Indemnitors, or (iii) any and all formalities which otherwise might be legally required to charge the Indemnitors with liability hereunder; provided, however, that the Indemnitors shall have no liability hereunder unless the Indemnitors receive timely written notice as set forth in paragraph B hereof.

H. No modification or waiver of any of the provisions of this Section 1 shall be binding upon any party hereto except as expressly set forth in a writing duly signed and delivered on behalf of such party.

I. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if given in accordance with the terms of Section 11.04 of the Funding Loan Agreement.

J. In the event of any inconsistencies or conflicts between the terms of this Section 1 and the terms of any of the Financing Documents (including any exculpatory language contained therein), the terms of this Section shall control, provided however, that it is not the intention of the parties hereto to change directly or indirectly the nature of the Indemnitors' nonrecourse obligation with respect to payment of the Project Loan under the Project Loan Agreement.

K. Notwithstanding anything to the contrary contained herein, the Indemnitors shall have no liability to an Indemnified Party, or, as appropriate, liability shall be reduced by any applicable comparative negligence statutes, in connection with a specific claim for indemnity by an Indemnified Party if a court of competent jurisdiction shall determine that such claim for damages arises out of or was caused by the gross negligence or willful misconduct

or intentional acts of such Indemnified Party. The Indemnitors shall have no further liability under this Agreement for any acts or omissions occurring after a foreclosure or deed in lieu of foreclosure whereby as a result therefrom neither the Owner nor a related party to the Owner has any interest in the Project.

L. The rights of the Governmental Lender and the Fiscal Agent under this Agreement shall be in addition to, and not in lieu of, any other rights and remedies of the Governmental Lender and the Fiscal Agent under the Funding Loan Agreement or any of the other Financing Documents.

**Section 2. Fee Guaranty of Governmental Lender's Fee and Fiscal Agent Fees.** Notwithstanding any provision in any Financing Document or any other resolution or document to the contrary, the Indemnitors agree to pay the Governmental Lender's fees (including, but not limited to, the fees described in Section 10 of the Restriction Agreement), Fiscal Agent fees and all fees and reasonable out of pocket expenses incurred by the Governmental Lender, its counsel, Bond Counsel and the Fiscal Agent and its counsel in connection with the transactions contemplated under the Project Loan Agreement. Until the agreements set forth herein are completely performed, this Section 2 shall survive the payment in full of the Project Loan and the disposition of the Project.

**Section 3. Enforcement of Agreement and Rights of Funding Lender.** For so long as the Governmental Note is outstanding, the enforcement of this Agreement is subject to the rights of the Funding Lender under Section 6.03 of the Funding Loan Agreement and Section 7.06 of the Project Loan Agreement.

**Section 4. Termination.** This Agreement shall terminate on the later of the date that (i) the Governmental Note is no longer outstanding, (ii) this Agreement terminates pursuant to Section 10(a) thereof, (iii) Security Instrument securing the Note has been satisfied or released; or (iv) the final rebate calculation has been made and any rebate that is owed by the Owner has been paid; provided, however, that this Agreement shall continue and the Indemnitors shall remain obligated hereunder for any causes arising or accruing prior to such termination.

**Section 5. Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same agreement, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 6. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles and venue shall be in Palm Beach County, Florida. The provisions of Section 4.06 of the Project Loan Agreement shall be applicable to the enforcement of this Agreement.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have caused this Fee Guaranty and Environmental Indemnity Agreement to be executed as of the \_\_\_ day of February, 2020 (herein, the "Effective Date").

[SEAL]

**HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA,** as the Governmental Lender

Attest:

By: \_\_\_\_\_  
Name: Robin B. Henderson  
Title: Secretary

By: \_\_\_\_\_  
Name: Gary P. Eliopoulos  
Title: Chairperson

**U.S. BANK NATIONAL ASSOCIATION,** as the Fiscal Agent

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Assistant Vice President

**LIH EL CID, LP,** a Florida limited partnership, as the Owner

By: El Cid Affordable Partner, Inc., its General Partner

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

**EL CID AFFORDABLE HOUSING, INC.,** a Florida not-for-profit corporation, as general partner

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

**EL CID WEST PALM BEACH SLP, LLC,** a Florida limited liability company

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

**LEDG CAPITAL, LLC**, a Nevada limited liability company

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

**KDG PARTNERS, LLC**, a Washington limited liability company

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

\_\_\_\_\_  
**JACOB LEVY**, an individual

**EXHIBIT A**  
**LEGAL DESCRIPTION**

47864746v7/007132.019900

**EXHIBIT "H"**

**CREDIT UNDERWRITING REPORT**