



**LEXINGTON INDUSTRIAL DEVELOPMENT  
AUTHORITY MEETING**

**Monday, February 24, 2020, 5:00 PM  
City Hall Second Floor Meeting Room  
300 East Washington Street, Lexington, Virginia**

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Page

1. **Call to Order - IDA Chairman, Bruce Summers**
2. **Approval of Minutes**
  - 2 - 3 2.1. [November 20, 2019 City Council/Industrial Development Authority Work Session Minutes-draft](#)
  - 4 - 6 2.2. [November 20, 2019 Industrial Development Authority Minutes-draft](#)
3. **Consider Review of IDA By-Laws**
  - 7 - 17 3.1. [IDA Bylaws](#)
4. **Update on Status of VDOT Site**
5. **Consideration of approval of the “Resolution of the Industrial Development Authority of the City of Lexington, Virginia Authorizing The Issuance of Multifamily Housing Revenue Bonds (Lexington House Apartments), Series 2020”**
  - 18 - 273 5.1. [Bond Purchase Agreement - Lexington House](#)  
[Final Bond Resolution - Lexington House](#)  
[Indenture of Trust - Lexington House](#)  
[Loan Agreement - Lexington House](#)  
[Regulatory Agreement - Lexington House](#)
6. **Adjournment**



## Minutes

City Council and Lexington Industrial Development Authority Joint Work Session  
November 20, 2019, 4:00 p.m.  
City Hall Community Meeting Room, 300 East Washington Street, Lexington, VA

Presiding: Mayor Frank Friedman and Industrial Development Authority (IDA) Chairman Brue Summers

### Councilmembers Present:

M. Alexander  
D. Ayers  
M. Hentz  
D. Sigler  
C. Smith  
L. Straughan

### IDA Members Present:

F. Bush  
B. Derrick  
D. Halseth  
T. Hellwig  
K. Shester

City Staff: J. Halasz, City Manager/IDA Secretary  
A. Glaeser, Planning Director  
J. Hostetter, Clerk of Council/IDA  
J. Jenkins, City Attorney

### **CITY COUNCIL CALL TO ORDER –**

Mayor Friedman called the City Council meeting to order at 4:00 p.m.

### **LEXINGTON IDA CALL TO ORDER –**

Chairman Summers called the Industrial Development Authority meeting to order at 4:00 p.m.

Mayor Friedman asked everyone to introduce themselves to City Manager Jim Halasz and confirmed the expectations of the work session.

### **PRESENTATION ON THE PROPOSED ACQUISITION AND MARKETING OF THE VDOT PROPERTY –**

Tim Davies of the Timmons Group gave a presentation on what the Timmons Group is, an overview of Economic Development, examples of recent success stories, the VDOT property work to date and the possible next steps with the VDOT Property.

Mayor Friedman asked what negotiating the price of the VDOT property would look like. T. Davies explained that in the example property he used, the negotiations did not necessarily go well because they did not have a lot of bargaining power. He explained that negotiating the terms is very important and is something that should be learned from this particular example.

Councilmember Sigler asked T. Davies if has seen the opportunity zone designation help project's get off the ground and if being an opportunity zone is enough of an incentive. T. Davies said that opportunity zones do not make a bad project a good project, it just adds a return for the investors looking for that particular tax benefit. Councilmember Sigler asked what the water and sewer capacity is for that property, to which T. Davies said that it is not something that they have looked into yet.

City Manager Halasz asked if something such as an environmental contamination on the property should be discussed before entering into a deal to purchase the property. T. Davies said that the terms of the agreement

would dictate how much gets discounted for things such as environmental contamination. Councilmember Alexander asked if the private sector would require less stringent requirements than the federal sector. T. Davies explained that if the City was dealing with a federally funded project, every study would be necessary, and if the City was dealing with a privately funded project it would a smaller list of requirements. Councilmember Alexander asked if remediation was added to the cost, which T. Davies confirmed.

Chairman Summers asked if the property having a school beside it would limit the highest and best use and if the market study is implying a highest and best use. T. Davies said that he would rather not put an industrial use next to a school and the multifamily and assisted living had a higher return and the market is healthy. Councilmember Sigler asked if any projects done to the school would need to be reviewed by the Planning Commission. Director Glaeser explained that the school is under a conditional use permit in that zoning district and they would have to amend their existing conditional use permit which would come before Planning Commission.

Mayor Freidman asked how organizations that the City is partnered with such as the Shenandoah Valley Partnership and the Chamber of Commerce fit into the role and if it is an opportunity to continue with The Timmons Group to find a developer for the property. T. Davies explained that the best return from participating with those partnerships will be to bring employers and bigger projects. Mayor Friedman asked if T. Davies could speak to leasing the land versus selling it outright. T. Davies said that some tenants will not go into a land lease situation and some will, so that would be a condition that the City may sell the real estate with. He also added that a small portion of the City's costs would be covered in a land lease and it could constrain the City.

City Manager Halasz asked if the market study was pointing to market rate multifamily senior housing rather than low moderate subsidized multifamily senior housing. T. Davies confirmed and further explained how a combination of the two could work for the City. Mayor Friedman asked if the property lended itself more towards residential than commercial. T. Davies said that the analysis that the Timmons Group did showed that it lended itself more toward residential and the market return is not as good for commercial on that property.

K. Shester asked if the 200 units would be specific for senior housing or multifamily housing. T. Davies explained that the market study looked at vacancy rates, product and trends and he was pleasantly surprised to see that number. Councilmember Alexander said that while there is need for affordable housing, she is not sure about 200 units, however senior housing is crucial. Chairman Summers said that as he recalled the market study did not envision an all new residential population, but rather movement of some of the existing population, for example, it also considered student housing. City Manager Halasz asked if multifamily, senior housing or other, have the best impact on the surrounding areas. T Davies said that putting residential near the school introduces more organic potential customers for some retail uses. Mayor Friedman added that all questions from the public should be sent through City Manage Halasz.

#### **CITY COUNCIL ADJOURNMENT –**

Mayor Friedman adjourned the City Council meeting at 5:02 p.m.

#### **LEXINGTON IDA ADJOURNMENT –**

Chairman Summers adjourned the Industrial development Authority meeting at 5:02 p.m.

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Bruce Summers, IDA Chair

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Jim Halasz, IDA Secretary

**Minutes**  
**Industrial Development Authority (IDA)**  
**Of the City of Lexington, VA**  
**Wednesday, November 20, 2019, 5:09 p.m.**

IDA:

Present: Bruce Summers, Chair  
Felicia Bush  
Buddy Derrick  
Dick Halseth  
Tammi Hellwig  
Katie Shester

Also present:

Staff: Jim Halasz, Secretary  
Jani Hostetter, Clerk  
Daniel Lauro, IDA Attorney  
Jared Jenkins, City Attorney  
Arne Glaeser, Planning Director

The Industrial Development Authority (IDA) met on November 20, 2019 in the Community Meeting Room of City Hall. Chairman Bruce Summers called the meeting to order at 5:09 p.m.

Approval of Minutes

**Buddy Derrick moved to approve the October 9, 2019 IDA Minutes. Dick Halseth seconded, and the motion carried unanimously (6/0).**

Appointment of City Manager Jim Halasz as IDA Secretary

**Katie Shester moved to appoint City Manager Jim Halasz as IDA Secretary. Buddy Derrick seconded, and the motion carried unanimously (6/0).**

Public Hearing and Consideration of the Lexington House Apartments Inducement Resolution –

Chairman Summers opened the Public Hearing at 5:11 p.m.

Bryce Quigley of Steele Properties gave an overview of Steele Properties and the scope of work for Lexington House Apartments. B. Derrick asked if there were any empty apartment units that can be used to house residents that are displaced during renovations. B. Quigley said that there are six vacant units, but they plan on not displacing many residents aside from the fully adaptable units and explained the process of renovating rooms without having to displace residents. F. Bush asked how many fully adaptable units are being renovated. B. Quigley said that four fully adaptable units and two audio visual accessibility units.

T. Hellwig questioned if all the flooring would be replaced, especially those with carpet. B. Quigley said that not all flooring will be replaced because some of the units do have newer flooring and a lot of the renovations are meant to extend the life of the building. T. Hellwig said that a lot of the enhancements look positive and asked if Steele Properties had gotten any feedback from the residents on the carpet in their space. B. Quigley said that they had a meeting with the residents on October 9, 2019 with a really good turnout and they had really positive

feedback. T. Hellwig asked if B. Quigley knew how old the carpet is in the units, to which B. Quigley said that the age of the carpet varies. T. Hellwig asked if there was a threshold how old the carpet had to be before being replaced, to which B. Quigley said that he would see if there was a threshold.

B. Summers asked if there is a process to get ongoing feedback from residents after the October 9, 2019 meeting. B. Quigley said that is something Steele Properties can engage in and that they would be happy to have an ongoing conversation with the IDA and the residents. He added that he is with the development portion of the project, but there are other managers from Steele Properties handling communications with residents.

Anne Saunders of McGuire-Woods introduced herself and gave an overview on the inducement resolution. T. Hellwig asked if there were minutes from the October 9, 2019 meeting Steele Properties had with the residents. B. Quigley said he did not personally have those minutes, but could see if he could get them to provide them to the IDA. B. Summers suggested that at the next IDA meeting with Steele Properties, the minutes could be provided, to which B. Quigley agreed. B. Derrick suggested that the IDA minutes reflect that the public hearing was held.

B. Summers asked if anyone from the public wished to comment on the resolution, hearing none, B. Summers proceeded with the consideration of the resolution.

**Buddy Derrick moved to adopt the Resolution authorizing the issuance of up to \$9,500,000 in principal amount of revenue bonds for the acquisition, construction, rehabilitation and equipping of the approximately 78-unit Lexington House Apartments multifamily housing facility. Felicia Bush seconded.**

**The motion carried unanimously as presented by Roll Call Vote:  
AYES: Derrick, Halseth, Shester, Hellwig, Bush, Summers  
NAYS: None**

Chairman Summers closed the Public Hearing at 5:26 p.m.

**T. Hellwig and K. Shester recused themselves due to their employment with Washington & Lee University.**

**T. Hellwig and K. Shester dismissed themselves from the meeting at 5:27 p.m.**

Consideration of Washington and Lee's Refinancing –

Steve McAllister, Washington & Lee University's (W&L) Vice President for Finance and Megan Gilliland of Kaufman and Canole gave an overview of Washington & Lee's refinancing request. F. Bush asked if the IDA would be considering the Series 2013 Educational Facilities Revenue

Bonds and Series 2015A Educational Facilities Revenue Bonds, but W&L may not proceed with the Series 2015A. S. McAllister said that it is possible, but they are asking for approval of both.

**Dick Halseth moved to adopt the Resolution authorizing the issuance of up to \$72,000,000 in principal amount of Educational Facilities Revenue Refunding Bonds. Buddy Derrick seconded.**

**The motion carried unanimously as presented by Roll Call Vote:**

**AYES: Derrick, Halseth, Bush, Summers**

**NAYS: None**

Other Business –

City Manager Halasz asked how the IDA wanted to proceed with the VDOT property and if they had any issues after their joint work session with City Council on November 20, 2019. D. Halseth said that his only concern is whether there is a market for 200 units. B. Derrick said he could not envision 200 units on five acres of land. City Manager Halasz and City Attorney Jenkins provide clarity of the Role of the IDA with the VDOT Property. B. Summers requested that City staff communicate with the IDA as to what the IDA's role will be throughout the process with an update at the next IDA meeting.

Adjournment

Chairman Bruce Summers adjourned the meeting at 5:35 p.m.

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Bruce Summers, IDA Chair

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Jim Halasz, IDA Secretary

# BYLAWS OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF LEXINGTON, VIRGINIA

## I. INTRODUCTION

A. **Name.** The name of this body shall be the “Industrial Development Authority of the City of Lexington, Virginia” and is sometimes hereinafter referred to as the “Authority.”

B. **Purpose.** The Authority shall have all purposes now or hereafter set forth in the Industrial Development and Revenue Bond Act, Chapter 49 of Title 15 .2 of the Code of Virginia, as amended (the "Act").

C. **Powers.** The Authority shall be vested with and may exercise all powers now or hereafter enumerated in the Act, along with that may be incidental thereto or necessary or appropriate to enable it to accomplish its purposes.

D. **Separate Entity.** The Authority shall be a political subdivision of the Commonwealth of Virginia, as provided by the Act, and as such shall be a separate and distinct legal entity from the City of Lexington, Virginia (“Lexington” or the “City”).

E. **Gender-neutral interpretation.** Any references to gender-based nouns or pronouns in these Bylaws shall be construed to refer generally to members of either sex.

## II. BOARD OF DIRECTORS AND OFFICERS

A. **Board of Directors.** The Authority shall be governed by a Board of Directors in which all powers of the Authority shall be vested.

B. **Default to the Act.** All provisions contained in Article II are derived from Section 4904 Title 15.2 of the Code of Virginia. Any conflict between a provision in Article II and Section 4904 shall be resolved in favor of Section 4904.

C. **Number, Appointment, and Terms of Directors.**

(1) There shall be seven Directors of the Authority who shall be appointed by the City Council of Lexington (the “City Council”).

(2) All appointments shall be for a term of four (4) years, except appointments to fill the remainder of an unexpired term created by a vacancy on the Board of Directors.

(3) All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of Subsection B(2).

(4) If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

D. **Oath.** Each Director, before entering upon his duties, shall take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia, as amended.

E. **Employment; Residence.** No Director shall be an officer or employee of Lexington. Every Director shall, at the time of his appointment and thereafter, reside in Lexington. When a

Director ceases to be a resident of Lexington, such Director's office shall be vacant and a new Director shall be appointed pursuant to the Act and Section II.F of these Bylaws.

F. **Vacancies.** The City Council shall make any appointments necessary to fill any vacancies upon the Board of Directors, such appointment being for the unexpired term of any Director who shall have resigned or otherwise vacated his office. The City Manager of Lexington shall promptly notify the City Council of any vacancy which may occur on the Board of Directors.

G. **Compensation for Directors.** The Directors shall receive no salary, but the Directors may be compensated such amount per regular, special or committee meeting as may be approved by the City Council not to exceed two hundred dollars (\$200) per meeting, and shall be reimbursed for necessary travel and other expenses incurred in the performance of their duties.

H. **Officers of the Authority.** The Directors shall elect a Chairman, a Vice-Chairman, a Secretary, and a Treasurer of the Authority (collectively, the "Officers"). All officers shall be elected annually at the regular meeting held in September of each year. They shall commence their duties immediately upon election and shall continue in office thereafter until a successor is elected and qualified. The Directors may elect at any regular or special meeting such Officers as may be necessary to fill any vacancy created by resignation, expiration of a term of appointment as a Director, or otherwise, which Officers shall serve for the remaining portion of such Officer's unexpired term.

(1) The Chairman and Vice-Chairman shall be elected from the membership of the Board. They shall remain full voting members of the Board of Directors after their election.

(2) The Directors shall elect Lexington's City Manager as Secretary and Lexington's Finance Director as Treasurer. Both the Secretary and the Treasurer shall be ex-officio members without the authority to vote on any business before the Board of Directors.

I. **Duties of Officers.** The duties of Officers of the Authority shall include, but shall not be limited to, the following:

(1) The Chairman shall preside at all meetings of the Authority; shall be responsible for all correspondence; shall make committee appointments; may appoint members of the Authority as liaison to any other governmental agencies, authorities, and commissions; shall act as a signatory when authorized; and shall have overall responsibility for accomplishment of the Authority's goals and purposes.

(2) The Vice Chairman shall, in the absence of the Chairman, exercise all of the Chairman's powers and duties. In the event the office of Chairman shall become vacant, the Vice Chairman shall immediately become the Chairman.

(3) The Secretary shall be responsible for taking detailed minutes of every meeting of the Authority, for providing appropriate notice of meetings to the Directors and Officers of the Authority and all other pertinent parties under Article III, and for preparing and distributing such minutes to all persons as directed by the Board of Directors. The Secretary shall maintain copies of all reports, correspondence, contracts, agreements, indentures, documents, audits, rules and regulations and any other records as may be directed by the Board of Directors. The Secretary also shall be responsible for



- preparing and filing all statements, reports and similar matters from time to time required by law to be filed by the Authority with any federal, state or local official.
- (4) The Treasurer shall be custodian of all funds of the Authority; shall keep and maintain suitable financial records as may be directed by the Board of Directors; shall arrange for an annual audit of the accounts of the Authority by an independent Certified Public Accountant, subject to the prior approval of the Board of Directors; and shall report to the Directors the results of such annual audit.
- (5) In addition to the foregoing powers and duties, each Officer of the Authority may exercise any powers conferred upon such officer by the Act, and all other powers as are customarily exercised by such officer in similar organizations or authorities as may be expedient, necessary or proper to further the lawful purposes of the Authority. During the absence of any Officer, the Board of Directors may designate any member of the Authority to perform the duties of the absent Officer until such Officer's return.

J. **Quorum.** Four members of the Board of Directors shall constitute a quorum of the Board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the Authority shall be leased or disposed of in any manner without a majority vote of the members of the Board of Directors (as described in Article III, Section A). No vacancy in the membership of the Board of Directors shall impair the right of a quorum to exercise all the powers and perform all the duties of the Board of Directors.

K. **Employees and Agents.** The Board of Directors shall have the power to employ and pay compensation to such employees and agents, including attorneys, consultants, and bond counsel, as the Board of Directors shall deem necessary in carrying on the business of the Authority.

### **III. MEETINGS AND HEARINGS**

A. **Voting.** Except as otherwise required in these Bylaws or by the Act, voting shall be by a simple majority of those present at any meeting of the board of directors that has been called and conducted in accordance with this Article. No Director shall be allowed to vote by proxy at any meeting of the Authority. If the absence or recusal of any member of the Board of Directors causes a vote to result in a tie, the matter shall be tabled. The same member of the Board who raised the tabled issue can raise the issue again at the same meeting or a subsequent meeting when he or she believes that the matter can be resolved by calling for another vote. However, a raised and tabled issue can only be re-raised once per meeting.

B. **Meetings and Notices.** Except as set forth below, regular meetings of the Board of Directors shall be held at the call of the Chairman when needed at Lexington City Hall. Special meetings of the Board of Directors may be called by the Chairman or a majority of the Board of Directors. Notice specifying the time and place of any special meeting shall be given to each Director and Officer of the Authority at least 24 hours before such meeting by personally delivering such notice to him or her or by telephoning or mailing such notice to him or her at least 24 hours before the meeting. The presence of any Officer or Director at a special meeting shall be deemed an acknowledgement of the timely receipt of notice thereof or a waiver of any such notice. Special meetings may be held without notice if all of the Directors are present or

those not present sign a written waiver of notice before or after the meeting. All meetings at which formal action is taken shall be open to the public.

**C. Public Hearing and Approval; Transmission of Fiscal Impact Statement.**

- (1) Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds, unless otherwise specified by federal law or regulation, the public hearing shall be conducted by the Authority either at its offices or in the General District Court Room of Lexington on a date and at a time selected by the Chairman of the Authority.
- (2) Notice of the hearing shall be given by the Secretary by (1) publishing once a week for two successive weeks in a newspaper published or having general circulation in the locality in which the facility to be financed is to be located and (2) advertising the meeting on the City's website. The notice shall specify the time and place of the hearing and also shall contain (a) the name and address of the Authority; (b) the name and address (principal place of business, if any) of the party seeking financing; (c) maximum dollar amount of financing sought; and (d) the type of business and purpose and specific location, if known, of the facility to be financed. Notwithstanding anything to the contrary contained herein, the hearing shall be scheduled and held not less than six (6) nor more than twenty-one (21) days after the second notice has appeared in the relevant local newspaper.
- (3) If, after the public hearing has been held, the Authority approves the financing, the Chairman shall convey promptly to the City Council a reasonably detailed summary of the comments expressed at the hearing, together with the Authority's recommendation. Such summary and recommendation shall be accompanied by a fiscal impact statement concerning the facility and financing therefor for which approval is sought in the form found in Appendix A of these Bylaws.
- (4) The Chairman shall use his best efforts to transmit said fiscal impact statement, summary and recommendation to the City Council within such time as will permit said City Council to either approve or disapprove the financing within sixty (60) calendar days from the public hearing.

**D. Minutes.** The Secretary of the Authority shall keep detailed minutes of all meetings and proceedings and all such minutes shall be open to public inspection at all times at the office of the Authority.

**E. Closed Sessions.** When addressing Authority business not required by law to be discussed in a public forum, any member of the Board of Directors may move to address said business in a closed session. To enter into a closed session, the motion must be seconded and approved by a majority of the Board of Directors. Business discussed in a closed session shall not be included on the minutes of the Authority. Any motion for a closed session shall be made according to the form exhibited in Appendix C.

**F. Financial Transactions, Records and Fiscal Year.** The Treasurer of the Authority shall keep suitable records of all financial transactions of the Authority and shall arrange to have the same audited following the end of each fiscal year, subject to the approval of the Board of

Directors. Copies of each audit shall be further furnished to the City Council and all such other persons as the Board of Directors may deem appropriate, and shall be open to public inspection at the office of the Industrial Development Authority, at City Hall, 300 East Washington Street, Lexington, Virginia 24450. The fiscal year of the Authority shall begin on July 1 and end on the last day of June next following.

G. **Agenda of Meetings.** The format of all regular meetings of the Board of Directors shall be as follows:

- a. Call to Order.
- b. Reading (if requested by any member), approval and correction of the minutes of the last regular meeting and any special meetings held subsequent to the last regular meeting.
- c. Treasurer's Report.
- d. Chairman's Report.
- e. Committee Reports: Executive Committee, Industrial Advisory Committee, and Special Committees.
- f. Old Business.
- g. New Business.
- h. Adjournment.

#### IV. **COMMITTEES**

A. **Executive Committee.** The Board of Directors may designate, by resolution adopted by a majority of the Directors, any two or more of the Directors to constitute an Executive Committee. The Executive Committee shall consider on behalf of the Board of Directors, all matters brought to its attention when the Board of Directors is not in session during either a regular or a special meeting. The Executive Committee may act solely in an advisory capacity and shall not exercise any of the powers granted to the Authority of its officers pursuant to these Bylaws or the Act. The Executive Committee shall report to the members of the Authority at the Authority's next regularly scheduled meeting all matters discussed by the Executive Committee.

B. **Special Committees.** The Board of Directors may appoint, from time to time, committees as it may deem necessary and expedient to promote the purposes of the Authority. Such committees shall be advisory only and shall not be empowered to act by or on behalf of the Authority. Members of any special committee shall not be compensated for their services but may be reimbursed for necessary traveling and other expenses incurred while on the business of the Authority.

#### V. **SEAL OF THE AUTHORITY**

The seal of the Authority shall be a flat faced circular die with the name of the Authority engraved thereon and such other words and figures as may appear thereon, as evidenced by a sample of such seal which appears on the margin of these Bylaws opposite this Section.

## **VI. CHECKS , NOTES , DRAFTS AND OTHER LEGAL DOCUMENTS**

Checks, notes, drafts, and other legal documents shall be signed by such Directors or Officers as specified in the Act, these Bylaws, or as the Board of Directors may, from time to time, authorize. The signature of any such person may be electronic when authorized by the Board of Directors or the Act.

## **VII. RULES AND REGULATIONS**

A. **Rules of Order.** Roberts Rules of Order, newly revised or any subsequent edition thereof, shall govern all matters of procedure not specifically set forth in these Bylaws or the Act.

B. **Rules and Regulations.** The Board of Directors may adopt, amend and alter, from time to time, such rules, regulations, or forms which it may deem necessary or expedient for the management of the affairs of the Authority and which shall not be inconsistent with the Act. The Secretary of the Authority shall maintain current copies of all rules, regulations, and forms adopted by the Authority, which shall be available for public inspection at all times at the office of the Authority.

## **VIII. AMENDMENT OF THE BYLAWS**

These Bylaws may be amended by a majority of the Board of Directors present at any duly constituted meeting, provided written notice of such amendment shall have been given to the Directors and Officers at least four business days prior to any such meeting.

**APPENDIX A: FISCAL IMPACT STATEMENT FORM**

\_\_\_\_\_ Date: \_\_\_\_\_

(Name of Applicant)

\_\_\_\_\_  
(Facility)

1. Maximum amount of financing sought	\$
2. Estimated taxable value of the facility's real property to be constructed in the locality	\$
3. Estimated real property tax per year using present tax rates	\$
4. Estimated personal property tax per year using present tax rates	\$
5. Estimated merchants' capital tax per year using present tax rates	\$
6.(a) Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality	\$
6.(b) Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality	\$
6.(c) Estimated dollar value per year of services that will be purchased from Virginia companies within the locality	\$
6.(d) Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality	\$
7. Estimated number of regular employees on year round basis	\$
8. Average annual salary per employee	\$
<b>TOTAL</b>	<b>\$</b>

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Authority Chairman

**APPENDIX B: PROCEDURES FOR FINANCIAL ASSISTANCE REQUESTS**

1. Prior to consideration of any request for financing assistance, the Authority shall require submission of the following documentation by all applicants:

- a. Cover letter soliciting an Authority Resolution of Inducement for the use of industrial revenue bonds.
- b. Background information on the applicant, including but not limited to: a brief history of the applicant; the names of the applicant's chief officers and principal owners; a description of the applicant's market and products or services; records of past sales growth and projected sales; financial statements for the previous three years of operation and current year estimates; and a statement of the relationship of this project to the organization and to its marketing and sales strategy.
- c. Detailed project outline, including but not limited to; a description of the facilities to be constructed and/or utilized; a schedule of the estimated cost of the project as it relates to the financing sought; an economic valuation analysis; and a detailed explanation of how the bonds will be sold, including all cost connected therewith.
- d. Statement of benefits to the State of Virginia and to the City of Lexington, including but not limited to: a projection of new employment opportunities created as a result of the project; an estimate of all taxes projected to be paid to the City of Lexington as a result of the facility; and an estimate of all taxes projected to be paid to the State of Virginia as a result of the facility; and a statement of other potential benefits which might accrue to the local economy, including non-monetary benefits.

2. All documentation referred to in Paragraph 1 shall be addressed to the Chairman, Industrial Development Authority of Lexington, Virginia.

3. At the time the application is received, a non-refundable filing fee of \$5,000 is due. A non-refundable closing fee of \$20,000 or 1 percent of the total issuance amount is due at the time the applicant's project is financed through the Authority. The applicant shall be responsible for the cost of advertising legal notices of public hearings, and other costs related to the public hearing as determined by the Authority. The applicant shall also be responsible for the payment of an annual fee. For affordable housing transactions where the Authority or the City is required to conduct ongoing monitoring of the project, the annual fee shall be based on the lesser of: 1) staff's estimate of the costs to be incurred each year in monitoring the project; or 2) one-eighth of one percent of the outstanding principal amount of the bonds. For all other transactions, the annual fee shall be the lesser of: 1) \$5,000 or 2) one-eighth of one percent of the outstanding principal amount of the bonds. Fees shall be made payable to the Industrial Development Authority of the City of Lexington, Virginia. The Authority shall retain

the right to waive all or part of the closing and/or annual fee if the applicant demonstrates to the Authority that financial hardship would result from payment of all or part of the closing fee.

4. Upon receipt of an application for financing assistance, the Authority shall forward all relevant materials to the City Council staff for review. The Authority shall meet to make a recommendation upon an application only after review by the City Council staff has been completed. The Authority shall hold a public meeting to allow for public comment prior to the adoption of an inducement resolution authorizing a proposed project or projects. Notice of this meeting shall be advertised in a newspaper of general circulation in the County fourteen days and again seven days before the public hearing is held. The notice must include the name and address of the Authority, the time and place of the hearing, the name and address of the party seeking financing, the maximum dollar amount of financing sought, the type of business and the proposed location of the facility to be financed. The Authority's recommendation along with accompanying documentation and a detailed summary of the public hearing shall then be forwarded to the City Council for consideration. Final action shall be taken by the Authority only after receipt of a recommendation from the City Council.

5. The Authority shall take into consideration the following factors in reviewing any request for financing assistance:

- a. General Land Use Plan.
- b. Existing Zoning.
- c. Efficient Land Utilization.
- d. Other County Board-adopted Goals, Policies, and Objectives.

6. The Authority shall include in its bond documents and require the applicant to include in its Official Statement the following certifications:

- a. The Official Statement shall meet current financial disclosure guidelines as promulgated by the Government Finance Officers Association; and,
- b. The applicant shall provide ongoing, timely disclosure of annual financial information (including an annual financial audit prepared by an independent auditor using generally accepted accounting principles) and notices of material events to the Authority and to the Municipal Securities Rulemaking Board. The applicant shall bear the burden of compliance with Securities Exchange Commission (SEC) mandates regarding ongoing compliance and reporting obligations, and shall be indemnified to the Authority for any fines resulting from failure to comply with SEC rules.

## APPENDIX C: MOTION FOR A CLOSED SESSION

### MOTION FOR CLOSED MEETING

I move that Industrial Development Authority of Lexington, Virginia convene in Closed Session in accordance with Section 2.2-3712, of the Code of Virginia, as amended, in order to discuss matters identified as exempt pursuant to Section 2.2-3711, Subsection A, Paragraph *[fill in paragraph number(s)]*. The subject to be addressed shall be *[fill in description from paragraph(s) cited]*

VOTE:

Don Burks	Aye	Nay
Homer "Buddy" Derrick	Aye	Nay
John DeVogt	Aye	Nay
Anna-Lisa Fitzgerald	Aye	Nay
Richard Halseth	Aye	Nay
James Joyner	Aye	Nay

### RESOLUTION

WHEREAS, the Industrial Development Authority of the City of Lexington has convened a closed session on this date pursuant to an affirmative vote in accordance with the provisions of the Virginia Freedom of Information Act, specifically Section 2.2-3711, Paragraph *[fill in paragraph number(s)]*, to discuss *[fill in description from paragraph(s) cited]*; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Authority that such executive meeting was conducted in conformity with Virginia law;

NOW THEREFORE BE IT RESOLVED by the Members of the Board of the Industrial Development Authority of Lexington, Virginia, that the Members hereby certify that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were, heard, discussed or considered by the Authority.



VOTE:

Don Burks	Aye	Nay
Homer "Buddy" Derrick	Aye	Nay
John DeVogt	Aye	Nay
Anna-Lisa Fitzgerald	Aye	Nay
Richard Halseth	Aye	Nay
James Joyner	Aye	Nay

ABSENT DURING VOTE: \_\_\_\_\_

ABSENT DURING MEETING: \_\_\_\_\_

Resolved: \_\_\_\_\_

\_\_\_\_\_  
John DeVogt, Chairman

\_\_\_\_\_  
Clerk

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**BOND PURCHASE AGREEMENT**

**by and among**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA,**

**STEELE LEXINGTON LLC**

**and**

**FMSBONDS, INC.**

**Dated March \_\_\_\_, 2020**

**Relating to:**

**\$8,200,000**

**Industrial Development Authority of the City of Lexington, Virginia,  
Multifamily Housing Revenue Bonds  
(Lexington House Apartments), Series 2020**

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## BOND PURCHASE AGREEMENT

**FMSBONDS, INC.** (“FMS”) (together with its successors or assigns hereunder, the “Underwriter”), hereby offers to enter into the following agreement with **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA**, a \_\_\_\_\_ duly organized and validly existing under the laws of the Commonwealth of Virginia (together with its successors and assigns, the “Issuer”) and **STEELE LEXINGTON LLC**, a limited liability company duly organized and validly existing under the laws of the Commonwealth of Virginia (together with its permitted successors and assigns, the “Borrower”), for the sale by the Issuer and the purchase by the Underwriter of the Bonds described below, which are being issued by the Issuer for the benefit of the Borrower. Upon your acceptance of this offer and your execution and delivery of this Agreement, this Agreement will be binding upon each of you and the Underwriter. This offer is made subject to your acceptance, evidenced by your execution and delivery of this Agreement to the Underwriter, at or prior to 1 p.m., eastern time, on March \_\_\_\_, 2020 and will expire if not so accepted at or prior to such time (or such later time as the Underwriter may agree in writing).

Section 1. Definitions. The capitalized terms used in this Agreement have the meanings assigned to them in the Glossary of Terms attached as Exhibit A hereto or in the Indenture, as applicable.

Section 2. Purchase and Sale.

2.1 Subject to the terms and conditions set forth in this Agreement, and in reliance on the representations, warranties and covenants contained herein, the Underwriter hereby agrees to purchase from the Issuer and the Issuer hereby agrees to sell to the Underwriter when, as and if issued, all (but not less than all) of the Bonds identified in Item 1 in Exhibit B attached hereto in exchange for delivery by the Underwriter of the Purchase Price for the Bonds set forth as Item 2 in Exhibit B attached hereto.

2.2 The Bonds will (i) be issued pursuant to the Resolution and the Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rate, interest payment dates and redemption provisions) set forth in Item 3 in Exhibit B attached hereto and in the Indenture.

Section 3. Closing. The Closing will take place at the time and on the date set forth in Item 5 in Exhibit B or at such other time or on such other date as may be mutually agreed upon by you and the Underwriter. At the Closing, the Issuer will direct the Trustee to deliver the Bonds to or upon the order of the Underwriter, pursuant to the DTC FAST System, in definitive form, duly executed and authenticated by the Trustee. Subject to the terms and conditions hereof, the Issuer will deliver or cause to be delivered at the offices of McGuireWoods, LLP, in Tysons, Virginia, the other documents and instruments to be delivered pursuant to this Agreement (the “Closing Documents”) and the Underwriter will accept delivery of the Bonds and Closing Documents and simultaneously will deliver the Purchase Price for the Bonds, by wire transfer, to the Trustee, in immediately available federal funds, for the account of the Issuer or as the Issuer directs. The Bonds will be made available to the Underwriter one (1) Business Day before the Closing at the closing location for purposes of inspection. The Bonds will be prepared and delivered as fully registered Bonds without coupons in the denominations set forth in the Indenture. The Bonds should be registered by the Trustee in the name of Cede & Co., as nominee for DTCC.

Section 4. Representations and Warranties of Issuer.

4.1 The Issuer hereby makes the following representations and warranties to the Underwriter for its benefit and the benefit of the Purchaser and the Holders from time to time of the Bonds, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Issuer is a \_\_\_\_\_, duly organized and validly existing under the laws of the Commonwealth of Virginia and is authorized to execute and deliver this Agreement and the other Issuer Documents and to issue, sell and deliver the Bonds pursuant to the laws of the Commonwealth of Virginia, including particularly the Act.

(b) The Issuer has, and as of the Closing Date will have, all necessary power and authority to (i) execute and deliver this Agreement and the other Issuer Documents, (ii) issue the Bonds in the manner contemplated by the Resolution, this Agreement and the Indenture, and (iii) otherwise consummate the transactions contemplated by the Resolution, this Agreement and the other Issuer Documents.

(c) At the time of its adoption, the Issuer had all necessary power and authority to adopt the Resolution.

(d) The Issuer has duly adopted the Resolution at a meeting or meetings duly called and held in accordance with applicable law and procedures of the Issuer, and since that time the Resolution has not been rescinded, amended or modified.

(e) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized the (i) execution and delivery of this Agreement, the Bonds and the other Issuer Documents, (ii) performance by the Issuer of the obligations contained in this Agreement, in the Bonds and in the other Issuer Documents, and (iii) consummation by the Issuer of all of the transactions contemplated hereby and by the other Issuer Documents.

(f) Assuming the valid authorization, execution and delivery of this Agreement and the other Issuer Documents by the other parties hereto and thereto and the authentication of the Bonds by the Trustee, this Agreement is, and the Bonds and the other Issuer Documents will be, the legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(g) All consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any Virginia court or governmental authority, board, agency, commission or body having jurisdiction which are required by or on behalf of the Issuer for the execution and delivery by the Issuer of this Agreement, the other Issuer Documents or the Bonds, or the consummation by the Issuer of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to Closing, except for the filing of the IRS Form 8038 and any other required state filings (which will all be timely filed after Closing).

(h) The execution and delivery by the Issuer of this Agreement, the Bonds and the other Issuer Documents, and the consummation by the Issuer of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the Act, the Constitution of the Commonwealth of Virginia or the organizational documents of the Issuer, (ii) any applicable law, rule, regulation, judgment, decree, order

or other requirement applicable to the Issuer, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Issuer is a party or by which the Issuer or its properties is bound.

(i) There is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any Virginia court, agency, arbitrator, public board or body or other entity or person, pending or, to the best knowledge of the Issuer, threatened against or affecting the Issuer or its officials, in their respective capacities as such, (i) which would restrain or enjoin the issuance or delivery of the Bonds or the collection of revenues pledged under the Indenture, (ii) which would in any way contest or affect the organization or existence of the Issuer or the entitlement of any officers of the Issuer to their respective offices, or (iii) which may reasonably be expected to contest or have a material and adverse effect upon (A) the due performance by the Issuer of this Agreement or the other Issuer Documents or the transactions contemplated hereby or thereby, (B) the validity or enforceability of the Bonds, the Resolution, this Agreement, the other Issuer Documents or any other agreement or instrument to which the Issuer is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, or (C) the exclusion of the interest on the Bonds from the gross income of the holders thereof for federal income tax purposes. The Issuer is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(j) When delivered to the Underwriter after receipt of payment therefor in accordance with the provisions of this Agreement, the Bonds will be duly authorized, executed, issued, and delivered and will constitute the Issuer's legal, valid and binding special, limited obligations, enforceable in accordance with their terms (except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity), and will be entitled to the benefit and security of the Indenture.

(k) Other than the Issuer Documents, the Issuer has not entered into any contract or arrangement that might give rise to any lien or encumbrance on the revenues or other assets, properties, funds or interests pledged pursuant to the Indenture.

(l) The Issuer has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion of the interest on the Bonds from the gross income of the holders thereof for federal income tax purposes.

(m) The Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Issuer is an issuer whose arbitrage certifications may not be relied upon.

(n) On the Closing Date, each of the representations and warranties of the Issuer contained herein and in the other Issuer Documents shall be true, correct and complete in all material respects.

(o) The Underwriter has not provided any municipal advisory services to the Issuer within the meaning of Rule 15Ba1-1 of the Securities Exchange Act of 1934, as amended.

4.2 Any certificate signed by any official of the Issuer and delivered to the Underwriter in connection with the delivery of the Bonds will be deemed to be a representation and

warranty by the Issuer to the Underwriter for its benefit and for the benefit of the Purchaser and any other Holders from time to time of the Bonds, as to the statements made therein.

Section 5. Representations and Warranties of Borrower.

5.1 The Borrower makes the following representations and warranties to the Issuer and the Underwriter, as of the date hereof, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is, and at all times will be, a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. The Managing Member is, and at all times will be, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado. Steele Properties Holdings III LLC (“Steele”), the managing member of the Managing Member, is, and at all times will be, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado.

(b) The Borrower has, and on the Closing Date will have, full legal right, power and authority (i) to execute and deliver this Agreement and the other Borrower Documents, and (ii) to consummate the transactions contemplated by this Agreement and the other Borrower Documents. The Managing Member has, and on the Closing Date will have, full legal right, power and authority to execute and deliver this Agreement and the other Borrower Documents on behalf of the Borrower. Steele has, and on the Closing Date will have, full legal right, power and authority to execute and deliver this Agreement and the other Borrower Documents on behalf of the Managing Member.

(c) The Borrower has duly authorized the execution and delivery of this Agreement and the performance by the Borrower of the obligations contained herein, and prior to the Closing Date the Borrower will have duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, and (iii) consummation by the Borrower of all transactions contemplated hereby and by the other Borrower Documents.

(d) All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrower or for the execution and delivery by the Borrower of this Agreement and the other Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby have been obtained or will be obtained prior to the Closing Date.

(e) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion of the interest on the Bonds from the gross income of the holders thereof for purposes of federal income taxation.

(f) All information concerning the Project, the Borrower, the Managing Member, Steele and the Guarantor submitted to the Originator by the Borrower, the Managing Member, Steele or the Guarantor, is true and correct in all material respects as of the date hereof and does not omit to state a material fact necessary to make the statements therein not misleading.

(g) There is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Borrower, the Managing Member, Steele or the

Guarantor or, to the knowledge of the Borrower, any basis therefor (i) in any way affecting the organization and existence of the Borrower, the Managing Member, Steele or the Guarantor, (ii) contesting or materially affecting the validity or enforceability of this Agreement, the other Borrower Documents or the Guarantor Documents, (iii) contesting the powers of the Borrower or its authority with respect to the Borrower Documents, (iv) contesting the authority of the Managing Member to act on behalf of the Borrower or of Steele to act on behalf of the Managing Member, (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on (A) the operations of the Borrower, the Managing Member, Steele or the Guarantor, (B) the due performance by the Borrower of the Borrower Documents or by the Guarantor of the Guarantor Documents, (C) the validity or enforceability of any of the Borrower Documents or the Guarantor Documents or the transactions contemplated hereby or by any other Borrower Document or Guarantor Document, or (vi) in any way contesting the exclusion from the gross income of the holders thereof for purposes of federal income taxation of the interest on the Bonds.

(h) This Agreement is, and, when executed and delivered by the Borrower and the other parties hereto, and the other Borrower Documents will be, the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(i) The execution and delivery by the Borrower of this Agreement and the other Borrower Documents and the consummation by the Borrower of the transactions contemplated thereby and hereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under (i) organizational documents of the Borrower, (ii) to the Borrower's knowledge, any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Borrower is subject, or (iii) any contract, indenture, agreement, mortgage, lease, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties is bound.

(j) The Underwriter has not provided any municipal advisory services to the Borrower within the meaning of Rule 15Ba1-1 of the Securities Exchange Act of 1934, as amended.

5.2 Each of the representations and warranties set forth in this Section 5 will survive the Closing.

5.3 Any certificate signed by the Borrower, the Managing Member, Steele or the Guarantor and delivered to the Underwriter shall be deemed a representation and warranty by the Borrower to the Underwriter, the Purchaser and the Holders as to the statements made therein.

## Section 6. Covenants.

6.1 The Issuer hereby makes the following covenants with the Underwriter:

(a) Prior to the Closing, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture or the other Issuer Documents.

(b) After all conditions have been met with respect to the issuance of the Bonds (including, without limitation, the payment of the Purchase Price), the Issuer will cause the

Bonds to be delivered in accordance with this Agreement, and upon receipt of evidence that the Trustee has received the Purchase Price set forth in Section 2.1 hereof, to the address and at the time specified by the Underwriter in conjunction with the Closing.

(c) The Issuer will not knowingly take or omit to take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be included in the gross income of the holders thereof for federal income tax purposes.

(d) Prior to the Closing, the Issuer will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of its obligations under the Resolution, this Agreement, the other Issuer Documents and the Bonds.

6.2 The Borrower hereby makes the following covenants with the Issuer and the Underwriter:

(a) The Borrower will not take or omit to take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(b) Prior to the Closing, the Borrower will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency, if any, that would constitute a condition precedent to the performance by it of its obligations under this Agreement and the other Borrower Documents.

(c) The Borrower will not voluntarily undertake any course of action inconsistent with the satisfaction by the Borrower of the requirements applicable to it, as set forth in this Agreement and the other Borrower Documents.

#### Section 7. Conditions of Closing.

7.1 The Underwriter has entered into this Agreement in reliance upon representations, covenants and agreements of the Issuer and the Borrower contained herein, in reliance upon the representations, covenants and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and the Borrower of their obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Underwriter's obligations under this Agreement to purchase, to accept delivery of and to pay for the Bonds will be subject to the performance by the Issuer and the Borrower of their obligations to be performed by them hereunder at or prior to the Closing, and to the accuracy in all material respects of the representations, covenants and agreements of the Issuer and of the Borrower contained herein as of the date hereof and as of the Closing as if made on the Closing Date, and will also be subject to the following additional conditions:

(a) There shall not have occurred any material error, misstatement or omission in the representations and warranties made by either of you in this Agreement or made to the Originator, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.



(b) Each of you shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by you at or prior to Closing.

(c) This Agreement, the other Issuer Documents, the other Borrower Documents and the Guarantor Documents shall have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date, shall be in form and substance satisfactory to the Originator, and no event of default shall exist under any such documents.

7.2 On the Closing Date, (a) the Originator shall have received, in immediately available funds, an amount equal to the fees set forth in Section 10 below, and the costs and expenses of the Underwriter incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts.

7.3 In addition to the conditions set forth above, the obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Originator of the following items:

(a) A certificate of Steele, dated the Closing Date and in form and substance reasonably satisfactory to the Originator;

(b) A certificate of the Guarantor, dated the Closing Date and in form and substance reasonably satisfactory to the Originator;

(c) Opinions of counsel to the Borrower, the Managing Member, Steele, and the Guarantor dated the date of issuance of the Bonds and addressed to the Issuer, the Trustee, the Purchaser and the Underwriter as to the matters on Exhibit C attached hereto;

(d) A tax opinion of Bond Counsel from McGuireWoods LLP, dated the date of issuance of the Bonds and addressed to the Underwriter, the Purchaser, the Originator, the Trustee and the Issuer, in form and substance acceptable to the Issuer, the Purchaser and the Originator;

(e) A supplemental opinion of Bond Counsel, dated the date of issuance of the Bonds and addressed to the Underwriter and the Purchaser, in form and substance acceptable to the Underwriter and the Purchaser;

(f) A pro forma mortgagee title insurance policy issued by the Title Company to the Trustee, dated effective as of the date of recording of the Mortgage, in form, scope and substance satisfactory to the Originator, insuring the lien of the Mortgage in an amount equal to the initial face amount of the Bonds, subject only to such liens and encumbrances as the Originator may approve, containing all the requirements included in the Originator's list of title requirements provided to the Borrower, to the extent available in the Commonwealth of Virginia;

(g) Evidence of the insurance required under the Loan Agreement, including, without limitation, flood insurance to the extent that any portion of the Improvements is located in a Special Flood Hazard area as defined by the United States Department of Housing and Urban Development;

(h) A certified legal description and as-built ALTA/ACSM Land Title Survey of the land included in the Project by a surveyor approved by the Originator in form and

substance acceptable to the Originator, containing all the requirements included in the Originator's list of survey requirements and form of surveyor's certificate both provided to the Borrower;

(i) Evidence in such form as the Originator may reasonably require of (i) satisfactory subdivision of the Project and zoning for all buildings and improvements relating thereto; (ii) the valid issuance of all necessary permits and licenses to renovate and operate the buildings and improvements, including, without limitation, all permits and licenses required under applicable law with respect to subdivision, zoning, safety, building, occupancy, fire protection, environmental, energy and similar matters; (iii) the availability of all utility and municipal services required for the operation of the buildings and improvements; and (iv) the availability of means of access to and from such property, by means of public ways or easements benefiting such property;

(j) Evidence reasonably satisfactory to the Originator that building permits listed on Schedule 6 to the Loan Agreement have been provided or will be provided upon the payment of fees and that upon Construction Completion, to the Borrower's knowledge, no new certificates of occupancy will be issued, except to the extent as may be required by the laws of the Commonwealth of Virginia;

(k) A budget detailing the costs of the proposed rehabilitation of the Project, and plans and specifications detailing the scope of such renovation, all satisfactory to the Originator;

(l) Copies of contracts with an architect and a general contractor or prime contractors, satisfactory to the Originator, for the rehabilitation of the Project, plus consents of the assignments of all such contracts to the Trustee by each professional;

(m) A report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the final plans and specifications, (ii) the construction contract(s) satisfactorily provide for the rehabilitation of the Project, and (iii) in the opinion of the Engineering Consultant, rehabilitation of the Project can be completed within eighteen (18) months following Closing, as may be extended pursuant to the Loan Agreement and Indenture, for an amount not greater than the amounts allocated for such purpose on the submitted budget;

(n) An environmental audit satisfactory to the Originator in scope, form and substance, and performed and certified to the Originator by an environmental engineer satisfactory to the Originator;

(o) An engineering report satisfactory to the Originator in scope, form and substance, and prepared and certified to the Originator by a structural engineer satisfactory to the Originator, and a report showing no infestation by wood-destroying insects;

(p) For each of the Borrower, the Managing Member, Steele and the Guarantor, a certified copy of its organizational documents as in effect on the date of closing, including copies of all filed documents, which shall, with respect to the Borrower and the Managing Member, contain provisions denoting its single purpose entity status, and evidence that all action necessary for the valid execution, delivery and performance by the Borrower, the Managing Member, Steele and the Guarantor of this Agreement and the other Borrower Documents or the Guarantor Documents, as applicable, to which it is or is to become a party shall have been duly and effectively taken;

(q) A certificate of the Borrower, dated the Closing Date, in form and substance reasonably satisfactory to the Purchaser, the Originator and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion;

(r) A non-arbitrage certificate of the Issuer and proceeds certificate of the Borrower, in form and substance acceptable to Bond Counsel;

(s) A certificate of the Trustee, dated the Closing Date, in form and substance satisfactory to the Originator;

(t) A properly completed IRS Form 8038 as to the Bonds to be executed on or before the Closing Date and filed with the IRS promptly following the Closing Date;

(u) Evidence of the consent of HUD to the assignment to and assumption by the Borrower of the Housing Assistance Payments Agreement for the Project and of final approval by HUD of the rentals to be charged by the Borrower following completion of the renovation of the Project;

(v) A current rent roll and an income and expense statement as of the last full month prior to Closing, concerning the leasing and operation of the Project, certified as true and correct by the Borrower;

(w) Oral confirmation from the Purchaser to the Originator that the Purchaser is ready to close; and

(x) Such other documents, certificates, approvals, assurances and opinions as the Purchaser or the Originator may reasonably request.

7.4 If any of the conditions set forth in Sections 7.1, 7.2 or 7.3 hereof have not been met on the Closing Date, the Underwriter may, at its sole option, terminate this Agreement or proceed to Closing upon waiving in writing such condition under this Agreement (but only with the consent of the Originator and Purchaser as to any condition subject to their approval or receipt). If this Agreement is terminated pursuant to this Section 7.4, no party will have any rights or obligations to the other parties hereto, except as provided in Section 10 below.

Section 8. Actions and Events at the Closing. The following events will take place at the Closing:

(a) The Issuer will deliver the Bonds to the Trustee for closing through DTCC's book-entry only system. The Bonds so delivered will be in the form required by the Indenture, duly executed on behalf of the Issuer and authenticated by the Trustee, and will be fully registered in the name of Cede & Co., as nominee for DTCC.

(b) The Issuer and/or the Borrower, as applicable, will deliver or cause to be delivered to the Underwriter at the place set forth in Item 5 in Exhibit B, or at such other place or places as you and the Underwriter may mutually agree upon, the materials described in Section 7.3 hereof.

(c) The Underwriter will deliver to the Trustee, for the account of the Issuer or as the Issuer directs, an amount equal to the Purchase Price of the Bonds, by wire transfer to the Trustee, in immediately available federal funds, which shall be deposited by the Trustee in the

Accounts set forth in the Indenture upon the issuance of the Bonds, and applied as set forth in the Indenture.

Section 9. Termination of Agreement. The Underwriter may terminate this Agreement, without liability therefor, by notifying you at any time prior to the Closing if:

(a) Any legislation is introduced in, or enacted by, the United States Congress, or shall have been reported out of committee or be pending in committee, or any decision is rendered by any court of competent jurisdiction, or any ruling or regulation, temporary regulation, release or announcement shall have been issued or proposed by the Treasury Department of the United States, the Internal Revenue Service, or any other agency of the government of the United States that, in the reasonable judgment of the Underwriter, has the purpose or effect of causing interest on the Bonds to be includable in gross income of the holders thereof for purposes of federal income taxation or to be an item of tax preference for purposes of the federal alternative minimum tax; or

(b) Any legislation is introduced in, or enacted by the United States Congress or any action is taken by, or on behalf of, the Securities and Exchange Commission, that, in the opinion of counsel to the Underwriter has the effect of requiring (i) the Bonds or the interests in the Loan Agreement or other financing documents to be registered under the 1933 Act or the Indenture to be qualified under the 1939 Act, or (ii) any governmental consents, approvals, orders or authorizations for the consummation of the transactions contemplated by this Agreement, the Issuer Documents, the Borrower Documents or the Guarantor Documents which cannot, without undue expense, be obtained prior to the Closing Date.

If this Agreement is terminated pursuant to this Section 9, no party will have any rights or obligations to the other parties hereto, except as provided in Section 10 below.

Section 10. Fees and Expenses; Costs of Issuance. The Borrower shall pay or cause to be paid all costs of issuance of the Bonds, including all reasonable expenses incident to the performance of the Underwriter's obligations hereunder in connection with its purchase of the Bonds, including, but not limited to, (i) the fees of the Originator set forth in Section 2.2(a) of the Loan Agreement, (ii) the cost of the preparation, printing or other reproduction of the Resolution, this Agreement, the other Issuer Documents, the other Borrower Documents and the Guarantor Documents, in reasonable quantities for distribution, (iii) the cost of producing, authenticating and delivering the Bonds, (iv) the fees and disbursements of Bond Counsel, Issuer's counsel, Originator's counsel and Trustee's counsel, (v) the fees and expenses, including, without limitation, all initial and continuing fees and expenses, of the Trustee and all paying agents, transfer agents and bond registrars, (vi) the fees and expenses, including, without limitation, all initial and continuing fees and expenses, of the Issuer, and (vii) the fees and expenses, including travel expenses, incurred by the Borrower's representatives in connection with the issuance, sale and delivery of the Bonds.

Section 11. Miscellaneous.

11.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following addresses or such other address as any of the parties shall specify:

If to the Underwriter: FMSbonds, Inc.  
4775 Technology Way  
Boca Raton, Florida 33431  
Attention: Mark Viggiano

With copies to: Red Stone Tax-Exempt Funding LLC  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Cody Langeness

and: Greenberg Traurig, LLP  
1717 Arch Street, Suite 400  
Philadelphia, Pennsylvania 19103  
Attention: Alexander L. Scarola

and: Greenberg Traurig, P.A.  
777 S. Flagler Drive, Suite 300 East  
West Palm Beach, Florida 33041  
Attention: Stephen D. Sanford

If to the Issuer: Industrial Development Authority  
of the City of Lexington, Virginia  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to the Borrower: Steele Lexington LLC  
6875 E. Evans Avenue  
Denver, Colorado 80224  
Attention: Justin Boyd

With a copy to: Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place, Suite 1900  
Chicago, Illinois 60605  
Attention: \_\_\_\_\_

11.2 This Agreement will inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns and will not confer any rights upon any other person except as expressly provided herein with respect to the Purchaser and the Holders from time to time of the Bonds.

11.3 This Agreement may not be assigned by the Issuer or the Borrower. This Agreement may be assigned by the Underwriter upon written notice of such assignment from the Underwriter to the Issuer and the Borrower.

11.4 This Agreement may not be amended without the prior written consent of the Issuer, the Borrower, the Originator and the Underwriter.

11.5 The representations, covenants and agreements of the Issuer and the Borrower will not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of (a) any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations, covenants and agreements, and (b) delivery of and payment for the Bonds.

11.6 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Agreement.

11.7 This Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of the Bonds.

11.8 This Agreement will become effective and binding upon the respective parties hereto upon the execution and delivery hereof by the parties hereto and will be valid and enforceable as of the time of such execution and delivery.

11.9 If any provision of this Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

11.10 This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to agreements to be performed wholly therein, without regard to conflict of laws principles.

11.11 As an inducement to the agreement of the Underwriter to purchase the Bonds pursuant to the terms of this Agreement, the Borrower agrees not to obtain or seek to obtain financing or credit of any kind or nature whatsoever from any other sources in lieu of the financing to be provided by the issuance of the Bonds by the Issuer and the purchase of the Bonds by the Underwriter. In the event of a breach of this covenant, the Underwriter shall be entitled to all remedies available to it, at law and in equity, including specific performance and damages.

11.12 The Borrower agrees to indemnify and hold harmless the Underwriter from any and all litigation or claims arising out of transactions contemplated herein, except for any litigation or claims directly resulting from the gross negligence or willful misconduct of the Underwriter.

11.13 The obligations of the Underwriter hereunder shall be without recourse to any shareholder, trustee, officer, employee, agent or manager of the Underwriter and no shareholder, trustee, officer, employee, agent or manager of the Underwriter shall be personally liable for the payment of any obligation of the Underwriter hereunder. In the event any legal actions or proceedings are brought in respect of such obligations, any judgment against the Underwriter shall be enforced only against the assets of the Underwriter and not against any property of any shareholder, trustee, officer, employee, agent or manager of the Underwriter.

Section 12. No Advisory or Fiduciary Role. The Issuer and the Borrower acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm's-length commercial transaction among the Issuer, the Borrower and the Underwriter, (ii) in connection with such transaction, the Underwriter is acting solely as a principal and not as an advisor (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), agent or a fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed a fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering of the Bonds or the process leading thereto (whether or not the Underwriter, or any affiliate of the Underwriter, has advised or is currently advising the Issuer or the Borrower on other matters) or any other obligation to the Issuer or the Borrower except the obligations expressly set forth in this Agreement, (iv) the Underwriter has financial and other interests that differ from those of the Issuer and the Borrower, and (v) each of the Issuer and the Borrower has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Bonds. Solely for the purpose of this Section 12, the term "Borrower" includes the Managing Member, Steele Properties Holdings III LLC and the Guarantor.

{signatures on next page}

If the foregoing accurately sets forth our mutual understanding concerning the subject matter hereof, kindly indicate your acceptance by executing this Agreement and returning this executed Agreement to the undersigned.

**FMSBONDS, INC.**, a Florida Corporation

By: \_\_\_\_\_  
Name: Theodore A. Swinarski  
Title: Senior Vice President Trading

[SIGNATURES CONTINUED ON NEXT PAGE]



Accepted as of the date first above written:

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF LEXINGTON, VIRGINIA**

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

Accepted as of the date first above written:

**STEELE LEXINGTON LLC,**  
a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

## EXHIBIT A

### **Glossary of Terms**

“1933 Act” means the Securities Act of 1933, as amended.

“1939 Act” means the Trust Indenture Act of 1939, as amended.

“Accounts” means all of the funds and accounts to be established under, and defined in, the Indenture, including the Project Fund (and within such Project Fund, the Bond Proceeds Account, the Costs of Issuance Account, the Equity Account, the Capitalized Interest Account and the Insurance and Condemnation Proceeds Account), the Replacement Reserve Fund, the Tax and Insurance Escrow Fund, the Rebate Fund, the Surplus Fund, the Bond Purchase Fund, the Redemption Fund, and the Operating Reserve Fund.

“Act” means \_\_\_\_\_, as amended.

“Agreement” means this Bond Purchase Agreement, as amended from time to time.

“Assignment of Capital Contributions” means that certain Assignment of Capital Contributions to be dated March \_\_\_\_, 2020, from the Borrower to the Trustee.

“Assignment of HAP Contract” means that certain Assignment of Housing Assistance Payments Contract to be dated March \_\_\_\_, 2020, from the Borrower to the Trustee, with the consent of HUD.

“Assignment of Leases” means that certain Assignment of Rents, Leases and Other Income to be dated March \_\_\_\_, 2020, from the Borrower to the Trustee.

“Assignment of Management Agreement and Consent” means that certain Assignment of Management Agreement to be dated March \_\_\_\_, 2020, from the Borrower to the Trustee, together with the consent of the manager of the Project.

“Assignment of Project Documents” means that certain Assignment of Project Documents to be dated March \_\_\_\_, 2020, from the Borrower to the Trustee.

“Bonds” means \$8,200,000 in aggregate principal amount of Industrial Development Authority of the City of Lexington, Virginia Multifamily Housing Revenue Bonds (Lexington House Apartments), Series 2020.

“Borrower” means Steele Lexington LLC, a Virginia limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia, together with its permitted successors and assigns hereunder.

“Borrower Documents” means, collectively, this Agreement, the Loan Agreement, the Regulatory Agreement, the Mortgage, the Note, the Assignment of Leases, the Environmental Indemnity, the Assignment of Project Documents, the Assignment of HAP Contract, Assignment of Capital Contributions, the HAP Contract, the Managing Member Pledge, the Assignment of Management Agreement and Consent, the Replacement Reserve Agreement, and all other agreements, documents and certificates as may be required to be executed and delivered by the Borrower to carry out, give effect to, and consummate the transactions contemplated by this Agreement or by the other Borrower Documents.

“Closing” means the proceeding at which the actions described in Section 8 are performed.

“Closing Date” means the date on which the Closing takes place.

“Developer” means Steele Properties III LLC, as developer.

“Developer Fee Pledge” means the Developer Limited Guaranty, Pledge and Security Agreement dated March \_\_\_\_, 2020, from the Developer in favor of the Trustee.

“Engineering Consultant” means Hillmann Consulting, LLC or other engineering consultant chosen by the Originator.

“Environmental Indemnity” means that certain Environmental Indemnity Agreement to be dated March \_\_\_\_, 2020, from the Borrower and the Guarantor named therein for the benefit of the Trustee.

“Guarantor” means Steele Properties LLC, together with its permitted successors and assigns.

“Guarantor Documents” means, collectively, the Guaranty of Recourse Obligations to be dated March \_\_\_\_, 2020, from the Guarantor for the benefit of the Trustee, the Guaranty of Completion to be dated March \_\_\_\_, 2020, from the Guarantor for the benefit of the Trustee, the Guaranty of Debt Service and Stabilization to be dated March \_\_\_\_, 2020, from the Guarantor for the benefit of the Trustee, and the Environmental Indemnity to be dated March \_\_\_\_, 2020, from the Borrower and the Guarantor for the benefit of the Trustee.

“HAP Contract” means that certain Housing Assistance Payment Contract, dated on or about the date of the Bonds, between the Borrower and HUD.

“HUD” means the United States Department of Housing and Urban Development.

“Indenture” means that certain Indenture of Trust to be dated as of March 1, 2020, between the Issuer and the Trustee.

“Issuer” means Industrial Development Authority of the City of Lexington, Virginia, a \_\_\_\_\_ duly organized and validly existing under the laws of the Commonwealth of Virginia, together with its successors and assigns.

“Issuer Documents” means, collectively, the Indenture, the Loan Agreement, the Regulatory Agreement and this Agreement.

“Loan Agreement” means that certain Loan Agreement to be dated as of March 1, 2020, between the Issuer and the Borrower.

“Managing Member” means Steele Lexington MM LLC, a limited liability company duly organized and validly existing under the laws of the State of Colorado, together with its permitted successors and assigns hereunder.

“Managing Member Pledge” means that certain Limited Guaranty, Pledge of Membership Interests and Security Agreement, dated March \_\_\_\_, 2020, from the Managing Member to the Trustee.

“Mortgage” means that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing to be dated the date of the Bonds, from the Borrower to Trustee.

“Note” means the promissory note of the Borrower to be dated the date of issuance of the Bonds from the Borrower to the Issuer and endorsed to the Trustee.

“Originator” means Red Stone Tax Exempt Funding LLC, a Delaware limited liability company.

“Project” means that certain 78-unit multifamily housing facility with related amenities and site improvements and related personal property and equipment located in Lexington, Virginia, the acquisition, rehabilitation and equipping of which are being financed with the proceeds of the Bonds.

“Purchaser” means Mizuho Capital Markets LLC, or its designee or nominee, together with their respective permitted successors and assigns hereunder.

“Regulatory Agreement” means that certain Land Use Restriction Agreement dated March \_\_\_\_, 2020, among the Issuer, the Trustee and the Borrower.

“Replacement Reserve” means that certain Replacement Reserve and Security Agreement dated March \_\_\_\_, 2020, between the Borrower and the Trustee.

“Resolution” means the resolution adopted by the Issuer on \_\_\_\_\_, 2020, relating to the transactions contemplated by this Agreement.

“State” means the Commonwealth of Virginia.

“Steele” means Steele Properties Holdings III LLC, a limited liability company duly organized and validly existing under the laws of the State of Colorado, together with its permitted successors and assigns hereunder.

“Title Company” means Sutton Land Title Agency, LLC, as agent for [Commonwealth Land Title Insurance Company].

“Trustee” means U.S. Bank, National Association, a national banking association, or its successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee under the Indenture.

“Trustee Documents” means the Indenture, the Loan Agreement and all other agreements, documents and certificates as may be required to be executed and delivered by the Trustee to carry out, give effect to, and consummate the transactions contemplated by this Agreement and the other Trustee Documents.

“Underwriter” means FMSbonds, Inc., together with its permitted successors and assigns hereunder.

“You” and similar terms refer collectively to the Issuer and the Borrower.

**EXHIBIT B**

**Terms of Bonds**

1. Title of Bonds: \$8,200,000 Industrial Development Authority of the City of Lexington, Virginia Multifamily Housing Revenue Bonds (Lexington House Apartments), Series 2020
2. Purchase Price of Bonds: 100%
3. Basic Bond Terms:
  - (a) Date of the Bonds: March \_\_\_\_, 2020
  - (b) Interest Payment Dates: First Business Day of each month commencing May 1, 2020.
  - (c) Aggregate Principal Amount of Bonds: \$8,200,000
  - (d) Maturity Date: March 1, 2060
  - (e) Bondholder right to demand redemption: Bondholders will have a right to require redemption of Bonds in whole at par on or after: March 1, 2037
  - (f) Interest Rate for Bonds: [4.25]% per annum.
  - (g) Special Redemption Provisions:
    - (i) sinking fund: on a quarterly basis to be deposited into the Redemption Fund on the dates and in the amounts shown on Schedule 3 to Loan Agreement.
    - (ii) optional prepayment: no optional prepayment will be permitted prior to March 1, 2036; thereafter, Bonds may be optionally redeemed at the redemption price equal to 100% of the principal amount thereof, plus interest thereon to, but not including, the redemption date.
    - (iv) mandatory redemption: as set forth in the Indenture.
4. Certain Required Funded Accounts:
  - (a) Tax and Insurance Escrow
  - (b) Replacement Reserve - deposits to commence the month following the Completion Date
  - (c) Operating Reserve – [\$436,000]
  - (g) Project Fund - funds sufficient to pay all estimated costs of rehabilitation of the Project shall be deposited into the Indenture at Closing or be paid pursuant to the Borrower's Operating Agreement

5. Time of Closing: 1 p.m., eastern time
  - (a) Date of Closing: On or before March 11, 2020
  - (b) Place of Closing: McGuireWoods, LLP, Tysons, Virginia
  - (c) Delivery of Bonds: Through DTCC's FAST book-entry only system

## EXHIBIT C

### **Matters to be Covered by Opinions of Counsel to the Managing Member**

1. Organization and Qualification. The Borrower is duly formed and validly existing as a limited liability company under the laws of the Commonwealth of Virginia. The Managing Member is duly formed and validly existing as a limited liability company under the laws of the State of Colorado. The managing member of the Managing Member (the “Member”) is duly formed and validly existing as a limited liability company under the laws of the State of Colorado. The Guarantor is duly formed and validly existing as a limited liability company under the laws of the State of Colorado.

2. Authority and Authorization. Each of the Borrower, the Managing Member and the Member has all requisite power and authority to execute and deliver the Borrower Documents to which it is a party and to perform its obligations under the Borrower Documents to which it is a party, and all such action has been duly and validly authorized by all necessary action on its part. The Guarantor has all requisite power and authority to execute and deliver the Guarantor Documents and to perform its obligations under the Guarantor Documents, and all such action has been duly and validly authorized by all necessary action on its part.

3. Execution and Binding Effect. The Borrower Documents to which the Borrower is a party have been duly and validly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with the terms thereof, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors’ rights. The Guarantor Documents have been duly and validly executed and delivered by the Guarantor and constitute the legal, valid and binding obligation of the Guarantor, enforceable in accordance with the terms thereof, except as such, enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors’ rights. The Developer Fee Pledge has been duly and validly executed and delivered by the Developer and constitute the legal, valid and binding obligation of the Developer, enforceable in accordance with the terms thereof, except as such, enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors’ rights.

4. Authorization and Filings. No authorization, consent, approval, license, exemption or other action by, and no registration, qualification, designation, declaration or filing with, any governmental authority is or will be necessary in connection with the execution and delivery of the Borrower Documents or the Guarantor Documents, or the consummation of the transactions contemplated or performance of or compliance with the terms and conditions thereof, other than the recordings and filings referred to in paragraphs 7, 8 and 9 below.

5. Absence of Conflicts. Neither the execution and delivery of the Borrower Documents and the Guarantor Documents, nor consummation of the transactions therein contemplated, nor performance of or compliance with the terms and conditions thereof will (a) violate any Legal Requirement, (b) conflict with or result in a breach of or a default under the operating agreement of the Borrower, the operating agreement of the Managing Member, the organizational documents of the Member or the organizational documents of the Guarantor, or, to the best of counsel’s knowledge after due inquiry, any agreement or instrument to which any of such parties or the Guarantor is a party or by which any of such parties or the Guarantor or any of their properties (now owned or hereafter acquired) may be subject or bound, or (c) to the best of counsel’s knowledge after due inquiry, result in the creation



or imposition of any lien, charge, security interest or encumbrance upon any property (now owned or hereafter acquired) of the Borrower, other than the liens created by the Borrower Documents.

6. Litigation. There is no pending or, to the best of counsel's knowledge after due inquiry, threatened action, suit, proceeding, investigation or inquiry by or before any governmental authority against or affecting the Borrower, the Managing Member, the Member, the Guarantor or the Project which, if adversely decided, would have a material adverse effect on the business, operations, condition (financial or otherwise) or prospects of the Borrower, the Managing Member, the Member, or the Guarantor or on the ability of the Borrower or the Guarantor to perform their respective obligations under the Borrower Documents and the Guarantor Documents, as applicable, or on the operation of the Project.

7. Validity of Mortgage Liens. The Mortgage is in appropriate form for recording and, when recorded in the Recorder's office for Rockbridge County, will create in favor of the Trustee a valid mortgage lien upon and security interest in the Project and will perfect the security interest in fixtures.

8. Validity of Assignment of Leases. The Assignment of Leases is in appropriate form for recording and, when recorded in the Recorder's office for Rockbridge County, will create in favor of the Trustee a valid assignment of the rents, leases and profits of the Project.

9. Perfection of Security Interests. The Borrower Documents and, when filed with the Secretary of State of the Commonwealth of Virginia, and in the real estate records of Rockbridge County, the UCC financing statements, will create in the Trustee valid and perfected security interests in the collateral described therein.

10. Remedies. The Borrower Documents and the Guarantor Documents do not omit essential remedies that in the opinion giver's experience are generally found in similar documents for mortgage loans in the Commonwealth of Virginia.

**RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY  
OF LEXINGTON, VIRGINIA AUTHORIZING THE ISSUANCE OF  
MULTIFAMILY HOUSING REVENUE BONDS (LEXINGTON HOUSE  
APARTMENTS), SERIES 2020**

**RECITALS**

A. The Industrial Development Authority of the City of Lexington, Virginia (the “Authority”) is a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) duly empowered by the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”). Under the Act, the Authority has been given the power to issue its revenue bonds from time to time for the purpose of inducing commercial enterprises to locate or remain in Virginia and to promote the commerce, safety, health, welfare, convenience or prosperity of citizens of the Commonwealth. The Act authorizes the Authority to issue its revenue bonds for the purpose of carrying out any of its powers, to make loans in furtherance of its purposes, to mortgage or pledge any or all of its assets, whether then owned or thereafter acquired, as security for the payment of the principal of, premium, if any, and interest on any such revenue bonds or notes and any agreements made in connection therewith, and to pledge the revenues and receipts from the repayment of such loans made with the proceeds of such bonds, or from any other source, to the payment of such bonds and notes and to refund bonds issued for such purposes. Under the Act, the Authority has been given the power to issue its revenue bonds from time to time and to use the proceeds thereof for the purpose of, among other purposes, the financing and refinancing of facilities used primarily for multi-family residences; to make and execute trust indentures, security documents and other contracts and instruments necessary or convenient in the exercise of such powers; and to protect and promote the health and welfare of the inhabitants of the Commonwealth of Virginia.

B. To further the Act’s purposes, at the request of Steele Lexington LLC, a Virginia limited liability company (the “Borrower”), the Authority has determined to issue and sell its Multifamily Housing Revenue Bonds (Lexington House Apartments), Series 2020 (the “Bonds”), in the maximum aggregate principal amount of \$9,500,000 pursuant to the Act. The Bonds will be issued in one or more series at one or more times to assist the Borrower in (a) financing or refinancing a portion of the cost of acquiring, constructing, rehabilitating and equipping a multifamily residential rental housing project known as Lexington House Apartments, consisting of one building containing approximately 78 residential units, representing approximately 42,282 net rentable square feet, located on approximately 1.98 acres of land at 130 Houston Street, Lexington, Virginia 24450, such Project to be owned and/or operated by the Borrower or an entity related to the Borrower and (b) financing certain costs of issuance, funding of any required reserves and other financeable expenditures (collectively (a) and (b), the "Project").

C. The Bonds will be issued pursuant to an Indenture of Trust (the “Indenture”) between the Authority and U.S. Bank National Association or other institution authorized to act as Trustee under the Indenture and meeting the requirements set forth for the Trustee in the Indenture, as trustee (the “Trustee”).

D. The Bonds will be limited obligations of the Authority, the principal of, and premium, if any, and interest on which will be payable solely out of the receipts and revenues of the Authority from the Loan Agreement (the "Loan Agreement") between the Authority and the Borrower.

E. The foregoing arrangements will be reflected in the following documents, which the Authority proposes to execute to carry out the transactions described above, forms of which have been filed with the Authority's records:

- (a) the Indenture;
- (b) a form of the Bonds bearing interest and payable as provided therein and in the Indenture and which is attached as an exhibit to the Indenture;
- (c) the Loan Agreement; and
- (d) a form of the Note bearing interest and payable as provided therein and in the Loan Agreement and which is attached as an exhibit to the Loan Agreement.

F. All of the documents listed above, except the Bonds are referred to in this Resolution as the "Basic Documents."

G. A public hearing has been held as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 15.2-4906 of the Act.

After careful consideration and in furtherance of the public purposes for which the Authority was created, NOW, THEREFORE, BE IT RESOLVED THAT:

1. The issuance of the Bonds to finance or refinance the Project is hereby authorized and approved. The Bonds shall be in substantially the form attached as an exhibit to the Indenture.

2. The Bonds and the Basic Documents are approved in substantially the forms on file with the Authority, with such changes, insertions or omissions (including, without limitation, changes of the dates thereof and the captions of the Bonds) as may be approved by the Chairman or the Vice Chairman of the Authority, whose approval will be evidenced conclusively by the execution and delivery of the Bonds.

3. The Bonds shall be issued on such terms and in such principal amount (subject to the maximum aggregate principal amount of \$9,500,000) and shall bear interest at a fixed rate as set forth in the Indenture; provided, however, that the maximum rate of interest on the Bonds shall not exceed 6% per annum, and the final maturity thereof shall be no later than 40 years from the date of issuance.

4. The execution, delivery and performance by the Authority of the Basic Documents to which it is a party are authorized. The execution of the Bonds, their delivery against payment therefor, and the amount of such payment to be disbursed in accordance with the terms of the Indenture, are hereby authorized.

5. The Chairman and the Vice Chairman of the Authority or either of them is authorized to execute and deliver on behalf of the Authority the Bonds and the Basic Documents to which the Authority is a party, and the Secretary or any Assistant Secretary of the Authority is authorized to affix the seal of the Authority to the Bonds and, if required, the Basic Documents and to attest such seal. The signatures of the Chairman or Vice Chairman and the Secretary or any Assistant Secretary and the seal of the Authority may be by facsimile. Each officer of the Authority is authorized to execute and deliver on behalf of the Authority such instruments, documents or certificates, and to do and perform such things and acts, as he or she deems necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Bonds, the Basic Documents or such instruments, documents or certificates, and all of the foregoing, previously done or performed by such officers of the Authority, are in all respects hereby approved, ratified and confirmed.

6. The Authority determines that the issuance of the Bonds in accordance with the terms of the Basic Documents and all action of the Authority contemplated by them will be in furtherance of the purposes for which the Authority was organized.

7. The directors, officers, legal counsel, agents and employees of the Authority are hereby and are authorized and empowered, collectively or individually, to take all action and steps to execute and deliver any and all instruments, documents, investments or contracts on behalf of the Authority which are necessary or desirable in connection with the sale, execution and delivery of the Bonds and the Basic Documents that are not inconsistent with the terms and provisions of this Resolution and other actions relating to the Bonds and the Basic Documents heretofore taken by the Authority, including but not limited to the execution and delivery of documents, instruments and certifications in connection with the issuance and delivery of the Bonds, and, in connection with the sale, issuance and delivery of the Bonds, the execution and delivery of any amendments, supplements, restatements or modifications of any Basic Documents or other documents previously executed in connection with or relating to the Bonds.

8. The Borrower has agreed to pay the Authority's fees, costs and expenses and to indemnify the Authority as provided in the Loan Agreement. All costs and expenses of the Authority in connection with the financing, including, without limitation, the fees and expenses of bond counsel and counsel to the Authority and the Authority's annual administrative fee, shall be paid by the Borrower, or to the extent permitted by applicable law, from the proceeds of the Bonds. If for any reason the Bonds are not issued, it is understood that all such expenses will be paid by the Borrower and that the Authority will have no responsibility therefor.

9. Neither the Directors of the Authority nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

10. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Project or the Borrower. The issuance of the Bonds as requested by the Borrower will not constitute a debt or pledge of the faith and credit of the Commonwealth or the City, and neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision of the Commonwealth will be pledged to the payment of such Bonds. Neither the City nor the Authority shall be obligated to pay the

Bonds or interest or premium thereon or other costs incident thereto except from revenues and money pledged therefor.

11. This resolution shall take effect immediately upon its adoption.

CERTIFICATE

Record of the roll-call vote by the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”) upon reading on a resolution titled “**RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA AUTHORIZING THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS (LEXINGTON HOUSE APARTMENTS), SERIES 2020,**” taken at a meeting of the Authority held on February 24, 2020:

	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Bruce Summers				
H. E. “Buddy” Derrick				
Richard “Dick” Halseth				
Tammi Hellwig				
Katie Shester				
Felicia Bush				

The undersigned Secretary of the Authority certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Directors of the Authority present and voting at a meeting duly called and held on February 24, 2020, in accordance with law, and that such resolution has not been repealed, revoked, rescinded or amended but is in full force and effect on this date.

WITNESS the following signature and seal of the Authority, this 24th day of February, 2020.

\_\_\_\_\_  
Secretary of the Industrial Development Authority  
of the City of Lexington, Virginia

[SEAL]



---

**INDENTURE OF TRUST**

**by and between**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of March 1, 2020**

**Relating to:**

**\$8,670,000**

**Industrial Development Authority of the City of Lexington, Virginia  
Multifamily Housing Revenue Bonds  
(Lexington House Apartments) Series 2020**

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## **INDENTURE OF TRUST**

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this “Indenture”), dated as of March 1, 2020, made and entered into by and between **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (together with its successors and assigns, the “Issuer”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (together with any successor trustee hereunder and their respective successors and assigns, (the “Trustee”)),

### **WITNESSETH:**

**WHEREAS**, by virtue of the authority of the laws of the Commonwealth of Virginia (the "State"), and particularly the Act (as hereinafter defined), the Issuer is empowered to issue its revenue bonds to assist in the financing of multifamily residences in order to promote safe and affordable housing in the State and to benefit thereby the safety, health, welfare and prosperity of the inhabitants of the State; and

**WHEREAS**, the Issuer has determined to issue and sell its \$8,670,000 Multifamily Housing Revenue Bonds (Lexington House Apartments) Series 2020 (the “Bonds”), for the purpose of financing the cost of the acquisition, rehabilitation and equipping of a multifamily residential rental housing project known as Lexington House Apartments, consisting of one building containing approximately 78 residential units, representing approximately 42,246 net rentable square feet, located on approximately 2.762 acres of land at 130 Houston Street, Lexington, Virginia 24450 (the “Project Facilities”) all pursuant to this Indenture and the Loan Agreement, dated as of March 1, 2020 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and Steele Lexington LLC, a Virginia limited liability company (together with its permitted successors and assigns, the “Borrower”); and

**WHEREAS**, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Project Costs by the issuance of the Bonds, all as hereinafter provided; and

**WHEREAS**, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed (i) in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and (ii) in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

**WHEREAS**, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE COVENANTS AND UNDERTAKINGS HEREIN EXPRESSED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

### **GRANTING CLAUSES**

The Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a), (b), (c) and (d) below (said property being herein referred to as the "Security"), to wit:

(a) All moneys from time to time paid by the Borrower pursuant to the terms of the Loan Agreement, the Note and the Bond Documents and all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement, the Bond Documents and the Note (but in each instance excluding the Reserved Rights, as defined herein); and

(b) All other moneys and securities from time to time held by the Trustee under the terms of this Indenture, excluding the Rebate Fund and excluding amounts required to be rebated to the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended, whether or not held in the Rebate Fund; and

(c) Any and all property, rights and interests (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder to the Trustee, which the Trustee is hereby authorized to receive at any and all times and to hold and apply the same subject to the terms of this Indenture; and

(d) All of the proceeds of the foregoing (except the amounts payable to or on behalf of the Issuer on account of its Reserved Rights), including without limitation investments thereof;

TO HAVE AND TO HOLD, all and singular, the Security with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

IN TRUST NEVERTHELESS, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection of this Indenture of one Bond over or from the others, except as herein otherwise expressly provided;

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of and premium, if any, on such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by the provisions of Article V (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or interest on Bonds, except Bonds purchased and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and interest thereon payable to the Holders thereof), and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the

Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Security is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee, for the benefit of the respective Holders from time to time of the Bonds as follows:

## **ARTICLE I** **DEFINITIONS**

**Section 1.1 Defined Terms.** In addition to terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

“**Accountant**” means Dauby, O'Connor & Zaleski, LLC, or such other accounting firm approved in writing by the Controlling Person.

“**Accounts**” means all funds and accounts established under this Indenture, including the Bond Fund, the Surplus Fund, the Operating Reserve Fund, the Rebate Fund, the Project Fund, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, and the Redemption Fund.

“**Act**” means the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

“**Advance**” means any disbursement from the Project Fund established under this Indenture made or to be made by the Trustee pursuant to the terms of the Loan Agreement.

“**Affiliate**” means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

“**Annual Budget**” means, for any Fiscal Year, the capital and operating budget adopted by the Borrower and approved by the Controlling Person, or deemed approved, pursuant to Section 6.24 of the Loan Agreement.

“**Anti-Terrorism Regulations**” shall have the meaning ascribed to such term in Section 6.23 of the Loan Agreement.

“**Architect**” means Benton Design Group, LLC, a Missouri limited liability company.

“**Architect’s Agreement**” means the contract dated \_\_\_\_\_, 20\_\_ between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the renovation thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and

certification of Final Completion, among other things, as the same may be amended, modified or supplemented from time to time.

**“Assignment of Capital Contributions”** shall have the meaning provided in Section 3.1 of the Loan Agreement.

**“Assignment of HAP Contract”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Assignment of Management Agreement and Consent”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Assignment of Project Documents”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Assignment of Rents”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Authorized Denomination”** means: (a) \$100,000, and any amount in excess of \$100,000, but not in excess of the aggregate principal amount of Bonds then Outstanding; and (b) for purposes of redemption or defeasance under all circumstances, \$5,000 or any integral multiple thereof.

**“Authorized Person”** means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Persons of the Borrower are [Stuart Heller, Hud Karshmer, David Asarch and Chad Asarch].

**“Bankruptcy Code”** means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

**“Beneficial Owner”** means the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository or a DTC Participant or an Indirect Participant on the records of such Securities Depository, DTC Participant or Indirect Participant, as the case may be, or such Person’s subrogee.

**“Bond”** or **“Bonds”** shall have the meaning given to such term in the recitals to this Indenture.

**“Bond Counsel”** means McGuireWoods LLP or an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, reasonably acceptable to the Issuer and the Controlling Person.

**“Bond Coupon Rate”** means 4.25% per annum.

**“Bond Documents”** means, collectively, the Bonds, this Indenture, the Loan Agreement, the Note, the Land Use Restriction Agreement, the Tax Certificate, the Purchase Agreement, the Mortgage, the Environmental Indemnity, the Assignment of Management Agreement and Consent, the Assignment of HAP Contract, the Continuing Disclosure Agreement, the Assignment of Rents, the Replacement Reserve Agreement, the Assignment of Project Documents, the Managing Member Pledge, the Developer Fee Pledge, the Assignment of Capital Contributions, the Guaranty of Recourse Obligations, the Guaranty of Debt Service and Stabilization and the Guaranty of Completion, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Bonds, including all modifications, amendments or supplements thereto.

**“Bond Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Bond Proceeds Account”** means the account within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Bondholder”** or **“Holder”** or **“Owner”** or words of similar import, when used with reference to the Bonds, means the registered owner or owners of the Bonds or Beneficial Owner or Beneficial Owners of the Bonds, as applicable.

**“Book-Entry System”** means a book-entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to Section 2.14 hereof.

**“Borrower”** shall have the meaning given to such term in the recitals to this Indenture.

**“Business Day”** means any day on which the offices of the Trustee, are open for business and on which The New York Stock Exchange is not closed.

**“Capital Expenditures”** means the capital expenditures relating to any construction, renovation, rehabilitation, repair and replacement of the Improvements or made pursuant to the recommendations of the Engineering Consultant.

**“Capitalized Interest Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Change Order”** means a change made to the Plans and Specifications relating to the Project Facilities, as evidenced by a written change order request in accordance with the terms of the Construction Contract.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the rulings and regulations (including temporary and proposed regulations) promulgated thereunder.

**“Collateral”** means all property of the Borrower in which the Trustee is granted a security interest to secure payment of the Bonds.

**“Completion Date”** means the date by which the renovation of the Improvements must achieve Final Completion. The initial Completion Date for the renovations is March \_\_, 2022; provided, however, that at the written request of the Borrower, the Completion Date may be extended for six (6) months or for such period as the Controlling Person may approve in its sole discretion, upon delivery of an extension fee equal to 25 basis points multiplied by the original principal amount of the Bonds to Red Stone Servicer, LLC.

**“Condemnation Award”** means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the Project Facilities less the actual costs incurred, including attorneys’ fees, in obtaining such award.

**“Construction Contract”** means the contract, dated on or about \_\_\_\_\_, 2020, between the Borrower and the Contractor, providing for the renovation of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

**“Contamination”** means the uncontained release, discharge or disposal of any Hazardous Substances at, on, upon or beneath the Project Facilities, whether or not originating at the Project Facilities, or arising from the Project Facilities into or upon any land or water or air, or otherwise into the environment, which may require remediation under any applicable Legal Requirements.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated the Issue Date, between the Borrower and the Trustee, as dissemination agent, as the same may be amended, modified or supplemented from time to time.

**“Contractor”** means Empire Corporation of Tennessee, Inc., a Tennessee corporation.

**“Control”** (including, with the correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

**“Controlling Person”** means any entity designated in writing by the Majority Owner to act as a Controlling Person hereunder, in accordance with Article IX hereof. If at any time a Controlling Person has not been designated by the Majority Owner, all references herein and in other Bond Documents to “Controlling Person” shall refer to the Majority Owner. The initial Controlling Person is Red Stone Servicer, LLC.

**“Counsel”** means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

**“Default”** means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

**“Default Interest”** means interest payable at the Default Rate.

**“Default Rate”** means a rate per annum equal to ten percent (10%) per annum; provided that such rate shall in no event exceed the maximum rate allowed by law.

**“Determination of Taxability”** means a determination that the interest accrued or paid on any of the Bonds is included in gross income of the Holders or former Holders for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

- (i) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;
- (ii) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received (1) a notice in writing by any Holder or former Holder that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Holder or former Holder that asserts in effect that the interest on the Bonds received by such Holder or former Holder is included in the gross income of such Holder or former Holder for federal



income tax purposes, or (2) an Opinion of Bond Counsel that concludes in effect that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(iii) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes; or

(iv) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

provided, however, no Determination of Taxability shall occur if the interest on any of the Bonds is included in the gross income of any Holder or former Holder for federal income tax purposes solely because such Bond was held by a Person who is a Substantial User or a Related Person.

“**Developer Fee Pledge**” shall have the meaning provided in Section 3.1 of the Loan Agreement.

“**Development Budget**” means the budget for the implementation and completion of the acquisition, renovation and equipping of the Project Facilities, initially as attached to the Loan Agreement as Schedule 4, together with any modifications or amendments thereto made in accordance with the Loan Agreement and with the prior written consent of the Controlling Person.

“**DTC Participant**” means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

“**Effective Gross Revenues**” of the Borrower means, for the period being tested, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person’s judgment for factors, including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) three percent (3.0%), or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; and (v) 30-day or more delinquencies.

“**Engineering Consultant**” means Hillmann Consulting, LLC or any other engineer licensed to practice in the State and chosen by the Controlling Person.

“**Environmental Audit**” means the written Phase I environmental site assessment for the Project Facilities prepared by GRS Group dated August 27, 2019.

**“Environmental Indemnity”** shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

**“Environmental Laws”** means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (i) activities at any of the Project Facilities, (ii) repairs or renovation of any Improvements, (iii) handling of any materials at any of the Project Facilities, (iv) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (v) storage, distribution, use, treatment, transport or disposal of any waste at or connected with any activity at any of the Project Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. §§ 9601 et seq., as amended from time to time; the Hazardous Materials Transportation Act 49 U.S.C. §§ 5101 et seq., as amended from time to time; the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq., as amended from time to time; the Federal Water Pollution Control Act 33 U.S.C. §§ 1251 et seq., as amended from time to time; and comparable State statutes.

**“Environmentally Sensitive Area”** means (i) a wetland or other “water of the United States” for purposes of Section 404 of the federal Clean Water Act or any similar area regulated under any State or local Legal Requirements, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable state Legal Requirements, (iii) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (iv) any other area development of which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

**“Equity Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“ERISA”** shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

**“ERISA Affiliate”** shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

**“Event of Default”** means, with respect to this Indenture, any of the events specified in Section 6.1 hereof, or with respect to the Loan Agreement, any of the events specified in Section 7.1 thereof.

**“Expenses”** means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Borrower and affirmed by the Controlling Person. In determining Expenses, the Controlling Person will take into account: (i) the actual amount of aggregate annualized Expenses, for the three (3) month period prior to determination of Stabilized NOI, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; and (ii) the annual Expenses that the Controlling Person used in the original underwriting of the Project Facilities, as set forth on Schedule 11 of the Loan Agreement. Any expense adjustment as reasonably determined by the Controlling Person may result in a line item which may be more or less than the actual annual expense for that line item for the period covered by the financial statements submitted by the Borrower to the Controlling Person.

**“Favorable Opinion of Bond Counsel”** means an opinion of Bond Counsel, addressed to the Issuer, the Trustee and the Majority Owner, with a copy to the Controlling Person, to the effect that a proposed action, event or circumstance (i) does not affect the exclusion from gross income of interest on the Bonds for federal income tax purposes, and (ii) does not affect the treatment of interest on the Bonds as not being an item of tax preference for purposes of the federal alternative minimum tax, which opinion may be subject to customary assumptions and exclusions.

**“Final Completion”** means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

(i) the Controlling Person shall have received a copy of the final Plans and Specifications containing all Change Orders and there shall have been no Material Change Orders other than Material Change Orders approved by the Controlling Person;

(ii) the Borrower shall have obtained the Governmental Actions, if any, required by the Legal Requirements and all Governmental Authorities associated with the Project Facilities, including use and occupancy permits (if any are required), and shall have furnished true copies of all such Governmental Actions to the Controlling Person. Temporary certificates of occupancy, as opposed to final certificates of occupancy or their equivalent, shall be acceptable provided (A) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions), (B) such Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities, (C) such Punchlist Items do not include major appliances or materially affect the systems (including plumbing, electrical, HVAC, mechanical, roofing and sprinklers) serving the Project Facilities or major structural components of the Project Facilities, and (D) adequate reserves, in amounts equal to 110% of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

(iii) as to all such Governmental Actions, no appeal or other action or proceeding challenging any such Governmental Actions shall have been filed or, if filed and decided, there shall have been no appeal (or further appeal) taken and all other statutory appeal periods must have expired, and there shall be no claim, litigation or governmental proceeding pending against the Borrower or the Project Facilities challenging the validity or the issuance of any zoning, subdivision or other land use ordinance, variance, permit or approval, or any Governmental Action of the kind described in this subparagraph (iii). In addition, as to all of such permits, approvals and certificates having statutory, regulatory or otherwise expressly specified and determinable appeal periods, such periods, if any, must have expired without an appeal having been taken (or any such appeal shall have been denied or shall have affirmed the granting of such Governmental Action);

(iv) the Controlling Person shall have received from the Architect, a certificate of the Architect in the form customary for projects of the scope of the Work for the Project Facilities with respect to completion of the Work at the Project Facilities;

(v) all Work set forth in the Plans and Specifications for the Project Facilities shall have been substantially completed and incorporated into the Improvements at the Project Facilities;

(vi) except for Permitted Encumbrances and Impositions not then due and payable, the Project Facilities shall be free of any and all private or governmental charges, claims or Liens (filed or not) of any nature, excepting only the liens and Security Interests in favor of the Trustee and any other encumbrances approved by the Controlling Person in writing;

(vii) with respect to all contractors and subcontractors and materialmen (for contracts less than \$50,000, only as required by the Title Company; provided that the Title Company

insures over any mechanics' and materialmen's liens arising from such excepted contractors, subcontractors or materialmen), either (i) the Borrower shall have obtained an unconditional waiver and release upon final payment of mechanics' and materialmen's liens if there are no Punchlist Items, or (ii) if there are Punchlist Items, the Borrower shall have obtained an unconditional waiver and release upon progress payment of mechanics' and materialmen's liens for all of the Improvements at the Project Facilities except for the Punchlist Items, and true copies thereof have been delivered to the Controlling Person;

(viii) the final complete use of proceeds and completion certificates in the form required under the Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person; and

(ix) the Trustee shall have received an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances.

**"Financing Statements"** means any and all financing statements (including continuation statements) or other instruments filed or recorded to perfect the Security Interest created in this Indenture.

**"Fiscal Year"** means the annual accounting year of the Borrower, which currently begins on January 1 of each calendar year.

**"Fitch"** means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

**"Force Majeure"** means any acts of God, strikes, walkouts or other labor disputes, riots, civil strife, war, acts of a public enemy, lightning, fires, explosions, storms or floods or shortages of labor or materials or other causes of a like nature beyond the control of the Borrower; provided, however, that the unavailability of sources of financing, the insufficiency of funds, the loss of a tenant or changes in market conditions shall not constitute Force Majeure.

**"GAAP"** means generally accepted accounting principles in effect in the United States from time to time, consistently applied.

**"Government Obligations"** means (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

**"Governmental Action"** means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority and shall include all permits and licenses required to renovate, use, operate and maintain any of the Project Facilities.

**“Governmental Authority”** means any federal, state, or local governmental or quasi - governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Borrower and/or the Project Facilities.

**“Guarantor”** means Steele Properties LLC, a Colorado limited liability company, together with its permitted successors and assigns.

**“Guaranty of Completion”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Guaranty of Debt Service and Stabilization”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Guaranty of Recourse Obligations”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“HAP Contract”** means the Housing Assistance Payments Contract #VA36H027007 between HUD and the Borrower, providing for housing assistance payments to be made to the Borrower for a period of not less than twenty (20) years.

**“Hazardous Substances”** means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

**“HUD”** means the United States Department of Housing and Urban Development.

**“Impositions”** means, with respect to the Project Facilities, all taxes including, without limitation, all real and personal property taxes, water charges and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Project Facilities.

**“Improvements”** means all buildings and other improvements included in the Project Facilities.

**“Indebtedness”** means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the Issuer, the Controlling Person, the Trustee or to the Holders from time to time of the Bonds, now existing and hereafter arising, under or in connection with this Indenture or any of the other Bond Documents, including all Repayments and all future advances, principal, interest, indemnities, other fees, late charges, enforcement costs and other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Controlling Person, the Trustee, the Issuer or the Holders from time to time of the Bonds.

**“Indemnified Parties”** shall have the meaning given to such term in Section 2.5 of the Loan Agreement.

**“Indenture”** shall have the meaning given to such term in the first paragraph hereof.

**“Indirect Participant”** means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository through a DTC Participant.

**“Insurance and Condemnation Proceeds Account”** means the account within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Insurance Proceeds”** means the total proceeds of insurance actually paid or payable by an insurance company in respect of the required insurance on the Project Facilities, less the actual costs incurred, including attorneys’ fees, in the collection of such proceeds.

**“Interest Payment Date”** means the first Business Day of each month that the Bonds are Outstanding, beginning [May ] 1, 2020.

**“Investor Letter”** means that certain Investor Letter, substantially in the form attached hereto as Exhibit B.

**“Issue Date”** or **“Dated Date”** means March \_\_, 2020, the date on which the Bonds are issued and delivered to the purchaser or purchasers thereof.

**“Issuer”** means the Industrial Development Authority of the City of Lexington, Virginia, a political subdivision of the State, duly organized and existing under the laws of the State, including the Act, together with its successors and assigns, in its capacity as issuer of the Bonds.

**“Issuer Fee”** means an annual administrative fee (the "Annual Fee") due to the Issuer equal to the lesser of one-tenth of one percent (1/10 of 1%) of the principal amount of the Bonds outstanding on each anniversary of the date of issuance of the Bonds or \$10,000.

**“Land Use Restriction Agreement”** means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of March 1, 2020, among the Issuer, the Trustee and the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Legal Requirements”** means all statutes, codes, laws, ordinances, regulations, rules, policies, or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to the health, safety or the environment).

**“Lien”** means any lien, mortgage, security interest, tax lien, pledge, encumbrance, title exception, conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

**“Loan”** means the loan of proceeds of the Bonds from the Issuer to the Borrower, as evidenced by the Note and pursuant to the terms of the Loan Agreement.

**“Loan Agreement”** shall have the meaning given to such term in the recitals to this Indenture.

**“Local Time”** means eastern time (daylight or standard, as applicable) in New York, New York.

**“Majority Owner”** means any one Person that is the Beneficial Owner of the Outstanding Bonds; provided, however, if no one Person is the Beneficial Owner of all of the Outstanding Bonds, “Majority Owner” means the Beneficial Owner or Owners of at least a majority in aggregate principal amount of all Outstanding Bonds.

**“Management Agreement”** shall have the meaning ascribed to such term in Section 6.19 of the Loan Agreement.

**“Manager”** means [Monroe Group, Ltd.], a [Colorado limited liability company], together with any successor manager of the Project Facilities approved by the Controlling Person and their respective successors and assigns.

**“Managing Member”** means Steele Lexington MM LLC, a Colorado limited liability company, and, if required by applicable law, is authorized to conduct its business in the State, the Managing Member of the Borrower, together with its successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of “Permitted Transfer” herein.

**“Managing Member Pledge”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Material Change Order”** means, with respect to the Project Facilities, a Change Order which (i) would result in an increase or decrease of \$50,000 in the aggregate contract price of the Work to be performed on the Project Facilities; (ii) when aggregated with other Change Orders previously effected, would result in an increase or decrease in excess of \$250,000 in the aggregate contract price for the Work to be performed on the Project Facilities; (iii) would reduce the number of apartment units in the Project Facilities; (iv) would materially reduce the aggregate useable square footage of the apartment units or the parking areas in the Project Facilities; (v) would change the number of one, two and three bedroom apartments in the Project Facilities; (vi) would alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (vii) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (viii) makes a substitution for any material or product that is of lesser quality, in the Controlling Person’s determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (ix) would materially adversely impair the value of the Project Facilities once the Work is completed.

**“Material Contract”** means each indenture, mortgage, agreement or other written instrument or contract to which the Borrower is a party or by which any of its assets are bound (including, without limitation, any employment or executive compensation agreement, collective bargaining agreement, agreement relating to an Obligation, agreement for the acquisition, renovation, repair or disposition of real or personal property, agreement for the purchasing or furnishing of services, operating lease, joint venture agreement, agreement relating to the acquisition or disposition of an Affiliate or agreement of merger or consolidation) which (i) evidences, secures or governs any outstanding obligation of the Borrower of \$100,000 or more per annum, or (ii) if canceled, breached or not renewed by any party thereto, would have a material adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

**“Maturity Date”** means [March 1], 2060.

**“Moisture Management Program”** shall have the meaning ascribed to such term in Section 6.14(d) of the Loan Agreement.

**“Monthly Tax and Insurance Amount”** means an amount equal to the sum of (i) one-twelfth (1/12th) of the annual Impositions, plus (ii) one-twelfth (1/12th) of the annual insurance premiums for the insurance coverages for the Project Facilities required by Section 6.4 of the Loan Agreement, as any such amounts may be increased if the Controlling Person determines that funds in the Tax and Insurance Escrow Fund will be insufficient to pay Impositions and insurance premiums when due.

**“Moody’s”** means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

**“Mortgage”** shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

**“Note”** means the promissory note of the Borrower, dated the Issue Date, as endorsed by the Issuer to the Trustee, in the form attached as Exhibit A to the Loan Agreement.

**“Obligations”** means any and all obligations of the Borrower for the payment of money including without limitation any and all (i) obligations for money borrowed, (ii) the Indebtedness and all other obligations evidenced by bonds, debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) obligations under any applicable ground lease, (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations incurred and payable in the ordinary course of Borrower’s business under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the pension paid.

**“OFAC Violation”** shall have the meanings ascribed to such term in Section 6.23 of the Loan Agreement.

**“Operating Agreement”** means the Amended and Restated Operating Agreement of the Borrower dated as of March \_\_, 2020.

**“Operating Reserve Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Opinion of Bond Counsel”** means any opinion of Bond Counsel delivered pursuant to this Indenture with respect to the excludability of interest on the Bonds from gross income of the Holders thereof for federal income tax purposes. Each such opinion shall be addressed to the Trustee, the Majority Owner, the Controlling Person and the Issuer.

**“Origination Fee”** shall have the meaning given to such term in Section 2.2(a) of the Loan Agreement.

**“Outstanding”** means, when used with reference to the Bonds at any date as of which the amount of outstanding Bonds is to be determined, all Bonds that have been authenticated and delivered by the Trustee hereunder, except:



- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;
- (iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof; and

(iv) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Borrower or any Affiliate of the Borrower; provided, however, that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Borrower or any Affiliate of the Borrower, then such Bonds shall be deemed to be Outstanding at such time for the purposes of this subparagraph (iv).

“**PBGC**” shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

“**Permitted Encumbrances**” means only:

- (i) the Land Use Restriction Agreement;
- (ii) Extended Use Regulatory Agreement and Declaration of Restrictive Covenants
- (iii) Section 8 Use Agreement
- (iv) the Mortgage;
- (v) the Assignment of Rents;
- (vi) for Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;
- (vii) statutory liens of landlords and liens of carriers, warehouseman, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (1) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided (2) such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person; and
- (viii) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

**“Permitted Investments”** means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

- (i) Bonds or other obligations of the United States;
- (ii) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;
- (iii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;
- (iv) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody’s or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody’s;
- (v) Prime commercial paper rated either “A-1” by S&P or “P-1” by Moody’s and, if rated by both, not less than “A-1” by S&P and “P-1” by Moody’s;
- (vi) Bankers’ acceptances drawn on and accepted by commercial banks;
- (vii) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (vi) of this definition or obligations determined to be of comparable quality by the board of directors of such fund or trust, including, without limitation, any such money market fund or trust for which the Trustee or an Affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (a) the Trustee or an Affiliate of the Trustee receives fees from such funds for services rendered, (b) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (c) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates; and
- (viii) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person, provided that the Trustee may require as a condition to the investment of funds under this clause (viii) there having first been delivered to the Trustee an opinion of Counsel to the effect that investment is permitted under any applicable laws of the State.

**“Permitted Transfer”** means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or indirect ownership interest in the Managing Member for estate planning purposes, so long as such transfer does not result in a change of management or control of the Managing Member, (iii) a transfer of membership interests in Borrower to the Tax Credit Investor, (iv) a transfer of the membership interests of the Tax Credit Investor in the Borrower to an Affiliate of such Tax Credit Investor, (v) a transfer of the investor member interests of the Tax Credit Investor in the Borrower to non-affiliates of such Tax Credit Investor with the prior written consent of the Controlling Person which shall not be unreasonably withheld or delayed, (vi) a transfer of any shares or ownership interests in the Tax Credit Investor, (vii) transfers of any interests in the

Managing Member so long as the Guarantor, or one or more members of the Guarantor, controls the Borrower after such transfer occurs, (viii) the removal and replacement of the Managing Member pursuant to the Operating Agreement, (ix) after the payment in full of all capital contributions under the Operating Agreement, any other transfer, assignment, pledge, hypothecation or conveyance of investor member interests in, or change in the investor member of, the Borrower (and the owners of such investor member) not described above, in accordance with the terms of the Operating Agreement, or (x) the extension, amendment or replacement of commercial leases approved by the Controlling Person to the extent such approval is required under the Loan Agreement; (xi) the extension, amendment or replacement of residential leases, and (xii) amendments to the Operating Agreement executed for the purpose of effectuating a transfer permitted under another subpart of this definition of Permitted Transfers.

**“Person”** means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**“Plans and Specifications”** means, with respect to the Project Facilities, the plans and specifications for the renovation of Improvements prepared by the Architect and more particularly identified on Schedule 5 attached to the Loan Agreement and approved by the Controlling Person, as the same may be amended, modified or supplemented as permitted under the Loan Agreement through Change Orders or otherwise.

**“Principal Payment Date”** means (i) [the first (1st) Business Day of each January, April, July and October that the Series 2020 Bonds are Outstanding, commencing on [July] 1, 2020], (ii) any other redemption date for the Bonds and (iii) the Maturity Date for the Bonds.

**“Project Costs”** means the costs, fees, and expenses associated with the acquisition, renovation, and equipping of the Project Facilities for use as affordable rental housing including but not limited to the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, and the payment of certain costs and expenses incidental to the issuance of the Bonds.

**“Project Facilities”** means the land and the multifamily apartment housing facilities consisting of a total of 78 units and related improvements, personal property and equipment, located in Lexington, Virginia, the acquisition, renovation and equipping of which are being financed by the proceeds of the Bonds.

**“Project Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Proposed Budget”** shall have the meaning given to such term in Section 6.24 of the Loan Agreement.

**“Punchlist Items”** means any items necessary at the time of the issuance of a temporary use and occupancy permit to complete fully the renovation of the Project Facilities in accordance with the Plans and Specifications for the Project Facilities, or required for the issuance of a final certificate of occupancy or its equivalent.

**“Purchase Agreement”** means the Bond Purchase Agreement, dated March \_\_, 2020, among the Issuer, the Borrower and FMSbonds, Inc., relating to the initial sale of the Bonds.

**“Qualified Project Costs”** means, subject to the provisions of the Tax Certificate, the actual costs incurred to acquire, renovate and equip the Project Facilities which (i) are or were incurred after September 21, 2019 (ii) are (A) chargeable to the Project Facilities’ capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project Facilities’ capital account are or would have been deducted only through an allowance for depreciation or (B) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code, and (iii) are made exclusively with respect to a “qualified residential rental project” within the meaning of Section 142(d) of the Code.

**“Rebate Amount”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**“Rebate Analyst”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement and shall be reasonably acceptable to the Controlling Person.

**“Rebate Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Rebate Report”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**“Record Date”** means with respect to each Interest Payment Date, the Trustee’s close of business on the day before such Interest Payment Date occurs, regardless of whether such day is a Business Day.

**“Redemption Fund”** means the account of that name created pursuant to Section 4.1(a) hereof.

**“Register”** means the register of the record Owners of Bonds maintained by the Trustee.

**“Regulatory Agreement Default”** shall have the meaning given to such term in Section 7.9(b) of the Loan Agreement.

**“Related Person”** with reference to any Substantial User, means a “related person” within the meaning of Section 147(a)(2) of the Code.

**“Rents”** shall have the meaning assigned to such term in the Mortgage.

**“Repayments”** means all payments of principal of, premium, if any, and interest on the Loan required to be paid by the Borrower to the Trustee, as the assignee of the Issuer pursuant to the Loan Agreement.

**“Replacement Reserve Agreement”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Replacement Reserve Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Required Equity Funds”** means \$2,891,663, comprised of seven separate installments of equity contributions to be made to the Borrower by the Tax Credit Investor, subject to and in accordance with the terms of the Operating Agreement.

**“Requisition”** means a requisition in the form attached to the Loan Agreement as Exhibit B, together with all invoices, bills of sale, schedules, applications for payment, certifications and other submissions required for the disbursement of the proceeds of the Bonds from the Project Fund pursuant to the terms hereof.

**“Reserved Rights”** means (a) the rights of the Issuer pursuant to Sections 2.5, 4.2, 6.10, 10.5 and 10.13 of the Loan Agreement; (b) all rights which the Issuer or its members, directors, officers, officials, agents or employees may have under this Indenture and the Bond Documents to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its members, directors, officers, officials, agents or employees; (c) the right of the Issuer to receive notices, reports or other information, make determinations and grant approvals hereunder and under the Bond Documents; (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or of the Issuer, and set forth in any of the Bond Documents or in any other certificate or agreement executed by the Borrower; (e) all inspection rights of the Issuer; (f) all rights of the Issuer in connection with any amendment to or modification of the Financing Documents; and (g) all enforcement remedies with respect to the foregoing.

**“Retainage”** means a holdback of ten percent (10%) until 50% completion and thereafter, five percent (5%) of the hard costs of renovation of the Improvements under each contract or subcontract.

**“Sale”** means the direct or indirect sale, agreement to sell, assignment, transfer, conveyance, hypothecation, lien, mortgage, grant of a security interest in or a deed to secure debt or deed of trust with respect to, encumbrance, lease, sublease or other disposition of the Project Facilities, or any part thereof or interest therein whether voluntary, involuntary, by operation of law or otherwise, other than (i) the leasing of individual residential units to tenants, (ii) the extension, amendment, renewal or replacement of commercial leases currently in effect, and (iii) the grant of easements for utilities and similar purposes in the ordinary course provided, such easements do not impair the use of the Project Facilities or diminish the value of the Project Facilities. “Sale” shall also include the direct or indirect sale, transfer, assignment, pledge, hypothecation or conveyance of legal or beneficial ownership of (a) equity ownership interests in the Borrower, (b) a controlling interest in the aggregate, at any time or times, of the equity ownership interests in the Managing Member, or (c) the substitution of a new Managing Member in the Borrower without the Controlling Person’s prior written consent, which it may withhold in its sole discretion; provided, however, that “Sale” shall not include a Permitted Transfer.

**“S&P”** means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, a limited liability company organized and existing under the laws of the State of New York, its successors and assigns and, if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

**“Secondary Market Transaction”** shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

**“Securities Depository”** means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

**“Securities Depository Nominee”** means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Register the Bonds to be delivered to

such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

**“Securities”** shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

**“Security”** shall have the meaning given to such term in the Granting Clauses of this Indenture.

**“Security Interest”** or **“Security Interests”** means the security interests created herein and shall have the meanings set forth in the U.C.C.

**“Stabilization”** means the point at which (i) the Improvements have been ninety percent (90%) occupied by tenants meeting the requirements of the Bond Documents on average for the prior three (3) consecutive months; (ii) the ratio of Stabilized NOI for the same three (3) consecutive months in the aggregate to the maximum principal, interest, payable in any three month period in the aggregate other than the month in which the Maturity Date occurs on the amount of Bonds Outstanding equals or exceeds 1.15 to 1.0; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Final Completion; and the Borrower shall have deposited an amount equal to approximately [\$448,315] or such other amount as approved by the Controlling Person, in the Operating Reserve Fund.

**“Stabilization Date”** means no later than March 11, 2022; provided, however, that at the written request of the Borrower, the Stabilization Date may be extended one (1) time for six (6) months or for such longer period as the Controlling Person may approve in its sole discretion, upon delivery of an extension fee equal to twenty-five (25) basis points multiplied by the original principal amount of the Bonds to the Red Stone Servicer, LLC.

**“Stabilized NOI”** means, for any period, (x) Effective Gross Revenues for such period less (y) Expenses for such period, as determined or approved by the Controlling Person.

**“State”** means the Commonwealth of Virginia.

**“Substantial User”** means, with respect to any “facilities” (as the term “facilities” is used in Section 144(a) of the Code), a “substantial user” of such “facilities” within the meaning of Section 147(a) of the Code.

**“Surplus Bond Proceeds”** means all moneys and any unliquidated investments remaining in the Bond Proceeds Account of the Project Fund upon Final Completion and after payment in full of the Project Costs (except for proceeds of the Bonds being retained to pay for Project Costs not then due and payable for which the Trustee shall have retained amounts pursuant to the Loan Agreement).

**“Surplus Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Tax and Insurance Escrow Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Tax Certificate”** means the Non-Arbitrage Certificate and Tax Compliance Agreement dated the Issue Date among the Issuer and the Borrower, as it may be amended, modified or supplemented from time to time.

“**Tax Credit Investor**” means Raymond James Tax Credit Fund XX L.L.C., a Florida limited liability company and its successors and assigns in such capacity pursuant to the Operating Agreement.

“**Third Party Costs**” means the ongoing fees of the Issuer, the Trustee the Rebate Analysts or any other third party in connection with the Bonds.

“**Title Company**” means Sutton Land Title Agency, LLC, as agent for Commonwealth Land Title Insurance Company.

“**Title Policy**” means the mortgagee’s title insurance policy relating to the Project Facilities issued by the Title Company to the Trustee, effective on the date of recording of the Mortgage, as the same may be subsequently down-dated or endorsed from time to time, with the approval of the Controlling Person.

“**Trustee**” shall have the meaning given to such term in the first paragraph of this Indenture.

“**U.C.C.**” means the Uniform Commercial Code of the State as now in effect or hereafter amended.

“**Work**” means the items of renovation of the Improvements required to be performed under the Plans and Specifications for the Improvements.

**Section 1.2** **Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) All terms defined in the Loan Agreement and not defined herein shall have the meaning given to such terms in the Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture, unless otherwise indicated.

## **ARTICLE II** **THE BONDS**

**Section 2.1** **Authorized Amount of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued and Outstanding hereunder is expressly limited to \$8,670,000. The Bonds shall be designated “Industrial Development Authority of the City of Lexington, Virginia Multifamily Housing Revenue Bonds (Lexington House Apartments) Series 2020.” The form of Bonds attached as Exhibit A to this Indenture shall be the form of Bonds referred to herein.

**Section 2.2 Issuance of Bonds.**

(a) The Bonds shall bear interest from the Issue Date until paid or exchanged, as applicable, at the rate set forth in Section 2.3 hereof computed on the basis set forth in the form of the Bonds, and the Bonds shall mature, unless sooner paid, on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable.

(b) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations only. The Bonds shall be numbered from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee.

(c) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the Issuer. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of, and interest on the Bonds shall be due and payable. The Bonds are subject to mandatory sinking fund redemption as provided in Section 2.12(c) hereof.

(d) The principal of and the interest on the Bonds shall be payable in lawful currency of the United States. The principal of the Bonds shall be payable at the principal office of the Trustee upon presentation and surrender of the Bonds (or, in the case of Bonds that are administered in the Book-Entry System, will be paid by wire transfer of immediately available funds to the Securities Depository); provided, however, that Bonds need not be presented for payment upon redemption pursuant to Section 2.12(c) of this Indenture. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, any Holder of a Bond or Bonds in an aggregate principal amount of not less than \$250,000 may, by prior written instructions filed with the Trustee (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

**Section 2.3 Interest Rate on Bonds.** The Bonds shall bear interest at the Bond Coupon Rate from the Issue Date to the date of payment in full of the Bonds, calculated in the manner set forth in the form of the Bonds. Interest accrued on the Bonds shall be paid on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of or interest payable on the Bonds is not paid when due or when any other Event of Default shall occur and be continuing, there shall be payable on the Bonds or on any amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof.

**Section 2.4 Execution; Limited Obligation.**

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chairman or the Vice Chairman of the Board of the Issuer and the corporate seal of the Issuer or a facsimile thereof shall be impressed or imprinted thereon and attested by the manual or facsimile signature of the Secretary or Assistant Secretary of the Issuer, in their official capacities. In case any officer whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes. The Bonds may be typewritten, printed, engraved, lithographed or otherwise produced.



(b) THE BONDS, THE PREMIUM, IF ANY, AND INTEREST HEREON ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM CERTAIN REVENUES AND RECEIPTS DERIVED FROM THE SECURITY AND AMOUNTS TO BE RECEIVED THEREUNDER, WHICH PAYMENTS, REVENUES AND RECEIPTS HAVE BEEN PLEDGED AND ASSIGNED TO THE TRUSTEE TO SECURE PAYMENT OF THE BONDS. THE BONDS, THE PREMIUM, IF ANY, AND THE INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER, THE CITY OF LEXINGTON, VIRGINIA (THE "CITY"), THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE ISSUER AND THE CITY SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES AND RECEIPTS PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT OF THE ISSUER, THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE, NOR THE TAXING POWER OF CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO. THE ISSUER HAS NO TAXING POWER.

**Section 2.5 Certificate of Authentication.** No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond set forth as Exhibit A hereto, executed by an authorized representative of the Trustee and such certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

**Section 2.6 Form of Bonds.**

(a) The Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the form set forth as Exhibit A hereto, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officer of the Issuer executing such Bonds, as evidenced by such officer's execution of the Bonds.

(b) Bonds shall be in either typewritten or printed form, as the Issuer shall direct, with approval of the Trustee. Any expenses, including but not limited to expenses of printing, incurred in connection with the preparation of the form of the Bonds shall be paid by the Borrower.

**Section 2.7 Delivery of Bonds.**

(a) Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them through the Securities Depository in the manner described in Section 2.14(a) hereof.

(b) Prior to the delivery by the Trustee of the Bonds, there shall be filed with the Trustee:

(i) A certified copy of all resolutions adopted and proceedings had by the Issuer authorizing execution of this Indenture, the Loan Agreement and the other Bond Documents to which the Issuer is a party and the issuance of the Bonds; and

(ii) An original executed counterpart of the Bond Documents (and with respect to the Note, endorsed without recourse by the Issuer to the Trustee); and

(iii) Copies of any Financing Statements required to be filed to perfect the security interests in the Security or under Section 3.2 of the Loan Agreement; and

(iv) A copy of completed IRS Form 8038 to be filed by or on behalf of the Issuer pursuant to Section 149(e) of the Code; and

(v) An original executed counterpart of the Tax Certificate; and

(vi) An Opinion of Bond Counsel or Counsel to the Issuer to the effect that this Indenture, the Loan Agreement and the Purchase Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer; and

(vii) An approving Opinion of Bond Counsel that the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Bonds will be excludable from gross income of the Holders thereof for federal income tax purposes, subject to customary exceptions, and is not an item of tax preference for purposes of the federal alternative minimum tax, that the Bonds are not required to be registered under the Securities Act of 1933, as amended, and that the Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and

(viii) An opinion of Counsel for the Borrower to the effect that the Continuing Disclosure Agreement and the Bond Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower and such other opinions as are required by the Purchase Agreement or reasonably requested by the Controlling Person or the Majority Owner; and

(ix) A pro forma title insurance policy reasonably acceptable to the Controlling Person; and

(x) Reliance letters for, or address of the opinions to, the Controlling Person and Majority Owner of each of the opinions filed with the Trustee; and

(xi) Such other documents, opinions and certificates as may be required by the Issuer, Trustee, Bond Counsel, Majority Owner or Controlling Person; and

(xii) An executed copy of the Investor Letter.

(c) Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds as provided in the written instructions of the Issuer to the Trustee.

**Section 2.8 Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Trustee evidence satisfactory to it and the Issuer of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable regulations as the Issuer and the Trustee may prescribe. If any such Bond shall have matured or a

redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in connection with this Section.

**Section 2.9 Exchangeability and Transfer of Bonds; Persons Treated as Owners.**

(a) The Register and all other records relating to the registration of the Bonds and for the registration of transfer of the Bonds as provided herein shall be kept by the Trustee.

(b) Any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the principal office of the Trustee, by providing the Trustee with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or such Holder's attorney, duly authorized in writing, and thereupon, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations. Transfers or exchanges of Bonds other than to a Qualified Institutional Buyer, to an Affiliate or to a trust or custodial arrangement require delivery of an investor letter substantially in the form set forth in Exhibit B hereto.

(c) Bonds may be exchanged upon surrender thereof at the principal office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the Holder or such Holder's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same tenor as the Bonds being exchanged and of any Authorized Denomination or Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds that the Holder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

(d) Such registrations of transfer or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration of transfer or exchange and all reasonable expenses of the Issuer shall be paid by the Borrower.

(e) The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal or interest shall be made only to or upon the order of the registered owner thereof or his/her duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(f) All Bonds issued upon any registration of transfer or exchange of Bonds shall be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such registration of transfer or exchange.

(g) Notwithstanding the foregoing, for so long as the Bonds are held under the Book-Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository, as more fully described in Section 2.14 hereof.

(h) In regard to the restriction on the transfer of the Bonds imposed by clause (b) of this Section 2.9, while the Bonds are in the Book Entry System, the Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Bond (including any transfers between or among DTC Participants, DTC Indirect Participants, or Beneficial Owners of interests in any Bond). When the Bonds are not in the Book-Entry System, the Investor Letter shall be delivered to the Trustee and its only duty shall be to examine such letter to determine whether it is in compliance with the requirements of this Indenture. When the Bonds are not in the Book-Entry System, the Trustee is authorized and directed to put a stop order on its books with respect to a transfer of the Bonds not in compliance with the requirements of this Indenture.

**Section 2.10 Non-presentment of Bonds.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay the principal of, premium, if any, and interest on such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, payment of such Bond or portion thereof as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to any applicable escheat laws, to hold such fund or funds uninvested in the Bond Fund, without liability to the Holder of such Bond for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his/her part on, or with respect to, said Bond, or portion thereof.

**Section 2.11 Ratably Secured.** All Bonds issued hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date.

**Section 2.12 Redemption of Bonds.**

(a) **Optional Redemption of Bonds.** The Bonds are subject to optional redemption in whole but not in part, at the direction of the Borrower upon not less than ten (10) days written notice to the Trustee and the Controlling Person (which notice shall be unconditional and irrevocable), in Authorized Denominations on any Interest Payment Date occurring on or after March 1, 2036, at a redemption price equal to 100% of the principal amount thereof, plus accrued interest thereon to, but not including, the redemption date.

(b) **Mandatory Redemption of Bonds.**

(i) The Bonds are subject to mandatory redemption from, and to the extent of, amounts on deposit in the Surplus Fund (subject to Section 4.4 hereof) on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, following the deposit of Surplus Bond Proceeds in the Surplus Fund at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(ii) The Bonds are subject to mandatory redemption in whole or in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this

Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Project Fund and are not to be used to repair or restore the Project Facilities at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iii) On or after the Stabilization Date and upon at least five Business Days written notice thereof, the Bonds are subject to mandatory redemption in part on any Interest Payment Date in the amount as specified by the Controlling Person in writing to the Trustee necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of "Stabilization," at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iv) The Bonds are subject to extraordinary mandatory redemption in whole or in part, at the direction of the Controlling Person to the Trustee and the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture following receipt by the Trustee of the direction of the Controlling Person, within one hundred eighty (180) days of the occurrence of any of the following events:

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the reasonable judgment of the Controlling Person subject to the provisions of Section 1.04 of the Mortgage it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months);

(3) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Loan Agreement or the other Bond Documents shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein, in each case, as determined by the Controlling Person;

(4) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Indenture subject to the Borrower's right to contest that, in the reasonable judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(5) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project Facilities for the purposes contemplated by the Loan Agreement shall have occurred or technological changes that

the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Controlling Person, would cause the Project Facilities to not be able to achieve Final Completion or Stabilization;

(6) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (ii) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months; or

(7) the Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Loan Agreement.

(v) The Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory redemption on account of a Determination of Taxability of less than all the Bonds would result, in the opinion of Bond Counsel, in the interest on the Bonds Outstanding following such mandatory redemption being excludable from the gross income of the Holders of such Bonds Outstanding, then the Bonds are subject to mandatory redemption upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such redemption must be in an Authorized Denomination.

(vi) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person on or after March 1, 2037, if the Controlling Person directs redemption by providing notice to the Borrower, the Trustee and the Issuer at least one hundred eighty (180) days prior to the Interest Payment Date specified in such notice on which the Bonds are to be redeemed at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the redemption date. The direction of the Controlling Person to redeem the Bonds shall be irrevocable and shall be binding on the Holders of all of the Bonds and on any transferee(s) of such Holders.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption in part on each Principal Payment Date, from amounts paid by the Borrower to the Trustee for deposit into the Redemption Fund pursuant to Sections 2.3(d) and 8.3 of the Loan Agreement (in the amount set forth on Schedule 3 of the Loan Agreement), at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(d) Selection of Bonds to be Redeemed. If less than all the Outstanding Bonds shall be called for redemption, the Trustee or, if the Bonds are held in Book-Entry System, the Securities Depository shall select or arrange for the selection of the Bonds to be redeemed in Authorized Denominations, by lot, pursuant to its rules and procedures; provided that, any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination. If the Bonds are held in the Book-Entry System, the Securities Depository shall, acting pursuant to its rules and procedures, reflect in said system the partial redemption and the Trustee shall either (i) exchange the Bond or Bonds held by the Securities Depository for a new Bond or Bonds in the appropriate principal amount, if such Bond is presented to the Trustee by the Securities Depository, or (ii) obtain from the Securities Depository a written confirmation of the reduction in the principal amount of the Bonds held by such Securities Depository.

(e) Partial Redemption of Bonds; Reamortization. In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the principal office of the Trustee of such Bond by the Holder thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 2.12(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture. In the event of a partial redemption of Bonds other than pursuant to Section 2.12(c), the mandatory sinking fund schedule set forth on Schedule 3 of the Loan Agreement shall be adjusted to provide for level debt service in respect of the Bonds remaining Outstanding after such partial redemption, on the basis of the original amortization schedule. The Controlling Person shall provide the Trustee and the Borrower with a new Schedule 3 reflecting such adjustment promptly following any such partial redemption.

(f) Redemption Price. Other than as described in Section 6.8 hereof, any redemption of Bonds shall be at a redemption price equal to 100% of the principal amount of Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, without premium, penalty or charge.

(g) Right of Borrower to Purchase Bonds. Subject to delivery of a Favorable Opinion of Bond Counsel, provided that such opinion shall not be required if the Bonds are held by a Substantial User or Related Person to a Substantial User, the Borrower shall have the option, by written notice to the Trustee and the Controlling Person given not less than five (5) Business Days (forty-five (45) days in case of a redemption pursuant to Section 2.12(b)(vi) hereof), in advance of any redemption date, to cause purchase of the Bonds in lieu of redemption on the redemption date. The purchase price of the Bonds so purchased in lieu of redemption shall be equal to the redemption price thereof, and shall be payable on the redemption date. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.

**Section 2.13 Notice of Redemption.** Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Controlling Person, but no defect in or failure to give such notice of redemption shall affect the validity of the redemption; provided, however, that (i) notice of redemption shall be mailed by the Trustee not less than five (5) Business Days prior to the date fixed for redemption pursuant to Section 2.12(a) and Section 2.12(b)(iii) hereof, and (ii) no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 2.12(c) hereof. All Bonds properly called for redemption will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed. Notwithstanding the foregoing, with respect to any Bonds held under the Book Entry System, notices of redemption shall be provided in accordance with the rules and procedures established by the Securities Depository, as more fully described in Section 2.14 hereof.

**Section 2.14 Book-Entry System.**

(a) On the date of issuance and delivery of the Bonds, one Bond in the aggregate principal amount of the Bonds and registered in the name of the Securities Depository Nominee will be issued and deposited with the Securities Depository and held in its custody. The Book-Entry System will be maintained by the Securities Depository and the DTC Participants and Indirect Participants and will evidence beneficial ownership of the Bonds in Authorized Denominations, with registration of transfers of ownership effected on the records of the Securities Depository, the DTC Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the DTC Participants and the Indirect Participants. The principal of, premium, if any, and interest on each Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Register as the registered Holder of such Bond or his/her registered assigns or legal representative at the principal office of the Trustee. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the Holder of the Bonds for all purposes. Transfer of, premium, if any, principal and interest payments or notices to DTC Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfer of principal of, premium, if any, and interest payments or notices to Beneficial Owners will be the responsibility of the DTC Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the DTC Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Bonds, notwithstanding any other provisions set forth herein, payments of principal of, premium, if any, and interest on the Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of said Holder as may be specified in the Register maintained by the Trustee or by such other method of payment as the Trustee may determine to be necessary or advisable with the concurrence of the Securities Depository.

(b) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, or (ii) the Borrower, on behalf of the Issuer, with the consent of the Trustee and the Controlling Person, elects to remove the Securities Depository, then the Borrower, on behalf of the Issuer, with the consent of the Trustee and the Controlling Person, may appoint a new Securities Depository.

(c) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds or has been removed and the Borrower fails to appoint a new Securities Depository, or (ii) the Controlling Person or the Borrower, with the consent of the Trustee and the Controlling Person, determines that continuation of a Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Beneficial Owners, the Book-Entry System will be discontinued, in which case the Trustee will deliver replacement Bonds in the form of fully registered certificates in Authorized Denominations in exchange for the Outstanding Bonds as required by the Trustee and the Beneficial Owners.

### **ARTICLE III** **SECURITY**

**Section 3.1 Security.** The Bonds and the interest and any premium thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof, and shall be secured by and payable from the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof.

**Section 3.2 Payment of Bonds and Performance of Covenants.** The Issuer shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Bonds or in the other Bond Documents to



which the Issuer is a party on its part to be performed or observed. The Issuer shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement and the other Bond Documents to which the Issuer is a party.

**Section 3.3 Authority.** The Issuer represents and warrants that (i) it is duly authorized under the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and delivery of the Bond Documents to which it is a party has been duly taken; (iii) the Bonds, upon issuance and authentication, and the Bond Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the Issuer in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) it has not received any payments under the Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; and (vii) the execution, delivery and performance of the Bond Documents to which it is a party and issuance of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound and no other approval, consent or notice from any Governmental Authority is required on the part of the Issuer.

**Section 3.4 No Litigation.** The Issuer represents and warrants that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the other Bond Documents to which the Issuer is a party, or (ii) the exclusion from gross income of interest on the Bonds.

**Section 3.5 Further Assurances.** The Issuer covenants that it will cooperate to the extent necessary with the Borrower and the Trustee in their defenses of the Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the Issuer in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better pledging of the Security. Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by Article VIII hereof.

**Section 3.6 No Other Encumbrances; No Dissolution.** The Issuer covenants that, (i) except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Bonds are Outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Bonds having assumed its obligations hereunder and under the Bonds.

**Section 3.7 No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any commissioner, director, member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either

directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any commissioner, director, member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such commissioner, director, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

#### **ARTICLE IV** **FUNDS**

##### **Section 4.1 Establishment of Funds and Accounts; Applications of Proceeds of the Bonds and Other Amounts.**

(a) The following Funds and Accounts are hereby created and established as special trust funds:

- (i) the Project Fund, consisting of:
  - (A) the Bond Proceeds Account;
  - (B) the Costs of Issuance Account (containing a Bond Proceeds Subaccount and an Equity Subaccount);
  - (C) the Equity Account;
  - (D) the Capitalized Interest Account;
  - (E) the Insurance and Condemnation Proceeds Account;
- (ii) the Replacement Reserve Fund;
- (iii) the Tax and Insurance Escrow Fund;
- (iv) the Rebate Fund;
- (v) the Bond Fund;
- (vi) the Surplus Fund;
- (vii) the Redemption Fund; and
- (viii) the Operating Reserve Fund.

(b) All the Funds and Accounts created by subsection (a) of this Section shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

(c) The proceeds of the sale of the Bonds and the initial installment of Required Equity Funds shall be applied as directed in writing by the Controlling Person to the Trustee pursuant to

the Closing Instructions Memorandum dated March \_\_, 2020 and executed by the Borrower, the Trustee and the Controlling Person (the “Closing Memorandum”).

**Section 4.2 Bond Fund.**

(a) There is hereby separately created and established with the Trustee the Bond Fund. There shall be deposited in the Bond Fund (i) all Repayments specified in the Loan Agreement to be deposited in the Bond Fund, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (ii) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund.

(b) Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds, for the payment of principal of the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption prior to the Maturity Date, and for the payment of the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

(c) After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Bond Fund shall be paid to the Borrower.

**Section 4.3 Project Fund.**

(a) The Trustee shall deposit all amounts specified in Section 4.1 hereof into the specified accounts and subaccounts of the Project Fund. The Trustee will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Tax Credit Investor and the Managing Member, in accordance with the provisions of the Operating Agreement and the Assignment of Capital Contributions.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement of Project Costs (or, in the case of moneys on deposit in the Bond Proceeds Account of the Project Fund, at least 95% of such funds for payment or reimbursement of Qualified Project Costs) to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person, in accordance with the provisions of the Loan Agreement; provided, however, after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, all Surplus Bond Proceeds remaining in the Bond Proceeds Account of the Project Fund shall be transferred to the Surplus Fund. All remaining amounts in the Equity Account upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed.

(c) The Trustee shall and is hereby authorized to transfer funds from the Capitalized Interest Account to the Bond Fund to pay interest on the Bonds accruing up to and including the Completion Date without submission of any Requisition. With respect to any such transfer, the Trustee shall first transfer amounts from proceeds of the sale of the Bonds. The Trustee shall transfer any Surplus Bond Proceeds remaining in the Capitalized Interest Account after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, to the Surplus Fund.

(d) Amounts in the Costs of Issuance Account shall be disbursed by the Trustee on the Issue Date and thereafter only to pay costs of issuance pursuant to a closing memorandum attached to a Requisition signed by the Borrower and the Controlling Person identifying the amount to be paid and

the payee. Amounts remaining in the Costs of Issuance Account (including investment proceeds) after the payment of all costs of issuance, and in any event not later than thirty (30) days following the Issue Date, shall be transferred to the Bond Proceeds Account or Equity Account of the Project Fund, as applicable.

(e) Reserved.

(f) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Controlling Person and the Majority Owner. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Bond Fund and applied to the redemption of Bonds in accordance with Section 2.12 hereof, or (ii) released to the Borrower if the Borrower obtains an opinion of Bond Counsel that such release will not affect the excludability of the interest on the Bonds from gross income for federal income tax purposes, all in accordance with direction of the Controlling Person to the Trustee and subject to the provisions of the Bond Documents.

(g) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Project Fund may be disbursed at the written direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine.

**Section 4.4 Surplus Fund.** The Surplus Fund shall receive all Surplus Bond Proceeds transferred thereto in accordance with the provisions of this Indenture. The deposit of Surplus Bond Proceeds in the Surplus Fund shall be, and shall be deemed to be, a joint direction by the Borrower and the Controlling Person to the Trustee to redeem the greatest principal amount of the Bonds possible to be redeemed from such deposit pursuant to Section 2.12(b)(i) hereof on the earliest redemption date on which the Bonds may be redeemed, and on such redemption date (or, if such day is not a Business Day, the immediately preceding Business Day) an amount equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the redemption date shall be transferred from the Surplus Fund to the Bond Fund and used for such redemption. After such transfer, if and to the extent that there are moneys remaining in the Surplus Fund, such moneys in the Surplus Fund shall be transferred to the Bond Fund and shall be used for payment of interest on or principal of the Bonds.

**Section 4.5 Use of Certain Additional Accounts.**

(a) Redemption Fund.

(i) There shall be deposited in the Redemption Fund (a) all payments specified in Section 8.3 of the Loan Agreement to be deposited in the Redemption Fund, and (b) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the redemption of Bonds pursuant to Section 2.12 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written direction of the Controlling Person, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Section 2.12 hereof. After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to

Section 5.2 hereof, and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

(ii) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Redemption Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine.

(b) Tax and Insurance Escrow Fund. There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 8.2 of the Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the direction of the Controlling Person; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the direction of the Controlling Person to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine. Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

(c) Rebate Fund. The Issuer recognizes that investment of the Bond proceeds will be at the written direction of the Borrower but agrees that it will commit no act, or omit any action, that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the applicable regulations thereunder. There is hereby established with the Trustee a Rebate Fund. Any provisions in this Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder. The Issuer and the Trustee will observe the covenants contained in the Tax Certificate as if fully set forth herein.

(d) Replacement Reserve Fund. There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Replacement Reserve Agreement and Section 8.1 of the Loan Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Controlling Person, in accordance with the terms of the Replacement Reserve Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable.

(e) Operating Reserve Fund. There shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.4 of the Loan Agreement. Funds shall

be disbursed from the Operating Reserve Fund, at the request of the Borrower, but only with the Controlling Person's written consent, to fund any operating deficits or expenses of the Borrower or for any other operating or capital needs of the Project Facilities. Upon receipt by the Trustee from the Borrower of a written request together with the written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed, the Trustee shall disburse funds from the Operating Reserve Fund in accordance with such written request. Upon the occurrence and continuation of an Event of Default, all moneys and investments in the Operating Reserve Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay any costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Interest earnings on amounts held in the Operating Reserve Fund shall be released not more frequently than annually to the Borrower upon its written request and with the prior written consent of the Controlling Person. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower.

#### **Section 4.6 Records.**

(a) The Trustee shall cause to be kept and maintained records pertaining to all Accounts maintained by the Trustee hereunder and all disbursements therefrom and shall periodically deliver to the Borrower statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Borrower and the Controlling Person, within a reasonable period of time, with a report stating the principal amount of Bonds outstanding and a list of the registered owners of the Bonds as of the date specified by the Borrower or the Controlling Person in its request.

(b) The Trustee shall provide the Borrower and the Controlling Person with a written report, on a monthly basis through the calendar month in which the last obligation of the Bonds is retired, identifying the Permitted Investments in which the moneys held as part of the Accounts were invested during the preceding period and the dates of such investments, together with such other information as the Trustee ordinarily provides to Persons such as the Borrower and the Controlling Person in its regular monthly investment reports.

**Section 4.7 Investment of Funds.** Moneys held as part of all Accounts hereunder shall be invested and reinvested in Permitted Investments as instructed by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Trustee to pay the principal of or interest that has become payable with respect to the Bonds shall not be invested. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the Accounts which were used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its Affiliate and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective Accounts and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any Accounts hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. Absent specific instructions from the Borrower approved by the Controlling Person to invest cash balances in Permitted Investments hereunder, the Trustee shall invest in Permitted Investments constituting obligations of the U.S. Treasury or its agencies having a term to maturity of not more than

thirty (30) days or any money market fund or similar investment fund that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than thirty (30) days.

**Section 4.8 Guaranties.** Any amounts realized by the Trustee under the Guaranty of Completion, the Guaranty of Debt Service and Stabilization, the Guaranty of Recourse Obligations, the Environmental Indemnity or the Developer Fee Pledge shall be used or applied or invested by the Trustee as directed in writing by the Controlling Person.

## **ARTICLE V** **DISCHARGE OF LIEN**

**Section 5.1 Discharge of Lien and Security Interest.** Upon payment in full of all of the Bonds and all amounts payable under the Loan Agreement and the other Bond Documents, these presents and the Security Interests shall cease, determine and be discharged, and thereupon the Trustee shall, upon receipt by the Trustee of an opinion of Counsel stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with (a) cancel and discharge this Indenture and the Security Interests; (b) execute and deliver to the Issuer and the Borrower, at the Borrower's expense, such instruments in writing as shall be required to cancel and discharge this Indenture and the Security Interests and reconvey to the Issuer and the Borrower the Security, and assign and deliver to the Issuer and the Borrower so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds; and (c) mark as cancelled the Note and satisfy the Mortgage; provided, however, that the cancellation and discharge of this Indenture pursuant to Section 5.3 hereof shall not terminate the powers and rights granted to the Trustee, with respect to the payment, registration of transfer and exchange of the Bonds; provided, further, that the rights of the Issuer and the Trustee to indemnify, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof.

**Section 5.2 Provision for Payment of Bonds.** Bonds shall be deemed to have been paid within the meaning of Section 5.1 hereof if:

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds and interest to accrue thereon through such maturity or redemption dates, as the case may be;

(b) there shall have been paid or provision duly made for the payment of all fees and expenses of the Issuer and the Trustee, due or to become due; and

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from the Borrower or the Controlling Person, as the case may be, in accordance with Section 2.12 hereof to cause a redemption of the Bonds, to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been granted to the Trustee.

(d) Limitations set forth elsewhere herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the Government Obligations described in this Section 5.2 for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. Notwithstanding any other provision of this Indenture to the contrary, all funds deposited with the Trustee as provided in this Section may be invested and reinvested, at the direction of the Borrower, in Government Obligations (or in a money market fund that invests solely in Government Obligations and is rated no lower than the second highest category by one of Fitch, Moody's or S&P and, if more than one of such rating agencies then rates such money market fund, is rated no less than the second highest rating category by each of such rating agencies then rating such money market fund) maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations (or money market fund) in the hands of the Trustee pursuant to this Section which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

**Section 5.3 Discharge of this Indenture.** Notwithstanding the fact that the lien of this Indenture upon the Security may have been discharged and cancelled in accordance with Section 5.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Security may have been discharged and cancelled, shall nevertheless continue and subsist after payment in full of the Bonds or the deemed payment in full of the Bonds in accordance with Section 5.2 hereof until the Trustee shall have returned to the Borrower, all funds held by the Trustee which the Borrower is entitled to receive pursuant to this Indenture after all Bonds have been paid at maturity or redeemed. Upon payment in full or defeasance of the Bonds, payment of amounts payable to the United States pursuant to any rebate requirement and payment of all other amounts owing under the Bond Documents, all remaining amounts held by the Trustee shall be paid to the Borrower.

## **ARTICLE VI**

### **DEFAULT PROVISIONS AND REMEDIES**

**Section 6.1 Events of Default.** Any one of the following shall constitute an Event of Default hereunder:

- (a) Failure to pay interest on any Bond when and as the same shall have become due;
- (b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due, whether at the stated maturity or redemption date thereof or by acceleration;
- (c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the Issuer included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer, the Guarantor and the Borrower with a copy to the Tax Credit Investor has been given by the Trustee or by the Controlling Person (with a copy to the Trustee); or
- (d) The occurrence of an Event of Default under the Loan Agreement or the failure by the Borrower to perform or comply with any of the other terms or conditions contained in any other Bond Documents to which the Borrower is a party and continuation of such failure for beyond the expiration of any notice, grace or cure period provided in the Loan Agreement or the Bond Documents (as applicable).



**Section 6.2 Acceleration.**

(a) Upon the occurrence and continuance of an Event of Default, at the direction of the Controlling Person, which shall specify the particular Event of Default, the Trustee immediately shall, by notice in writing sent to the Issuer, the Borrower, the Tax Credit Investor, the Majority Owner and the Controlling Person, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Note to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 (if applicable).

(b) Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid (or, in the case of Bonds administered in the Book-Entry System, cause to be sent pursuant to the applicable procedure of the Securities Depository), to each Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

**Section 6.3 Other Remedies; Rights of Holders.**

(a) Upon the happening and continuance of an Event of Default hereunder, the Trustee may, with the prior written consent of the Controlling Person, and shall upon the direction of the Controlling Person, with or without taking action under Section 6.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Bond Documents.

(b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee, the Controlling Person, the Majority Owner or the Holders 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 Trustee, the Majority Owner, the Controlling Person or to the Holders hereunder or now or hereafter existing.

(c) No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or 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.

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) The Trustee, as the assignee of substantially all right, title and interest of the Issuer in and to the Loan Agreement and the Note, shall be empowered to enforce each and every right granted to the Issuer under the Loan Agreement and the Note other than Reserved Rights.

**Section 6.4 Right of Controlling Person to Direct Proceedings.**

(a) Anything in this Indenture to the contrary notwithstanding, the Controlling Person shall have the right at any time, by an instrument or instruments in writing executed and delivered

to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

(b) No Holder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Holder has given the Trustee, the Tax Credit Investor and the Borrower written notice of an Event of Default, the Controlling Person shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, there shall have been offered to the Trustee indemnity satisfactory to it against the cost, expense and liability to be incurred in connection with such request and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within ninety (90) days after receipt of notice with no inconsistent direction given during such ninety (90) days by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder by the Act to enforce (i) the payment of the principal of, acceleration premium, if any, and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of, acceleration premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in this Indenture.

**Section 6.5 Discontinuance of Default Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver 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 Issuer and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Issuer and the Trustee shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

**Section 6.6 Waiver.** The Trustee, with the consent of the Controlling Person may, and shall upon the written direction of the Controlling Person, waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer shall have been paid or provided for.

**Section 6.7 Application of Moneys.** Except for moneys deposited pursuant to Article V hereof, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source other than moneys held for the redemption of Bonds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other outstanding fees and expenses of the Trustee, and (ii) any sums due to the Issuer under the Loan Agreement (other than Repayments), such moneys shall be applied in the order set forth below:

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

**First:** To the payment of all installments of interest then due on the Bonds in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

**Second:** To the payment of the unpaid principal of and acceleration premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Bonds from the respective dates upon which they became due (at the rate borne by the Bonds, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such acceleration premium, then to the ratable payment of the amounts due on such date;

**Third:** To the payment of the amounts required to reimburse the Issuer and the Owners of the Bonds for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder; and

**Fourth:** The balance shall be paid to the Borrower (subject to any required deposits to the Rebate Fund).

(b) If the principal of all the Bonds shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal, acceleration premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium, interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal on all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article then, subject to subsection (b) of this Section in the event that the principal of all the Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section.

(d) Notwithstanding anything contained herein to the contrary, the Controlling Person may, with express written consent of the Majority Owner, by written notice to the Trustee direct the application of funds other than in the manner set forth in Section 6.7(a) above, including, without limitation, the application of funds between the principal or acceleration premium of or interest on the Bonds.

(e) Whenever moneys are to be applied pursuant to this Section, the Trustee shall fix the date, which shall be not more than seven (7) calendar days after receipt of such moneys, upon which such application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

**Section 6.8 Default Interest and Acceleration Premium.** In the event that principal of or interest payable on the Bonds is not paid when due or upon the occurrence and during the continuance of any other Event of Default, there shall be payable on the Bonds or on any amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before March 1, 2037, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

**Section 6.9 Cure by Tax Credit Investor.** Notwithstanding anything to the contrary contained herein, the Issuer and the Trustee hereby agree that any timely (within the cure period, if any, granted to the Borrower) cure of any default made or tendered by the Tax Credit Investor shall be deemed

to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that the Tax Credit Investor shall not have any obligation or duty to take any action to cure any default or to cause any default to be cured. Borrower and Tax Credit Investor shall be permitted to cure any default of a Guarantor hereunder by providing a replacement Guarantor within thirty (30) days approved by the Controlling Person in its sole discretion.

## **ARTICLE VII** **THE TRUSTEE**

**Section 7.1 Appointment of Trustee.** The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a) The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees. The Trustee may act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the Issuer, approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) Except as provided in Section 7.8 hereof, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any financing statements or continuation statements, or for insuring the Security or the Project Facilities, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security. The Trustee shall not be liable to the Borrower, any Holder, any Beneficial Owner or any other Person for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.7 hereof in good faith as instructed by the Borrower in accordance with the provisions of this Indenture, and with the prior written consent of the Controlling Person, as applicable. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the Issuer or for the use by the Borrower of the proceeds of the Bonds advanced to the Borrower as provided in the Loan Agreement. The Trustee may become the owner of Bonds secured hereby with the same rights as any other Holder.

(d) The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any notices, directions, consents, approvals or requests provided to the Trustee pursuant to the terms of this Indenture or any of the Bond Documents shall not be effective until provided in writing. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bond shall be conclusive

and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its gross negligence, bad faith or willful misconduct in the performance of those express duties.

(f) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project Facilities.

(g) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trust and powers or otherwise in respect of this Indenture.

(h) Before taking any action requested hereunder by the Holders which may require it to expend its own funds, the Trustee may require satisfactory security or indemnification for the reimbursement of all expenses to which it may be put by reason of any action so taken. The Trustee shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Majority Owner or the Controlling Person which do not require the Trustee to expend its own funds or for which funds have been advanced by the Majority Owner or the Controlling Person to the Trustee in advance of its taking such action.

(i) All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Indenture and for the benefit and security of the Holders of the Bonds as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Issuer under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under Section 6.1(a) or (b), or Section 6.1(c) or (d) if written notice thereof has been received by the Trustee) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) upon written notification of a Determination of Taxability by the Holder of any Bonds, (iv) upon written notification of such default by the Controlling Person, the Majority Owner or two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, or (v) upon receipt of an Opinion of Bond Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Trustee may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(k) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture and use the

same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs.

(l) In addition to the Trustee's other duties hereunder, the Trustee shall authenticate and cancel Bonds as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer and the Borrower at all reasonable times. All Bonds shall be made available for authentication, exchange and registration of transfer at the principal office of the Trustee.

(m) The Trustee shall have no duty to inspect or oversee the renovation or completion of the Improvements or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

(n) Without limiting the duties of the Trustee expressly set forth herein, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Bonds under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.

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

(p) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith on its part and except as otherwise expressly set forth herein, rely upon a written certificate of the Controlling Person or the Majority Owner.

(q) In the absence of a direction from the Controlling Person, if the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, pursuant to the provisions of this Indenture, the directions given by the Majority Owner shall be controlling and the Trustee shall follow such directions.

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

(s) The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Bonds and may join in any action that any Holder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Borrower and may act as depository, trustee or agent for any committee of Holders secured hereby or other obligations of the Borrower, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the affiliates of the Trustee.

(t) The Trustee shall have no responsibility or obligation to DTC Participants, to Indirect Participants, or to the Persons for whom they act as nominees with respect to the Bonds, or to any Beneficial Owner of Bonds in respect of the accuracy of any records maintained by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant, the

payment by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any amount in respect of the principal of or interest on the Bonds, any notice which is permitted or required to be given under this Indenture, the selection by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any Person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by the Securities Depository or the Securities Depository Nominee as Holder.

(u) Whether or not expressly so provided, each and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section.

**Section 7.2 Compensation and Indemnification of Trustee; Trustee's Prior Claim.**

(a) The Loan Agreement provides that the Borrower will pay the reasonable fees and third-party expenses of the Trustee under this Indenture and all other amounts which may be payable to the Trustee under this Section, such fees and third-party expenses to be paid when due and payable by the Borrower directly to the Trustee for their own account. Except as set forth in Section 6.7, the Trustee shall not have a lien on the Security for the payment of its fees or third-party expenses and shall not be entitled to pay its fees and third-party expenses from amounts held in the Accounts hereunder.

(b) The Borrower shall (i) pay the Trustee from time to time, and the Trustee shall be entitled to, payment of its fees (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), (ii) pay or reimburse the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made, in accordance with any of the provisions of this Indenture and the Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own gross negligence, willful misconduct or bad faith, and (iii) indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of its duties hereunder or under the Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own gross negligence, willful misconduct or bad faith. "Trustee," for purposes of this Section shall include any predecessor Trustee, but the gross negligence, willful misconduct or bad faith of any Trustee, shall not affect the indemnification of any other Person. The obligations of the Borrower under this Section shall survive the termination of this Indenture.

**Section 7.3 Intervention in Litigation.** In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of Holders, and shall intervene if requested in writing by the Controlling Person, the Majority Owner or the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding.

**Section 7.4 Resignation; Successor Trustees.**

(a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days prior written notice to the Issuer, the Borrower, the Controlling Person and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. If no successor is appointed within sixty (60) days after the notice of resignation, the Controlling Person may appoint a Trustee or the resigning Trustee may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a

successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Issuer, the Controlling Person and the Borrower.

(b) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

**Section 7.5 Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, the Controlling Person and the Borrower and signed by the Holders of a majority in aggregate principal amount of Bonds then Outstanding. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed by an instrument or concurrent instruments in writing delivered to the Trustee and the Issuer and signed by the Controlling Person, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee all of its right, title and interest in this Indenture and the Security in the same manner as provided in Section 7.4 hereof.

**Section 7.6 Instruments of Holders.**

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him/her the execution thereof; and

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

(b) The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in clauses (a) (i) or (ii) above that the original such instrument is no longer reliable. In the absence of direction from the Controlling Person, if the Trustee shall receive conflicting directions from two or more groups of Holders, the directions given by the Majority Owner shall be controlling and the Trustee shall follow such directions.



**Section 7.7 Power to Appoint Co-Trustees.**

(a) At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project Facilities may at the time be located, the Issuer and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Holders of a majority of the aggregate principal amount of the Bonds then Outstanding, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Trustee and the Borrower either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project Facilities, or to act as separate trustee or separate co-trustees of all or any part of the Project Facilities, and to vest in such person or persons, in such capacity, such title to the Project Facilities or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

(b) Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

(c) The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

(d) If the Issuer shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Borrower shall have the power to make such appointment.

(e) The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

(f) Every co-trustee or separate trustee appointed pursuant to this Section 7.7, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(i) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(iii) Any request in writing by the Trustee to any co-trustee or separate trustee 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-trustee or separate trustee.

(iv) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee 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-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.

(vi) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(vii) Any moneys, paper, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

(g) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the Security Interest and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

(h) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the Security Interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 7.4 hereof.

**Section 7.8 Filing of Financing Statements.** The Trustee shall file or record or cause to be filed or recorded all Financing Statements that are required in order fully to protect and preserve the Security Interests in the Security and the priority thereof and the rights and powers of the Trustee in connection therewith, including without limitation all continuation statements for the purpose of continuing without lapse the effectiveness of (i) those Financing Statements which shall have been filed at or prior to the issuance of the Bonds in connection with the security for the Bonds pursuant to the authority of the U.C.C., and (ii) any previously filed continuation statements that shall have been filed as required herein. The Trustee shall also file the financing and continuation statements required under Section 3.2 of the Loan Agreement. The Trustee will provide a copy of all such filed or recorded Financing Statement to the Borrower. The Borrower will pay all costs of filing the Financing Statements and all financing and continuation statements required under Section 3.2 of the Loan Agreement.

**ARTICLE VIII**  
**AMENDMENTS, SUPPLEMENTAL INDENTURES**

**Section 8.1 Supplemental Indentures.**

(a) The Issuer and the Trustee, with the prior written consent of the Controlling Person, but without the consent of or notice to any Holders, may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(i) to grant to or confer upon the Trustee for the benefit of the Holders, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(ii) to grant or pledge to the Trustee for the benefit of Holders, any additional security other than that granted or pledged under this Indenture;

(iii) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute then in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States;

(iv) to appoint a successor Trustee or co-trustees in the manner provided in Article VII hereof;

(v) to modify, amend or supplement this Indenture to permit a transfer of Bonds from one Securities Depository to another or the discontinuance of the Book-Entry System and issuance of replacement Bonds to the Beneficial Owners;

(vi) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not (in the reasonable judgment of the Controlling Person) materially adversely affect the interest of the Holders; or

(vii) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes.

(b) When requested by the Issuer, and if all conditions precedent under this Indenture have been met, and there shall have been delivered to the Trustee an opinion of Bond Counsel to the effect that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms and will not adversely affect the excludability of interest on the Bonds from the gross income of the Holders thereof for federal income tax purposes, the Trustee will join the Issuer in the execution of such supplemental indenture, but shall not be required to join the Issuer in the execution of any such supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee cover any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(c) The Trustee shall file copies of all such supplemental indentures with the Borrower. The Trustee shall cause notice of any supplemental indenture described above to be given by first-class mail, postage prepaid (or, in the case of Bonds administered in the Book-Entry System, given pursuant to the applicable procedure of the Securities Depository), to the Holders of the Outstanding Bonds then shown on the Register.

**Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower.**

(a) Exclusive of supplemental indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section 8.2, and not otherwise, anything contained in this Indenture to the contrary notwithstanding, no indenture or indentures supplemental hereto for the purpose of modifying, altering, amending, adding to or rescinding, in any particular manner, any of the terms or provisions contained in this Indenture or in any supplemental indenture shall be effective without delivery of a Favorable Opinion of Bond Counsel, the written consent of the Majority Owner and execution and delivery by the Trustee (acting upon the direction of the Controlling Person) and the Issuer; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the prior written consent of the Holders of all Outstanding Bonds, (i) an extension of the maturity of the principal of, or the optional, extraordinary or mandatory redemption date of, or interest on, any Bond, (ii) a reduction in the principal amount of or the rate of interest on, any Bond, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien on the Security prior to the lien of this Indenture, or (v) a reduction in the aggregate principal amount of the Bonds required for any consent to any supplemental indenture; provided further, however, that without the prior written consent of the Trustee, the Trustee shall not be required to join the Issuer in the execution of any supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee covering any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained pursuant to Section 8.5 hereof.

(b) Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article that affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such supplemental indenture, amendment or other document.

**Section 8.3 Amendments to the Loan Agreement or the Note Not Requiring Consent of Holders.**

(a) The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Note without the prior written consent of the Trustee, the Borrower and the Controlling Person. The Issuer may, with the consent of the Controlling Person, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Note acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the exclusion of interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes, or (iv) in connection with any other change therein which, in the judgment of the Issuer acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without

the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

(b) The Issuer and the Borrower shall file copies of any such amendments to the Loan Agreement or the Note with the Trustee and the Controlling Person.

**Section 8.4 Amendments to the Loan Agreement or the Note Requiring Consent of Holders.** Except as provided in Section 8.3 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Note, nor shall any such modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Majority Owner, such consent to be obtained in accordance with Section 8.5 hereof. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement or the Note. The Issuer and the Borrower shall file copies of all such amendments to the Loan Agreement or the Note with the Trustee, the Controlling Person and the Majority Owner.

**Section 8.5 Notice to and Consent of Holders.** If consent of the Controlling Person, the Majority Owner or any other Holder is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Note or for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid (or, pursuant to the applicable procedures of the Securities Depository, if applicable), to the Controlling Person, the Majority Owner or any other applicable Holder then shown on the Register. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal office of the Trustee for inspection by all Holders. If, within forty five (45) days or such longer period as shall be prescribed by the Trustee following the mailing or electronic dispatch of such notice, the Controlling Person, the Majority Owner or the Holders of all, of the principal amount of the Bonds Outstanding, as the case may be, by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Controlling Person, the Majority Owner or the Holders, as applicable, shall thereby be conclusively presumed.

## **ARTICLE IX**

### **CONTROLLING PERSON; SERVICING**

**Section 9.1 Majority Owner to Appoint Controlling Person.** The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Majority Owner's sole cost and expense, to act on behalf of the Majority Owner under the Bond Documents as the "Controlling Person". The Majority Owner may at any time and from time to time terminate or remove and replace any such Controlling Person. The Majority Owner shall give notice to the Trustee and the Issuer of its appointment, termination, removal and replacement of any Controlling Person, and the parties may rely on any such notice until any subsequent notice is given. Initially, the Majority Owner has engaged Red Stone Servicer, LLC to act as the "Controlling Person" hereunder and Red Stone Servicer, LLC has accepted such engagement. The Majority Owner is under no obligation to appoint a Controlling Person; if at any time a Controlling Person has not been designated by the Majority Owner, all references to the "Controlling Person" herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion provided for herein, in the Loan Agreement or in any other Bond Document that is directed to the Controlling Person shall also be directed to, and may be relied upon by, the Majority Owner. The Majority Owner will have no liability to the Issuer, the Trustee or any other

Person for any act or omission of the Controlling Person unless the Controlling Person is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case but not, in any event, with respect to any liabilities, damages, costs or expenses against which such Indemnified Party is indemnified under Section 2.5 of the Loan Agreement.

**Section 9.2 Servicing.**

(a) The Majority Owner has appointed the Controlling Person to be the servicer of the Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the Borrower, the Majority Owner and the Trustee have no obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest payable under this Indenture or Bond Documents; provided, however that, to the extent permitted under the Bond Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Majority Owner.

(b) The Controlling Person shall be responsible for the performance of the following servicing duties:

(i) The Controlling Person shall perform the duties expressly given to the Controlling Person under the Bond Documents and this Indenture.

(ii) The Controlling Person shall prepare monthly bills to the Borrower in accordance with the Bond Documents for payments to the Trustee of principal and interest under the Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund. On the last Business Day of each calendar month, the Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Trustee on the Note on the next Business Day and will provide a copy thereof to the Trustee. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Indenture and Bond Documents:

- (1) The principal and interest due and payable on the Note;
- (2) The Trustee's fee and Issuer's fee, as applicable;
- (3) Any monthly Replacement Reserve Fund deposit;
- (4) Any Monthly Tax and Insurance Amounts;
- (5) Any other escrow or reserve deposits required by this Indenture or Bond Documents;
- (6) Any assumption or transfer fee required by this Indenture or Bond Documents; and
- (7) Any acceleration premium.

(c) All payments received under this Indenture or Bond Documents shall be applied in the following order unless otherwise instructed by the Majority Owner or expressly set forth in this Indenture or Bond Documents:

- (i) To the principal and interest due and payable on the Note;
- (ii) To the Issuer's fee and Trustee's fee, as applicable;
- (iii) To the acceleration premium, if applicable;
- (iv) To required deposits to the Replacement Reserve Fund;
- (v) To required deposits in the Tax and Insurance Escrow Fund;
- (vi) To other escrow or reserve deposits required by this Indenture or the other Bond Documents;
- (vii) To Default Interest and any late fees; and
- (viii) To other amounts due under the Bond Documents.

Any payment received by the Controlling Person from or on behalf of the Borrower under this Indenture or the Bond Documents shall be remitted by the Controlling Person to the Trustee no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Indenture or Bond Documents.

(d) The Controlling Person shall make any remittance to the Trustee by wire transfer in accordance with the instructions received from the Trustee or to any other party entitled to such remittances pursuant this Indenture or the Bond Documents in accordance with the instructions received from the Majority Owner.

(e) The Controlling Person shall review the Tax and Insurance Escrow Fund and the Replacement Reserve Fund on an annual basis and adjust required monthly escrow payments in accordance with terms of Bond Documents. The Controlling Person shall notify the Majority Owner and the Trustee of such adjustment.

(f) The Controlling Person shall prepare monthly reports for the Majority Owner and the Trustee outlining the status of the Loan, including disbursements from the Replacement Reserve Fund, the Tax and Insurance Escrow Fund, the Operating Reserve Fund or any other Account under this Indenture, loan history schedules, outstanding loan balances and escrow balances and consents, approvals or waivers given by the Controlling Person, which reports shall be furnished to the Majority Owner no later than the fifteenth (15th) day of each calendar month (or the next Business Day thereafter if such fifteenth (15th) day is not a Business Day).

(g) The Controlling Person shall provide immediate written notice to the Majority Owner of any Event of Default of which it receives notice or has actual knowledge, or any event which, with the giving of notice or the passage of time, or both, would constitute any Event of Default of which it receives notice or has actual knowledge.

(h) The Controlling Person shall refer to the Trustee all Borrower requests for a quote of a payoff amount for the Loan, shall request a copy of any such quote from the Trustee, and shall

notify the Majority Owner of the Borrower's request. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Bond Documents or this Indenture or otherwise as directed by the Majority Owner.

(i) The Controlling Person shall use its best efforts to obtain financial statements and other reports from the Borrower at the times and to the extent required under the Bond Documents and deliver the same to the Majority Owner and the Trustee.

(j) The Controlling Person shall obtain, and shall provide to the Majority Owner a copy of the Borrower's certificates of compliance with the Land Use Restriction Agreement or other evidence of such compliance submitted by the Borrower to the Issuer or the Issuer's designee within thirty (30) days after the later of (i) the date it is required to be submitted to the Issuer or the Issuer's designee, or (ii) the date it is actually so submitted.

(k) The Controlling Person may perform additional duties with respect to the Loan during renovation of the Project Facilities or during the period following an Event of Default at the request of the Majority Owner.

## **ARTICLE X**

### **MISCELLANEOUS**

**Section 10.1 Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon any part of such Project Facilities is not paid as required, the Trustee may, subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its "prime rate" shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security.

**Section 10.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Holders, the Controlling Person and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Controlling Person and the Borrower as herein provided.

**Section 10.3 Severability.** If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

**Section 10.4 Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or facsimile transmission (with confirmed receipt) to the address or email set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage



prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Borrower, the Trustee, the Majority Owner, the Controlling Person and the Tax Credit Investor may, by written notice given hereunder, designate any different addresses, phone numbers and facsimile numbers to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

**To the Issuer:** Industrial Development Authority of the City of  
Lexington, Virginia  
300 East Washington Street  
Lexington, Virginia 24450  
Attention: Secretary  
Telephone: (540) 462-3700  
Facsimile: (540) 463-5310  
Email: jhalasz@lexingtonva.gov

**With a copy to:** BotkinRose PLC  
3190 Peoples Drive  
Harrisonburg, Virginia 22801  
Attention: Daniel R. Lauro, Esq.  
Telephone: (540) 437-7442  
Facsimile: (540) 432-3337  
Email: dlauro@botkinrose.com

**To the Borrower:** Steele Lexington LLC  
6875 E. Evans Avenue  
Denver, CO 80224  
Attention: Justin Boyd  
Telephone: (303) 322-8888  
Facsimile: (303) 322-2320  
Email: jboyd@monroegroup.com

**With a copy to:** Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place, Suite 1900  
Chicago, Illinois 60605  
Attention: Diane K. Corbett  
Telephone: (312) 491-4401  
Facsimile: (312) 491-4411  
Email: dcorbett@att-law.com

**To the Trustee:** U.S. Bank National Association  
1021 East Cary Street, Suite 1850  
Richmond, Virginia 23219  
Attention: M. Dorsel Robinson  
Telephone: (804) 771-7928  
Facsimile: \_\_\_\_\_  
Email: dorsel.robinson@usbank.com

**To the Majority Owner:** At the address set forth on the Register  
maintained by the Trustee

**To the Controlling Person**

Red Stone Servicer, LLC  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis \_\_\_\_\_  
Telephone: (516) 750-2243  
Facsimile: (516) 750-2251  
Email: \_\_\_\_\_

**With a copy to**

Greenberg Traurig, LLP  
1717 Arch Street  
Suite 400  
Philadelphia, PA 19103  
Attention: Alexander L. Scarola, Esquire  
Telephone: (215) 988-7854  
Facsimile: (215) 988-7801  
Email: scarolaa@gtlaw.com

**If to Tax Credit Investor:**

Raymond James Tax Credit Fund XX L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
800 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**With a copy to:**

Tomtishen Aoun PLLC  
2001 Commonwealth Blvd., Suite 300  
Ann Arbor, Michigan 48105  
Attention: Brad M Tomtishen  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**Section 10.5 Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

**Section 10.6 Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

**Section 10.7 Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**Section 10.8 Governing Law.** This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles.

**Section 10.9 Limited Liability of Issuer.** Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Issuer may incur under the Bonds, this Indenture, the Loan Agreement, the Purchase Agreement or any other Bond document shall not constitute a general obligation of the Issuer but shall constitute limited obligations of the Issuer payable solely from and enforced only against the Security. In no event shall this Indenture be construed as depriving the Issuer of any right or privilege or requiring it or any member, officer, agent, employee, representative or advisor to take or omit to take or to permit or suffer the taking of, any action by itself or anyone else that would violate or result in the Issuer's being in violation of the Act or any other applicable state or federal law.

**Section 10.10 Execution in Counterparts; Electronic Signatures.** This Indenture 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. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Indenture.

**Section 10.11 Successors of the Issuer.** In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements contained in this Indenture by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, governing body, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred. In the event no successor shall exist, then all rights and duties of the Issuer may be exercised and such duties fulfilled by the Trustee, but the Trustee shall be under no obligation to exercise and fulfill such rights and duties.

**Section 10.12 Electronic Storage.** The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed in its name and on its behalf by its authorized official and the Trustee has caused this Indenture to be executed, in its name by its duly authorized representative, all as of the day and year first above written.

**INDUSTRIAL DEVELOPMENT AUTHORITY OF  
THE CITY OF LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Name: Bruce J. Summers  
Title: Chair

**U.S. BANK NATIONAL ASSOCIATION, as trustee**

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

**EXHIBIT A  
FORM OF BOND**

**UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA  
\$8,670,000  
Industrial Development Authority of the City of Lexington, Virginia  
Multifamily Housing Revenue Bonds  
(Lexington House Apartments) Series 2020**

No. R-1 \_\_\_\_

<u>DATED DATE</u>	<u>MATURITY DATE</u>	<u>BOND COUPON RATE</u>	<u>CUSIP NO.</u>
March __, 2020	[March 1], 2060	4.25%	_____

REGISTERED OWNER: CEDE & CO.  
PRINCIPAL AMOUNT: EIGHT MILLION SIX HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$8,670,000)

The Industrial Development Authority of the City of Lexington, Virginia (the “Issuer”), a political subdivision of the Commonwealth of Virginia, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and premium, if any, and (B) interest thereon, at the Bond Coupon Rate specified above, payable on the first Business Day of each month, commencing [May] 1, 2020 to the person whose name appears on the registration books on day before such day (whether or not a Business Day) (a “Record Date”) and to pay any other amounts as specified in the Indenture (hereinafter defined). **All capitalized terms not defined herein shall have the meaning set forth in the Indenture.**

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of U.S. Bank National Association, as trustee (the “Trustee”), or its successor.

Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve 30 day months. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office

of the Trustee or its successor. This Bond shall bear interest at the Default Rate as and when prescribed in the Indenture.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee. Payments in respect of Bonds administered in the Book-Entry System (including principal, premium and interest) will be made by wire transfer of immediately available funds to the Securities Depository.

This Bond is one of an issue of duly authorized Industrial Development Authority of the City of Lexington, Virginia Multifamily Housing Revenue Bonds (Lexington House Apartments) Series 2020 (the "Bonds") issued in the aggregate principal amount of \$8,670,000, pursuant to the provisions of the Act.

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of March 1, 2020 (as amended, modified or supplemented from time to time, the "Loan Agreement"), between the Issuer and the Borrower, to finance the acquisition, construction, rehabilitation and equipping of a multifamily residential rental housing project located in Lexington, Virginia, and known as "Lexington House Apartments" (the "Project Facilities"). The Borrower's payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of March 1, 2020 (as amended, modified or supplemented from time to time, the "Indenture"), between the Issuer and the Trustee.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture. If an Event of Default (as defined in the Indenture) shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. The Indenture provides that in certain events such declaration and its consequences may be rescinded on and subject to the conditions set forth in the Indenture.

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF.

NEITHER THE COMMONWEALTH OF VIRGINIA, NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF LEXINGTON, VIRGINIA (THE "CITY"), NOR THE ISSUER SHALL BE OBLIGATED TO THIS BOND OR THE INTEREST HEREON OR OTHER COSTS INCIDENT HERETO EXCEPT FROM THE REVENUES AND MONEYS PLEDGED

THEREFOR AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA, OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF SUCH BONDS OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO.

NEITHER THE DIRECTORS OF THE ISSUER NOR ANY PERSON EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Indenture. One bond certificate with respect to the date on this Bond is stated to mature, registered in the name of the Securities Depository Nominee, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in this bond by the Securities Depository's Participants ("**Participants**"), beneficial ownership of this Bond in the principal amount of \$5,000 or any multiple thereof being evidenced in the records of such Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Participants pursuant to rules and procedures established by the Securities Depository and its Participants. The Issuer and the Trustee will recognize the Securities Depository Nominee, while the registered owner of this Bond, as the owner of this Bond for all purposes, including payments of principal of, premium, if any, and interest on this Bond, notices and voting. Transfer of principal and interest payments to Participants will be the responsibility of the Securities Depository, and transfer of principal, redemption premium, if any, and interest payments to beneficial owners of this bond by Participants will be the responsibility of such Participants and other nominees of such beneficial owners. The Issuer will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository Nominee, its Participants or persons acting through such Participants. While the Securities Depository Nominee is the owner of this Bond, notwithstanding, the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Bond shall be made in accordance with existing arrangements between the Securities Depository and the Trustee or its successors under the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the Issuer to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

The Bonds shall not constitute the personal obligation, either jointly or severally, of the members of the Governing Body or of any other officer or official of the Issuer.

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

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.



**IN WITNESS OF THE ABOVE**, the Issuer has caused this Bond to be to be executed and delivered by the manual or facsimile signature of its Chairman or Vice Chairman and its seal to be affixed hereon and attested by the manual or facsimile signature of its Secretary or Assistant Secretary as of the day and year first written above.

**INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF  
LEXINGTON, VIRGINIA**

[SEAL]

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

ATTEST:

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

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

Date of Registration and Authentication: \_\_\_\_\_.

**U.S. BANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Authorized Officer

**ASSIGNMENT FOR TRANSFER**

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

\_\_\_\_\_  
Date:  
Signature Guaranteed:

\_\_\_\_\_  
Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

**EXHIBIT B**  
**INVESTOR LETTER**

## FORM OF INVESTOR LETTER

March \_\_, 2020

Industrial Development Authority of the City of Lexington, Virginia  
Lexington, Virginia

U.S. Bank National Association  
Richmond, Virginia

**Re: \$8,670,000 Industrial Development Authority of the City of Lexington, Virginia  
Multifamily Housing Revenue Bonds (Lexington House Apartments) Series 2020**

Ladies and Gentlemen:

We have agreed to purchase, and the Industrial Development Authority of the City of Lexington, Virginia (the “Issuer”) has agreed to sell to us, all of the captioned obligations at the aggregate purchase price of \$8,670,000 with no accrued interest (the “Obligations”). The Obligations will bear interest and have the terms and redemption provisions be secured as described in that certain Indenture of Trust, dated as of March 1, 2020 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), all subject to receipt by you and by us of such opinions, certificates, and other documents as disclosed in the Indenture or other documentation, as you or we may reasonably require to establish the validity and legality of the Obligations. Capitalized terms utilized herein and not defined shall have the meanings ascribed in the Indenture.

We hereby represent and warrant that:

(1) we are an institutional purchaser that is a “qualified institutional buyer” within the meaning of Rule 144A of the Securities Act of 1933 (the “1933 Act”) (“Qualified Institutional Buyer”) or an “accredited investor” as described in Rule 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the 1933 Act (“Accredited Investor”), and, if we are buying for an account for which we are acting as fiduciary or agent, such account was established by and the beneficial owner thereof is a Qualified Institutional Buyer or Accredited Investor;

(2) we have made our own inquiry and analysis with respect to the Obligations and the security therefor, and other material factors affecting the security and payment of the Obligations, and we have not relied upon any statement by the Issuer, or any of its officers, directors, or employees, agents, representatives, or its financial consultants or legal advisors in connection with such inquiry or analysis or in connection with the offer and sale of the Obligations, other than the representations and statements of the Issuer set forth in the documents delivered in connection with the Obligations;

(3) we have either been furnished with or have had access to all necessary information that we desire in order to enable us to make an informed decision concerning purchase of the Obligations, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the purpose for which the proceeds of the Obligations will be utilized, and the security therefor, so that we have been able to make an informed decision to purchase the Obligations;

(4) we are purchasing the Obligations for our own account and are not acting as an underwriter under the 1933 Act;

(5) we further acknowledge that we are responsible for consulting with our advisors concerning any obligations, including, but not limited to, any obligations pursuant to federal and state securities and income tax laws, we may have with respect to subsequent purchasers of the Obligations if and when any such future disposition of the Obligations may occur;

(6) we understand that the Obligations (a) are not being registered under the Securities Act of 1933 and are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state due to exemptions from registration provided for therein, (b) will not be listed on any stock or other securities exchange, (c) will carry no rating from any rating service, and (d) will not be readily marketable;

(7) we understand that the Issuer is not required to make any continuing disclosure pursuant to Rule 15c2-12(b) (the “Rule”) of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, because the Obligations are being sold pursuant to a private placement, generally in denominations of \$100,000 or any integral multiple of \$1,000 in excess thereof, to less than thirty-five sophisticated investors, and therefore the Rule is not applicable to the offering of the Obligations; provided, however, that the Borrower has covenanted and agreed to provide financial information on an on-going basis as described in the Loan Agreement;

(8) we understand that the Obligations are limited obligations of the Issuer payable solely from revenues of the Borrower and the Issuer shall not be directly or indirectly contingently or morally obligated to use any other moneys or assets of the Issuer for all or any portion of the principal of and interest on the Bonds; and

(9) we understand and agree that the foregoing representations and warranties will be relied upon by McGuireWoods LLP, Bond Counsel, in rendering its opinion on the exemption of the Obligations from registration under existing federal securities laws.

Very truly yours,

**[INVESTOR]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature page to Investor Letter]*

---

**LOAN AGREEMENT**

**by and between**

**STEELE LEXINGTON LLC**

**and**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA**

**Dated as of March 1, 2020**

**Relating to:**

**\$8,670,000**

**Industrial Development Authority of the City of Lexington, Virginia  
Multifamily Housing Revenue Bonds  
(Lexington House Apartments) Series 2020**

---

The amounts payable to Industrial Development Authority of the City of Lexington, Virginia (the “Issuer”) and other rights of the Issuer (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to U.S. Bank National Association, as trustee (the “Trustee”) under the Indenture of Trust between the Issuer and the Trustee dated as of March 1, 2020.



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## LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement”) made as of March 1, 2020, by and between INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA, a political subdivision of the Commonwealth of Virginia (together with its successors and assigns, the “Issuer”) and STEELE LEXINGTON LLC, a Virginia limited liability company (together with its permitted successors and assigns, the “Borrower”),

### WITNESSETH:

**WHEREAS**, the Issuer is authorized under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”) to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

**WHEREAS**, the Issuer has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of the Issuer’s Multifamily Housing Revenue Bonds (Lexington House Apartments) Series 2020 (the “Bonds”) in original aggregate principal amount of \$8,670,000, pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the “Indenture”), dated as of March 1, 2020, between the Issuer and U.S. Bank National Association, as trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the “Trustee”), to provide funds to finance the costs of the acquisition, rehabilitation and equipping of the Project Facilities (as hereunder defined); and

**WHEREAS**, the proceeds of the Bonds are being applied to finance the acquisition, construction, rehabilitation and equipping of a multifamily residential rental housing project consisting of one building containing approximately 78 units representing approximately 42,282 net rentable square feet, located on approximately 1.98 acres of land at 130 Houston Street, Lexington, Virginia 24450 and known as “Lexington House Apartments” (the “Project Facilities”).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE BORROWER AND THE ISSUER HEREBY AGREE AS FOLLOWS:

### ARTICLE I DEFINITIONS

Section 1.1 Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture.

Section 1.2 Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words “hereof”, “herein”, “hereto”, “hereby” and “hereunder” refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants”, (v) the term “including” shall mean “including, but not limited to,” and (vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of

[Stuart Heller, Hud Karshmer, David Asarch or Chad Asarch], upon reasonable inquiry. References to any time of the day in this Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day.

## **ARTICLE II LOAN AND PROVISIONS FOR REPAYMENT**

### Section 2.1 Basic Loan and Repayment Terms.

(a) The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. The Loan shall be made by depositing the proceeds from the initial sale of the Bonds in accordance with Article IV of the Indenture. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Indenture. The Borrower's obligation to repay the Loan shall be evidenced by the Note, the form of which is attached hereto as Exhibit A.

(b) The Borrower hereby agrees to pay the Note and repay the Loan made pursuant to this Agreement by paying or causing to be paid to the Trustee in immediately available funds for the account of the Issuer for deposit into the Bond Fund or the Redemption Fund, as applicable, on the dates and in the amounts set forth on Schedule 3 hereto, and any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or by sinking fund redemption or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds, as provided in the Indenture.

(c) It is understood and agreed that the Note and all payments payable by the Borrower under this Section 2.1 are assigned by the Issuer to the Trustee for the benefit of the Bondholders. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 10.1 hereof, all loan re-payments payable to the Issuer pursuant to the Note and this subsection.

(d) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.3(b) hereof and Section 2.12(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

### Section 2.2 Fees.

(a) On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, to Red Stone Tax Exempt Funding LLC an origination fee (the "Origination Fee") equal to \$102,500.

(b) The Borrower shall pay (as directed by the Controlling Person) on the first Business Day of each month commencing on [May 1], 2020, through Final Completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the Controlling Person in the prior month in an amount not to exceed \$1,500.00 per month. If the Borrower fails to requisition such costs, the Controlling Person may direct the Trustee to disburse such amounts as part of any Advance.

(c) The Borrower shall pay all reasonable fees and expenses of the Trustee as set forth in the Indenture.

(d) On the date the Project Facilities achieve Stabilization, the Borrower shall pay to Red Stone Servicer, LLC a stabilization review fee equal to \$6,000.

(e) The Borrower shall pay to the Issuer, its reasonable costs, fees and expenses incurred in connection with its administration and enforcement of, and compliance with, this Agreement or the Indenture, including, but not limited to, reasonable attorneys' fees, and on each anniversary of the date of issuance of the Bonds (the "Anniversary Date") the Issuer Fee. The Borrower shall promptly provide the Issuer with the outstanding principal amounts of the Bonds as of each anniversary date in order to enable the Issuer to compute and invoice the Borrower for the Issuer Fee.

### Section 2.3 Termination; Voluntary Prepayment and Redemption.

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

(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed pursuant to Section 2.12(a) of the Indenture, on any Interest Payment Date on or after March 1, 2036, upon the payment of the principal amount of the Bonds plus interest accrued thereon to, but not including, the date of redemption, without premium or penalty.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to March 1, 2037, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount of interest which would have accrued on the amount of Bonds scheduled to be Outstanding from the date of acceleration to, but not including, March 1, 2037.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 2.12(b) of the Indenture. In addition, on each Interest Payment Date, the Borrower shall pay to the Trustee for deposit into the Redemption Fund the amount set forth for such purpose on Schedule 3 hereto, which amount shall be applied on each Principal Payment Date to the mandatory sinking fund redemption of the Bonds pursuant to Section 2.12(c) of the Indenture.

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

Section 2.4 Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond



Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer or the Trustee (or any persons or entities for whom the Trustee may be acting) or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.5 Indemnification. The Borrower covenants to defend, indemnify and hold harmless the Issuer, the Trustee, the Controlling Person, the Majority Owner, and each of their respective Affiliates and each of their and their Affiliates' respective board members, directors, officers, officials, employees, representatives and agents (each an "Indemnified Party" and collectively, the "Indemnified Parties"), except as limited below, from and against any and all claims, damages, losses, liabilities, costs or expenses (including attorneys' fees for counsel of each of the Indemnified Parties' choice) whatsoever which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) the Bonds, the Indenture, the Loan Agreement, the Land Use Restriction Agreement, or the Tax Certificate or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale, remarketing, defeasance or redemption, in whole or in part, of the Bonds;

(b) any breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or the other Bond Documents, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default or any Determination of Taxability;

(c) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Controlling Person or the Majority Owner's actions taken pursuant to this Agreement or any of the other Bond Documents or any other event or transaction contemplated by any of the foregoing;

(d) any untrue statement or alleged untrue statement contained or incorporated by reference in any offering or reoffering materials prepared in respect of the Bonds, or any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements in light of the circumstances in which they are or were made not misleading;

(e) the acceptance or administration of the Bond Documents or the Security Interests thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project Facilities or the use thereof, including without limitation any lease thereof or assignment of its interest in this Agreement;

(f) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Advances or the Project Facilities, the operation of the Project Facilities, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition or renovation of, the Improvements or any part thereof;

(g) any Lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes, assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project Facilities;

(h) any violation or alleged violation of any applicable law or regulation (other than by Trustee, Controlling Person or Majority Owner) including, without limitation, any Environmental Law or any inspection, review or testing with respect to, or the release of any toxic substance from, the Project Facilities or any part thereof (except for matters determined in a final judgment or ruling by a Governmental Authority with the jurisdiction to have occurred after a foreclosure or deed in lieu of foreclosure);

(i) the enforcement of, or any action taken by the Issuer, the Trustee, the Controlling Person or the Majority Owner, related to remedies under, this Agreement, the Indenture and the other Bond Documents;

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

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

(l) any declaration of taxability of interest on the Bonds, or allegations (or regulatory inquiry) that interest on the Bonds is taxable, for federal tax purposes;

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

(n) any brokerage commissions or finders' fees claimed by any broker or other party in connection with the Bonds or the Project Facilities if such broker is engaged by the Borrower in connection with the sale of the Project Facilities.

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by the Indemnified Parties, provided that, with the exception of the Issuer, the Borrower shall not be required to indemnify any of the Indemnified Parties for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, finally determined by a court of competent jurisdiction to have been caused by the willful misconduct of the Issuer or the willful misconduct or negligence of any other Indemnified Party (whether sole, joint, concurrent, comparative or otherwise), in which event the Borrower shall not be liable under this Section to such Indemnified Party to the extent such claims, damages or losses were caused by such Person's (or its agent's) negligence or willful misconduct. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in

the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Party 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.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the Indenture. Notwithstanding any other provision of this Agreement or the Indenture to the contrary, the Borrower agrees (i) not to assert any claim or institute any action or suit against the Trustee or its employees arising from or in connection with any investment of funds made by the Trustee in good faith as directed by the Borrower, the Controlling Person or the Majority Owner, and (ii) to indemnify and hold the Trustee and its employees harmless against any liability, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment direction of the Borrower, except to the extent caused by the Trustee's negligence or willful misconduct. Nothing in this Section is intended to limit the Borrower's obligations contained in Section 2.1 and 2.2 hereof. Amounts payable to the Issuer hereunder shall be due and payable ten (10) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the ten (10) day period. When the Issuer incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally. The obligations of Borrower to the Indemnified Parties under this Section shall not be subject to the recourse limitations of Section 10.13 hereof.

Section 2.6 Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

### **ARTICLE III SECURITY**

Section 3.1 Mortgage and Other Security Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver to the Trustee (and where required, duly record), (a) the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, made by the Borrower to the Trustee covering the Project Facilities (the "Mortgage" or the "Deed of Trust"); (b) the Environmental Indemnity Agreement dated as of the date hereof, by the Borrower and Guarantor in favor of the Trustee (the "Environmental Indemnity") pursuant to which the Borrower and the Guarantor shall indemnify and hold the Trustee harmless from environmental liabilities; (c) the Assignment of Management Agreement, dated as of the date hereof, by the Borrower to and for the benefit of the Trustee, consented to by the Manager (the "Assignment of Management Agreement and Consent"); (d) the Replacement Reserve and Security Agreement, dated as of the date hereof, made by the Borrower in favor of the Trustee (the "Replacement Reserve Agreement"); (e) the Assignment of Housing Assistance Payments, dated as of the date hereof, made by the Borrower to the Trustee for the HAP Contracts in effect for the Project Facilities, consented to by HUD (the "Assignment of HAP Contract"); (f) the Assignment of Project Documents, dated as of the date hereof, made by the Borrower in favor of the Trustee (the "Assignment of Project Documents") and consented to by the Architect and the Contractor; (g) the Guaranty of Recourse Obligations, dated as of the date hereof, made by the Guarantor in favor of the Trustee (the "Guaranty of Recourse

Obligations”); (h) the Guaranty of Completion, dated as of the date hereof made by the Guarantor in favor of the Trustee (the “Guaranty of Completion”); (i) the Guaranty of Debt Service and Stabilization dated as of the date hereof made by the Guarantor in favor of the Trustee (the “Guaranty of Debt Service”); (j) the Assignment of Leases, Rents and Other Income, dated as of the date hereof, made the Borrower to the Trustee (the “Assignment of Rents”); (k) the Assignment of Capital Contributions, dated the date hereof, by the Borrower for the benefit of the Trustee, (the “Assignment of Capital Contributions”); (l) a Limited Guaranty, Pledge of Managing Membership Interests and Security Agreement, dated the date hereof, by the Managing Member, in favor of the Trustee (the “Managing Member Pledge”); and (m) a Developer Limited Guaranty, Pledge and Security Agreement dated as of the date hereof from Steele Properties III LLC, as “Developer” in favor of the Trustee (the “Developer Fee Pledge”).

Section 3.2 Financing Statements. The Borrower hereby authorizes the Trustee, without the signature of the Borrower, to file such financing statements and continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Issuer’s and/or the Trustee’s security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents. The Borrower will pay upon demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Controlling Person may designate.

#### **ARTICLE IV REPRESENTATIONS OF ISSUER**

Section 4.1 Representation by the Issuer. The Issuer represents and warrants to the Borrower, the Trustee and the Holders from time to time of the Bonds as follows:

(a) The Issuer is a political subdivision of the Commonwealth of Virginia and is authorized by the Act to execute and to enter into this Agreement and to undertake the transactions contemplated herein and to carry out its obligations hereunder.

(b) The Issuer has all requisite power, authority and legal right to execute and deliver the Bond Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Bond Documents. All action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Bond Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Issuer do not contravene applicable law or any contractual restriction binding on or affecting the Issuer.

(c) The Issuer has duly approved the issuance of the Bonds and the loan of the proceeds thereof to the Borrower for the acquisition and renovation of the Project Facilities; no other authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required as a condition to the performance by the Issuer of its obligations under the Bond Documents.

(d) This Agreement is, and each other Bond Document to which the Issuer is a party when delivered will be, legal, valid and binding special, limited obligations of the Issuer enforceable against the Issuer in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally.

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

(f) There are no obligations of the Issuer other than the Bonds that have been, are being or will be (i) sold at substantially the same time, (ii) sold pursuant to the same plan of financing, and (iii) reasonably expected to be paid from substantially the same source of funds.

(g) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture or this Agreement or (ii) the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

(h) In connection with the authorization, issuance and sale of the Bonds, the Issuer has complied in all material respects with all provisions of the laws of the State, including the Act.

(i) The Issuer has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Bonds under the Indenture. The Bonds constitute the only bonds or other obligations of the Issuer in any manner payable from the revenues to be derived from this Agreement, and except for the Bonds, no bonds or other obligations have been or will be issued on the basis of this Agreement.

(j) The Issuer is not in default under any of the provisions of the laws of the State, which default would affect the issuance, validity or enforceability of the Bonds or the transactions contemplated by this Agreement or the Indenture.

(k) The Issuer covenants and agrees that it will take or cause to be taken all required actions to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(l) No member of the Issuer, nor any other official, employee or agent of the Issuer, has any interest (financial, employment or other) in the Borrower, in the Project Facilities or in the transactions contemplated hereby or by the other Bond Documents.

(m) The Issuer used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 4.2 No Liability of Issuer; No Charge Against Issuer's Credit. Any obligation of the Issuer created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Bonds, shall not impose or constitute a debt or pecuniary liability upon the Issuer, the State or any political subdivision thereof, including the City, or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder and under the Indenture, except (as provided in the Indenture and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Bonds or the income from the temporary investment thereof.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement of the Issuer hereunder against any past, present or future trustee, officer, member, employee or agent of the Issuer, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released as a condition of and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Bonds to the Borrower, and the issuance of the Bonds.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

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

Section 5.1 Existence. The Borrower is a limited liability company, duly organized, validly existing and in good standing under the Legal Requirements of the State. The Borrower has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its Operating Agreement and articles of organization. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower has been, is and will be engaged solely in the business of acquiring, renovating, equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The Managing Member of the Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Colorado and, if required by applicable law, is duly qualified to do business in the State. The Managing Member has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its articles of organization and operating agreement. The Managing Member has and will have no other assets other than its membership interests in the Borrower.

Section 5.2 Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the Operating Agreement, operating agreement, articles of incorporation, bylaws, certificate or articles of organization or certificate of membership interests of the Borrower or the Managing Member, as applicable, or any Legal Requirement applicable to the Borrower or the Managing Member or any Material Contract or restriction binding on or affecting the Borrower, the Managing Member or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof. This Agreement and the other Bond Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower.

Section 5.3 Governmental Authorizations and Other Approvals. The Borrower and the Managing Member have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and renovate the Project Facilities in accordance with the provisions of the Bond Documents. Except as set forth on Schedule 6 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to renovate, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of renovation of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal

Requirements (except as disclosed in writing to the Controlling Person), including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower are listed and described on Schedule 6 hereto and have been validly issued and are in full force and effect. With respect to any Governmental Actions not yet obtained, if any, the steps listed on Schedule 6 are all the steps needed to obtain such Governmental Actions and the Borrower knows of no reason such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the renovation or operation of the Project Facilities. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4 Validity and Binding Effect. This Agreement and the other Bond Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally, and except as enforceability may be limited by applicable securities laws or public policy.

Section 5.5 No Litigation. Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the Managing Member or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the Managing Member, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the Managing Member before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the Managing Member, or the validity or enforceability of this Agreement, the Bonds, or the Bond Documents or the renovation, operation or ownership of the Project Facilities, or the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

Section 5.6 No Violations. The Borrower and the Managing Member are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Bond Documents, or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject in all material respects. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been timely filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of the Project Facilities.

Section 5.7 Compliance. The ownership of the Project Facilities, the renovation of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Certificate and the Land Use Restriction Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of

any Governmental Authority. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to renovate, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the City of Lexington, Virginia. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities.

Section 5.8 Title to Properties; Liens and Encumbrances. The Borrower has good and indefeasible title in fee simple to the Project Facilities, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no Liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.9 Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available (or will be timely available) within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate Governmental Authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10 Financial Information.

(a) All of the financial information furnished to the Controlling Person or the Majority Owner with respect to the Borrower, the Guarantor, and the Managing Member in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the Guarantor or the Managing Member has any material liability or contingent liability not disclosed to the Controlling Person and the Majority Owner in writing; and

(b) Since its formation, each of the Borrower, the Guarantor, and the Managing Member has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the Guarantor, or the Managing Member.

Section 5.11 ERISA. No employee pension plan maintained by the Borrower or the Managing Member or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the Managing Member or any ERISA Affiliate by the Pension Benefit Guaranty Corporation (“PBGC”) or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower’s, the Managing Member’s or any ERISA Affiliate’s property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of



ERISA) maintained for employees of the Borrower, the Managing Member or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the Managing Member or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the Managing Member or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the Managing Member or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the Managing Member nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, "ERISA Affiliate" means (i) any corporation included with the Borrower or the Managing Member in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower, or the Managing Member within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower, or the Managing Member is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the Managing Member under Section 414(o) of the Code.

Section 5.12 Environmental Representations. Except as set forth on the Environmental Audit delivered to the Controlling Person (a) the Borrower has no knowledge of any activity at the Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea formaldehyde foam insulation present at the Project Facilities, or (v) lead-based paint at the Project Facilities; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the Managing Member identifying the Borrower or the Managing Member as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the renovation of the Project Facilities.

Section 5.13 Outstanding Obligations and Material Contracts. Attached hereto as Schedule 2 is (i) a complete list of all Obligations of the Borrower and the Managing Member as of the date of execution and delivery hereof, together with a description of the instruments evidencing, governing or securing such Obligations (provided that no description need be provided of the Obligations hereunder) and (ii) a complete list of all other Material Contracts. There exists no default under any such instrument. Except for the Obligations listed on Schedule 2, neither the Borrower nor the Managing Member has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the

Managing Member has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14 Solvency. Each of the Borrower, the Guarantor and the Managing Member is and, after giving effect to this Agreement and all other agreements of the Borrower, the Guarantor and the Managing Member being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due).

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

Section 5.16 Bond Documents. Each of the Borrower, the Guarantor and the Managing Member has provided the Controlling Person and the Majority Owner with true, correct and complete copies of: (i) all documents executed by the Borrower, the Guarantor or the Managing Member in connection with the Bonds, including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (iii) all correspondence, if any, relating to the Bonds from the Trustee, the Issuer, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (iv) all documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents to which the Borrower is a party remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Bond Documents to which the Borrower is a party.

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

Section 5.18 Executive Order 13224. Neither the Borrower, the Managing Member nor any Person holding any legal or beneficial interest whatsoever in any of those entities is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

Section 5.19 No Broker. The Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.20 Construction Contract; Architect's Agreement. The Construction Contract and the Architect's Agreement are each in full force and effect, and the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all Work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

Section 5.21 Development Budget. The Development Budget attached hereto as Schedule 4 accurately reflects all anticipated costs of implementing and completing the Work within the Plans and Specifications.

Section 5.22 Plans and Specifications. The Borrower has furnished the Trustee, the Controlling Person and the Majority Owner with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Trustee, the Controlling Person and the Majority Owner comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Tax Credit Investor and such Governmental Authority as is required for renovation of the Project Facilities.

Section 5.23 Survey. To the actual knowledge of the Borrower, the survey for the Project Facilities delivered to the Trustee, the Controlling Person and the Majority Owner does not fail to reflect any material matter of survey affecting the Project Facilities or the title thereto.

Section 5.24 Flood Plain. No part of the Project Facilities is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project Facilities is an area identified as an area having special flood hazard, flood insurance in an amount equal to 100% of the appraised insurable value of the Project Facilities has been obtained by the Borrower.

Section 5.25 Rent Roll. To the Borrower's actual knowledge, attached hereto as Schedule 12 is, in all material respects, a true, correct and complete rent roll for the Project Facilities (the "Rent Roll"), which includes all leases affecting the Project Facilities. Except as set forth in Schedule 12, to the Borrower's actual knowledge: (i) each lease is in full force and effect; (ii) the tenants under the leases have accepted possession of and are in occupancy of all of their respective demised Project Facilities, have commenced the payment of rent under such leases, and there are no offsets, claims, or defenses to the enforcement thereof; (iii) all rents due and payable under the leases have been paid and no portion thereof has been paid for any period more than thirty (30) days in advance; (iv) the rent payable under each lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under the leases (except as disclosed on Schedule 12) which remains outstanding, there are no defaults on the part of the landlord under any lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; and (vi) to the Borrower's actual knowledge, except as disclosed on the Rent Roll, there is not present a material default by the tenant under any lease. The Borrower will hold any security deposits under the leases in a non-commingled bank account in the name of the Borrower and meeting the requirements of applicable laws. None of the leases contains any option to purchase or right of first refusal to purchase the Project Facilities or any part thereof. Neither the leases nor the Rents have been assigned or pledged to any Person and no Person has any interest therein except the tenants thereunder.

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

## **ARTICLE VI GENERAL COVENANTS**

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

Section 6.1 Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the Managing Member will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited liability company under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, and (v) not materially amend any provision of its certificate of formation or its operating agreement, relating to its purpose, management, operation or distribution of cash flow and payment of debt without the prior written consent of the Controlling Person (except as otherwise permitted herein in relation to Permitted Transfers or for matters which do not materially adversely impact the payment of debt or the amount or timing of the capital contributions to be made by the Tax Credit Investor) and (vi) promptly and diligently enforce its rights under the Operating Agreement, and cause the Tax Credit Investor to make its capital contributions as and when required under the Operating Agreement.

Section 6.2 Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes.

Section 6.3 Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the renovation of the Project Facilities not obtained prior to the Issue Date and shall provide copies thereof to the Controlling Person and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, renovation and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person.

Section 6.4 Maintenance of Insurance.

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

requirements shall include, but not necessarily be limited to, the requirements set forth on Schedule 13 hereto.

(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Controlling Person. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Issuer, the Controlling Person, the Trustee and the Majority Owner as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted to the Trustee pursuant to the Mortgage. Upon request of the Trustee, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default that has continued uncured hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance, together with all required endorsements, required by Section 6.4(a) hereof shall be delivered to the Trustee, with a copy to the Controlling Person and the Majority Owner on or before the Issue Date. The Borrower shall deliver to the Issuer and the Trustee before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.4. Prior to the expiration of each such policy, the Borrower shall furnish the Trustee, with a copy to the Controlling Person (and, upon written request, the Majority Owner, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person or Majority Owner may, from time to time, reasonably require.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.4(a) hereof shall be applied, with the prior written consent of the Controlling Person toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

(e) The risk of loss or of decrease in the enjoyment and beneficial use of the Project in consequence of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, civil strife, war, nuclear explosion, or otherwise, or in consequence of foreclosures, attachments, levies or executions, is expressly assumed by the Borrower, and the Borrower agrees that the Issuer and the Trustee shall in no event be answerable, accountable or liable therefor, nor shall any of the foregoing events entitle the Borrower to any abatement or diminution of its obligations hereunder.

Section 6.5 Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.6 Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they are being renovated; (ii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iii) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.7 Inspection Rights.

(a) The Borrower will, at any reasonable time and from time to time, with reasonable prior written notice, permit the Controlling Person, the Trustee, the Issuer, and the agents or representatives of the Controlling Person, the Trustee and the Issuer, to examine and copy and make abstracts from the records and books of account of, subject to the rights of tenants, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the Managing Member and the Accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Controlling Person may direct. The Borrower shall pay or reimburse the Controlling Person on demand for fees and expenses incurred in connection with such inspections, so long as such inspections are deemed necessary and are not excessive.

(b) After the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person notifying the Controlling Person of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.6 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Controlling Person shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.6 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c) The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report. If the Borrower fails to complete the work within such time period, the Controlling Person, at the Controlling Person's discretion, may, with reasonable notice to the Borrower, complete such work for and on the Borrower's behalf and may do any act or thing the Controlling Person deems necessary or appropriate to that end. The expenses incurred by the Controlling Person in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Controlling Person immediately upon demand. All work performed by the Borrower shall be performed in a good and workmanlike manner and shall be completely free and clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.6 hereof.

Section 6.8 Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.9 Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person the following in form satisfactory to the Controlling Person and in such number of copies as the Controlling Person may reasonably require:

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

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

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

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

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

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

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

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

(c) As soon as possible and in any event within twenty-five (25) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of expense and income as well as occupancy reports, a rent roll and, if required by the Controlling Person, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Controlling Person;

(d) Weekly, an occupancy report for the Project Facilities, which may be delivered electronically;

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

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

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

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

(i) Not later than the Completion Date, the certificate of completion and the use of proceeds certificate set forth as Schedules 8 and 9 hereof;

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

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



(l) Not later than forty-five (45) days after the Stabilization Date, a stabilization certificate in the form set forth on Schedule 10 hereto;

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

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

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

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

#### Section 6.10 Tax-Exempt Status.

(a) The Borrower covenants, represents and agrees that it will not take or omit to take or permit any action that, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Agreement, the Mortgage and the Land Use Restriction Agreement, as may be necessary, in the Opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Bonds or affecting the Project Facilities.

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

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

(d) Neither the Borrower nor any Related Person shall, pursuant to any arrangement, formal or informal, purchase any of the Bonds.

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

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

(g) No portion of the proceeds of the Bonds will be used to acquire existing property or any interest therein unless such acquisition meets the rehabilitation requirements of Section 147(d) of the Code.

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

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

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

(k) The Borrower covenants, represents and agrees that it will comply with the terms and conditions of the Tax Certificate.

#### Section 6.11 Single Purpose Entities.

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

(b) The Borrower and the Managing Member shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the Managing Member shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with

a third Person other than the Managing Member, or any respective Affiliate thereof; (iii) except as described in the Operating Agreement, not incur or contract to incur any Obligations, secured or unsecured, direct or contingent (including guaranteeing any Obligation), other than, in the case of the Borrower, (A) the Obligations evidenced by this Agreement and the other Bond Documents or (B) any operating deficit loan or subordinated loans as described in the Operating Agreement; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the Managing Member), except as provided in the Operating Agreement or in connection with the Developer Fee; (v) do or cause to be done all things necessary to preserve its existence; (vi) not materially amend, modify or otherwise change its membership certificate, Operating Agreement, articles of incorporation or other organizational documents or bylaws relating to its purpose, management, operation or distribution of cash flow and payment of debt without obtaining the prior written consent of the Controlling Person, which shall not be unreasonably withheld, conditioned or delayed (and except as otherwise permitted herein in relation to Permitted Transfers or for matters which do not materially adversely impact the amount or timing of the payment of debt or the capital contributions to be made by the Tax Credit Investor); (vii) conduct and operate its business as presently conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) to the extent funds are available to the Borrower, maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity provided that the foregoing covenant shall not obligate any member of the Borrower to make capital contributions to the Borrower in excess of the amounts required under the Operating Agreement; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the Managing Member; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the Managing Member to dissolve, or (C) consent to the dissolution or liquidation of the Managing Member; (xiv) not commingle the funds and other assets of the Borrower with those of the Managing Member, any Affiliate thereof or any other Person; and (xv) except as provided for in the Bond Documents, not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person, which shall not be unreasonably withheld, conditioned or delayed (it being understood that the Development Agreement and Management Agreement have been approved by the Controlling Person).

Section 6.12 Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), by the Borrower (the sale with recourse of receivables or any “sale and lease back” of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

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

Section 6.13 Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness.

(a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Borrower's Indebtedness under the Bond Documents and all of its other Obligations, whether now existing or hereafter arising, and comply with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and Capital Expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within sixty (60) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall not make any distribution of funds to its members unless no Default or Event of Default exists, such distribution is in accordance with the provisions of the Operating Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution. In addition, Borrower shall not make any payment to the Managing Member or to any officers or directors thereof, prior to the required monthly payment of the Borrower's Indebtedness under the Bond Documents, the funding of any required reserves under the Bond Documents and the payment of any of its other Obligations then due and payable.

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

Section 6.14 Environmental Covenants.

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

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

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

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

(e) Upon the occurrence of an Event of Default, or if the Controlling Person has reason to believe that there has occurred and is continuing a violation of Environmental Law or that there exists a condition that could give rise to any Governmental Action, the Controlling Person may provide written notice to the Borrower to address such condition, and if the Borrower does not provide written notice to the Controlling Person (within five (5) days after receipt of the Controlling Person's notice) of

steps that the Borrower will take to address such condition and promptly take such steps to address such condition, then the Controlling Person may, at its discretion, commission an investigation at the Borrower's expense of (i) compliance at the Project Facilities with Environmental Laws, (ii) the presence of Hazardous Substances or Contamination at the Project Facilities, (iii) the presence at the Project Facilities of materials which are described in clause (b) of Section 5.12, (iv) the presence at the Project Facilities of Environmentally Sensitive Areas, (v) the presence at the Project Facilities of radon products, (vi) the presence at the Project Facilities of tanks of the type described in paragraph (e) of Section 5.12 or in paragraph (d) of Section 6.14 above, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this paragraph, the Borrower, and its lessees, sub-lessees and assigns, will comply with any reasonable request for information made by the Controlling Person or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees or assigns of the Borrower in connection with an investigation pursuant to this paragraph. The Borrower will permit the Controlling Person and its agents access to all areas of the Project Facilities at reasonable times and in reasonable manners (including reasonable notice and subject to the rights of tenants) in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

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

Section 6.15 Controlling Person. The Borrower acknowledges and agrees that (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture; (ii) the Majority Owner has appointed Red Stone Servicer, LLC to serve in the capacity of Controlling Person hereunder, under the other Bond Documents, and under the Indenture; and (iii) the Majority Owner retains the sole and exclusive right to appoint, remove or replace the Controlling Person, without the consent or approval of the Borrower, but shall provide notice to the Borrower within ten (10) Business Days of any change to the Controlling Person. The Borrower shall comply with the directions of the Controlling Person made on behalf of the Majority Owner.

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

Section 6.17 Leases. The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project Facilities now in effect except for leases to residential tenants in compliance with the Land Use Restriction Agreement. Except for amendments to historical leases in

place for existing residential tenants, leases to residential tenants in compliance with the Land Use Restriction Agreement and leases for services associated with residential rental properties (such as laundry and cable lease), the Borrower shall not enter into or become liable under, any leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person. Each lease of residential units in the Project Facilities to a residential tenant that was not already in existence as of the date of this Agreement shall be on a form of lease approved by the Controlling Person and shall be in compliance with the requirements of the Land Use Restriction Agreement.

Section 6.18 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and the other Bond Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement or the other Bond Documents and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture; provided, however, such instruments and notes shall not be construed to permit a change in the material economic terms of the Loan or expand the rights and responsibilities of the parties hereunder.

Section 6.19 Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person with the Manager (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the "Management Agreement"). Under the Management Agreement, the Manager shall provide certain management services and shall be entitled to receive as compensation for those services an amount based upon a percentage of the gross income received from the Project Facilities on account of rents, service fees, late charges and penalties and other charges received under leases. Any amounts due the Manager in excess of 5.45% of such gross revenue shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Bonds, all Third Party Costs and all required deposits into the Accounts and all other amounts identified in the Assignment of Management Agreement. The Borrower shall not replace the Manager for the Project Facilities without the Controlling Person's prior written approval, and the Management Agreement shall not be terminated or modified without the Controlling Person's prior written approval. In the event the Manager resigns or is removed, the Borrower shall promptly seek a replacement Manager and submit such Manager and its proposed form of Management Agreement to the Controlling Person for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person may (but shall not be required to) engage a new Manager on terms satisfactory to the Controlling Person in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Manager shall execute a consent to the Assignment of the Management Agreement pursuant to which the Manager shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days' notice following and during the existence of an Event of Default.

Section 6.20 Determination of Taxability. Neither the Borrower nor the Managing Member shall admit in writing to the Issuer or the Trustee or to any Governmental Authority that interest on the Bonds has become includable in gross income for purposes of federal income taxation without first providing reasonable advance notice to the Controlling Person and the Majority Owner and permitting the Controlling Person or the Majority Owner, at its sole discretion and at its expense, to contest such

conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Trustee, the Controlling Person and the Majority Owner.

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

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

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

Section 6.24 Adoption of Capital and Operating Budgets.

(a) On or before December 1 of each Fiscal Year, commencing December 1, 2020, the Borrower shall submit to the Controlling Person for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the "Proposed Budget"). The Controlling Person shall have the right to approve or disapprove any Proposed Budget, which approval shall not be unreasonably withheld or delayed. Third Party Costs not within the Borrower's control and costs associated with remediation of emergency conditions shall be permitted



variances to the Annual Budget. If any Proposed Budget is not disapproved by the Controlling Person within thirty (30) days following submission by the Borrower, such budget shall be deemed approved. If any budget is disapproved, the Borrower shall thereafter consult with the Controlling Person in an effort to achieve a mutually acceptable Annual Budget for an additional thirty (30) days. To the extent the proposed operating budget is disapproved, the operating budget for the previous Fiscal Year shall remain in effect increased by five percent (5%) over the previous Fiscal Year (except for costs of utilities, Impositions and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Annual Budget may be revised from time to time with approval of Controlling Person to reflect changes to Expenses and proposed Capital Expenditures set forth in the then-current Annual Budget.

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

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

(ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Fund and the projected revenues and Expenses of the Project Facilities;

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

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

Section 6.25 Borrower's Approval of Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of, acceleration premium, if any, and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

Section 6.26 Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Controlling Person shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.2(a) hereof, and the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

Section 6.27 Additional Conditions Precedent. The rights of the Borrower to draw the initial advance of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 7 hereof.

Section 6.28 No Amendments. The Borrower shall not amend, modify or otherwise change the other Bond Documents without the prior written consent of the Issuer, the Trustee and the Controlling Person.

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

Section 6.30 Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the rehabilitation of the Project Facilities for each requested draw with copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

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

Section 6.32 Sufficiency of Loan Proceeds. If, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (i) the remaining proceeds of the Loan, and (ii) any other sums on deposit by the Borrower with the Trustee and the capital contributions from Borrower's members are insufficient to complete construction of the Project Facilities, the Controlling Person may require the Borrower to deposit with the Trustee for deposit into the Project Fund, within ten (10) days after written request by the Controlling Person, the projected deficiency, and such deposit shall be first disbursed in the same manner as the Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Loan shall be made.

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

Section 6.34 Special Servicing Costs. In accordance with industry standards and as set forth on Exhibit D hereto, the Controlling Person, as servicer of the Loan, may charge the Borrower additional servicing fees and costs for special servicing requests. The Borrower shall pay as and when due all such special servicing fees or costs.

## **ARTICLE VII DEFAULTS AND REMEDIES**

Section 7.1 Defaults. Each of the following shall constitute an event of default hereunder (“Event of Default”):

(a) Failure by the Borrower to pay any installment of principal or interest required to be paid by the Borrower under this Agreement, the Note or any of the other Bond Documents when the same shall become due and payable or failure by the Borrower to pay any other amount required to be paid by the Borrower under this Agreement or any other Bond Documents within ten (10) days after demand for payment of the same;

(b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.1, 6.11 or 6.12 hereof;

(c) Failure by the Borrower to perform or comply with any of the terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party, other than as described in any other subsection of this Section 7.1, and continuation of such failure for forty-five (45) days after written notice from the Trustee or the Controlling Person to the Borrower and the Tax Credit Investor, or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such forty-five (45) day period, if the Borrower, the Managing Member or the Tax Credit Investor shall have commenced a cure of such default within such forty-five (45) day period and shall be diligently pursuing such cure as quickly as reasonably possible; for the avoidance of doubt, the Tax Credit Investor shall have the right, but not the obligation, to cure an Event of Default under this Section;

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

(e) Any provision of this Agreement or any of the other Bond Documents to which the Borrower, the Managing Member or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the Managing Member or the Guarantor, is declared to be null and void, subject to the Borrower to be allowed forty-five (45) days to cure, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the Managing Member or any Guarantor or any Governmental Authority, or the Borrower, the Managing Member or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower, the Managing Member or any Guarantor is a party;

(f) The occurrence of an Event of Default as defined in the Indenture or the other Bond Documents or an act, circumstance or event (or failure to act or non-occurrence of an act) (after the lapse of any applicable grace period) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Indenture or the other Bond Documents; or the occurrence of a

breach under the HAP Contract which causes, or, with the giving of notice, the passage of time, or both, would permit HUD to terminate the payments thereunder;

(g) The Borrower, any Guarantor or the Managing Member (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the Managing Member, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the Managing Member to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the Managing Member in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the Managing Member is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the Managing Member, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the Managing Member an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the Managing Member or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the Managing Member, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of ninety (90) days;

(h) The Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement;

(i) Subject to the provisions of the Mortgage (as defined in Section 3.1 hereof), the Project Facilities suffer a material loss by fire or other casualty exceeding \$100,000 in damage and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee within thirty (30) days of the determination of such deficiency;

(j) The Project Facilities and the Borrower: (i) fail to achieve Final Completion on or before the Completion Date or fail to deliver all necessary supporting documentation (including, but not limited to, the Complete Certificate set forth on Schedule 8 hereto and the Use of Proceeds Certificate set forth on Schedule 9 hereto) evidencing the achievement of Final Completion not later than forty-five (45) days following the Completion Date, or (ii) fail to achieve Stabilization on or before the Stabilization Date or fail to deliver all necessary supporting documentation (including, but not limited to, the Stabilization Certificate set forth on Schedule 10 hereto) evidencing the achievement of Stabilization not later than forty-five (45) days following the Stabilization Date;

(k) Any litigation or administrative proceeding ensues, and is not dismissed within ninety (90) days, involving the Borrower, the Managing Member, any Guarantor or any instrument, contract or document delivered by the Borrower to the Controlling Person or the Trustee in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Controlling Person's reasonable opinion, a materially adverse effect on the Borrower's, the Managing Member's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(l) Any one or more judgments or orders (in excess of \$50,000) are entered against the Borrower or the Managing Member, or (in excess of \$250,000) for any Guarantor, and (1) continue unsatisfied and unstayed for sixty (60) days or (2) a judgment lien on any property of the Borrower, any Guarantor or the Managing Member is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower, any Guarantor or the Managing Member on terms which do not violate any of the Borrower's covenants under this Agreement;

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

(n) Renovation of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except (i) for Force Majeure, and (ii) any other such reason as the Controlling Person shall deem reasonable;

(o) If at any time an event has occurred that causes the Borrower to be unable for a period of forty-five (45) days to meet the requirements for an Advance under this Agreement, regardless of whether the Borrower has requested an Advance that has not been funded;

(p) The Contractor shall have defaulted under the Construction Contract, which default the Controlling Person, in its sole but reasonable opinion, shall deem to be substantial, and the Borrower, within thirty (30) days after receipt of written notice from the Controlling Person, shall have failed to exercise any right or remedy to which it shall be entitled under the Construction Contract; and

(q) The Improvements have not been completed substantially in accordance with the Plans and Specifications by the Completion Date, as may be extended pursuant to the provisions herein.

Notwithstanding the foregoing, if any Event of Default described in paragraph (g), (k), or (m) of Section 7.1 is caused solely by the action of a Guarantor, then so long as no other Default or Event of Default exists under the Bond Documents, the Controlling Person shall not direct the Trustee to declare an Event of Default or pursue remedies hereunder for a period of an additional thirty (30) days, during which period the Borrower or Tax Credit Investor shall have the option to cure such Event of Default to the satisfaction of the Controlling Person, or to provide a replacement guarantor, which replacement guarantor shall be acceptable to the Controlling Person in its reasonable discretion.

Section 7.2 Remedies. If an Event of Default has occurred and is continuing uncured, the Trustee, acting solely at the written direction of the Controlling Person and subject to the provisions of the Indenture, shall:

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

(b) Declare the Borrower's obligations hereunder, under the Note and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided,

no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

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

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Controlling Person shall proceed to negotiate or invite bidding to procure, within an additional thirty (30) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Controlling Person in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within thirty (30) days after notice from the Borrower to do so, the Controlling Person shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity; and

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) reasonable fees, costs and expenses of the Trustee and the Controlling Person and Majority Owner and their respective counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are negligent or due to its willful misconduct) under Section 2.5 hereof, the other Bond Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any

Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

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

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

Section 7.3 No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the direction of the Controlling Person (or by the Issuer if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.4 No Waiver; Remedies Cumulative. No failure on the part of the Issuer, the Trustee, the Controlling Person or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.5 Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder, the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the Managing Member (any such notice being expressly waived by the Borrower and the Managing Member) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the Issuer to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the Issuer in connection therewith, whether or not the Issuer shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Trustee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Trustee may have.

Section 7.6 Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Trustee, the Controlling Person, the Majority Owner and the Tax Credit Investor and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice.

Section 7.7 Cure by Tax Credit Investor . Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any timely cure of any default made or tendered by the Tax Credit Investor shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that the Tax Credit Investor shall

not have any obligation or duty to take any action to cure any default or to cause any default to be cured. Borrower and Tax Credit Investor shall be permitted to cure any default of a Guarantor hereunder by providing a replacement Guarantor approved by the Controlling Person in its sole discretion.

Section 7.8 Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder and under the Note following an Event of Default on or before March 1, 2037, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement and the Note shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9 Reserved Rights; Regulatory Agreement Defaults.

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

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

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

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

(iii) If such Regulatory Agreement Default is not reasonably curable by the Controlling Person or the Majority Owner without the Trustee’s first securing possession of the Project Facilities and/or operational control of the Borrower and the Controlling Person or the Majority Owner (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Trustee, subject to the terms of the Indenture, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Bond Documents; (y) thereafter instructs the Trustee, pursuant to the terms of the Indenture, to pursue diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Trustee or other designee of the Controlling Person or the Majority Owner obtains possession or control of the Project Facilities, until such default is cured; provided, however, that any extension, of the period within which a



Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the opinion of Bond Counsel provided to the Trustee, the Controlling Person and the Majority Owner, such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds; and provided further, that the Trustee, upon five (5) Business Days' prior written notice to the Controlling Person and the Majority Owner following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Trustee, the Controlling Person and the Majority Owner shall have been provided with an opinion of Bond Counsel to the effect that such reduction of such period is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Controlling Person, the Tax Credit Investor and the Majority Owner, nothing in this Section 7.9 shall restrict or in any way limit the right of the Issuer or the Trustee to take any action for specific performance available under the Land Use Restriction Agreement or at law or in equity in order to enforce the terms of the Land Use Restriction Agreement or to enforce Reserved Rights hereunder, so long as neither the Issuer nor the Trustee takes any action (i) to declare the outstanding balance of the Bonds or the Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby.

## **ARTICLE VIII DEPOSITS TO FUNDS**

Section 8.1 Deposits to and Disbursements from the Replacement Reserve Fund. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Trustee, for deposit into the Replacement Reserve Fund established by the Indenture, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Fund from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement and pursuant to Section 4.5(d) of the Indenture.

Section 8.2 Deposits to Tax and Insurance Escrow Fund.

(a) On the Issue Date, the Borrower shall pay, or cause to be paid, to the Trustee, to be deposited in the Tax and Insurance Escrow Fund, an amount which, when added to an amount equal to the sum of:

(i) the product of the Impositions component of the Monthly Tax and Insurance Amount for the Project Facilities and the number of months from and including the Issue Date, until and including the month in which occurs the date that the Impositions on the Project Facilities are due and payable before penalty; and

(ii) the product of the insurance component of the Monthly Tax and Insurance Amount and the number of months from and including the Issue Date, until and including the month in which occurs the date that the annual insurance premiums for the insurance on the Project Facilities required hereunder are due and payable, will be

sufficient to pay in full the Impositions and insurance premiums for the Project Facilities when the same become due and payable before penalty.

(b) Thereafter, on the first (1<sup>st</sup>) Business Day of each month commencing [May] 1, 2020, and each month thereafter, the Borrower shall pay, or cause to be paid, to the Trustee an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

Section 8.3 Deposits to Redemption Fund. On the first Business Day of each month commencing [May] 1, 2020, and thereafter on the first (1<sup>st</sup>) Business Day of each month until the date on which the Bonds are no longer Outstanding or have been defeased, the Borrower shall pay to the Trustee the monthly amount shown on Schedule 3 attached hereto for deposit into the Bond Fund pursuant to Section 4.2(a) or the Redemption Fund pursuant to Section 4.5(a) of the Indenture, as applicable. If there are sufficient funds on deposit in the Surplus Fund, the Borrower shall not be required to make the payments set forth on Schedule 3 only to the extent of the amount on deposit in the Surplus Fund. Following any partial redemption of Bonds (other than pursuant to Section 2.12(c) of the Indenture), the Controlling Person shall adjust the monthly amount due pursuant to this provision to account for any partial redemption of the Bonds in the manner set forth in Section 2.12(e) of the Indenture and shall provide the Borrower and the Trustee with the revised Schedule 3. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all amounts required to redeem the Bonds pursuant to Section 2.12(b)(vi) of the Indenture on or before the Interest Payment Date specified in the notice of the Controlling Person as provided in Section 2.12(b)(vi) of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all other amounts required to redeem Bonds pursuant to Section 2.12 of the Indenture, as provided therein.

Section 8.4 Deposits to Operating Reserve Fund. On the date the Project Facilities achieve Stabilization, the Borrower shall pay or cause to be paid to the Trustee, to be deposited in the Operating Reserve Fund, the sum of [\$448,315] pursuant to Section 4.1 of the Indenture. Following any disbursement, payment or transfer of moneys from the Operating Reserve Fund, the Borrower shall replenish the Operating Reserve Fund as provided in the Operating Agreement, and prior to the payment of any distributions to the Borrower's members, until such time as the balance on deposit in the Operating Reserve Fund equals [\$448,315]. Amounts on deposit in the Operating Reserve Fund shall be applied as set forth in Section 4.5(e) of the Indenture. The Operating Reserve fund shall be held in an interest-bearing account and the interest shall be paid to Borrower annually. Upon Maturity, the Operating Reserve shall be released to Borrower.

Section 8.5 Investment. Funds in the Accounts shall be invested in Permitted Investments upon the direction of the Borrower with the consent of the Controlling Person, as set forth in Section 4.7 of the Indenture. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee will deposit any cash held from time to time in the Accounts in one or more interest-bearing bank accounts with an institution or institutions of the Trustee's choosing. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Indenture. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Controlling Person to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

Section 8.6 Security Interest in Accounts. The Borrower hereby assigns and pledges to the Issuer, and grants the Issuer a security interest in, as additional collateral security for the Borrower's obligations to the Issuer hereunder (and the Borrower acknowledges and agrees that the Issuer shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Issuer hereby directs the Trustee to hold all moneys in the Accounts from time to time as assignee of the Issuer.

Section 8.7 Reports. The Trustee shall provide to the Borrower detailed monthly reports on or before the fifth (5<sup>th</sup>) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, the Trustee shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds.

Section 8.8 No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its negligence, bad faith or willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## **ARTICLE IX RENOVATION AND FUNDING OF ADVANCES**

Section 9.1 Renovation of Project Facilities; Final Completion. The Borrower shall commence performance of the Work in respect of the Improvements no later than [April 11], 2020, and shall achieve Final Completion of such Work in accordance with the Plans and Specifications on or before the Completion Date; provided, however, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one (1) time for an additional six (6) months, upon delivery of an extension fee equal to one quarter of one percent (0.25%) of the original principal amount of the Bonds to Red Stone Servicer, LLC.

### Section 9.2 Making The Advances.

(a) At such time as the Borrower desires to obtain an advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Controlling Person for its approval; no Requisition shall be delivered to the Trustee until it has been approved by the Controlling Person, and each advance by the Trustee of the amounts in the Project Fund shall be subject to the prior approval of the Requisition by the Controlling Person. The Controlling Person shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b) Each Requisition shall be submitted to the Controlling Person at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Controlling Person. Except as otherwise provided for herein, the Controlling Person shall direct the Trustee to deposit the proceeds of each Requisition into such account.

Section 9.3 Advances to Contractors; to Others. At its option during the existence of any Event of Default or Default, the Controlling Person may direct the Trustee to make any or all advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due.

Section 9.4 Requisition. Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person prior to payment and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in (i) not less than ninety-five percent (95%) of all disbursements having been used to pay or reimburse the Borrower for Qualified Project Costs and (ii) one hundred percent (100%) of all disbursements have been used to pay or reimburse the Borrower for Project Costs. The Controlling Person acknowledges that the Borrower is required to provide copies of each Requisition to the Tax Credit Investor prior to submission to the Controlling Person.

Section 9.5 Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Trustee from the Project Fund are to be used. Subject to Section 9.7 hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Section 9.7 hereof, in no event shall the Controlling Person approve any Advance in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any Advances previously made by the Trustee from the Project Fund for such costs.

Section 9.6 Retainage. The Controlling Person shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such Advance is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant.

Section 9.7 Contingency Reserve. The amount allocated to “contingency” in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the Controlling Person and may be used for the Costs of the Project, which approval shall not be unreasonably withheld, conditioned or delayed. The disbursement of a portion of the contingency reserve shall in no way prejudice the Controlling Person from directing the Trustee to withhold disbursement of any further portion of the contingency reserve.

Section 9.8 Stored Materials. The Controlling Person shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Controlling Person’s receiving satisfactory evidence that:

(a) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of thirty (30) days; and

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

Section 9.9 Cost Overruns and Savings.

(a) If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$100,000 or more, the Borrower shall immediately notify the Controlling Person in writing and promptly submit to the Controlling Person for its approval a revised Development Budget. If the Controlling Person otherwise becomes aware of any such change in costs of the Work, the Controlling Person shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

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

(c) If the revised schedule indicates a decrease in costs of the Work for the Project Facilities, no savings may be reallocated by the Borrower unless and until the Borrower has furnished the Controlling Person and the Engineering Consultant with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full. At such time, such savings may be reallocated by the Borrower to other line items and may be used for the Costs of the Project with the written consent of the Controlling Person, which will not be unreasonably withheld, conditioned or delayed.

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

Section 9.10 Right to Retain the Engineering Consultant.

(a) The Trustee shall have the right to retain, at the direction of the Controlling Person and at the Borrower's reasonable cost and expense, the Engineering Consultant to perform various services on behalf of the Controlling Person, including, without limitation, to make periodic inspections, upon reasonable notice and in connection with a draw submitted by the Borrower, for the purpose of assuring that renovation of the Improvements to date is in accordance with the Plans and Specifications, to advise the Controlling Person of the anticipated cost of and time for completion of renovation of the Improvements and to review all construction contracts and subcontracts.

(b) The fees of the Engineering Consultant during the performance of the renovation shall be paid by the Borrower in accordance with Section 2.2(b) hereof.

(c) Neither the Controlling Person nor the Engineering Consultant shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any

neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of renovation of the Improvements. Neither the Controlling Person nor the Engineering Consultant assumes any obligation to the Borrower, the Managing Member or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

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

Section 9.12 Initial Advances. The right of the Borrower to draw the initial Advance on the Issue Date shall be subject to the satisfaction of the following conditions precedent:

- (a) The Borrower shall have delivered the items listed on Schedule 7 attached hereto;
- (b) The Borrower shall have delivered evidence as to the obtaining of all approvals, permits and licenses which are then required, if any, or necessary for the renovation of the Improvements at the Project Facilities, together with copies of all such approvals, permits and licenses or evidence that no such permits or licenses are required;
- (c) The Borrower shall have delivered copies of the Borrower's contracts with the Architect and the Contractor, duly executed by the parties thereto, and to the extent applicable, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be, supplying labor or materials for the renovation of the Project Facilities;
- (d) The Borrower shall have delivered to the Controlling Person two (2) complete sets of the Plans and Specifications, together with evidence of their approval by all Governmental Authorities having jurisdiction;
- (e) The Borrower shall have delivered payment and performance bonds in respect of the Construction Contract;
- (f) The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (a) the Engineering Consultant has reviewed the Plans and Specifications identified on Schedule 5, (b) the Construction Contract satisfactorily provides for the renovation of the Project Facilities, and (c) in the opinion of the Engineering Consultant renovation of the Project Facilities can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose on the Development Budget;
- (g) The Borrower shall have delivered to the Controlling Person evidence as to:
  - (i) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;
  - (ii) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

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

(iv) the obtaining of all Governmental Actions which are required, necessary or desirable for the renovation of the Improvements and the access thereto, together with copies of all such Governmental Actions as listed on Schedule 6;

(h) The first installment of the Borrower's Required Equity Funds (\$694,000) shall have been delivered to the Trustee and the other deposits required under Section 4.1(c) of the Indenture shall have been made; and

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

Section 9.13 Subsequent Advances. The right of the Borrower to draw any subsequent advances of funds from the Project Fund shall be subject to the satisfaction of the following conditions:

(a) The Borrower shall have delivered the items listed on Part B of Schedule 7 attached hereto.

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

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

(d) The Controlling Person and the Trustee shall have received:

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

(ii) a "date down" endorsement to the Title Policy indicating no change in the state of title not approved by the Controlling Person; and

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

(e) Notwithstanding anything to the contrary set forth in this Agreement, no sums shall be disbursed until the Borrower has delivered a waiver or full or conditional (conditioned only on

receipt of payment) release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work for which payment is requested.

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

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

(h) All installments of Required Equity Funds then due and payable shall have been deposited with the Trustee;

(i) If at any time during the renovation of the Project Facilities, the Controlling Person shall in its sole discretion determine that the remaining undisbursed portion of the Project Fund, any other sums previously deposited by Borrower with the Trustee, and any Required Equity Funds yet to be deposited with the Trustee (other than Required Equity Funds which have not been deposited due to a default by the Borrower under the applicable provisions of the Operating Agreement), is or will be insufficient to complete fully the renovation of the Improvements in accordance with the Work, and to pay all other projected costs in connection with the Work, the Borrower will, within seven (7) days after written notice of such determination from the Controlling Person deposit with the Trustee (for deposit into the Equity Account of the Project Fund) such sums of money in cash as the Controlling Person may reasonably require, in an amount sufficient to remedy the condition described in such notice, and sufficient to pay any liens for labor and materials alleged to be due and payable at the time in connection with the Improvements (to the extent not already bonded over or reserved for), and, at the Controlling Person's option, the Controlling Person shall not be obligated to authorize any further advances of the amounts held in the Project Fund by Trustee until the provisions of this Section 9.13(i) have been fully complied with.

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

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

Section 9.14 Effect of Approval. Approval of any Requisition by the Controlling Person shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the work, the quantity of the work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans and Specifications. Any inspection of the work that the Controlling Person may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the work shall be solely for the Controlling Person's information and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the



information or protection of any right or interest of any person or entity other than the Controlling Person and the Majority Owner.

**ARTICLE X  
MISCELLANEOUS**

Section 10.1 Notices. All notices and other communications provided for hereunder shall be in writing and sent by facsimile and by reputable overnight mail service or private delivery service addressed as follows:

To the Borrower:	Steele Lexington LLC 6875 E. Evans Avenue Denver, Colorado 80224 Attention: Justin Boyd Telephone: (303) 322-8888 Facsimile: (303) 322-2320 Email: jboyd@monroegroup.com
With a copy to:	Applegate & Thorne-Thomsen, P.C. 425 S. Financial Place, Suite 1900 Chicago, Illinois 60605 Attention: Diane K. Corbett Telephone: (312) 491-4401 Facsimile: (312) 491-4411 Email: dcorbett@att-law.com
If to the Issuer:	Industrial Development Authority of the City of Lexington, Virginia 300 East Washington Street Lexington, Virginia 24450 Attention: Secretary Telephone: (540) 462-3700 Facsimile: (540) 463-5310 Email: jhalasz@lexingtonva.gov
With a copy to:	BotkinRose PLC 3190 Peoples Drive Harrisonburg, Virginia 22801 Attention: Daniel R. Lauro, Esq. Telephone: (540) 437-7442 Facsimile: (540) 432-3337 Email: dlauro@botkinrose.com
If to the Trustee:	U.S. Bank National Association 1021 East Cary Street, Suite 1850 Richmond, Virginia 23219 Attention: M. Dorsel Robinson Telephone: (804) 771-7928 Facsimile: _____ Email: dorsel.robinson@usbank.com

If to the Controlling Person: Red Stone Servicer, LLC  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis  
Telephone: (516) 750-2243  
Facsimile: (516) 750-2251  
Email: \_\_\_\_\_

With a copy to: Greenberg Traurig, LLP  
1717 Arch Street  
Suite 400  
Philadelphia, PA 19103  
Attention: Alexander L. Scarola, Esquire  
Telephone: (215) 988-7854  
Facsimile: (215) 988-7801  
Email: scarolaa@gtlaw.com

If to the Majority Owner: At the address set forth on the Register  
maintained by the Trustee

If to Tax Credit Investor: Raymond James Tax Credit Fund XX L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
800 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: Tomtishen Aoun PLLC  
2001 Commonwealth Blvd., Suite 300  
Ann Arbor, Michigan 48105  
Attention: Brad M. Tomtishen  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

The above parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Controlling Person and the Majority Owner are express third party beneficiaries of this Agreement and the rights of the Trustee (as assignee of the Issuer) hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person. The Borrower and the Issuer intend that no person other than the parties hereto, the Trustee, the Majority Owner, the Controlling Person, and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3 Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.4 Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.5 Costs, Expenses and Taxes. The Borrower agrees to pay on the Issue Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Issuer, the Trustee, the Controlling Person and the Majority Owner in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Controlling Person, and the reasonable fees and expenses of counsel for the Majority Owner and the Controlling Person with respect thereto and with respect to advising the Majority Owner and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.6 Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Trustee include interest in excess of such a maximum amount, the Trustee shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7 Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8 Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the Managing Member, the Guarantor, the Controlling Person, the Trustee, the Issuer and the Holders from time to time of the Bonds, with respect to the subject matter hereof.

Section 10.9 Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Bond Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding; (ii) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the State and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements. **THE PARTIES HERETO, OTHER THAN THE ISSUER, HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

Section 10.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State without reference to its principles of conflicts of law.

Section 10.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12 Sale of Bonds and Secondary Market Transaction.

(a) At the Controlling Person or Majority Owner's request (to the extent not already required to be provided by the Borrower under this Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Controlling Person or Majority Owner customarily adheres or which may be reasonably required in the marketplace or by the Controlling Person or Majority Owner in connection with one or more sales or assignments of all or a portion of the Bonds or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Bonds (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Issuer shall incur any Third Party Costs or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information (as hereinafter defined) or any opinion required in connection therewith, and all such costs including, without limitation, any costs associated with receiving a rating on the Bonds, shall be paid by the Controlling Person or Majority Owner, and shall not materially modify Borrower's rights or obligations under this Agreement or the other Bond Documents. Without limiting the generality of the foregoing, the Borrower and the Issuer shall, so long as the Loan is still outstanding:

(i) (1) provide reasonable financial and other information with respect to the Bonds, and with respect to the Project Facilities, the Borrower, the Managing Member, the Manager, or the contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Controlling Person or Majority Owner, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports, termite and other insect infestation reports and other due diligence investigations of the Project Facilities, as may be reasonably requested from time to time by the Controlling Person or Majority Owner or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Controlling Person or Majority Owner pursuant to this paragraph (i) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Controlling Person or Majority Owner and the Rating Agencies;

(ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project Facilities, the Borrower and the Bond Documents reasonably acceptable to the Controlling Person or Majority Owner, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a "bring down" of the representations and warranties contained in the Bond Documents as of the date thereof and a representation that no Default or Event of Default has occurred and is continuing; and

(iii) execute such amendments to the Bond Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Bond Documents and is not otherwise adverse to such party in its reasonable discretion.

(b) The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market

Transaction, including a prospectus or private placement memorandum (each, a “Secondary Market Disclosure Document”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 10.12(c) hereof, with the Controlling Person and Majority Owner in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project Facilities necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

(c) In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, the Project Facilities or such third party (and portions of any other sections reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, the Project Facilities or the third party). The Borrower shall, if requested by the Controlling Person or the Majority Owner, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project Facilities or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities or the third party) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such third parties. Furthermore, the Borrower hereby indemnifies the Majority Owner, the Controlling Person, the Trustee, the Issuer and their respective affiliates, officers, directors, partners, members, agents, attorneys, and controlling persons and the underwriter group for any securities (collectively, the “Securities Group”) for any liabilities to which any such parties may become subject to the extent such liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Controlling Person, the Majority Owner, the Trustee, the Issuer, its members, and the Securities Group for any liabilities to which the Majority Owner, the Controlling Person, the Issuer, the Trustee or the Securities Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading, and (ii) reimburse the Controlling Person, the Majority Owner, the Trustee, the Securities Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Controlling Person, the Majority Owner, the Trustee or the Securities Group in connection with defending or investigating the liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

(e) Promptly after receipt by an indemnified party under this Section 10.12 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower.

In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior written consent of the Borrower.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 is for any reason held to be unenforceable by an indemnified party in respect of any liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Section 10.12, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

#### Section 10.13 Nonrecourse.

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

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

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

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

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Project Facilities or its operation in accordance with the provisions of Section 6.8 or 6.9 of this Agreement;

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

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

(vi) the occurrence of any of the following transfers:

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

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

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

(D) Borrower executes a Lease that does not meet the requirements set forth in the Bond Documents;

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the Managing Member or the Guarantor; or the Borrower's misappropriation of funds or other Collateral; or

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

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

(i) a violation of Section 6.11(a) or 6.13(c) hereof after the expiration of any applicable notice and cure period;



(ii) if the Borrower or Guarantor fails to cure for thirty (30) days after the giving to it by Controlling Party of written notice to comply with Section 6.12(b) hereof;

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

(iv) the Borrower or the Managing Member fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower or the Managing Member with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(v) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi)(B) above, for which Borrower will have personal liability for any loss or damage); provided, however, that Borrower will not have any personal liability for a transfer that is a Permitted Transfer;

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

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

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

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

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

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

(d) The Borrower and the Guarantor shall have full recourse and personal liability for all of the following:

(i) the performance of and compliance with all of Borrower's obligations under Sections 5.12 and 6.14 of this Agreement (relating to environmental matters) or the Borrower's failure to comply with the provisions of the Environmental Indemnity;

(ii) the costs of any audit under Section 6.8 of this Agreement; and

(iii) and any costs and expenses incurred by the Issuer, Trustee, the Controlling Person and the Majority Owner in connection with the collection of any amount for which Borrower is personally liable under this Section 10.13, including attorneys' fees, actually incurred, 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.

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

(f) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Bond Documents, Issuer and Trustee shall not be deemed to have waived any right which Issuer or Trustee may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Borrower's and Guarantor's Indebtedness under the Bond Documents or to require that all collateral shall continue to secure all of the Indebtedness under the Bond Documents.

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

Section 10.15 Determinations by the Majority Owner and Controlling Person. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Controlling Person or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the Controlling Person or the Majority Owner under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the

Controlling Person or the Majority Owner (or its designated representative) at its sole and absolute discretion.

Section 10.16 Debtor-Creditor Relationship. It is expressly understood and agreed that the relationship between the Issuer and the Borrower established by the transaction contemplated by this Agreement and by all of the other Loan Documents is exclusively that of creditor or lender, on the part of the Issuer, and debtor or borrower, on the part of the Borrower, and is in no way to be construed as a partnership or joint venture of any kind. It is further understood that all payments by the Borrower under the Loan Documents shall be exclusively on account of the said debtor/creditor relationship. However, the Issuer has not undertaken to review the accuracy, completeness, or sufficiency of any financial information of the Borrower and makes no representations as to the creditworthiness of the Borrower or the financial feasibility of the operation of the Project Facilities.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be duly executed and delivered on the day and year first above written.

**INDUSTRIAL DEVELOPMENT AUTHORITY OF  
THE CITY OF LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Name: Bruce J. Summers  
Title: Chair

**STEELE LEXINGTON LLC, a Virginia limited  
liability company**

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

**EXHIBIT A**  
**FORM OF PROMISSORY NOTE**

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

\$8,670,000

March \_\_\_, 2020

FOR VALUE RECEIVED, Steele Lexington LLC, a Virginia limited liability company duly formed and validly existing (the “Borrower”), by this promissory note hereby promises to pay to the order of the Industrial Development Authority of the City of Lexington, Virginia (the “Issuer”) the principal sum of EIGHT MILLION SIX HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$8,670,000), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of U.S. Bank National Association, or its successor as trustee under the Indenture.

The principal amount and interest shall be payable on the dates and in the amounts set forth on Schedule 3 to the Agreement (as hereinafter defined) and on such other dates, that principal and redemption price of, and interest on the Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the “Note” referred to in the Loan Agreement, dated as of March 1, 2020 (as the same may be amended, modified or supplemented from time to time, the “Agreement”) between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to U.S. Bank National Association, as trustee under the Indenture of Trust, dated as of March 1, 2020 (as the same may be amended, modified or supplemented from time to time, the “Indenture”), by and between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$8,670,000 Multifamily Housing Revenue Bonds (Lexington House Apartments) Series 2020 (the “Bonds”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

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

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

On and subject to the terms and exceptions set forth in Section 10.13 of the Loan Agreement, the obligations under this Note are non-recourse to the Borrower and its members.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of an Event of Default on this Note, as set forth in the Agreement.

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

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

**ENDORSEMENT**

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

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Name: Bruce J. Summers  
Title: Chair

Dated: \_\_\_\_\_, 2020

**EXHIBIT B  
FORM OF WRITTEN REQUISITION  
OF THE BORROWER**

BORROWER:

PROJECT :

REQUISITION NO.: \_\_\_\_\_

In the Amount of \$ \_\_\_\_\_

TO: U.S. Bank National Association  
1021 East Cary Street, Suite 1850  
Richmond, Virginia 23219  
Attention: M. Dorsel Robinson

Red Stone Servicer, LLC, as Controlling Person  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

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

<u>Amount</u>	<u>Source</u>	<u>Payable to:</u>
	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]

**Requisition - Contents and Attachments**

- Borrower's Representations and Warranties
- Contractor's Application and Certification for Payment (AIA Form G-702)
- Requisitions and Invoices Supporting Application
- Contractor's Requisition Certificate
- Architect's Requisition Certificate
- Borrower's Request for Payment
- Lien Waivers

## Representations and Warranties

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Controlling Person under the terms of the Loan Agreement dated as of March 1, 2020 (the "Agreement"), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.
2. Renovation of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of renovation of the Improvements by \$\_\_\_\_\_ in the aggregate, has notified the Engineering Consultant of such changes and, to the extent necessary, has received any and all necessary approvals from the Controlling Person.
4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Indenture of Trust dated as of March 1, 2020, with respect to the Bonds.
5. All money requisitioned by the Borrower for renovation of the Improvements and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor and, to the Borrower's best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Controlling Person and the Trustee in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Bond Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.
8. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Bond Documents, (ii) except as previously disclosed by the Borrower to the Controlling Person, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements are not being renovated in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Bond Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Bond Documents are in full force and effect.
9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Controlling Person.
10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition, not less than 95% of amounts paid from proceeds of the Bonds have been applied to the payment of Qualified Project Costs.



- 11. Attached hereto are copies of lien waivers from all such subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Insurance Company.
- 12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Loan Agreement.

Executed this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

Approved:  
RED STONE SERVICER, LLC, as Controlling Person

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_, 20\_\_

**Contractor's Application for Payment**

**Requisitions and Invoices**

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: U.S. Bank National Association ("Trustee")  
Red Stone Servicer, LLC ("Controlling Person")

FROM: Empire Corporation of Tennessee, Inc. ("Contractor")

RE: Renovation of Lexington House Apartments (the "Project Facilities") by Steele Lexington LLC ("Borrower")

We are the general contractor for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding renovation of the Improvements and knowing that the Trustee and the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. In reference to our contract dated \_\_\_\_\_, 20\_\_, with Borrower for renovation of the Improvements, and the Plans and Specifications therefor, no amendments, modifications or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
2. Our Application for Payment No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - a. Retainage not exceeding \_\_% of the value of labor and materials incorporated into the Project Facilities and covered by applications submitted by us on account of the renovation of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated \_\_\_\_\_, 20\_\_, is \$\_\_\_\_\_); and
  - b. [specify other claims, if any]
3. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows:
4. We have paid in full all our obligations to subcontractors, workmen, suppliers and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.

5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated \_\_\_\_\_, 20\_\_ plus the amount of all our previously funded applications.

Executed as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

EMPIRE CORPORATION OF TENNESSEE, INC., a  
Tennessee corporation

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

Name:

Title:

**Architect's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: U.S. Bank National Association ("Trustee")  
Red Stone Servicer, LLC ("Controlling Person")

FROM: Benton Design Group LLC ("Architect")

RE: Renovation of Lexington House Apartments (the "Project Facilities") by Steele Lexington LLC ("Borrower")

We are the architect for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding renovation of the Improvements, and knowing that the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. We inspected the Project Facilities on \_\_\_\_\_, 20\_\_ and found the status of Work at the Project Facilities on that date and the progress made on the Project Facilities since our last certificate to you dated \_\_\_\_\_, 20\_\_ to be as follows:
  
2. We delivered the Plans and Specifications for the Project Facilities, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as follows:
  
3. All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of renovation have been furnished, installed or stored on site. All of the Work to date is hereby approved except as follows:
  
4. We have examined the requisition being submitted herewith to you by Borrower, which requisition includes an Application for Payment from Empire Corporation of Tennessee, Inc., a Tennessee corporation ("Contractor") respecting renovation of the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) \_\_% of the value of labor and materials incorporated into the Improvements.
  
5. We have been advised that as of this date there remains unexpended funds of \$ \_\_\_\_\_ which are available to fund renovation costs, from which funds to pay the aforementioned Application for Payment will be deducted. In our opinion, such unexpended funds, after deduction of funds sufficient to cover both the current Application for Payment and the applicable retainage heretofore withheld and to become due on account of previous Applications, will be sufficient to pay for all renovation costs reasonably required to complete the Work, provided that

the amount advanced under the current application is, in fact, applied against obligations incurred for labor and materials heretofore furnished on account of renovation of the Improvements.

6. All permits, licenses, approvals and the like required to complete renovation of the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project Facilities of which we have notice or knowledge as of the date hereof except as follows:
7. Access to and egress from the Project Facilities and all improvements to be constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project Facilities. All necessary approvals for installation of or connection to said facilities or services have been obtained.
8. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project Facilities.
9. No amendments, modifications or changes have been made to our contract dated \_\_\_\_\_, 20\_\_ with the Borrower except such as have had your prior written approval.
10. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows:

This certificate is rendered based on our examination of the Project Facilities, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.



Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BENTON DESIGN GROUP LLC**, a Missouri  
limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Borrower's Request for Payment**

[attach spreadsheets in form provided by Red Stone]

**Lien Waivers**

**EXHIBIT C**  
**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, 20\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_ (the "Lease") by and between Steele Lexington LLC ("Lessor") and \_\_\_\_\_ ("Resident") for unit number \_\_\_\_\_ (the "Unit") in \_\_\_\_\_.

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

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

Resident or Residents:  
(all Residents must sign here)

Lessor:

Resident's Signature

STEELE LEXINGTON LLC

Resident's Name

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

Resident's Unit No.

Authorized Representative:

Resident's Signature

Resident's Name

Resident's Unit No.

**EXHIBIT D  
SCHEDULE OF SERVICING FEES**

	Transaction Type	
<b><u>DISBURSEMENTS</u></b>		
-	Disbursements	\$0
-	NSF Fees	\$150
-	Two-Party Checks	\$150
<b><u>EASEMENTS, CONDEMNATION &amp; CASUALTY</u></b>		
-	Collateral Substitution	\$2,500 + Legal
-	Condemnation	\$4,000 + Legal
-	Easement	\$3,000 + Legal
<b><u>LEASES &amp; SNDA's</u></b>		
-	Leasing Consents	\$2,500 + Legal if necessary
-	Leasing Consents- Ex Post Facto	\$2,500 + Legal if necessary
-	Leasing Consents w/ Negotiated SNDA	\$2,500 + Legal if necessary
-	Negotiated SNDA/Estoppel (w/o Lease Consent)	\$750 + Legal
-	RS Standard SNDA- No Changes to Form	\$750 + Legal
<b><u>MODIFICATIONS</u></b>		
-	Assignments	\$5,000 Non-Refundable Review Fee + 1% Transfer Fee at closing or as stipulated in Loan Documents + Legal
-	Stabilization or other timing Extensions	\$10,000 + Legal
-	Forbearance	Negotiated
-	Modifications and Amendments to Existing Loan Documents	\$3,000 + Legal
<b><u>OTHER</u></b>		
-	Defeasance	Negotiated
-	Other Credit Action	Negotiated
-	Property Management Change	\$1,000
-	Annual Fee	\$1,000
-	Secondary/Subordinate Debt	\$5,000 + Legal
-	Special Asset Management	\$1,500 per site visit + Travel
<b><u>PAYOFFS &amp; RELEASES</u></b>		
-	Letter of Credit Actions	Negotiated
-	Partial Property/Collateral Release	\$3,000 + Legal
-	Payoff Preparation	\$750 + Legal
<b><u>TRANSFERS</u></b>		
-	Assumption / Transfer of Beneficial Interest (Change in control)	\$5,000 Non-Refundable Review Fee + 1% Transfer Fee at closing or as stipulated in Loan Documents
-	Transfer of Beneficial Interest/ Partnership Change	\$5,000 + Legal

**SCHEDULE 1  
SCHEDULE OF LITIGATION**

[TO BE UPDATED]

**SCHEDULE 2**  
**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

1. Bond Documents
2. Amended and Restated Operating Agreement of the Borrower
3. Development Agreement
4. Management Agreement
5. Construction Contract
6. Architect Agreement

[TO BE UPDATED]

**SCHEDULE 3**  
**SCHEDULE OF DEBT SERVICE PAYMENTS**



**Lexington House Apartments  
Bond Redemption Schedule**

**Schedule 3**

Date	Outstanding Loan Amount	Monthly Interest Payments	Monthly Redemption Fund Deposits	Bonds Redeemed
May 1, 2020				
June 1, 2020				
July 1, 2020				
August 1, 2020				
September 1, 2020				
October 1, 2020				
November 1, 2020				
December 1, 2020				
January 1, 2021				
February 1, 2021				
March 1, 2021				
April 1, 2021				
May 1, 2021				
June 1, 2021				
July 1, 2021				
August 1, 2021				
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**SCHEDULE 4  
DEVELOPMENT BUDGET**

**SCHEDULE 5  
PLANS AND SPECIFICATIONS**

On file with the engineering consultant.

**SCHEDULE 6  
PERMITS AND APPROVALS**

A. GOVERNMENTAL ACTIONS ALREADY OBTAINED

1. [To Be Updated]

B. GOVERNMENTAL ACTIONS NOT YET OBTAINED

[To Be Updated]

**SCHEDULE 7**  
**CONDITIONS TO ADVANCES**

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

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

2. Subcontracts; Other Contracts. The Borrower shall have delivered to the Controlling Person, and the Controlling Person shall have approved, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project Facilities in the amount of \$10,000 or more. The Borrower shall have delivered to the Controlling Person correct and complete photocopies of all other executed contracts with contractors, subcontractors, engineers or consultants for the Project Facilities in an amount of \$25,000 or more, and of all development, management, brokerage, sales or leasing agreements for the Project Facilities.

3. Validity of Liens. The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, the Assignment of Leases, the Assignment of HAP Contract, the Developer Fee Pledge and the Managing Member Pledge shall be effective to create in the Trustee a legal, valid and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries necessary to create, maintain and perfect such liens and security interests shall have been duly effected.

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

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

(b) Title Policy. The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

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

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

5. Evidence of Access, Availability of Utilities, Project Approvals. Evidence as to:
- (a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;
  - (b) the availability of water supply and stone and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;
  - (c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and
  - (d) the obtaining of all Project Approvals which are required, necessary or desirable for the renovation of the Improvements and the access thereto, together with copies of all such Governmental Actions.
6. Environmental Report. An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Controlling Person, which report or reports shall indicate a condition of the Land and any existing improvements thereon in compliance with all Requirements and in all respects satisfactory to the Controlling Person in its sole discretion and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.
7. Soils Report. A soils report for the Project Facilities prepared by a soils engineer approved by the Controlling Person, which report shall indicate that based upon actual surface and subsurface examination of the Project Facilities, the soils conditions are fully satisfactory for the proposed renovation and operation of the Improvements and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely. A termite or other insect infestation report prepared by a firm approved by the Controlling Person, which report shall indicate that based upon actual inspection of the Project Facilities either (i) that no termite or other insect infestation at the Project Facilities, or (ii) that termite or insect infestation is present and recommended steps for extermination and remediation of the conditions at the Project Facilities, and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.
8. Survey and Taxes. A Survey of the Land (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Issue Date.
9. Deposit of Funds. The initial installment of Required Equity Funds shall have been delivered to the Trustee and deposited in the Project Fund.
10. Requisition. A Requisition complying with the provisions of this Agreement and the Indenture.
11. Form Lease. The standard form of lease to be used by the Borrower in connection with the Improvements.
12. Engineering Consultant Report. The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans and Specifications, (ii) the Plans and Specifications have been received and approved by each Governmental Authority to which the Plans and Specifications are required under applicable Legal Requirements to be submitted, (iii) the Construction Contract satisfactorily provides for the renovation of

the Improvements, and (iv) in the opinion of the Engineering Consultant, renovation of the Improvements can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose in the Development Budget.

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

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

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

16. Appraisal. The Controlling Person shall have received an Appraisal, in form and substance satisfactory to the Controlling Person, showing that the original face amount of the Bonds does not exceed ninety percent (90%) of the value of the Project Facilities, assuming completion in accordance with the Plans and Specifications and including the value of the low income housing tax credits and favorable financing.

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

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

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

20. Payment and Performance Bonds. The Controlling Person shall have received the Payment and Performance Bonds in form and content satisfactory in all respects to the Controlling Person.

B. CONDITIONS TO SUBSEQUENT ADVANCES. The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

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



2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date there shall exist no Default or Event of Default.
3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Bond Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made and shall also be true and correct in all material respects on the Borrower on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Bond Documents).
4. No Damage. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty.
5. Receipt by Controlling Person. The Controlling Person shall have received:
  - (a) Requisition. A Requisition in meeting the requirements of this Agreement and the Indenture;
  - (b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a “Down Date Endorsement”) shall be delivered by the Title Insurer, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any Bond proceeds disbursed from the Capitalized Interest Account of the Project Fund;
6. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the renovation of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of renovation of the Improvements, stating the percentage of in-place renovation of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the renovation of the Improvements;
7. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Controlling Person, and that payment and performance bonds have been obtained, as required.
8. Mechanics’ Liens. The Controlling Person may withhold or refuse to fund any advance hereunder if any mechanic’s lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, or if notice of intention to record or file any such lien has been received.
9. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Operating Agreement shall have been deposited with the Trustee.
10. Release of Retainage. In addition to the conditions set forth in this Section, the Controlling Person’s obligation to authorize any advance of Retainage shall be subject to receipt by the Controlling Person of evidence of Final Completion.

**SCHEDULE 8**  
**FORM OF COMPLETION CERTIFICATE**

\_\_\_\_\_, 20\_\_

U.S. Bank National Association  
1021 East Cary Street, Suite 1850  
Richmond, Virginia 23219  
Attention: M. Dorsel Robinson

Red Stone Servicer, LLC, as Controlling Person  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

Re: Lexington House Apartments (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to U.S. Bank National Association, as trustee (the “Trustee”), and Red Stone Servicer, LLC as Controlling Person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the “Controlling Person”) that “Final Completion” of the Project Facilities (as defined in the Indenture of Trust dated as of March 1, 2020 (the “Indenture”) by and between the Trustee and Industrial Development Authority of the City of Lexington, Virginia (the “Issuer”)) has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of March 1, 2020 between the undersigned and the Issuer (the “Loan Agreement”) have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect’s certificate as required by clause (iv) of the definition of “Final Completion” contained in the Indenture.
2. Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project Facilities (the “Permits”) as referenced in clause (ii) of the definition of “Final Completion” contained in the Indenture. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project Facilities as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.
3. Attached hereto is a complete schedule of all Punchlist Items referenced in clause (ii) of the definition of “Final Completion” contained in the Indenture. This schedule of Punchlist Items meets the requirements and limitations set forth in the Loan Agreement for Punchlist Items. The undersigned will promptly complete all Punchlist Items.
4. Attached are lien waivers required by clause (vii) of the definition of “Final Completion” contained in the Indenture.

5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Trustee, subject only to Permitted Encumbrances, as required by clause (ix) of the definition of "Final Completion" contained in the Indenture.

6. Attached hereto is evidence of insurance meeting the requirements of Section 6.4 of the Loan Agreement.

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

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

Accepted and agreed to by:

RED STONE SERVICER, LLC, as Controlling Person

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

## **Schedule of Attachments to Completion Certificate**

Architect's Completion Certificate

Occupancy Permits

Schedule of Punchlist Items

Lien Waivers

Endorsement to Title Policy

Insurance Certificates

Evidence of Payment of Impositions

**SCHEDULE 9**  
**FORM OF USE OF PROCEEDS CERTIFICATE**

\_\_\_\_\_, 20\_\_

U.S. Bank National Association  
1021 East Cary Street, Suite 1850  
Richmond, Virginia 23219  
Attention: M. Dorsel Robinson

Red Stone Servicer, LLC, as Controlling Person  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

Re: Lexington House Apartments (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to U.S. Bank National Association, as trustee (the “Trustee”), and Red Stone Servicer, LLC, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the “Controlling Person”) that (i) no less than 95% of the Net Proceeds of the Bonds has been spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code. Attached hereto is a schedule of expenditures showing all costs of the Project Facilities, the amounts expended for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended in compliance with the requirements of the Internal Revenue Code; and (ii) the undersigned has expended, within two (2) years of the later of the date the Project Facilities were acquired or the date of issuance of the Bonds, from proceeds of the Bonds or other sources, an amount equal to at least 15% of the “portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the Bonds” for “rehabilitation expenses” within the meaning of Section 147(b) of the Code. Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of March 1, 2020 between the Trustee and the Industrial Development Authority of the City of Lexington, Virginia.

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

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

**Schedule of Attachments to Use of Proceeds Compliance Certificate**

Evidence of Use of Proceeds

**SCHEDULE 10**  
**FORM OF STABILIZATION CERTIFICATE**

\_\_\_\_\_, 20\_\_

U.S. Bank National Association  
1021 East Cary Street, Suite 1850  
Richmond, Virginia 23219  
Attention: M. Dorsel Robinson

Red Stone Servicer, LLC, as Controlling Person  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

Re: Lexington House Apartments (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to U.S. Bank National Association, as trustee (the "Trustee") and Red Stone Servicer, LLC, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Controlling Person") that the date of Final Completion was \_\_\_\_\_, 20\_\_ and:

The undersigned hereby represents and warrants that:

1. The Improvements have been 90% occupied by tenants meeting the requirements of the Bond Documents in each of the prior three (3) consecutive months.
2. The ratio of Stabilized NOI in each of the prior three (3) consecutive months to maximum principal, interest, Issuer fees and Trustee fees payable in any month other than the month in which the Maturity Date occurs on the amount of Bonds Outstanding is 1.15 to 1.0.
3. No Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be continuing under the Bond Documents, the Managing Member Pledge, the Developer Fee Pledge or the Guarantor Documents.
4. The Borrower has at all times been and is currently in compliance with all requirements set forth in the Land Use Restriction Agreement.

The required deposit into the Operating Reserve Fund has been made.

5. There have been no disbursements from [insert names of any required reserves] which have not been replenished.
6. Stabilization [has/has not] occurred.
7. Attached hereto is \_\_\_\_\_ showing the calculation of Stabilization.



Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture of Trust dated as of March 1, 2020 between the Trustee and Industrial Development Authority of the City of Lexington, Virginia.

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

Accepted and agreed to by:

RED STONE SERVICER, LLC, as Controlling  
Person

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

## Stabilization Spreadsheet

**SCHEDULE 11  
ANNUAL EXPENSES**

Marketing, Administrative, Maintenance, Security, & Salaries	\$ _____ per Unit
Management Fee	5.45% of Effective Gross Income
Utilities	Actual
Insurance	Actual
Real Estate Taxes	Actual
Reserves for Replacement	\$[300] per unit

[To Be Updated]

**SCHEDULE 12  
RENT ROLL**

### **SCHEDULE 13 INITIAL INSURANCE REQUIREMENTS**

The Project Facilities must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverage's required by the Controlling Person, additional coverage may be required at the Controlling Person's discretion.

The named insured in each policy must be the Borrower.

All policies must be written on a per occurrence basis except for boiler and machinery which may be written on a per-accident basis. Each policy must have a cancellation provision requiring the carrier to notify the Trustee and the Controlling Person at least 30 days in advance of any policy reduction or cancellation for any reason.

Use of an Acord form 28, 27 or other form are acceptable as temporary evidence of coverage provided the form states "This is evidence that insurance as identified below has been issued, is in force, and conveys all the rights and privileges afforded under the policy" and uses a cancellation clause section "Should the policy be terminated, the company will give the additional interest identified below 30 days written notice, and will send notification of any changes to the policy that would affect that interest, in accordance with the policy provisions or as required by law" Use of an Acord form stating "...matter of information only..." and "...the issuing insurer will endeavor to mail notice..." are unacceptable.

Blanket Insurance policies are acceptable but must comply with certain requirements. Please see the "Blanket Insurance Guidelines" section for details.

Terrorism coverage is required for property and general liability and excess/umbrella coverage unless the Controlling Person grants prior written waiver and must meet the same requirements under the property, general liability and excess/umbrella coverage requirements provided in the sections following.

Each Policy must be for a term of not less than one year. All existing or new policies must be paid in full and cannot be financed.

**Carrier Rating Requirement**

Each insurance carrier providing property damage and/or liability insurance, whether admitted or non-admitted, must fall into one of the acceptable Financial Size Categories and meet the applicable minimum Financial Strength Rating for A.M. Best and, if the aggregate carrier exposure is greater than \$25 million, the minimum rating from one of the following: Fitch Ratings, Inc. S&P Global Ratings, or Moody's Investors Service, Inc.. Details are in the chart below:

Aggregate Carrier Exposure	Minimum A.M. Best Financial Strength Rating	AND	Minimum A.M. Best Financial Size Category	OR	Minimum Rating from Fitch Ratings, Inc., S&P Global Ratings, or Moody's
Less than \$5 million	A-	AND	VII	OR	A- by Fitch Ratings, Inc. OR A- by S&P Global Ratings OR A3 by Moody's Investors Service, Inc.
Greater than \$5 million & Less than \$25 million	A-	AND	VIII	OR	A- by Fitch Ratings, Inc. OR A- by S&P Global Ratings OR A3 by Moody's Investors Service, Inc.
Greater than \$25 million	A-	AND	IX	OR	A- by Fitch Ratings, Inc. OR A- by S&P Global Ratings OR A3 by Moody's Investors Service, Inc.

Standard insurance carrier rating requirements and minimum financial size categories are based on the aggregate carrier exposure, which is defined in the chart below.

**Aggregate Carrier Exposure (for each individual carrier)**

Insurance Type		
Property damage insurance	Specific Insurance or policy for one property	Required building coverage limits + required Business Income/Rental Value Insurance
	Blanket Insurance or master program from one carrier	Blanket Insurance or master program limit
	An individual policy, Blanket Insurance or master program with more than one carrier participating with layered limits	Total limit provided by the carrier in all layers in which the carrier participates
Liability Insurance	Specific Insurance or policy for one Property	Total aggregate limits (general liability + excess/umbrella)
	Liability insurance for multiple properties, or master program from one carrier	Total aggregate limits (general liability + excess/umbrella)
	An individual policy, liability insurance policy for multiple properties or master program with more than one carrier participating with layered limits	Total limit provided by the carrier in all layers in which the carrier participates

***Property Damage (“All Risk”) Insurance***

<b>What’s Required?</b>	“All Risk” or Cause of Loss-Special Form which includes an agreed value clause or no-coinsurance provision. Inflation guard endorsement (where available)	
<b>When Does it Apply?</b>	All property types	
<b><u>Maximum Deductible</u></b>	<b>Replacement Cost</b>	<b>Maximum Deductible*</b>
	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000
<b><u>Maximum Deductible for Blanket Insurance</u></b>	One percent of the aggregate Replacement Cost of the covered properties, to a maximum deductible of \$250,000	
<b>Amount of Coverage</b>	<p>100% Replacement cost coverage. Replacement cost must be certified annually. The most common resources to determine the estimated replacement cost of the property may include one of the following resources:</p> <p><b>Insurance Company</b>-the replacement cost estimate provided by the insurance company that has underwritten or will underwrite the property damage insurance.</p> <p><b>Appraiser</b>-a qualified commercial real estate appraiser experienced in the market</p> <p><b>Contractor</b>-reputable commercial contractor with experience constructing and/or reconstructing properties in the area similar for the property</p> <p><b>Third Party Vendor</b>-a third party vendor that specializes in replacement cost calculations or publishes data used for this purpose</p>	
* A higher deductible may be available if certain qualifications are met. Please contact the insurance department for list of criteria.		



**Boiler and Machinery Insurance**

<b>What's Required?</b>	Boiler and Machinery Insurance	
<b>When Does it Apply?</b>	Properties with a central HVAC system where steam boilers and/or other pressurized systems are in operation and are regulated by the State where the property is located. The insurance must cover loss or damage from explosion of steam boilers, pressure vessels and/or other steam equipment now or installed at a later date.	
<b>Amount of Coverage</b>	Replacement cost of the building housing the central HVAC system, including the replacement cost of the central HVAC system. If coverage is provided by a different carrier than the property damage policy a joint loss agreement is required by both policies.	
<b>Maximum Deductible</b>	<b>Replacement Cost of the Property</b>	<b>Maximum per occurrence deductible</b>
	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000
<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$5 million	\$50,000
	Greater than \$5 million but less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

***Business Income/Rent Loss Coverage***

<b>What's Required?</b>	Business Income/Rental Value Insurance, if the business income/rental value insurance is not included in the primary or other property damage policy (for example, it may not be included in the coverage provided by a flood, earthquake, or windpool insurance policy), a separate policy must be obtained to include business income/rental value for such covered losses.	
<b>When Does it Apply?</b>	All property types	
<b>Amount of Coverage</b>	<b>UPB (unpaid principal balance) and number of stories</b>	<b>Minimum number of months of effective gross income</b>
	Mortgages with UPB of \$50 mil or less	12
	Mortgages with a UPB of \$50 million or greater	18
<b>Extended Period of Indemnity required</b>	<b>UPB and number of stories</b>	<b>Minimum extended period of indemnity</b>
	Mortgages with UPB of \$50 mil or less	None Required
	Mortgages with a UPB of \$50 million or greater	90 days
<b>Maximum Deductible</b>	7 days	

***Earthquake Insurance***

<b>What's Required?</b>	<b>Earthquake Insurance</b>
<b>When Does it Apply?</b>	A property located in a seismic zone 3 or 4 with a PML of 20% or greater
<b>Amount of Coverage</b>	See section regarding Earthquake Insurance page 18
<b>Maximum Deductible</b>	See section regarding Earthquake Insurance page 18

***Flood Insurance***

<b>What's Required?</b>	Flood Insurance	
<b>When Does it Apply?</b>	Flood insurance is required for Property improvements located in an area identified as a Special Flood Hazard Area (SFHA)	
<b>Amount of Coverage</b>	100% of the full replacement cost. If 100% of the full replacement cost exceeds NFIP coverage limit, additional flood insurance from another insurer is required. Business Income/Rental Value Insurance is also required.	
<b>Deductible for NFIP coverage</b>	Must comply with NFIP deductible for the type of improvement insured.	
<b>Maximum Deductible for private flood insurance</b>	<b>Property replacement cost</b> Less than \$10 million	<b>Maximum deductible</b> \$50,000
	Equal to or greater than \$10 million	\$75,000
<b>Maximum Deductible for flood insurance under Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b> Equal to or less than \$5 million	<b>Maximum per occurrence deductible</b> \$50,000
	Greater than \$5 million but less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

***Ordinance and Law Coverage***

<b>What's Required?</b>	Ordinance and Law Coverage
<b>When Does it Apply?</b>	All property types that represent nonconforming uses under current building, zoning, or land use laws or ordinances.
<b>Amount of Coverage</b>	<ol style="list-style-type: none"> <li>1. Loss of Undamaged Portion of the Building-full replacement cost less the damage threshold of the local building ordinance. If threshold is not available, 100% of the full replacement cost of the property.</li> <li>2. Demolition Cost-estimated full demolition expense of the single largest building, or 10% of full replacement cost</li> <li>3. Increased Cost of Construction-no less than 10% of full replacement cost</li> </ol>
<b>Loss of Income</b>	Business Interruption/Rent Loss must be endorsed to cover income/rent loss arising out of the increased time necessary to repair or rebuild

**Windstorm Coverage**

<b>What's Required?</b>	If the "All Risk" property damage insurance excludes wind-related events, a separate windstorm insurance policy must be obtained meeting the same requirements as the Property Damage ("All Risk") Insurance. If coverage is provided by a state windpool policy, see State Windpool Policy Requirements on page 17.	
<b>When Does it Apply?</b>	Required for all properties	
<b>Amount of Coverage</b>	100% of replacement cost, either not contain a coinsurance clause or contain a coinsurance clause that is offset or suspended by an Agreed Amount endorsement. If an Agreed Amount endorsement is used the Agreed Amount must be equal to replacement cost	
<b>Maximum Deductible</b>	<p style="text-align: center;"><b>Property replacement cost</b></p> <p style="text-align: center;">Less than \$10 million</p> <p style="text-align: center;">Equal to or greater than \$10 million</p>	<p style="text-align: center;"><b>Maximum Deductible</b></p> <p style="text-align: center;">\$50,000</p> <p style="text-align: center;">\$75,000</p> <p style="text-align: center;">When expressed as a percentage, the max deductible per occurrence is 5% of the Total Insurable Value of the property</p>
<b>Maximum Deductible for Blanket Insurance</b>	<p style="text-align: center;">One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000</p> <p style="text-align: center;">When expressed as a percentage, the max deductible per occurrence is 5% of the Total Insurable Value of the property</p>	



	2 to 3	1 to 3 4 to 10 11 to 20 >20	\$3 million \$5 million \$10 million \$15 million
	4 to 10	1 to 3 4 to 10 11 to 20 >20	\$5 million \$10 million \$15 million \$20 million
	<b>11 to 20</b>	<b>1 to 3</b> <b>4 to 10</b> <b>11 to 20</b> <b>&gt;20</b>	\$10 million \$15 million \$20 million \$25 million
	<b>&gt;20</b>	<b>1 to 3</b> <b>4 to 10</b> <b>11 to 20</b> <b>&gt;20</b>	\$15 million \$20 million \$25 million \$50 million

**Liability Insurance Requirements for Seniors Housing Properties**

<b>What's Required?</b>	<p>Minimum coverage of \$1 million per occurrence and \$2 million in the annual aggregate <u>in addition to</u> excess/umbrella coverage as indicated below. General aggregate limit must apply per location.</p> <p>Policy may be written on a “claims made” or “an occurrence-based” policy. If coverage is changed from a “claims made” policy to an “occurrence-based” policy you must notify our office in writing for prior approval.</p>	
<b>Assisted Living Residences, Properties with Assisted Living Care, and</b>	<b>Number of licensed beds</b>	<b>Minimum per claim/occurrence</b>
<b>Properties that provide Skilled Nursing, Alzheimer’s Disease or Dementia Care</b>	<p>Less than or equal to 100 beds</p> <p>Greater than 100 but less than or equal to 500</p> <p>Greater than 500 but less than or equal to 1,000</p> <p>Greater than 1,000</p>	<p>\$1 million</p> <p>\$5 million</p> <p>\$10 million</p> <p>\$25 million</p>
<b>Maximum Deductible</b>	<p>\$100,000 for policies insuring 500 or fewer licensed beds</p> <p>\$250,000 for policies insuring more than 500 licensed beds</p>	
<b>Additional Insured</b>	<p>The Trustee is not be to named as an additional insured on professional liability insurance policies</p>	



***Vehicle Liability Insurance***

<b>When Does it Apply?</b>	If the Borrower and/or Property owns, leases, hires, rents, borrows, uses or has another use on its behalf a vehicle in conjunction with the operation of the property.
<b>Amount of Coverage</b>	\$1 million per accident

***Cooperative Fidelity Bond/Crime Insurance***

<b>What's Required</b>	Maintain fidelity bond/crime insurance coverage for the Co-op's employees, officers and board members
<b>When Does it Apply?</b>	Cooperative Corporations
<b>Amount of Coverage</b>	Two times the monthly gross association fee plus reserves or Six times the monthly gross association fee
<b>Maximum Deductible</b>	\$25,000

***Cooperative Directors and Officers Liability Insurance***

<b>What's Required</b>	Maintain directors' and officers' liability insurance
<b>When Does it Apply?</b>	Cooperative Corporations
<b>Amount of Coverage</b>	\$1 million per occurrence
<b>Maximum Deductible</b>	\$25,000

***Builder's Risk Insurance***

<b>What's Required?</b>	Builder's Risk Insurance	
<b>When Does it Apply?</b>	Required for any additions, alternations, rehabilitations, new construction or repairs to the property during any construction. Amount equal to 100% of contracts and materials. Requirement may be met with either an extension of the standard property damage insurance policy or a separate Builder's Risk policy.	
<b>Amount of coverage</b>	Coverage must be at least 100% of the sum of the contract or contracts and all materials to complete the work. Policy must cover fire and other perils within the scope of a policy known as a "Causes of Loss-Special Form" or "All Risk" policy.	
<b>Maximum Deductible</b>	<p align="center"><b>Replacement Cost of the property</b></p> <p align="center">Less than \$10 million</p> <p align="center">Equal to or greater than \$10 million</p>	<p align="center"><b>Maximum per occurrence deductible</b></p> <p align="center">\$50,000</p> <p align="center">\$75,000</p>
<b>Maximum Deductible for Blanket Insurance</b>	<p align="center"><b>Aggregate Replacement Cost of the covered properties</b></p> <p align="center">Equal to or less than \$ 5 million</p> <p align="center">Greater than \$5 million but less than \$7.5 million</p> <p align="center">Greater than \$7.5 million</p>	<p align="center"><b>Maximum per occurrence deductible</b></p> <p align="center">\$50,000</p> <p align="center">\$75,000</p> <p align="center">One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000</p>

***Localized Perils Insurance***

<b>What's Required?</b>	Sinkhole, mine subsidence, volcanic eruption or avalanche insurance	
<b>When Does it Apply?</b>	For a property located in an area prone to localized perils, such as sinkhole, mine subsidence, volcanic eruption and avalanche. Sinkholes are particularly common in Florida, Mine subsidence may occur in any location where there is, or has been, subterranean mining, but is particularly common in Pennsylvania, Ohio, Illinois and Colorado	
<b>Amount of Coverage</b>	100% Replacement Cost of the buildings affected by the localized peril	
<b>Maximum Deductible</b>	<p><b>Replacement Cost of the property</b></p> <p style="text-align: center;">Less than \$10 million</p> <p style="text-align: center;">Equal to or Greater than \$10 million</p>	<p><b>Maximum per occurrence deductible</b></p> <p style="text-align: center;">\$50,000</p> <p style="text-align: center;">\$75,000</p>
<b>Maximum Deductible for Blanket Insurance</b>	<p><b>Aggregate Replacement Cost of the covered properties</b></p> <p style="text-align: center;">Equal to or less than \$ 5 million</p> <p style="text-align: center;">Greater than \$5 million but equal to or less than \$7.5 million</p> <p style="text-align: center;">Greater than \$7.5 million</p>	<p><b>Maximum per occurrence deductible</b></p> <p style="text-align: center;">\$50,000</p> <p style="text-align: center;">\$75,000</p> <p style="text-align: center;">One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000</p>

***Sewer and Drain Insurance***

<b>What's Required?</b>	Sewer and drain backup insurance
<b>When Does it Apply?</b>	If the property is prone to periodic sewer or drain back-ups caused by ground water, public or private water systems or public sewers external to the property
<b>Amount of Coverage and Deductible</b>	Must be consistent with coverage obtained by other lenders in the area

### ***Blanket Insurance Guidelines***

We must determine that the blanket limits provide adequate coverage. The property must be identifiable in the policy and/or associated schedule including the values specific to the location. In addition we need the values for all locations on the policy or at a minimum the values by zip code so that we can evaluate the concentration of risk.

All blanket limits must equal at least the greater of 1) the largest Total Insurable Value within the Borrower's portfolio covered by the blanket limit or 2) 10% of the aggregate Total Insurance Value of the Borrower's portfolio of properties covered by the blanket limit.

**Windstorm** blanket limit must equal at least the greater of 1) The largest Total Insurable Value within the Borrower's portfolio covered by the blanket limit or 2) For properties located in Tier 1 Windstorm Risk counties, 40% of the aggregate Total Insurable Value within the state covered by the blanket limit. For All properties located outside Tier 1 counties 10% of the aggregate Total Insurable Value of the Borrower's portfolio of properties covered by the blanket limit.

**Flood** blanket limit must equal at least the greater of 1) the sum of the max flood insurance coverage available from NFIP for each building located in SFHA "A" or "V" or 2) the largest Total Insurable Value within the Borrower's portfolio that requires flood insurance or 3) 40% of the largest aggregate Total Insurable Value within any MSA that contains properties for which flood insurance is required.

## State Windpool Policy Requirements

### *Windstorm insurance through a State Windpool*

The following requirements in 1, 2 or 3 below must be met if windstorm coverage can only be obtained from a State Windpool:

1. If the policy issued by the State Windpool does not contain a coinsurance clause, the policy must be written in an amount no less than 100% of the estimated replacement cost of the insurable improvements without any deductible for depreciation.
2. If the policy issued by the State Windpool contains a coinsurance clause that is offset or suspended by an agreed amount provision:
  - The policy must be written in an amount no less than 100% of the estimated replacement cost of the insurable improvements without any deduction for depreciation and
  - The agreed amount must equal the estimated replacement cost
3. If the policy issued by the State Windpool contains a coinsurance clause that is not offset or suspended by an agreed amount endorsement provision, then all of the following are required:
  - The policy must be written in an amount no less than 100% of the estimated replacement cost of the insurable improvements without any deduction for depreciation.
  - The replacement cost estimate must meet the requirements for the guide
  - The servicer must document in the mortgage file that there is a replacement cost estimate dated within 12 months of the requires for coinsurance
  - The policy must contain a coinsurance clause less than or equal to 90% (such as 70% or 80%)

In addition, the guarantor must sign an additional guaranty of any losses incurred by the Trustee associated with the borrower's failure to maintain the required windstorm coverage.

If business income/rental value insurance is not included in the State Windpool insurance policy, a separate business income/rental value insurance policy for windstorm coverage must be obtained.

***Earthquake Insurance***

If the property is located in a Seismic Risk Zone 3 or 4 and the PML is greater than 20% but less than or equal to 40% earthquake insurance is required. For a property in which earthquake insurance is required, the coverage must be the greater of \$1 million or 150% of the difference between the projected loss for the property using the actual PML and the projected loss with a 20% PML. A reserve account may be required for certain deductibles based on the borrower equity and the maximum deductible.

Required to obtain separate business income/rental value insurance and ordinance and law coverage if earthquake insurance does not provide that coverage for earthquake damage.

For example:

Replacement cost for the property=\$30 million

Actual PML=30%

Minimum required earthquake insurance=\$4.5 million

Replacement Cost X Actual PML	\$30 million X 30%	=	\$9 million
Replacement Cost X 20%	\$30 million X 20%	=	\$6 million
			\$3 million
Difference X 150%	\$3 million X 150%	=	\$4.5 million

**Maximum Deductibles**

<b>Borrower Equity</b>	<b>Maximum Deductible</b> (a reserve account may be required for certain deductibles)	<b>Reserve Account</b>
Equal to or less than 30%	5% of coverage	Not required
Equal to or less than 30%	10% of coverage	Required for 5% of the coverage amount
Equal to or less than 30%	15% of coverage	Required for 10% of the coverage amount
Greater than 30%	15% of coverage	Not required

This Instrument Prepared By  
and After Recording Return To:

Michael W. Graff, Jr.  
McGuireWoods LLP  
1750 Tysons Boulevard, Suite 1800  
Tysons Corner, Virginia 22102

EXEMPTION CLAIMED:  
VA. CODE §58.1-809

## **REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS**

**THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS** (this “Agreement”) is made as of the first (1<sup>st</sup>) day of March, 2020, by **STEELE LEXINGTON LLC**, a Virginia limited liability company (the “Borrower”; index as Grantor), for the benefit of the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Issuer”; index as a Grantee), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee and agent (the “Trustee”; index as a Grantee) under an Indenture of Trust dated as of March 1, 2020, with the Issuer (as the same may be modified, amended or supplemented from time to time, the “Indenture.”

### **RECITALS:**

WHEREAS, the Issuer is authorized by the provisions of the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”), to issue its revenue bonds and to loan the proceeds thereof to finance certain facilities used primarily for single and multifamily residences in order to promote safe and affordable housing in the Commonwealth of Virginia and to benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth of Virginia; and

WHEREAS, by proceedings adopted pursuant to and in accordance with the provisions of the Act, the Issuer has authorized the issuance of its Multifamily Housing Revenue Bonds (Lexington House Apartments) Series 2020 in the aggregate principal amount of up to \$9,500,000 (the “Bonds”) pursuant to the Indenture; and

WHEREAS, the proceeds of the Bonds will be used to fund a loan (the “Loan”) by the Issuer to the Borrower pursuant to a Loan Agreement, dated as of March 1, 2020, between the Issuer and the Borrower (as amended, modified or supplemented from time to time, the “Loan Agreement”) and the Borrower will apply the proceeds of the Loan to finance a portion of the costs of the acquisition, construction, rehabilitation and equipping of a multifamily residential rental housing project known as Lexington House Apartments (the “Project”) on land more particularly described on Exhibit A hereto and located in the City of Lexington, Virginia (the “City”); and

WHEREAS, the interest on the Bonds is intended to be excludable from the gross income of the owners thereof for Federal income tax purposes under Sections 103 and 142 of the Internal Revenue Code of 1986, as amended, and any applicable temporary or final regulations promulgated thereunder or under Sections 103 and 142 of the Internal Revenue Code of 1986, as amended, by the United States Department of the Treasury (collectively, the “Code”); and

WHEREAS, the Issuer is unwilling to make the Loan unless the Borrower agrees to be regulated in the manner set forth in this Agreement in order to (i) satisfy the applicable requirements of the Act and (ii) preserve the exclusion of the interest on the Bonds from the gross income of the owners thereof for Federal income tax purposes, and the Borrower is willing to execute and abide by the terms of this Agreement as a condition of obtaining the Loan.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Terms defined in the foregoing recitals shall have the same meanings when used below. Any capitalized term used in this Agreement which is not defined herein shall have the meaning ascribed thereto in the Indenture or the Loan Agreement, as applicable. In addition, the following words and terms as used herein shall have the following meanings unless a different meaning clearly appears in the context:

“Adjusted Income” means, as of any Determination Date, the “adjusted income” of the persons or families occupying a residential unit in the Project as determined in accordance with HUD requirements for determining whether a family qualifies as a “lower income family” for purposes of the Section 8 program.

“Area Median Gross Income” means, as of any Determination Date, the area median gross income for the area where the Project is located as determined by HUD under the Section 8 Program.

“Bond Counsel” means an attorney or firm of attorneys acceptable to the Trustee and the Controlling Person and of nationally recognized standing in the field of municipal finance whose opinions are generally accepted by purchasers of municipal obligations. McGuireWoods LLP, as Bond Counsel for the initial issuance of the Bonds, is agreed to be acceptable to the Trustee and the Controlling Person.

“Borrower’s Cost Certificate” means the certification of the Borrower attached as Exhibit B to the Non-Arbitrage Certificate and Tax Compliance Agreement between the Issuer and the Borrower executed in connection with the issuance of the Bonds.

“Borrower’s Information Return Certificate” means the certification delivered by the Borrower at closing in substantially the form set forth in Exhibit E hereto, which may be included in the Borrower’s Cost Certificate.

“Certification of Continuing Program Compliance” means the document in substantially the form attached hereto as Exhibit D.

“Certification of Tenant Eligibility” means the document in substantially the form attached hereto as Exhibit B.

“Commercial Facilities” means facilities (if any) included as part of the Project other than (i) the residential units, (ii) any facilities approved by the Trustee and the Controlling



Person that are treated as “functionally related and subordinate” to such residential units under the Code and which are intended and available for use solely by residential tenants in the Project, and (iii) the portion of any facilities related to both the residential units and the other facilities of the Project which is treated as being allocable to the residential units under Section 142(d) of the Code.

“Determination Date” means, with respect to each person or family occupying a residential unit in the Project, (i) the earlier of the date upon which such person or family initially occupies such residential unit on a rental basis or signs a lease with respect to such residential unit, and (ii) each annual anniversary of the date set forth in (i) above.

“Family Size Adjustment Factor” means, as of any Determination Date, the income limit adjustment percentage which would be applied by HUD on such date with respect to the persons or families occupying a particular residential unit in the Project in order to take into account varying family sizes for purposes of determining whether such persons or families qualify as “lower income families” under the Section 8 Program.

“HUD” means the United States Department of Housing and Urban Development.

“Income Verification” means the document in substantially the form attached hereto as Exhibit C.

“Low or Moderate Income Persons or Families” means those persons or families occupying a residential unit in the Project whose Adjusted Income, as of the first Determination Date for such persons or families, does not exceed sixty percent (60%) of the product of (i) the Area Median Gross Income on such Determination Date and (ii) the Family Size Adjustment Factor for such residential unit as of such Determination Date.

Notwithstanding the foregoing, a person or family shall no longer be considered to be a Low or Moderate Income Person or Family after any subsequent Determination Date on which his or its Adjusted Income exceeds one hundred forty percent (140%) of the product of (i) the Area Median Gross Income on such Determination Date, and (ii) the Family Size Adjustment Factor for such residential unit on such Determination Date, if the next residential unit of smaller or comparable size in the Project that becomes available for occupancy after such Determination Date is not rented to Low or Moderate Income Persons or Families. Moreover, if all of the occupants of a unit (at any time during their occupancy) are “students”, as defined in Section 151(c)(4) of the Code, such occupants shall not be considered to be Low or Moderate Income Persons or Families unless at least one of the students is entitled to file a joint Federal income tax return under Section 6013 of the Code.

“Low or Moderate Income Unit” means a residential unit in the Project that is occupied by Low or Moderate Income Persons or Families.

“Mortgage” means the \$ \_\_\_\_\_ Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof from the Borrower to the deed of trust trustees named therein, for the benefit of the Trustee, as the same may be amended, modified and supplemented from time to time.

“Mortgaged Property” includes all property, real, personal or mixed, covered by the Mortgage.

“Parking Spaces” means the automobile and truck parking spaces (if any) included as part of the Project.

“Permitted Transfer” means a transfer of all or a portion of the real estate constituting the Project permitted by the Indenture and the Loan Agreement.

“Plans and Specifications” means the final plans and specifications for the Project, as such plans and specifications may be revised from time to time in accordance with the Indenture and the Loan Agreement.

“Qualified Project Period” means the period beginning on the first day on which at least ten percent (10%) of the residential units in the Project were first occupied and ending on the latest of:

- (i) the date which is fifteen (15) years after the date on which at least fifty percent (50%) of the residential units in the Project were first occupied;
- (ii) the first date on which no Bonds (or any other “tax-exempt private activity bond,” within the meaning of Section 142(d)(2)(A)(ii) of the Code, issued with respect to the Project) is outstanding; or
- (iii) the date on which any assistance provided with respect to the Project under the Section 8 Program terminates.

“Recreation Facilities” means the recreational and exercise facilities shown on the Plans and Specifications and functionally related and subordinate to the residential units in the Project.

“Section 8 Program” means HUD’s Housing Assistance Payments Program under Section 8 of the United States Housing Act of 1937 and all applicable rules and regulations thereunder, both as amended and supplemented from time to time (or if the Section 8 Program is terminated, the rules and regulations under Section 8 as in effect immediately prior to such termination).

“State” means the Commonwealth of Virginia.

“Tax Credit Investor” means Raymond James Tax Credit Fund XX L.L.C., and its successors and assigns.

2. Use, Rents and Occupancy. The Borrower hereby represents, covenants and agrees that, in connection with its acquisition, rehabilitation ownership and operation of the Project, it has at all times complied and will continue to comply (and will require any subsequent purchaser or assignee of the Project to comply) with the following:

- (a) Once available for occupancy, each residential unit in the Project (other than any unit occupied by a resident manager or other necessary employee) has been, and will

continue to be, rented or held available for rental to the general public on a continuous, non-transient basis at all times during the Qualified Project Period and may not, during the Qualified Project Period, be converted to condominium or other use.

(b) At least forty percent (40%) of the completed residential units in the Project (other than any unit occupied by a resident manager or other necessary employee) will be occupied (or held vacant and available for immediate occupancy) at all times during the Qualified Project Period by Low or Moderate Income Persons or Families. The qualification of each residential unit in the Project as a Low or Moderate Income Unit shall be determined on the first Determination Date for the persons or family occupying such residential unit and on each subsequent Determination Date for such persons or family.

(c) Except as set forth above, any vacant Low or Moderate Income Unit shall retain its status as a Low or Moderate Income Unit until it is reoccupied, at which time its character as a Low or Moderate Income Unit shall be redetermined under the rules set forth above, except that no re-occupancy of a Low or Moderate Income Unit for a temporary period (not to exceed thirty-one (31) days) shall be taken into account.

(d) The Adjusted Income of each person occupying a Low or Moderate Income Unit will be verified by an Income Verification (or other such form of document upon which the Borrower may commercially reasonably rely). Income Verifications will be completed and submitted to the Trustee and the Controlling Person (i) at the time of initial occupancy or execution of the initial lease, whichever is earlier, and at the time of any vacancy and re-occupancy of any Low or Moderate Income Unit, and (ii) on each subsequent Determination Date for the persons or families occupying such Low or Moderate Income Unit.

(e) The Borrower has designed and will maintain the Project so that (i) each residential unit contains separate and complete facilities for living, sleeping, eating, cooking and sanitation, and (ii) the Low or Moderate Income Units will not be isolated from the other residential units in the Project. All residential units in the Project will be similarly constructed (*i.e.*, shall be of similar quality and type of construction, subject to variations in the number of bedrooms and total floor space). Tenants in Low or Moderate Income Units shall enjoy equal access with other tenants to all common facilities of the Project.

(f) All tenant leases shall be expressly subordinate to the Mortgage and all leases of Low or Moderate Income Units shall contain clauses, among others, wherein each individual lessee:

(1) certifies the accuracy of the statements made by such lessee on the Certification of Tenant Eligibility and the Income Verification;

(2) agrees that his or her obligation to provide accurate information concerning family income, family composition and other eligibility requirements on each Determination Date for such lessee shall be deemed substantial and material obligations of his or her tenancy; that such lessee will comply promptly with all requests for information and for authorization to verify information with respect thereto from the Borrower, the Trustee or the Controlling Person; and that such lessee's failure or refusal to comply with a

request for information or for authorization to verify information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy; and

(3) agrees that his or her lease may be terminated on thirty (30) days' notice if any information provided by such lessee is materially false or inaccurate or if such lessee fails to perform any of its obligations under the lease, including, without limitation, those set forth in paragraph (2) above.

(g) All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any business of the Borrower that is unrelated to the Project and shall be maintained, as required by the Trustee or the Controlling Person from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Issuer, the Trustee and the Controlling Person.

(h) The benefits of this Section 2 shall inure to, and may be enforced by the Trustee, the Issuer, the Controlling Person and their respective successors and assigns, for the term of this Agreement.

3. Sale of Project. During the term of this Agreement, the Borrower shall neither sell or assign the Project or any rights thereto or interests therein, in whole or in part, nor sell or assign any interests in the Borrower (except as provided in the Amended and Restated Operating Agreement of the Borrower and as permitted by the Indenture and the Loan Agreement) without the prior written consent of the Trustee and the Controlling Person, accompanied by evidence that (i) the Borrower shall not be in default hereunder and shall have complied with the provisions of the other Bond Documents regarding such sale or assignment, (ii) the continued operation of the Project shall comply with the provisions of this Agreement, (iii) if applicable, the purchaser or assignee shall be willing and capable of complying with the terms of this Agreement, (iv) if applicable, the purchaser or assignee shall execute any document reasonably requested by the Trustee or the Controlling Person with respect to assuming the obligations of the Borrower under this Agreement, (v) the Trustee and the Controlling Person shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Project, and (vi) in the opinion of Bond Counsel, such action shall not adversely affect the exclusion of the interest on the Bonds from the gross income of the owners thereof for Federal income tax purposes.

The Trustee or the Controlling Person consent shall not be required in connection with any sale or assignment which occurs after the end of the Qualified Project Period and involves the prepayment, in full, of the Loan on the date of such sale or assignment.

4. Information.

(a) Beginning in the first month after commencement of the Qualified Project Period, the Borrower shall deliver to the Trustee and the Controlling Person on or before the fifth Business Day of each calendar month during the term of this Agreement a Certification of Continuing Program Compliance in the form attached hereto as Exhibit D to which shall be attached a copy of each Certification of Tenant Eligibility executed since the last Certification of

Continuing Program Compliance was delivered unless each such Certification of Tenant Eligibility previously has been delivered.

(b) At the request of the Trustee or the Controlling Person, the Borrower shall furnish monthly financial reports and shall give specific answers to questions upon which information is desired from time to time relating to the income, assets, liabilities, contracts, operation, and condition of the Mortgaged Property or the Project, the status of the Bond Documents and the Qualified Project Period.

(c) As required by Section 142(d)(7) of the Code, annually the Borrower shall file or cause to be filed with the Internal Revenue Service an IRS Form 8703. Not later than thirty (30) days prior to the date on which such IRS Form 8703 is required to be filed, the Borrower shall furnish to the Trustee and the Controlling Person a copy of such form as proposed to be so filed.

(d) The Borrower shall deliver to the Issuer on the date of issuance of the Bonds the Borrower's Information Return Certificate and such other information as may be required to enable the Issuer to file the information return on IRS Form 8038 required by Section 149(e) of the Code.

5. Equal Opportunity. The Borrower will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, familial status or national origin, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968 (Public Law 90-284, 82 Stat. 73), Executive Order 11063 and the Fair Housing Amendment Act of 1988 (Public Law 100-430, 102 Stat. 1620, 1622, 1623, 1636).

6. Compliance with Act and Code. The Borrower covenants and agrees that (i) it will comply with all requirements of the Act applicable to it or to the Project and (ii) at no time will it take any action, or fail to take any action, which action or failure to act would adversely affect the exclusion of the interest on the Bonds from the gross income of the owners thereof for Federal income tax purposes under the Code. The Borrower hereby further certifies and covenants as follows:

(a) Commercial Facilities.

(i) The construction, rehabilitation and equipping of the Project has been designed and will be undertaken and the Project will be operated to include only such Commercial Facilities, if any, as are specifically shown in the Plans and Specifications.

(ii) If the Project includes a rental or management office, such office shall be used exclusively for the rental or management of the residential units in the Project, and if the Trustee and the Controlling Person approve the occupancy of any residential units by a resident manager or other necessary employee, none of such resident Project personnel shall be responsible for or involved with the occupancy, rental or maintenance of any Commercial Facilities, unless the Borrower elects to treat such office and residential units as part of the Commercial Facilities for purposes of this Section 6(a).

(b) Recreation Facilities. The Recreation Facilities are intended and shall be available for use solely by tenants of the Project and their guests. The Borrower may include the privilege to use such Recreation Facilities in the rent charged to each tenant and thus assess no additional fees or charges for such privilege, or may assess additional fees or charges for such privilege, but only if such additional fees or charges are affordable for the Low or Moderate Income Persons or Families.

(c) Acquisition, Rehabilitation, Construction and Equipping of the Project.

(i) On the date of issuance of the Bonds, the Borrower will execute and deliver to the Issuer, the Trustee and the Controlling Person the Borrower's Cost Certificate with respect to the Project. The Borrower hereby covenants that no disbursement of Bonds proceeds will be made for:

(A) costs of issuance of the Bonds in excess of 2% of the face amount of the Bonds;

(B) costs of issuance of the Bonds and nonissuance "bad costs" identified in the Borrower's Cost Certificate in an aggregate amount exceeding five percent (5%) of the total costs taken into account as shown in the Borrower's Cost Certificate;

(C) the acquisition of a building (and any equipment therein as of the date of acquisition), the first use of which was not pursuant to such acquisition within the meaning of Section 147(d)(1) of the Code, unless the Borrower has covenanted to expend within two years of the later of the date the building was acquired or the Bonds were issued from proceeds of the Loan or other available sources, an amount equal to at least fifteen percent (15%) of "the portion of the cost of acquiring such building (and equipment) financed with the net proceeds" of the Bonds for "rehabilitation expenditures" within the meaning of Section 147(d) of the Code with respect to such building and equipment;

(D) the acquisition of land (or an interest therein) in an amount equaling or exceeding twenty-five percent (25%) of the net proceeds of the Bonds, as shown in the Borrower's Cost Certificate;

(E) any cost of the Project which would cause the "average reasonably expected economic life" (as determined in the manner, and as of the time provided, by Section 147(b) of the Code) of the Project to be less than one day more than eighty-three and one-third percent (83-1/3%) of the "average maturity" of the Bonds within the meaning of Section 147(b) of the Code;

(F) the cost of any portion of the Project constituting a "health club facility" for general public use, a "facility primarily used for gambling" or a "store the principal business of which is the sale of alcoholic beverages for consumption off premises" within the meaning of Section 147(e) of the Code; or

(G) the cost of land, or an interest therein, to be used for "farming purposes" within the meaning of Section 147(c) of the Code.

(ii) The Borrower hereby represents that the Issuer adopted a resolution or other “official action” with respect to the Project and the financing thereof prior to “commencement” of the “acquisition,” or “reconstruction” of the Project (as required Treasury Regulations Section 1.150-2 and Section 1.142-4).

7. Default.

(a) The Borrower shall give written notice to the Issuer, the Trustee and the Controlling Person of any violation of the Borrower’s obligations hereunder within fifteen (15) days after first discovering any such violation. Within fifteen (15) days after the Trustee first has actual notice of a violation by the Borrower of any of the provisions of this Agreement, the Trustee shall give written notice thereof to the Issuer, the Borrower, the Tax Credit Investor and the Controlling Person, in each case, by first class mail, return receipt requested, addressed to the respective address of such party stated in the Loan Agreement, or such other address as may subsequently, upon appropriate written notice thereof to the other parties to this Agreement, be designated by any party hereto as its legal business address. The Borrower shall have thirty (30) days after the date such notice is mailed to correct any such violation; provided, however, that the Borrower shall have a greater period of time for correction of the violation if such greater period is approved by the Trustee (with the written approval of the Controlling Person) and accompanied by a written opinion of Bond Counsel delivered to the Borrower, the Trustee and the Controlling Person to the effect that such greater period does not adversely affect the exclusion from gross income of interest on the Bonds. The Issuer hereby agrees that any timely cure of any default made or tendered by the Tax Credit Investor or investor member of the Borrower shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower. If the violation cannot be corrected within the applicable period, it shall nonetheless be deemed to be corrected if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the violation is corrected; provided, however, that corrective action shall be required to be completed within the applicable period if the Trustee (with the written approval of the Controlling Person) on the advice of Bond Counsel determines it necessary to preserve the exclusion of the interest on the Bonds from the gross income of the owners thereof for Federal income tax purposes.

(b) If a violation of this Agreement is not corrected by the Borrower to the satisfaction of the Trustee or the Controlling Person within the time and otherwise as provided in subsection (a) of this Section 7, without further notice, the Trustee (at the written direction of the Controlling Person) shall declare a default under this Agreement effective on the date of such declaration of default, and, upon such default, the Trustee, or its nominee, at the written direction of the Controlling Person, shall:

(i) Take possession of the Project, bring any action necessary to enforce any rights of the Borrower arising from the Project or its operation, and operate or cause the Project to be operated in accordance with the terms of this Agreement until such time as the Trustee, with the approval of the Controlling Person, determines that the Borrower is again in a position to operate the Project in accordance with the terms of this Agreement and in compliance with the requirements of the Bond Documents; or

(ii) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a

receiver to take over and operate the Project in accordance with the terms of this Agreement or for such other relief as may be appropriate, since the injury to the Trustee and the Controlling Person arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

(c) If the Borrower shall fail to observe or perform any covenant, condition, obligation or agreement contained in this Agreement, the Trustee, at the written direction of the Controlling Person, shall be entitled, in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under this Agreement, it being recognized that the beneficiaries of the Borrower's obligations under this Agreement may not be adequately compensated by monetary damages in the event of the Borrower's default. The Borrower acknowledges and agrees that the Trustee's and the Controlling Person's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure the public purpose under the Act or compliance with the Code, as applicable.

8. Agreement Binding. This Agreement and the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Borrower, its heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and all subsequent owners of the Project or any interest therein, the Issuer and the Trustee (for the benefit of the Bondholders) and their respective successors and assigns, for the term provided in Section 9 hereof.

9. Term of Agreement. This Agreement shall be in full force and effect from the date hereof until the end of the Qualified Project Period; provided, however, that:

(a) this Agreement shall terminate in the event that involuntary non-compliance with this Agreement is caused by a change in the Federal law or an action of a Federal agency which prevents the Trustee from enforcing this Agreement, or fire, seizure, requisition, condemnation or similar event, and the Borrower, within a reasonable period, either (i) prepays the Loan in full, which prepayment is applied to retire the Bonds at the earliest date permitted under the terms of the Indenture, or (ii) uses the amounts received as a consequence of such event to reconstruct the Project or to construct another project meeting the requirements of Section 142(d) of the Code; and

(b) the requirements of this Agreement shall be terminated in the event that the Project is subject to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, occasioned by a default of the Borrower under this Agreement or under the Bond Documents and, within a reasonable period, the Loan is prepaid in full (and such prepayment is applied to retire the Bonds at the earliest date permitted under the terms of the Indenture), unless and until, during any part of the Qualified Project Period subsequent to such event, the Borrower or a "related person" (within the meaning of Treasury Regulations Section 1.103-10(e) of the Code) obtains an ownership interest in the Project for Federal income tax purposes.

10. Expenses. The Borrower covenants and agrees to pay all expenses, including reasonable counsel fees, costs and expenses, paid or to be paid by the Issuer, the Trustee and the Controlling Person in connection with the execution of this Agreement (including any amendments or supplements hereto) or performance hereunder or the enforcement by the Issuer, the Trustee and the Controlling Person of the obligations of the Borrower hereunder.



11. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

12. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State without regard to conflict of law principles.

13. No Recourse. No recourse under or upon any obligation, covenant or agreement contained in this Agreement or under any judgment obtained against the Issuer, or the enforcement of any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of this Agreement shall be had against any past, present or future commissioner, officer, agent or employee of the Issuer as such, either directly or through the Issuer or otherwise, for any action taken by the Issuer as a result of this Agreement.

14. Amendments; Waivers.

(a) Except as provided in subparagraph (b) hereof, this Agreement may be amended only by a written instrument executed by the parties hereto, and duly recorded in the Clerk's Office of the Circuit Court of the County of Rockbridge, Virginia, and only upon (i) receipt by the Issuer, the Trustee and the Controlling Person of an opinion from Bond Counsel that such amendment will not adversely affect the tax-exempt status of interest on the Bonds, is authorized or permitted pursuant to the terms hereof and is not contrary to the provisions of the Act and (ii) the written consent of the Controlling Person.

(b) To the extent any amendments to the Act or the Code shall, in the written opinion of Bond Counsel filed with and addressed to the Issuer, the Trustee, the Borrower and the Controlling Person, retroactively impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement, and if such requirements are applicable to the Project, the Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(c) To the extent that the Act or the Code, or any amendments thereto, shall, in the written opinion of Bond Counsel filed with and addressed to the Issuer, the Trustee, the Borrower and the Controlling Person, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, this Agreement may be amended or modified to provide such less restrictive requirements upon (i) written amendment hereof signed by the Issuer, the Trustee and the Borrower, (ii) receipt by the Issuer, the Trustee and the Controlling Person of the written opinion of Bond Counsel to the effect that such amendment will not adversely affect the tax-exempt status of interest on the Bonds or violate the requirements of the Act and (iii) the written consent of the Controlling Person.

(d) The Borrower, the Issuer and the Trustee shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary to effectuate the intent of Section 14(b) hereof, and each of the Borrower and the Issuer hereby appoints the Trustee as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Issuer, as is applicable, any such document or instrument (in such form as may be approved in writing by Bond Counsel) if either the Borrower or the Issuer defaults in the

performance of its obligations under Section 14(b) hereof; provided, however, that the Trustee shall take no action under this subsection (d) without first notifying the Borrower or the Issuer, or both of them, as is applicable, and without first providing the Borrower or the Issuer, or both, as is applicable, an opportunity to comply with the requirements of Section 14(b) hereof.

(e) Any waiver of any condition under this Agreement must be made in writing executed by the parties hereto and upon (i) a written opinion of Bond Counsel addressed to the Issuer, the Trustee and the Controlling Person to the effect that such waiver will not adversely affect the exclusion from gross income of interest on the Bonds for federal income purposes and is not contrary to the provisions of the Act and (ii) the written consent of the Controlling Person.

15. Third Party Beneficiaries. The parties to this Agreement recognize and agree that the terms of this Agreement and the enforcement of such terms are essential to the security of the Trustee and the Controlling Person and are entered into for the benefit of various parties, including the Trustee and the Controlling Person. The Controlling Person shall, accordingly, have contractual rights in this Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Trustee, or to cause the Trustee to enforce, the terms of this Agreement. In addition, the Controlling Person is intended to be and shall be a third-party beneficiary of this Agreement.

16. Indemnification. The Borrower will indemnify and hold harmless the Issuer, the Trustee, the Controlling Person and each director, commissioner, member, employee, officer, trustee, official or agent of each of them (the “Indemnitees”) on the terms set forth in Section 2.5 of the Loan Agreement, whether or not the Loan Agreement has expired or otherwise been terminated. Each of the other parties hereto acknowledges and agrees that each of the rights and protections of the Indenture and each of the indemnifications provided to the Trustee under the Loan Agreement, shall be afforded the Trustee with respect to this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BORROWER:

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

\_\_\_\_\_ OF \_\_\_\_\_,  
[CITY] [COUNTY] OF \_\_\_\_\_; to wit:

The foregoing instrument was acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 2020, by David Asarch, the Manager of Steele Properties Holdings III LLC, the managing member of Steele Lexington MM LLC, the managing member of Steele Lexington LLC. He is personally known to me or has presented satisfactory identification to me.

(SEAL)

My Commission Expires: \_\_\_\_\_  
Registration No.: \_\_\_\_\_

Notary Public

[Regulatory Agreement and  
Declaration of Restrictive Covenants]

ISSUER:

**INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF  
LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Name: Bruce J. Summers  
Title: Chair

COMMONWEALTH OF VIRGINIA,  
CITY OF LEXINGTON; to wit:

The foregoing instrument was acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 2020, by Bruce J. Summers, Chair of the Industrial Development Authority of the City of Lexington, Virginia, a political subdivision of the Commonwealth of Virginia, on its behalf. He is personally known to me or has presented satisfactory identification to me.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
Registration No.: \_\_\_\_\_

[Regulatory Agreement and  
Declaration of Restrictive Covenants]

TRUSTEE:

**U.S. BANK NATIONAL ASSOCIATION**, as  
Trustee

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

COMMONWEALTH OF VIRGINIA,  
[CITY] [COUNTY] OF \_\_\_\_\_; to wit:

The foregoing instrument was acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, \_\_\_\_\_ of U.S. Bank National Association, a national banking association, in its behalf. He/she is personally known to me or has presented satisfactory identification to me.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
Registration No.: \_\_\_\_\_

[Regulatory Agreement and  
Declaration of Restrictive Covenants]

**EXHIBIT A**  
**LEGAL DESCRIPTION OF REAL ESTATE**

**EXHIBIT B**

**CERTIFICATION OF TENANT ELIGIBILITY**

Re: Lexington House Apartments  
Lexington, Virginia  
Apartment Number: \_\_\_\_\_

1. I/We, the undersigned, being first duly sworn, state, that I/we have read and answered fully, and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

1.	2.	3.	4.	5.
Names of Members of the Household	Relationship of Head of Household	Age	Social Security Number	Place of Employment
	HEAD			
	SPOUSE			

2. The anticipated income of all the above persons during the 12-month period beginning this date, including income described in (a) below, but excluding all income described in (b) below, is \$\_\_\_\_\_.

(a) The amount set forth above includes, but is not limited to, all of the following income unless such income is described in (b) below:

(i) all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions;

(ii) net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);

(iii) interest and dividends (include all income from assets as set forth in item 3(b) below);

(iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;

(v) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

(vi) the maximum amount of public assistance available to the above persons;

(vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(viii) except as set forth in (b)(v) below, all regular pay, special pay and allowances of a member of the Armed Forces; and

(ix) any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above:

(i) casual, sporadic or irregular gifts;

(ii) amounts which are specifically for or in reimbursement of medical expenses;

(iii) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;

(iv) amounts of educational scholarships paid directly to a student or an educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes;

(v) hazardous duty pay to a member of a household in the armed forces who is away from home and exposed to hostile fire;

(vi) income from employment of children (including foster children) under the age of 18 years; and

(vii) foster child care payments.

3. If any of the persons described in column 1 above (or any person whose income or contributions were included in item 2) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands), provide:

(a) the total value of all such assets owned by all such persons:  
\$ \_\_\_\_\_, and



(b) the amount of income expected to be derived from such assets in the 12-month period commencing this date: \$\_\_\_\_\_.

4. (a) Will all of the persons listed in column 1 of item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes \_\_\_\_\_ No \_\_\_\_\_

(b) (Complete only if the answer to Question 4(a) immediately above is "Yes"). Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes \_\_\_\_\_ No \_\_\_\_\_

I/we acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on bonds issued to finance construction of the apartment building for which application is being made. I/we consent to the disclosure of such information to the issuer of such bonds, the holders of such bonds, any trustee acting on their behalf and any authorized agent of the Treasury Department or Internal Revenue Service.

Upon penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. Each of the undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Tenant

SUBSCRIBED AND SWORN to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

[NOTARY SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Notary Registration No.: \_\_\_\_\_

**NOTE TO BORROWER:** A vacant unit previously occupied by Low or Moderate Income Persons or Families may be treated as occupied by Low or Moderate Income Persons or Families until reoccupied, other than for a period of 31 consecutive days or less, at which time the character of the unit shall be redetermined.

**FOR COMPLETION BY BORROWER ONLY:**

I. Calculation of eligible income:

- (A) Enter amount entered for entire household in 2 above: \$ \_\_\_\_\_
- (B) If the amount entered in 3(a) above is greater than \$5,000, enter:
  - (i) the product of the amount entered in 3(a) above multiplied by the current passbook savings rate as determined by HUD: \$ \_\_\_\_\_
  - (ii) the amount entered in 3(b) above; \$ \_\_\_\_\_
  - (iii) line (i) minus line (ii) (if less than \$0, enter \$0): \$ \_\_\_\_\_
- (C) TOTAL ELIGIBLE INCOME (Line I(A) plus line I(B)(iii)):  
\$ \_\_\_\_\_

II. Qualification as Low or Moderate Income Persons or Families:

(A) Is the amount entered in line I(C) less than 60% of the product of (1) the Area Median Gross Income, and (2) the Family Size Adjustment Factor (as such terms are defined in Section 1 of the Regulatory Agreement and Declaration of Restrictive Covenants)?

Yes \_\_\_\_\_ No \_\_\_\_\_

- (B) (i) If line II(A) is “No”, then the household does not qualify as Low or Moderate Income Persons or Families, skip to item IV.
- (ii) If line II(A) above is “Yes” and Line 4(a) above is “No”, then the household qualifies Low or Moderate Income Persons or Families; skip to item IV.
- (iii) If lines II(A) and 4(a) above are both “Yes” and line 4(b) above is also “Yes”, then the household qualifies as Low or Moderate Income Persons or Families; skip to item IV.
- (iv) If line II(A) above is “Yes”, but neither (ii) nor (iii) is applicable, then the household does not qualify as Low or Moderate Income Persons or Families.

III. Qualification as Low or Moderate Income Persons or Families (Only applies to renewals by tenants who originally qualified as Low or Moderate Income Persons or Families and who have heretofore continued to so qualify):

(A) Is the amount entered in line I(C) less than 140% of the product of (1) 60% of the Area Median Gross Income, and (2) the Family Size Adjustment Factor (as such terms are defined in Section 1 of the Regulatory Agreement and Declaration of Restrictive Covenants)?

Yes \_\_\_\_\_ No \_\_\_\_\_

(B) (i) If line III(A) is “No”, then the household will continue to qualify as Low or Moderate Income Persons or Families only if the next unit of comparable or smaller size in the Project that becomes available is rented to Low or Moderate Income Persons or Families.

(ii) If line III(A) above is “Yes” and line 4(a) above is “No”, then the household qualifies as Low or Moderate Income Persons or Families; skip to item IV.

(iii) If lines III(A) and 4(a) above both are “Yes” and line 4(b) above is also “Yes”, then the household qualifies as Low or Moderate Income Persons or Families; skip to item IV.

(iv) If line III(A) above is “Yes” but neither (ii) nor (iii) is applicable, then the household does not qualify as Low or Moderate Income Persons or Families.

IV. (Check one)

\_\_\_\_\_ The household does not qualify as Low or Moderate Income Persons or Families.

\_\_\_\_\_ The household qualifies as Low or Moderate Income Persons or Families.

V. Number of apartment unit assigned: \_\_\_\_\_  
(enter here and on page one)

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager



**EXHIBIT D**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

WITNESSETH, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, Steele Lexington LLC, a Virginia limited liability company (the “Borrower”), having obtained a loan financed by the Industrial Development Authority of the City of Lexington, Virginia (the “Issuer”) in connection with the acquisition, construction, rehabilitation and equipping of a multi-family residential rental housing project known as Lexington House Apartments (the “Project”), does hereby certify that (1) the Project is in continuing compliance with that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of March 1, 2020 (the “Agreement”), among the Issuer, the Trustee (named therein) and the Borrower that was filed in the Clerk’s Office of the Circuit Court of the County of Rockbridge, Virginia (including the requirement that all units be and remain rental units), (2) a Certification of Tenant Eligibility is attached hereto for each new tenant and each renewal tenant in the Project since the filing of the last Certificate of Continuing Program Compliance and that the same are true and correct to the best of the undersigned’s knowledge and belief; and (3) based on determinations made on the appropriate Determination Date or Dates, as of the last day of the prior month, \_\_\_\_ units in the Project are occupied by Low or Moderate Income Persons or Families as such term is defined in the Agreement or are currently vacant and being held available for such occupancy and have been so held continuously since the date a Low or Moderate Income Person or Family vacated such unit.

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager

**EXHIBIT E**

**BORROWER'S INFORMATION RETURN CERTIFICATE**

The undersigned DOES HEREBY CERTIFY to the Issuer, the Trustee and the Controlling Person as follows:

1. I am authorized to execute and deliver this Certificate on behalf of Steele Lexington LLC, a Virginia limited liability company (the "Borrower"). The Borrower is the owner of a multi-family residential rental housing project known as Lexington House Apartments (the "Project") and has obtained from the Issuer a loan (the "Loan") to finance all or a portion of (a) the costs of acquiring, constructing, rehabilitating and equipping the Project, and (b) certain other costs.

2. Schedule A attached hereto truly, correctly and completely identifies the property that is expected to be financed with the proceeds of the Loan.

3. The Borrower acknowledges that the information contained in this Certificate and the Schedule attached hereto is being provided to enable the Issuer to complete and file the Information Return for Private Activity Bond Issues (IRS Form 8038) required to be filed with the Internal Revenue Service in connection with the issuance of Bonds of the Issuer that will be used to finance the Loan.

[Signatures Appear on Following Page]

**STEELE LEXINGTON LLC**, a Virginia limited liability company

By: Steele Lexington MM LLC,  
a Colorado limited liability company,  
its managing member

By: Steele Properties Holdings III LLC,  
a Colorado limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David Asarch  
Title: Manager



## SCHEDULE A

### Average Reasonably Expected Economic Life of the Project

The following describes the property to be financed with proceeds of the Loan:

<u>Item</u>	<u>ADR CLASS (if any)</u>	<u>Cost</u>	<u>Date Placed in Service or Expected to be Placed in Service</u>	<u>Asset Life in Years (ADR Mid-Point or Appraisal)*</u>
Land	N/A	\$		N/A
Buildings & Structures	Rev. Proc. 62-21	\$		55 years
FF&E	00.11	\$		10 years

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\* Note: The midpoint lives under the ADR system (the “asset guideline period”) as set forth in Revenue Procedure 83-35 may be used where applicable. In case of structures, the guideline lives under Revenue Procedure 62-21 may be used. The Borrower may also use an appraisal of economic useful life satisfactory to Bond Counsel.