

'MINUTES OF THE REGULAR MEETING  
OF THE  
BOARD OF DIRECTORS  
WEST VIRGINIA HOUSING DEVELOPMENT FUND  
January 26, 2022

The regular meeting of the Board of Directors of the West Virginia Housing Development Fund (the "Fund") was held on Wednesday, January 26, 2022, via video conferencing and via phone. The video conferencing information was made available to the public in the Notice of Meeting of the Board of Directors posted on the Secretary of State website, and the Fund's website. No members of the public attended the meeting. The Chair called the meeting to order at 9:12 a.m. with the following members present throughout, except where noted.

Ann Urling, Chair (via video)

Norm Bailey, Representative for the Honorable Kent Leonhardt, Commissioner of Agriculture (via video)

Bob Nistendirk, Member (via video)

John Gianola, Member (via phone)

Kara Hughes, Representative for the Honorable Riley Moore, State Treasurer (via video)

Sam Kapourales, Member (via phone)

Patrick Martin, Member (via video)

Chris Stansbury, Member (via phone)

Steven Travis, Representative for the Honorable Patrick Morrissey, Attorney General (via video)

Members Absent:

Kris Raynes, Member

Staff present:

Erica Boggess, Executive Director

Julie Davis, Deputy Director - Production

Zach Fisher, Internal Auditor

Trisha Hess, Senior Manager - Accounting

Chad Leport, Division Manager - Finance and Federal Financial Compliance

Whitney Humphrey, Communications Administrator

Brian Jeffrey, Senior Network Administrator

Martha Lilly, Legal Assistant

Kelley Ridling, Senior Manager - Internal Audit

Lori Ryan, Executive Assistant

Kristin Shaffer, Senior Legal Counsel

Nathan Testman, Senior Division Manager- Multifamily Lending

Dorothy White, Federal Compliance Officer

Michelle Wilshire, Senior Manager - Low Income Housing Tax Credit Program

Others Present:

Samme Gee - Jackson Kelly PLLC  
Kelley Goes - Jackson Kelly PLLC

APPROVAL OF THE MINUTES OF THE DECEMBER 15, 2021,  
MEETING

Member Patrick Martin moved the approval of the minutes of the December 15, 2021 meeting. His motion was seconded by Member John Gianola, and, upon the affirmative vote of the eight (8) members present, the Chair declared the motion adopted.

FINANCIAL STATEMENTS AND DELINQUENCY REPORTS FOR  
THE PERIOD ENDED DECEMBER 31, 2021

Erica Boggess presented the financial statements and delinquency reports for the period ended December 31, 2021. The financials and delinquency reports were accepted as presented.

CONSIDERATION OF A BOND AUTHORIZING RESOLUTION  
FOR UP TO \$3,500,000 FOR JOSEPH'S CROSSING

Chad Leport requested the Board's approval of the Bond Authorizing Resolution for the Joseph's Crossing project and explained that the Board approved a Bond Inducement Resolution on behalf of WC Joseph's Crossing Limited Partnership at the March 24, 2021 meeting.

Mr. Leport stated that the bond issuance will be in an amount not to exceed \$3,500,000 and that the bonds are required to qualify the project for 4% tax credits. The Fund will serve as the conduit issuer, which will provide WC Joseph's Crossing Limited Partnership, the borrower, access to the tax-exempt market. The bond proceeds, along with other funds, will provide the borrower with financing for the acquisition, construction, furnishing and equipping of Joseph's Crossing, a 42-unit residential rental housing project located in Summersville, WV. The bonds have an expected maturity date of July 31, 2024. The maximum interest rate will not exceed 15%.

Mr. Leport stated that staff is asking the Board's approval of the Bond Authorizing Resolution for the project approving the following: The issuance of the Bonds in an amount not to exceed 3,500,000; the execution and delivery of the Bonds; providing parameters for establishing the provisions for redemption, maturity and interest rate and other terms of the Bonds; appointing the Executive Director as the issuer representative to approve final terms and bond pricing within such parameters; the execution and delivery of a Financing Agreement; appointing bond counsel, general counsel, and financial advisor; approval of the allocation of Bond Volume Cap to the Bonds; authorizing the execution and delivery of other bond documents; and all other actions relating to such financing and bond documents, in substantially the form presented.

Member Martin moved the approval of the Bond Authorizing Resolution and bond documents in substantially the form presented. His motion was seconded by Member Bob Nistendirk, and, upon the affirmative vote of the eight (8) members present, the Chair declared the motion adopted.

A copy of the Bond Authorizing Resolution along with supporting documents is attached as Exhibit A.

Member Sam Kapourales joined the meeting.

CONSIDERATION OF CREDIT LINE FOR MULTIFAMILY  
LIQUIDITY

Ms. Boggess explained to the Board that in recent years, the Fund has increased construction financing in the Multifamily Lending Program, which has created the need for outside liquidity when construction disbursements outpace repayments. To provide for this contingency, the Fund entered into a two-year, \$20 million, revolving line of credit from United Bank in early 2020 that is expiring.

Ms. Boggess stated that staff is recommending a two-year extension of the line of credit. This line of credit will only be used to fund CRA-eligible multifamily construction projects and will be repaid as construction loans pay off.

Member Martin moved to accept the recommendation of a two-year extension of the \$20 million, revolving line of credit from United Bank. His motion was seconded by Member Nistendirk, and upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

INFORMATIONAL ITEM - UPDATE ON MOUNTAINEER RENTAL  
ASSISTANCE PROGRAM

Ms. Boggess presented an update on the Mountaineer Rental Assistance Program ("MRAP") and explained that the Fund continues to operate the rental assistance program.

Ms. Boggess also explained that staff continues to develop the Housing Assistance Fund Program for mortgages.

Samme Gee informed the Board that Member Sam Kapourales is a landlord and that some of his tenants are receiving rental assistance through MRAP. Ms. Gee informed the Board that, upon reviewing the Fund's Act, his tenants' participation in MRAP does not conflict with his position on the Board, but Mr. Kapourales has disclosed the activity and will refrain from voting on any matters involving the Mountaineer Rental Assistance Program. Ms. Gee further stated that if any other Board member is a landlord with tenants applying for MRAP assistance, they should contact her so it can be disclosed to the Board.

EXECUTIVE SESSION TO DISCUSS MATTERS  
INVOLVING COMMERCIAL COMPETITION, WHICH IF  
MADE PUBLIC, MIGHT ADVERSELY AFFECT THE  
FINANCIAL OR OTHER INTEREST OF THE STATE OR ANY  
POLITICAL SUBDIVISION PURSUANT TO W. VA CODE  
§6-9A-4(b)(9)

Representative Norm Bailey moved that the Board enter Executive Session to discuss matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the State or any Political Subdivision pursuant to W. Va. Code §6-9A-

4(b)(9). His motion was seconded by Member Martin, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted. The Board adjourned into Executive Session at 9:38 a.m.

The Executive Session concluded at 10:04 a.m. Chair Urling stated that no action took place during the Executive Session.

ADJOURNMENT

There being no further business, Representative Bailey moved to adjourn the meeting. His motion was seconded by Member Kapourales. Meeting adjourned at 10:05 a.m.



Martha Lilly, Assistant Secretary



**WEST VIRGINIA HOUSING DEVELOPMENT FUND  
BOND AUTHORIZING RESOLUTION**

RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE, EXECUTION AND DELIVERY OF THE ISSUER'S MULTIFAMILY HOUSING REVENUE BONDS (JOSEPH'S CROSSING APARTMENTS PROJECT) SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000 ON ONE OR MORE ISSUANCE DATES AS DRAW-DOWN BONDS; PROVIDING PARAMETERS FOR ESTABLISHING THE PROVISIONS FOR REDEMPTION AND MATURITY OF AND RATE OF INTEREST ON AND OTHER TERMS AND PROVISIONS OF SUCH BONDS; APPOINTING THE EXECUTIVE DIRECTOR AS THE REPRESENTATIVE OF THE ISSUER TO APPROVE THE FINAL TERMS AND PRICING OF THE BONDS WITHIN SUCH PARAMETERS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT WITH RESPECT TO THE BONDS; APPOINTING BOND COUNSEL, GENERAL COUNSEL AND A FINANCIAL ADVISOR; APPROVING THE ALLOCATION OF THE ISSUER'S PRIVATE ACTIVITY BOND VOLUME CAP TO THE BONDS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS AND THE TAKING OF ALL OTHER ACTIONS RELATING TO SUCH FINANCING.

WHEREAS, the West Virginia Housing Development Fund (the "Issuer"), under Chapter 31, Article 18 of the Code of West Virginia, 1931, as amended (the "Act"), has plenary power and authority to issue revenue bonds to finance the cost of the acquisition, construction, improvement, rehabilitation and equipping of residential housing projects;

WHEREAS, WC Joseph's Crossing Limited Partnership, a West Virginia limited partnership (the "Borrower"), has requested that the Issuer assist the Borrower in the acquisition, rehabilitation, furnishing and equipping of privately owned real and personal property known as Joseph's Crossing Apartments and containing approximately 42 affordable living units in a multi-family rental housing facility comprised of seven residential buildings, located at 215 Red Stone Way, Summersville, Nicholas County, West Virginia, and the payment of certain costs and expenses related thereto (collectively, the "Project");

WHEREAS, the Issuer has found and determined and does hereby find and determine that, in order to provide adequate and improved residential housing for citizens of the State of West Virginia, at reasonable cost, it is desirable and appropriate for the Issuer to assist in the financing of the Project;

WHEREAS, the Borrower has requested that the Issuer issue Multifamily Housing Revenue Bonds (Joseph's Crossing Apartments Project) Series 2022 (collectively, the "Bonds") in an aggregate principal amount not to exceed \$3,500,000 on one or more issuance dates as draw-down bonds, for the purpose of assisting in the financing of the Project;

WHEREAS, the fssuer and the Borrower intend for the interest on the Bonds to be excluded from gross income of the holder for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Issuer's private activity bond volume cap under Section 146 of the Code is required to be allocated to the Bonds, and the Issuer desires that such allocation be made as described herein;

WHEREAS, the Bonds wiII be issued by the Issuer pursuant to a Financing Agreement (the "Financing Agreement") among the Issuer, the Borrower and KeyBank National Association as direct purchaser of the Bonds (the "Holder"), will be secured by the Pledged Revenues as set forth in the Financing Agreement, and will be sold to the Holder pursuant to the Financing Agreement;

WHEREAS, the Borrower has requested that the Issuer lend the proceeds of the Bonds to the Borrower (the "Loan"), and the proceeds of the Bonds will be used to accomplish the Project;

WHEREAS, the Borrower has agreed to repay the Loan by making Loan Payments (as defined in the Financing Agreement) at the times and in the amounts set forth in the promissory note to be executed by the Borrower and delivered to the Holder (the "Note") for application to the payment of the principal of and interest on the Bonds as and when due;

WHEREAS, the Governor of the State of West Virginia has given his direction to the Issuer, pursuant to and in accordance with §5-1-28 of the Code of West Virginia, 1931, as amended, to issue the Bonds, and has given his approval for the issuance of the Bonds after a public hearing following reasonable public notice as required by Section 147(f) of the Code;

WHEREAS, certain actions are required to be taken by the Issuer as a prerequisite to the issuance of the Bonds, and the Issuer desires to take such actions; and

WHEREAS, the enactment of this Resolution constitutes action giving final approval for the issuance of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE WEST VTRGİNIA HOUSING DEVELOPMENT FUND (THE "BOARD OF DIRECTORS") AS FOLLOWS:

Section 1. Approval of the Project and the Bonds. It is hereby found and determined that the Bonds should be issued, that the financing of the Project for the Borrower is a public purpose of the Issuer, promotes the public purposes under the Act and is in the public interest and that the Project satisfies the requirements of the Act.

Section 2. Approval of Allocation of Volume Cap to Bonds. The allocation to the Bonds of a portion of the Issuer's unused private activity bond volume cap for calendar year 2019, for which the Issuer duly made a carryforward election, is hereby approved.



Section 3. Approval of Financing Agreement. A draft form of the Financing Agreement has been prepared and presented to the Issuer. The Financing Agreement substantially in the form submitted at this meeting shall be and the same is hereby approved. The Executive Director is authorized to negotiate and approve the final form and content of the Financing Agreement under such terms and conditions as are acceptable to the Executive Director, the Borrower and the Holder, with such changes, insertions and omissions as may be approved by the Executive Director. The Executive Director, Assistant Secretary or other authorized officer of the Issuer are hereby authorized, empowered and directed to execute and deliver the Financing Agreement prior to or simultaneously with the issuance of the Bonds for and on behalf of the Issuer, in the form and upon those terms and conditions as approved by the Executive Director, and such approval shall be conclusively evidenced by the execution and delivery of the Financing Agreement by the Executive Director, Assistant Secretary or other authorized officer of the Issuer. The Executive Director and Assistant Secretary are hereby authorized, empowered and directed to sell and deliver the Bonds on one or more issuance dates, as draw-down bonds, to the Holder as set forth in the Financing Agreement.

Section 4. Issuance of and Terms of Bonds. To accomplish the purpose of the Act, and to assist in the financing of the Project, the issuance of the Bonds in an aggregate principal amount not to exceed \$3,500,000 on one or more issuance dates, as draw-down bonds, is hereby authorized and directed. The Bonds shall be issued as they are drawn down in accordance with the Financing Agreement. The Bonds shall be dated a date or dates to be established in accordance with the Financing Agreement, shall mature no later than July 31, 2024, and shall bear interest at a daily variable rate to be established in accordance with the Financing Agreement, not to exceed 15%, with the dated date(s), maturity date(s), interest rate(s), redemption provisions and other terms of the Bonds to be approved by the Executive Director and set forth in the Financing Agreement, such approval to be evidenced by the execution of the Financing Agreement as described above. The Bonds shall be in the denominations and in registered form, be payable in the medium of payment and at such places, be subject to redemption prior to maturity and be entitled to payment, all as provided in the Financing Agreement as finally approved and executed as described above. The Bonds shall be sold to and purchased directly by the Holder pursuant to the Financing Agreement. All of the provisions of the Financing Agreement, when executed and delivered as authorized herein, shall be deemed to be part of this Resolution as fully and to the same extent as if incorporated herein and shall be in force and effect from the date of the execution thereof.

Section 5. Bonds to Constitute Limited Obligations. The Bonds are secured by and payable from Pledged Revenues as set forth in the Financing Agreement, subject only to the provisions of the Financing Agreement permitting the application thereof for the purposes and on the terms and conditions set forth in the Financing Agreement. The Bonds are special, limited obligations of the Issuer and are not a lien or charge upon the funds or property of the Issuer, except to the extent of the Pledged Revenues. The Bonds shall not constitute general obligations of the Issuer or the State of West Virginia and under no circumstances shall the Bonds be payable from, nor shall any holder thereof have any rightful claim to, any income, revenues, funds or assets of the Issuer other than as set forth in the Financing Agreement. The Bonds shall not be a moral obligation of the Issuer or in any way be secured by any assets of the Issuer other than as set forth in the Financing Agreement.

Section 6. Appointments. At the request of the Borrower, the issuer hereby appoints the following:

(a) Hawkins Delafield & Wood LLP ("Bond Counsel") is hereby appointed as bond counsel to the Issuer in connection with the issuance of the Bonds. It is understood by the Issuer that Bond Counsel will be compensated only from the proceeds of the Bonds or other funds available to the Borrower.

(b) Jackson Kelly PLLC ("General Counsel") is hereby appointed as general counsel to the Issuer in connection with the issuance of the Bonds. It is understood by the Issuer that General Counsel will be compensated only from the proceeds of the Bonds or other funds available to the Borrower.

(c) Piper Sandler & Co. (the "Financial Advisor") is hereby appointed as financial advisor to the Issuer in connection with the issuance of the Bonds. It is understood by the Issuer that the Financial Advisor will be compensated only from the proceeds of the Bonds or other funds available to the Borrower.

Section 7. Authentication of Bonds. An authorized officer of the Issuer is hereby directed to authenticate the Bonds in accordance with the Financing Agreement and to deliver them upon the order of the Executive Director.

Section 8. Investment of Funds. Without further authorization from the Issuer, funds held under the Financing Agreement shall be invested and reinvested as may be permitted by the Act and the Financing Agreement.

Section 9. No Continuing Disclosure Obligations. The Issuer shall have no responsibility to undertake or complete any continuing disclosure related to the Bonds.

Section 10. Indemnification. Subject to the provisions of, and as set forth in, the Financing Agreement, the Borrower shall defend, indemnify and hold the Issuer and its officials harmless from and against any and all loss, cost, expense, claim or action arising out of or connected with the adoption of this Resolution and the consummation of the transactions provided for herein and contemplated hereunder.

Section 11. Personal Liability. None of the present or future employees, officers or Board of Directors of the Issuer, or any person executing the Bonds or the documents relating thereto, shall be personally liable for the Bonds or any other obligation relating to the issuance of the Bonds or be subject to any personal liability by reason of the issuance of the Bonds.

Section 12. Formal Actions. The Issuer hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in open meetings of the Issuer, and that all deliberations of the Issuer which resulted in formal action were taken in meetings open to the public, in full compliance with all applicable notice and other legal requirements.



Section 13. incidental Actions. The Executive Director, Assistant Secretary or other authorized officer of the Issuer are hereby authorized and directed to execute and deliver a tax certificate with the Borrower (the "Tax Certificate"), a Regulatory and Restrictive Covenants for Land Use Agreement by and between the Issuer and the Borrower (the "Extended Use Agreement"), a bond regulatory agreement by and between the Issuer and the Borrower (the "Regulatory Agreement"), and such other documents, agreements, instruments and certificates and to take such other actions as may be necessary or appropriate in order to effectuate the execution, delivery and receipt, or any thereof, of the Financing Agreement and the issuance of the Bonds, and for carrying out the transactions contemplated therein, all in accordance with the Act, the Code and this Resolution. The execution, delivery and due performance, as applicable, of the Financing Agreement, the Tax Certificate, the Extended Use Agreement, the Regulatory Agreement and such other documents, agreements, instruments and certificates as noted above are hereby in all respects approved, authorized, ratified and confirmed, including all acts heretofore taken in connection with the issuance of the Bonds.

Section 14. Expenses and Fees. All expenses incurred by the Issuer in connection with the issuance of the Bonds, including its legal fees, any administrative fees of the Issuer and the issuance fee as specified in the Issuer's then current Debt Management Policy, shall be paid to or reimbursed to the Issuer from the proceeds of the Bonds or other funds available to the Borrower.

Section 15. Governing Law. The laws of the State of West Virginia shall govern the construction of this Resolution and of all Bonds issued in accordance with the provisions of the Financing Agreement.

Section 16. Severability. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution.

Section 17. Effective Date; Repeal of Inconsistent Resolutions. This Resolution shall take effect immediately upon its adoption, and all prior resolutions or parts thereof inconsistent herewith are hereby repealed.

Adopted this 26<sup>th</sup> day of January, 2022.

WEST VIRGINIA HOUSING DEVELOPMENT  
FUND

By: E. J. Bagel  
Title: \_\_\_\_\_

CERTIFICATION

I, Joy WU, duly appointed Assistant Secretary of the West Virginia Housing Development Fund, CI hereby certify that the foregoing is a true and accurate copy of a Resolution adopted by the Board of Directors of the West Virginia Housing Development Fund at its meeting of the Board of Directors on January 26, 2022.

Dated: June 1, 2022

  
Assistant Secretary

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FINANCING AGREEMENT

among

WEST VIRGINIA HOUSING DEVELOPMENT FUND

and

WC JOSEPH'S CROSSING LIMITED PARTNERSHIP

and

KEYBANK NATIONAL ASSOCIATION

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Up to \$3,500,000  
West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds  
(Joseph's Crossing Apartments Project) Series 2022

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Dated

as of

\_\_\_\_\_, 2022

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(This Index is not a part of the Agreement  
but rather is for convenience of reference only.)

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## FINANCING AGREEMENT

THIS FINANCING AGREEMENT made and entered into as of \_\_\_\_\_, 2022 among the WEST VIRGINIA HOUSING DEVELOPMENT FUND (the “Issuer”), a public body corporate and governmental instrumentality of the State of West Virginia, WC JOSEPH’S CROSSING LIMITED PARTNERSHIP, a limited partnership duly formed under the laws of the State of West Virginia (the “Borrower”), and KEYBANK NATIONAL ASSOCIATION, a national banking association organized and existing pursuant to the laws of the United States of America (together with any subsequent registered owner of the Bonds, the “Holder”) under the following circumstances summarized in the following recitals (the capitalized terms not defined above or in the recitals being used therein as defined in Article I hereof):

A. Pursuant to the Act, the Issuer has determined to issue, sell and deliver its Bonds to the Holder and to loan the proceeds derived from the sale thereof to the Borrower to assist in the financing of the Project to be undertaken by the Borrower.

B. The Borrower, the Holder and the Issuer each have full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer, the Holder and the Borrower agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement shall never constitute a general debt or obligation of the Issuer or give rise to any pecuniary liability of the Issuer but shall be payable solely out of the Pledged Revenues):

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

#### **Section 1.1     Use of Defined Terms.**

In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

#### **Section 1.2     Definitions.**

As used herein:

“Act” means the West Virginia Housing Development Fund Act, Article 18 of Chapter 31 of the Code of West Virginia, 1931, as amended.

“Additional Payments” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 5.2 hereof.

“Adjusted Daily SOFR Rate” means the Daily Simple SOFR plus the Margin, adjusting daily with each change in the Daily Simple SOFR rate throughout the term of the Bonds.

“Advance” means each payment made by the Holder of a portion of the purchase price of the Bonds (not to exceed \$3,500,000 in aggregate principal amount) in accordance with this Agreement.



“Agreement” means this Financing Agreement as amended or supplemented from time to time.

“Assignment” means the Assignment of Leases and Rents, dated as of the Closing Date, given by the Borrower to the Holder, to secure performance of this Agreement, as amended or supplemented from time to time.

“Authorized Borrower Representative” means the person at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer and the Holder, containing the specimen signature of that person and signed on behalf of the Borrower by or on behalf of the General Partner of the Borrower.

“Authorized Officer” means the Chairman, Vice Chairman or Executive Director (being the duly appointed chief administrative officer) of the Issuer and, in the case of an act to be performed or a duty to be discharged, any director, officer or employee of the Issuer then authorized to perform such act or discharge such duty.

“Base Rate” means for any day, a fluctuating rate per annum equal to the *higher of*:

- (i) the rate of interest established by KeyBank National Association, from time to time, as its “prime rate,” whether or not publicly announced, which interest rate may or may not be the lowest rate charged by it for commercial loans or other extensions of credit, plus 0% per annum but in no event less than [3.25%] per annum; or
- (ii) the Federal Funds Effective Rate in effect from time to time, determined one Business Day in arrears, plus 1/2 of 1% per annum.

Any change in the Base Rate due to a change in the prime rate or the Federal Funds Effective Rate, as applicable, shall be effective from and including the effective date of such change in the prime rate or the Federal Funds Effective Rate, respectively.

“Benchmark” means initially, Daily Simple SOFR; *provided that* if a Benchmark Transition Event or an Early Opt-in Election (each as defined in Section 4.1.4.5) as applicable, and its related Benchmark Replacement Date (as defined in Section 4.1.4.5) have occurred with respect to Daily Simple SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement, to the extent that such Benchmark Replacement has become effective pursuant to Section 4.1.4.

“Benchmark Floor” means three quarters of one percent (75 basis points) per annum.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, in such form as Holder may require.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Board” means the Board of the Issuer.

“Bond Counsel” means Hawkins Delafield & Wood LLP or other independent counsel nationally recognized as experienced in matters relating to the exclusion from gross income for federal tax purposes of interest on obligations of states and political subdivisions and which is reasonably acceptable to the Issuer and the Borrower.

“Bond Documents” means the Bonds, the Note, this Agreement, the Mortgage, the Assignment, the Bond Regulatory Agreement, the Tax Certificate and Agreement, and any instrument, document, certificate or agreement related thereto.

“Bond Payment Date” means each Interest Payment Date and any other date Bond Service Charges are due, whether at maturity, upon acceleration or otherwise.

“Bond Registrar” means the registrar of the Bonds acting as agent of the Issuer, initially, KeyBank National Association as initial Holder of the Bonds, and any successor registrar of the Bonds named in connection with the transfer of the Bonds to a subsequent Holder. KeyBank National Association is hereby appointed by the Issuer as Bond Registrar and KeyBank National Association hereby accepts such appointment.

“Bond Regulatory Agreement” means the Bond Regulatory Agreement dated as of the Closing Date between the Issuer and the Borrower relating to the Project.

“Bond Service Charges” means the interest on the Bonds for any period or payable at any time whether due on an Interest Payment Date, or the principal and interest on the Bonds due at maturity or upon acceleration or redemption.

“Bonds” means the Issuer’s Multifamily Housing Revenue Bonds (Joseph’s Crossing Apartments Project) Series 2022, in an amount not to exceed \$3,500,000 dated as of their date of initial delivery and authorized to be issued pursuant to the Act and substantially in the form attached as Exhibit A-1 hereto.

“Borrower Documents” means, collectively, the Bond Documents, the Collateral Documents, the Extended Use Agreement and any other agreement to which the Borrower is a party relating to the Project or the Loan.

“Borrower Tax Certification” means the tax certification of the Borrower delivered to the Issuer with respect to the Bonds and the Project and attached as an exhibit to the Tax Certificate and Agreement.

“Business Day” means a day on which banks in New York, New York or Cleveland, Ohio, are not authorized or required to remain closed and on which the Federal Reserve Bank and the New York Stock Exchange are not closed.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline or directive (whether or not have the force of law) by any Governmental Authority; *provided, however*, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted, or issued.

“Closing Date” means \_\_\_\_\_, 2022.

“Code” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Collateral” means the Pledged Revenues, the pledged loan documents, and any and all property securing Loan.

“Collateral Documents” means those documents and instruments executed by the Borrower for the benefit of the Holder securing the Borrower’s repayment obligations under the Note, including the Mortgage, the Assignment, and the following:

(a) A payment guaranty (the “Payment Guaranty”) executed by the Payment Guarantor in favor of the Holder, pursuant to which the Payment Guarantor guarantees the Borrower’s repayment obligations under this Agreement and the Note.

(b) A guaranty of performance and completion for the Project (the “Completion Guaranty”), executed by the Completion Guarantor and pursuant to which the Completion Guarantor guarantees the lien-free and timely completion of the Project in accordance with all provisions of this Agreement and the Borrower’s obligation to keep the Loan “In Balance” and to pay for all cost overruns.

(c) An environmental indemnity for the Project (the “Indemnity”) from the Borrower and the Guarantor indemnifying the Holder with regard to all matters related to Hazardous Material (as defined in the Indemnity) and other environmental matters.

(d) An assignment of construction documents, including, without limitation, the general contract, all architecture and engineering contracts, management agreement, Plans and Specifications, permits, licenses, approvals and development rights, together with consents to the assignment and continuation agreements from the general contractor, the architect and other parties reasonably specified by the Holder.

(e) An assignment of the General Partner’s interest in the Borrower.

(f) Such UCC financing statements as the Holder’s counsel determines are advisable or necessary to perfect or notify third parties of the security interests intended to be created by the Borrower Documents.

(g) An assignment of developer’s right, title and interest in and to developer fees related to the Project.

(h) A pledge of Borrower’s right, title and interest in and to the Limited Partner Equity (as defined in Section 4.3(i)(12) of this Agreement) for the Project.

(i) A notice of commencement in form and substance acceptable to the Holder shall be filed immediately after the Mortgage.



(j) Such other documents, instruments or certificates as the Holder and its counsel may reasonably require, including such documents as the Holder in its sole discretion deems necessary or appropriate to effectuate the terms and conditions of this Agreement and the Borrower Documents, and to comply with the laws of the State.

“Completion Date” means the date of completion of the Project evidenced in accordance with the requirements of Section 4.4 hereof, not later than \_\_\_\_\_, 20\_\_\_\_. [15 month construction schedule plus 3 months]

“Completion Guarantor” means Woda Construction, Inc., an Ohio corporation.

“Construction Fund” means the construction fund for the Project, created pursuant to Section 4.3 hereof.

“Construction Period” means the period between the Closing Date and the Completion Date.

“Corporate Tax Rate” means the Federal Income Tax Rate for corporations.

“Daily Simple SOFR” means for any day (a “SOFR Interest Day”), an interest rate per annum equal to the *greater of* (a) SOFR for the day that is five (5) Business Days prior to (i) if such SOFR Interest Day is a Business Day, such SOFR Interest Day, or (ii) if such SOFR Interest Day is not a Business Day, the Business Day immediately preceding such SOFR Interest Day, and (b) the Benchmark Floor. Any change in Daily Simple SOFR due to change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“Default Rate” means a rate per annum equal to [three percentage points (300 basis points)] in excess of the Interest Rate, or, if lower, the highest rate permitted by applicable laws, and in no event shall the Default Rate exceed the Maximum Interest Rate.

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

“Eligible Investments” means, with respect to the investment of any funds not required for immediate disbursement, any of the following securities, provided, however, that notwithstanding anything to the contrary herein or elsewhere, Eligible Investments shall be limited to securities in which funds of the Issuer are permitted to be invested as set forth in Subsection (8) of Section 6 of the Act as then in effect:

(i) Direct obligations of or obligations guaranteed by the United States of America or for the payment of the principal and interest on which the full faith and credit of the United States of America is pledged;

(ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; export-import bank of the United States; federal land banks; Tennessee valley

authority; United States postal service; inter-American development bank; international bank for reconstruction and development; small business administration; Washington metropolitan area transit authority; general services administration; federal financing bank; federal home loan mortgage corporation; student loan marketing association; farmer's home administration; the federal national mortgage association or the government national mortgage association; or any bond, debenture, note, participation certificate or other similar obligation to the extent such obligations are guaranteed by the government national mortgage association or federal national mortgage association or are issued by any other federal agency and backed by the full faith and credit of the United States of America;

(iii) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes, preliminary loan notes, or project notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(iv) Certificates of deposit, time deposits, investment agreements, repurchase agreements or similar banking arrangements with a member bank or banks of the federal reserve system or a bank the deposits of which are insured by the federal deposit insurance corporation, or its successor, or a savings and loan association or savings bank the deposits of which are insured by the federal savings and loan insurance corporation, or its successor, or government bond dealers reporting to, trading with and recognized as primary dealers by a federal reserve bank: *Provided*, That such investments shall only be made to the extent insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or to the extent that the principal amount thereof shall be fully collateralized by obligations which are authorized investments for the housing development fund pursuant to this section;

(v) Direct obligations of or obligations guaranteed by the state of West Virginia;

(vi) Direct and general obligations of any other state, municipality or other political subdivision within the territorial United States: *Provided*, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency;

(vii) Any bond, note, debenture or annuity issued by any corporation organized and operating within the United States: *Provided*, That such corporation shall have a minimum net worth of \$15 million and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: *Provided, however*, That: (1) Such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements; and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years; and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dunn & Bradstreet, Best's or Moody's;

(viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity or other market risks in relation to obligations issued or to be issued or owned or to be owned by the housing development fund, options, futures contracts (including index futures but exclusive of commodities futures, options or other contracts), standby purchase agreements or

similar hedging arrangements listed by a nationally recognized securities exchange or a corporation described in paragraph (vii) above;

(ix) Certificates, shares or other interests in mutual funds, unit trusts or other entities registered under section eight of the United States Investment Company Act of 1940, but only to the extent that the terms on which the underlying investments are to be made prevent any more than a minor portion of the pool which is being invested in to consist of obligations other than investments permitted pursuant to this section; and

(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia state board of investments or any other obligation authorized as an investment for the West Virginia state board of investments under Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended or for a public housing authority under Article 15, Chapter 16 of the Code of West Virginia, 1931, as amended.

“Engineered Systems” means materials and systems that have been contracted for by Borrower and are intended to be incorporated into the Project but require off-site engineering, design, and manufacture prior to installation at the Project. Engineered Systems shall include, without limitation, elevators and sprinkler systems.

“ERISA ” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“Event of Default” means any of the events described as an Event of Default in Section 7.1 hereof.

“Extended Use Agreement” means the Regulatory and Restrictive Covenants for Land Use Agreement related to the Project entered into in accordance with Section 42(h)(6)(B) of the Code and dated on or about the date hereof, between the Issuer and the Borrower.

“FATCA” means sections 1471 through 1474 of the Internal Revenue Code as in effect from time to time, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such sections of the Internal Revenue Code as in effect from time to time.

“Federal Funds Effective Rate” means for any day, the rate per annum (rounded upward to the nearest one one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of Cleveland on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day.

“Fiscal Year” means, with respect to a Person, which includes the Borrower and any Guarantor entity, that period beginning on January 1 of each year and ending on December 31 of that year or such other fiscal year as shall be designated by such Person as its annual accounting period.

“Force Majeure” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 hereof.

“GAAP” means generally accepted accounting principles.



“General Partner” means WC Joseph’s Crossing GP, LLC, an Ohio limited liability company.

“Governmental Authority” means any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility.

“Guarantor” means collectively, the Completion Guarantor and the Payment Guarantor.

“Holder” or “Holder of a Bond” means the Person in whose name a Bond is registered and shall initially mean KeyBank National Association.

“Initial Advance” means the initial Advance from the Holder to be deposited in the Construction Fund on the Closing Date in the amount of \$\_\_\_\_\_.

“Interest Payment Date” means the first day of each month commencing \_\_\_\_\_, 2022.

“Interest Period” means, initially the period from the Closing Date to and including \_\_\_\_\_, 2022 and thereafter the period commencing on the first day of each month and ending on the last day of that month, provided that the final period prior to Maturity Date shall commence on the first day of the month in which Maturity Date shall take place and end on the Maturity Date.

“Interest Rate” means the Applicable Rate, provided that in no event shall the Interest Rate exceed the Maximum Interest Rate: provided further that upon a determination of Taxability, the “interest Rate” shall mean the Taxable Rate.

“Investor Limited Partner” means Ohio Equity Fund for Housing Limited Partnership XXXI, and its successors and assigns, or an affiliate thereof.

“Issuer Fees and Expenses” means (i) the reasonable expenses and disbursements payable to the Issuer under this Agreement for extraordinary fees, costs and expenses incurred by Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to this Agreement; and (ii) an amount equal to \$17,500, payable on the Closing Date.

“Loan” means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

“Loan Documents” means this Financing Agreement, the Bond Documents, the Borrower Documents, the Collateral Documents, the Note, the Mortgage, and all other documents evidencing or securing the Bonds or the Loan.

“Loan Payments” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and of Section 5.1 hereof.

“Margin” means 2.50% per annum.

“Material Adverse Change” shall have the meaning given to that term in the Collateral Documents.

“Maturity Date” means \_\_\_\_\_, 2024 [24 months].

“Maximum Interest Rate” means the lesser of 15% percent per annum and the maximum rate permitted by applicable law.

“Mortgage” means the Deed of Trust dated as of \_\_\_\_\_, 2022, effective as of the date herewith, given by the Borrower to the Holder, to secure performance of this Agreement, as amended or supplemented from time to time.

“Note” means the Promissory Note of the Borrower, dated as of even date with the Bonds, in the form attached hereto as Exhibit A-2, in the aggregate principal amount of \$3,500,000.

“Notice Address” means:

To the Issuer:	West Virginia Housing Development Fund 5710 MacCorkle Avenue, S.E. Charleston, West Virginia 25304 Attention: Executive Director
With a copy to:	Hawkins Delafield & Wood LLP 7 World Trade Center 250 Greenwich Street, Fl 41 New York, New York 10007 Attention: Daniel N. Fuss
To the Holder:	KeyBank National Association 4910 Tiedeman Road Mailcode OH-01-51-0311 Brooklyn, Ohio 44144 Attention: Community Development Lending
With a copy to:	Thompson Hine LLP 127 Public Square, 3900 Key Center Cleveland, Ohio 44114 Attention: David M. Lewis, Esq.
To the Borrower:	WC Joseph’s Crossing Limited Partnership c/o The Woda Group, Inc. 500 South Front Street 10th Floor Columbus, Ohio 43215 Attention: David Cooper, Jr.
With a copy to	Woda Cooper Companies, Inc. 500 South Front Street 10th Floor Columbus, Ohio 43215 Attention: David Cooper, Jr.
With a copy to:	Reno & Cavanaugh, PLLC 455 Massachusetts Avenue, NW Suite 400 Washington, D.C. 20001

Attention: Efrem Levy

and a copy to: Ohio Equity Fund for Housing Limited  
Partnership XXXI  
88 East Broad Street, Suite 1800  
Columbus, Ohio 43215-3526  
Attention: \_\_\_\_\_

With a copy to: Barnes & Thornburg LLP  
41 S. High Street  
Suite 3300  
Columbus, Ohio 43215-6104  
Attention: Laing Akers

or such additional or different address, notice of which is given under Section 9.2 hereof.

“Opinion of Bond Counsel” means an opinion of Hawkins Delafield & Wood LLP or of other counsel nationally recognized as having an expertise in connection with the exclusion of interest on obligations of states and local governmental units from gross income for federal income tax purposes.

“Partnership Agreement” shall have the meaning given to that term in Section 4.3(i)(12) hereof.

“Payment Guarantor” means collectively, Woda Cooper Companies, Inc., an Ohio corporation, Woda Cooper Development, Inc., an Ohio corporation, and Woda Construction, Inc., an Ohio corporation.

“Permitted Liens” shall have the meaning given to that term in the Mortgage.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and investor limited partnerships), societies, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Plans and Specifications” means the set of plans and specifications describing the Project as now prepared and as may be changed as herein provided from time to time.

“Pledged Property” means the real property described on Exhibit A to the Mortgage, along with the personal property described therein.

“Pledged Revenues” means (a) the Loan Payments, (b) all of the moneys received or to be received by the Issuer or the Holder for the account of the Issuer in respect of repayment of the Loan, (c) any moneys and investments in the Construction Fund, (d) any funds received by the Borrower from the funding sources identified in Sections 4.3(i)(12), (21) or (22) of this Agreement and (e) all income and profit from the investment of the foregoing moneys. Moneys on deposit in the Rebate Fund do not constitute Pledged Revenues.

“Post-Closing Actions” mean the actions identified on the Post-Closing Exhibit.

“Post-Closing Exhibit” means the *Post-Closing Exhibit*, attached hereto as Exhibit H and incorporated herein, as the same may be supplemented or otherwise modified in writing by the Parties in accordance with the terms of this Agreement.

“Project” means, collectively, the residential rental facilities more specifically described on Exhibit B attached hereto.

“Project Costs” means those costs and expenses in connection with the acquisition, rehabilitation, furnishing, and equipping of the Project permitted by the Act to be paid or reimbursed from the proceeds of the sale of the Bonds including, but not limited to, the following:

(a) payment of (i) the cost of the preparation of the Plans and Specifications, if any (including any preliminary study or planning of the Project or any aspect thereof) and pre-development cost (including interest on any pre-development loans of the Borrower or its affiliates), (ii) the cost of acquisition, rehabilitation and equipping of the Project and all costs associated with providing utility services or other facilities and all real or personal properties deemed necessary in connection with the Project (including development, architectural, engineering, and supervisory services with respect to any of the foregoing), and (iii) any other costs and expenses relating to the Project;

(b) payment of the purchase price of equipment for the Project, including all costs incident thereto, payment for labor, services, materials, and supplies used or furnished in site improvement and in the installation or equipping of the Project, including all costs incident thereto, payment for the cost of the rehabilitation, acquisition, and installation of utility services or other facilities;

(c) payment of the taxes, assessments, and other charges, if any, referred to in herein that may become payable during the Construction Period;

(d) payment of expenses incurred in seeking to enforce any remedy against any contractor, subcontractor, installer, or deliveryman in respect of any default under a contract relating to the Project;

(e) payment of the fees or out-of-pocket expenses of the Borrower, if any, including, but not limited to, architectural, engineering, development and supervisory services with respect to the Project;

(f) payment of the fees or out-of-pocket expenses, if any, of those providing services with respect to the Project, including, but not limited to, architectural, engineering, development and supervisory services;

(g) payment to the Borrower of such amounts, if any, as shall be necessary to reimburse the Borrower in full for all advances and payments made by it for any of the items set forth in (a) through (f) above; and

(h) payment of any other costs and expenses relating to the Project which would constitute a “cost” or “expense” permitted to be paid by the Issuer under the Act.

“Rebate Analyst” means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and retained by the Borrower to make the computations and

give the directions required pursuant to the Tax Certificate and Agreement. The Rebate Analyst will be Hawkins Delafield & Wood LLP.

“Rebate Analyst Fee” means the amount due to the Rebate Analyst from the Borrower in connection with an arbitrage rebate calculation as required by the Tax Certificate and Agreement.

“Rebate Fund” means the Rebate Fund created pursuant to Section 4.6 hereof.

“Resolution” means the Bond Authorizing Resolution adopted by the Board on January 26, 2022, providing for the issuance of the Bonds and approving this Agreement and related matters.

“SOFR or SOFR Rate” means with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Interest Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Unavailability Period” means the period (if any) (a) beginning at the time that either (i) the SOFR Administrator permanently or indefinitely has ceased to provide SOFR or (ii) the SOFR Administrator has announced that SOFR is no longer representative and (b) ending at the time that either (i) the SOFR Administrator has resumed providing SOFR or (ii) the SOFR Administrator has announced that SOFR is representative, as applicable.

“State” means the State of West Virginia.

“State Agency” means West Virginia Housing Development Fund.

“Taxable Rate” means the Daily SOFR Rate plus [4%].

“Tax Certificate and Agreement” means the Tax Certificate and Agreement with respect to the Bonds and the Project dated the Closing Date, made and executed by the Issuer and the Borrower.

“Term Letter” means the Term Letter dated January 29, 2021, from the Holder to the Borrower, including all Attachments and Exhibits thereto and superseding any prior term letter.

“Title Company” means \_\_\_\_\_

“Unassigned Issuer’s Rights” means all of the rights of the Issuer to receive Additional Payments under Section 5.2 hereof, to be held harmless and indemnified under Section 6.3 hereof, to determine if satisfactory arrangements for Additional Payments under Section 5.2 hereof have been made, to be reimbursed for attorney’s fees and expenses under Section 7.4 hereof, to receive duplicate copies pursuant to Section 9.2 hereof, to give or withhold consent to amendments, changes, modifications, alterations and termination of this Agreement under Section 9.5 hereof and to exercise its remedies under Section 7.2 hereof.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday, or (iii) a day on which the Securities Industry and Financial Markets Administration recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“USA PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56), signed into law October 26, 2001.

“USA PATRIOT Act Customer Identification Program” means that certain customer identification and review process established by Holder pursuant to the requirements of the USA PATRIOT Act to verify the identity of all permitted transferees of interests in Borrower and any assignees of any portion of the Loan.

### **Section 1.3     Interpretation.**

Any reference herein to the Issuer, to the Board or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Code of West Virginia or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holder or the Borrower under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof”, “hereby”, “herein”, “hereto”, “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

All capitalized terms used herein with reference to the Collateral and defined in the Uniform Commercial Code as adopted in the State from time to time shall have the meaning given therein unless otherwise defined herein. To the extent the definition of any category or type of Collateral is expanded by any amendment, modification or revision to the Uniform Commercial Code, such expanded definition will apply automatically as of the effective date of such amendment, modification or revision.

### **Section 1.4     Captions and Headings.**

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)



**ARTICLE II**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 2.1      Representations, Warranties and Covenants of the Issuer.**

The Issuer represents and warrants that: (a) it is a public body corporate and governmental instrumentality of the State existing under the laws of the State; (b) it has duly accomplished all conditions necessary to be accomplished by it prior to the issuance, execution and delivery of the Bonds and the execution and delivery of this Agreement; (c) it is not to its knowledge in violation of or in conflict with any provisions of the laws of the State which would impair its ability to carry out its obligations contained in this Agreement; (d) it has the legal right and is empowered to enter into the transactions contemplated by the Resolution and this Agreement; (e) it has duly authorized the execution and delivery of the Bond Documents (to which it is a party) and the execution, delivery and performance of this Agreement and the Extended Use Agreement; (f) it will do all things in its power and control in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body; (g) it will take, or require to be taken, all actions within its power and control that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes; and (h) it will not knowingly take or authorize any actions that would adversely affect such exclusion under the Code.

**Section 2.2      Representations, Warranties and Covenants of the Borrower.**

The Borrower represents, warrants and covenants that:

(a) It is a limited partnership duly formed and validly existing under the laws of the State and authorized to do business in the State.

(b) It has full power and authority to execute, deliver and perform the Borrower Documents and to enter into and carry out the transactions contemplated by those documents. That execution, delivery and performance of the Borrower Documents do not, and will not, violate any provision of law applicable to the Borrower or its governing documents and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Borrower is a party or by which it is bound. The Borrower Documents have, by proper action, been duly authorized, executed and delivered by the Borrower and all steps necessary have been taken to constitute the Borrower Documents valid and binding obligations of the Borrower.

(c) The provision of financial assistance to be made available to it under this Agreement and the commitments therefor made by the Issuer have induced the Borrower to undertake the transactions contemplated by this Agreement.

(d) It will use or operate the Project in accordance with the Act and the Code and knows of no reason why the Project will not be so operated. If, in the future, there is a cessation of that operation, it will use its best efforts to resume that operation or accomplish an alternate use by the Borrower or others approved by the Issuer which will be consistent with the Act and the Code.

(e) The Project will be completed in substantial accordance with the Plans and Specifications and will be operated and maintained in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other applicable governmental regulations and as to be consistent with the Act.

(f) Except as disclosed in writing to the Issuer and the Holder, the Borrower does not have any liabilities, contingent or otherwise, whether due or to become due, including, without limitation, liabilities as guarantor under any guaranty, liabilities for taxes, liabilities for long term leases, liabilities for unusual forward or long term commitments or judgments.

(g) All property to be purchased from moneys on deposit in the Construction Fund will be owned by the Borrower.

(h) Except as disclosed by the Borrower in writing to the Issuer and the Holder, no litigation at law or in equity nor any proceeding before any governmental agency or other tribunal involving the Borrower is pending or, to the knowledge of the Borrower, threatened, in which any material liability of the Borrower is not adequately covered by insurance or in which any judgment or order would have a material and adverse effect upon the business or assets of the Borrower or would materially and adversely affect the operation of the Project, the validity of the Borrower Documents or the performance of the Borrower's obligations thereunder or the transactions contemplated hereby.

(i) The statements prepared and submitted by the Borrower and used by the Issuer in preparing the Tax Certificate and Agreement and information statement pursuant to Section 149(e) of the Code are true and complete in all material respects as of the date of issuance of the Bonds. In the event that circumstances render such statements inaccurate, the Borrower shall notify the Issuer and Bond Counsel and the Borrower shall prepare and submit or cause to be submitted, true and complete amendments of, or supplements to, those statements if in the opinion of Bond Counsel, such amendments or supplements are deemed necessary or advisable.

(j) The Project is taxed separately without regard to any other property and for all purposes the Project may be mortgaged, conveyed and otherwise dealt with as an independent parcel.

(k) The Borrower has and will continue to have good and marketable indefeasible fee simple title to the Project, subject only to the Permitted Liens.

(l) To the best of the Borrower's knowledge, no condition, circumstance, event, agreement, document, instrument, restriction, or pending or threatened litigation or proceeding exists which could have a material adverse effect on the validity or priority of the liens and security interests granted to the Holder under the Mortgage or the other Collateral Documents or which could have a material adverse effect on the ability of the Borrower to own and complete the Project, or which could have a material adverse effect on the ability of the Borrower to perform its obligations under the Bond Documents or the Borrower Documents, or which would constitute a default in the obligations of the Borrower under any of the Bond Documents or Borrower Documents or which would constitute such a default with the giving of notice or lapse of time or both.

(m) All utility and municipal services required for the rehabilitation, occupancy and operation of the Project, including, but not limited to, water supply, storm and sanitary sewage disposal system, gas, electric and telephone facilities are available, or will be available as of the Completion Date to the extent not needed during construction, for use and tap-in at the boundaries of the Project or pursuant to recorded easements, and written permission has been or will be obtained from the applicable utility companies or municipality to connect the Project into each of said services and to thereafter provide the Project with such services to the extent necessary for operation of the Project.

(n) All permits and licenses required by applicable law to construct, renovate, occupy and operate the Project have been issued and are in full force or, if the present stage of preparation of Plans and Specifications, or the stage of construction or renovation of the Project, does not allow such issuance, then such permits and licenses will be issued if and when the Project is constructed or renovated pursuant to the Plans and Specifications.

(o) The storm and sanitary sewage disposal system, water system and all mechanical systems of the Project do (or when constructed or rehabilitated will) comply with all applicable environmental, pollution control and ecological laws, ordinances, rules and regulations. The applicable environmental protection agency, pollution control board and/or other governmental agencies having jurisdiction of the Project have issued their permits and/or approvals for the construction, tap-in and operation of those systems, or, if the present stage of construction or renovation of the Project does not allow such issuance, then such permits and/or approvals will be issued when the Project is constructed and renovated pursuant to the Plans and Specifications.

(p) All utility, vehicular access (including curb cuts and highway access), construction, and other permits and easements required for the construction, renovation, use and operation of the Project have been granted and issued, to the extent necessary or required for the then-current stage of construction, renovation, operation or use of the Project.

(q) Except for any encroachment as shown on the survey provided on the Closing Date, when completed in accordance with the Plans and Specifications, the Project will not encroach upon any property line, building line, set back line, side yard line, or any recorded or visible easement, or other easement of which the Borrower is aware or has reason to believe may exist, affecting the Project, or unless the Borrower has obtained the appropriate variances.

(r) No condemnation of any portion of the Project and no denial of access to the Project from any point of access to the Project, has commenced, or to the best of the Borrower's knowledge, is contemplated by any Governmental Authority.

(s) None of the proceeds of the Bonds will be used in a manner inconsistent with the Code or the Act.

(t) The Loan is not being made for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation G, T, U, or X issued by the Board of Governors of the Federal Reserve System, and the Borrower agrees to execute all instruments necessary to comply with all the requirements of Regulation U of the Federal Reserve System.

(u) The Borrower is not a party in interest to any plan defined or regulated under ERISA, and the assets of the Borrower are not "plan assets" of any employee benefit plan covered by ERISA or Section 4975 of the Code.

(v) The Borrower is not a "foreign person" within the meaning of Section 1445 or 7701 of the Code.

(w) Neither the Borrower nor any Guarantor is (or will be) a person with whom Holder is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support

Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, the Borrower hereby agrees to provide Holder with any additional information that Holder deems reasonably necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

(x) All information provided in Borrower's Beneficial Ownership Certification is true, complete, and correct as of the date thereof.

### **Section 2.3     Representations, Warranties and Covenants of the Holder.**

The Holder represents, warrants and covenants that:

(a) The Holder is purchasing the Bonds for investment for its own account or for its loan portfolio and is not purchasing the Bonds for resale or other disposition, and the undersigned has no present intention of reselling or otherwise disposing of all or any part of the Bonds or dividing its interest therein, but the Holder reserves the right to sell or otherwise dispose of the Bonds as it chooses, in accordance with the terms of this Financing Agreement and the Form of Investor Letter attached hereto as Exhibit F. The Holder understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.

(b) The Holder is a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended (the "1933 Act"), or an "Accredited Investor" within the meaning of Regulation D promulgated under Section 4(2) of the Securities Act of 1933, as amended. The Holder agrees that it will not sell, transfer, assign, or otherwise dispose of the Bonds except to another qualified institutional buyer or accredited investor as described above, which investor has executed and delivered a letter substantially similar to the Investor Letter attached hereto as Exhibit F.

(c) The Holder has either been supplied with or been given access to information, including financial statements and all other financial information that Holder requested, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project and the Bonds.

In reaching the conclusion that it desires to acquire the Bonds, the Holder agrees that it has carefully evaluated the Borrower and the Project and the risks associated with this investment or loan and acknowledges that it is able to bear the economic risk of this investment or loan. The Holder, by reason of its knowledge and experience in financial and business matters, is capable of evaluating the merits and risks of the investment in the Bonds. The representations in this Section 2.3 shall not relieve the Borrower from any obligation to disclose any information required by the documents entered into in connection with the issuance of the Bonds or required by any applicable law.

The Holder acknowledges that no official statement or other disclosure document has been prepared in connection with the sale and delivery of the Bonds and understands that the Bonds are not rated by any rating agency.

The Holder understands that the Bonds are not registered under the Securities Act of 1933, as amended, and that such registration is not legally required as of the date hereof, and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a

rating from any rating service and (d) will be delivered in a form which may not be readily marketable; moreover, the Holder further understands and agrees that the Borrower shall not be obligated to bear any cost related to any future such registration, qualification, listing, rating or marketing of Bonds, whether or not such actions are contemplated at this time.

(End of Article II)

**ARTICLE III**  
**ACQUISITION AND COMPLETION OF THE PROJECT**

**Section 3.1     Acquisition, Construction, Equipment and Improvement.**

The Borrower (a) shall acquire the Project and construct, improve and equip the Project with all reasonable dispatch and in material accordance with the Plans and Specifications for the Project, (b) shall pay when due all fees, costs and expenses incurred in connection with that acquisition, rehabilitation, equipment and improvement from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in connection with the acquisition, rehabilitation, improvement and equipment of the Project, and shall enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is that of Borrower and any contracts made by Borrower with respect to the Project, whether acquisition contracts, construction contracts or otherwise, or any work to be done by the Borrower on the Project are the made or done by the Borrower on its own behalf and not as agent or contractor for the Issuer or the Holder.

The proceeds of the Bonds shall be used exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code, and (ii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code. For the purpose of complying with Section 42(h)(4)(B) of the Code for the greatest number of buildings, the proceeds of the Bonds shall be deemed allocated on a pro rata basis to each group of buildings in the Project and the land on which such group is located so that each group of buildings and the land on which such group is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower, the General Partner, the Investor Limited Partner and their partners and neither the Holder nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any person, including without limitation, the Borrower, the General Partner, the Investor Limited Partner, the partners of the General Partner or the Investor Limited Partner, or any other affiliate of the Borrower for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or Event of Default under this Agreement.

**Section 3.2     Equity.**

Borrower shall have provided evidence reasonably satisfactory to Holder that Borrower's cash equity invested in the Project will not be less than the difference between the total Project cost as set forth in the Budget and the aggregate maximum Loan amount; provided, however, in no event shall Borrower's cash equity and subordinate sources in the Project during construction be less than [\$2,256,639], which shall be composed of the first capital contribution (as defined in Section 4.3(i)(12) herein), and a portion of proceeds of the CDBG-DR Loan as described in Section 4.3(i)(22).

**Section 3.3     Plans and Specifications.**

The Plans and Specifications for the Project have been filed with, and are hereby approved by, the Holder.

The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made which would (i) change the use of the Project to purposes other than those



permitted by the Act, Sections 142(d) and 147 of the Code, the Bond Regulatory Agreement and the Extended Use Agreement, (ii) increase the Project Costs without evidence satisfactory to the Issuer and the Holder that moneys are available to meet such increased costs or (iii) impair the structural integrity of the Project or any material portion thereof. At or prior to the execution and delivery of this Agreement, the Borrower shall provide to the Issuer and the Holder evidence acceptable to the Issuer and the Holder, in their reasonable discretion, of the availability of all financing contemplated by the plan of financing for the Project including, without limitation (and without regard to whether the immediate availability of such financing is a condition to undertaking the Project), the equity portion of the financing and all other public and private financing and any interim or bridge financing to be provided in anticipation of the closing of any of the foregoing aspects of the financing therefor. Any material changes in the plan of financing shall be communicated promptly to the Issuer and the Holder and must be approved in writing by the Issuer and the Holder in their sole discretion. Copies of all documents evidencing that financing, and the security therefor, all in form reasonably acceptable to the Issuer and the Holder, shall have been provided to the Issuer and the Holder.

No revision of the Plans and Specifications for the Project in excess of \$50,000 shall be made unless the Borrower has first (i) delivered to the Issuer and the Holder a narrative description of the proposed revision accompanied by a certificate of either an independent architect or of an employee of the Issuer designated for that purpose by the Issuer certifying the change in Project Costs resulting from the revision and that the moneys then on deposit in the Construction Fund together with investment earnings thereon at the rate of return stated in the certificate will be sufficient to pay in full the Project Costs including the change in Project Costs resulting from such revision, (ii) obtained from the appropriate Governmental Authority any necessary building and zoning permits approving or authorizing the work contemplated by the revision in the Plans and Specifications for the Project, and (iii) obtained the consent of the Holder, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **Section 3.4     Borrower Required to Pay Costs in Event Construction Fund Insufficient.**

If moneys in the Construction Fund are not sufficient to pay all Project Costs, the Borrower, nonetheless, will complete the Project in accordance with the Plans and Specifications and shall pay all such additional Project Costs from its own funds. Except as otherwise provided herein or in any of the Collateral Documents, the Borrower shall pay all costs of issuing the Bonds. The Borrower shall not be entitled to any reimbursement for its payment of any such additional Project Costs or payment of issuance costs from the Issuer or the Holder; nor shall it be entitled to any abatement, diminution or postponement of its Loan Payments.

(End of Article III)

**ARTICLE IV**  
**ISSUANCE AND TERMS OF BONDS, INTEREST RATE; CREATION OF FUNDS AND**  
**ACCOUNTS; CONDITIONS TO FUNDING**

**Section 4.1     Interest Rate.**

4.1.1 Applicable Rate. Unless the Default Rate is applicable under the terms of the Loan Documents, and except as otherwise provided in Section 4.1.2, 4.1.3, or 4.1.4, the outstanding principal balance of the Bonds will bear interest at the Adjusted Daily SOFR Rate (the “Applicable Rate”).

4.1.2 Illegality. If Holder determines that any applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for Holder or its applicable lending office to make, maintain, or fund loans whose interest is determined by reference to Daily Simple SOFR or SOFR, or to determine or charge interest rates based upon Daily Simple SOFR or SOFR, then, (i) Holder shall notify Borrower and Issuer that Holder is no longer able to maintain the Applicable Rate based on Daily Simple SOFR, and (ii) the Applicable Rate shall automatically be converted to the Base Rate upon notice thereof to Borrower. The Base Rate will then be the Applicable Rate until Holder notifies Borrower and Issuer that the circumstances described herein no longer exist, in which case the Applicable Rate will be converted to the Adjusted Daily SOFR Rate from the date of Holder’s notice that such circumstances no longer exist.

4.1.3 Inability to Determine Rates.

4.1.3.1 Temporary. If Holder determines (which determination shall be conclusive and binding on the Borrower) that “Daily Simple SOFR” cannot be determined pursuant to the definition thereof other than due to a Benchmark Transition Event, Holder will promptly so notify Borrower and Issuer. Upon notice thereof by Holder to Borrower and Issuer, the Base Rate shall be the Applicable Rate, until Holder revokes such notice.

4.1.3.2 Permanent. If Holder determines (which determination shall be conclusive and binding on the Borrower) that “Daily Simple SOFR” cannot be determined pursuant to the definition thereof as a result of a Benchmark Transition Event, or an Early Opt-in Election, Holder will promptly so notify Borrower and Issuer, and the provisions of Section 4.1.4 shall be applicable. Upon notice thereof by Holder to Borrower and Issuer, the Base Rate shall be the Applicable Rate unless and until Holder and Borrower have amended this Agreement to provide for a Benchmark Replacement in accordance with Section 4.1.4.1.

4.1.4 Benchmark Replacement Setting.

4.1.4.1 Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-In Election, as applicable, Holder and Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement, in which case the “Applicable Rate” will be the Benchmark Replacement plus the Margin.

4.1.4.2 Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, Holder will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

4.1.4.3 Notices; Standards for Decisions and Determinations. Holder will promptly notify Borrower and Issuer of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and, if applicable, Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Holder pursuant to this Section 4.1.4, including any determination with respect to a tenor, rate, or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in Holder's sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 4.1.4.

4.1.4.4 Benchmark Unavailability Period. During any Benchmark Unavailability Period or at any time the tenor for the then-current Benchmark is not the Available Tenor, the Base Rate will be the Applicable Rate until a Benchmark Replacement has replaced the then-current Benchmark pursuant to this Section 4.1.4, in which case the Applicable Rate will be the Benchmark Replacement plus the Margin. Holder shall have no duty to notify Borrower in advance that the Applicable Rate is converting to the Base Rate.

4.1.4.5 Certain Defined Terms. As used in this Section:

4.1.4.5.1 “*Available Tenor*” means the overnight tenor.

4.1.4.5.2 “*Benchmark Replacement*” means with respect to any Benchmark Transition Event or Early Opt-in Election, the sum of: (i) the alternate benchmark rate that has been selected by Holder and Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment; *provided that*, in each case, if such Benchmark Replacement as so determined would be less than the Benchmark Floor, such Benchmark Replacement will be deemed to be the Benchmark Floor for the purposes of this Agreement and the other Loan Documents.

4.1.4.5.3 “*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero), that has been selected by Holder and Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities.

4.1.4.5.4 “*Benchmark Replacement Conforming Changes*” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the addition of a concept of “interest period,” timing and frequency of determining rates and making payments of interest, length of lookback periods and other technical, administrative or operational matters) that Holder decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the

administration thereof by Holder in a manner substantially consistent with market practice (or, if Holder decides that adoption of any portion of such market practice is not administratively feasible or if Holder determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as Holder decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

4.1.4.5.5 “*Benchmark Replacement Date*” means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark for the Available Tenor (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or

(3) in the case of an Early Opt-In Election, the date specified by Holder by notice to Borrower.

For the avoidance of doubt, (A) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (B) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to the Available Tenor of such Benchmark (or the published component used in the calculation thereof).

4.1.4.5.6 “*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide the Available Tenor of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority

over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide the Available Tenor of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that the Available Tenor of such Benchmark (or component thereof) is no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to the Available Tenor of such Benchmark (or the published component used in the calculation thereof).

4.1.4.5.7 “*Benchmark Transition Start Date*” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety (90) days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by Holder by notice to Borrower.

4.1.4.5.8 “*Benchmark Unavailability Period*” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date pursuant to clause (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 4.1.4 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 4.1.4.

4.1.4.5.9 “*Early Opt-in Election*” means the occurrence of:

(1) a determination by Holder that U.S. dollar denominated credit facilities of similar type are being executed as such time, or that include language similar to that contained in this Section 4.1.4, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the then-current Benchmark, and

(2) the election by Holder to declare that an Early Opt-in Election has occurred and the provision by Holder of written notice of such election to Borrower.

4.1.4.5.10 “*Reference Time*” means with respect to any setting of the then-current Benchmark means 3:00 p.m. (New York City time) four (4) Business Days prior to such setting.

4.1.4.5.11 “*Relevant Governmental Body*” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

4.1.4.5.12 “*Unadjusted Benchmark Replacement*” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

4.1.5 Notification. Holder does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the administration of, submission of, calculation of, or any other matter related to Daily Simple SOFR, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable or successor rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, comparable or successor rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Daily Simple SOFR or any other Benchmark or (b) the effect, implementation, or composition of any Benchmark Replacement Conforming Changes.

4.1.6 Information as to Rates. The applicable Base Rate or Daily Simple SOFR shall be determined by Holder, and such determination shall be conclusive absent manifest error. Holder, upon determining the Applicable Rate, shall promptly notify Borrower and Issuer thereof.

4.1.7 Default Rate. The Bonds shall bear interest at the Default Rate following the occurrence and during the continuation of any Event of Default.

4.1.8 Calculation of Interest. Interest at the Applicable Rate or Default Rate shall be calculated for the actual number of days elapsed on the basis of a 360-day year, including the first date of the applicable period to, but not including, the date of repayment.

4.1.9 Accrual of Interest. Interest shall accrue from the time of disbursement. For any Bond proceeds that are disbursed into escrow (a) to be released to Borrower at Closing, or (b) at Borrower’s request, as all or part of a Draw Request, interest on such funds shall be calculated from the date Holder deposits such funds into escrow, regardless of whether and when Borrower satisfies all conditions for release of such funds from escrow. Holder shall have no obligation to require the escrow agent to deposit escrowed funds in an interest-bearing account.

4.1.10 Increased Costs.

4.1.10.1 Increased Costs Generally. If any Change in Law shall:

4.1.10.1.1 impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D of the Federal Reserve Board as in effect from time to time), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Holder;

4.1.10.1.2 subject Holder to any taxes (other than (a) taxes imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Documents, (b) any withholding taxes imposed under FATCA, and (c) taxes that are imposed on or measured by net income (however denominated) or that are franchise taxes or branch profits taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or



4.1.10.1.3 impose on Holder any other condition, cost or expense (other than taxes) affecting this Agreement or the Bonds;

and the result of any of the foregoing shall be to increase the cost to Holder of making, converting to, continuing or maintaining the Bonds or of maintaining its obligation to make the Bonds, or to increase the cost to Holder, or to reduce the amount of any sum received or receivable by Holder hereunder (whether of principal, interest or any other amount) then, upon request of Holder, Borrower will pay to Holder such additional amount or amounts as will compensate Holder for such additional costs incurred or reduction suffered.

4.1.10.2 Capital Requirements. If Holder determines that any Change in Law affecting Holder or any lending office of Holder or Holder's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on Holder's capital or on the capital of Holder's holding company, if any, as a consequence of this Financing Agreement, the commitments of Holder, or the Bonds purchased by Holder to a level below that which Holder or Holder's holding company could have achieved but for such Change in Law (taking into consideration Holder's policies and the policies of Holder's holding company with respect to capital adequacy), then from time to time Borrower will pay to Holder such additional amount or amounts as will compensate Holder or Holder's holding company for any such reduction suffered.

4.1.10.3 Certificates for Reimbursement. A certificate of Holder setting forth the amount or amounts necessary to compensate Holder or its holding company, as the case may be, as specified in subsection 4.1.10.1 or 4.1.10.2 of this Section and delivered to Borrower, shall be conclusive absent manifest error. Borrower shall pay Holder the amount shown as due on any such certificate within ten (10) days after receipt thereof.

4.1.10.4 Delay in Requests. Failure or delay on the part of Holder to demand compensation pursuant to this Section shall not constitute a waiver of Holder's right to demand such compensation; *provided* that Borrower shall not be required to compensate Holder pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that Holder notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of Holder's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

## **Section 4.2 Issuance and Terms of the Bonds; Registration and Transfer; Application of Proceeds.**

(a) To provide funds to make the Loan for purposes of assisting in paying the Project Costs, the Issuer will issue, sell and deliver the Bonds to the Holder and the Holder agrees to purchase the Bonds at the purchase price of 100% of the principal amount thereof with each Advance. The Bonds will be issued as a draw-down Bond in fully-registered form in the aggregate principal amount not to exceed \$3,500,000. As Bonds are drawn, such amounts will bear interest at the Interest Rate beginning on the date of each draw. Interest shall be calculated for the actual number of days elapsed on the basis of a 360-day year. Bonds will mature on the Maturity Date and will be subject to redemption prior to maturity as provided in Sections 4.8 and 4.9 hereof. The Borrower hereby approves the terms and conditions of the Resolution and the Bonds, and of the terms and conditions under which the Bonds will be issued, sold and delivered.

(b) The Bonds shall be signed by the Chairman, Vice Chairman, Executive Director or other Authorized Officer of the Issuer and attested by the Secretary (or Assistant Secretary) of

the Issuer (provided that such signatures may be facsimile). In case any officer whose signature or a facsimile of whose signature appears on any Bond shall cease to be that officer before the issuance of the Bond, the officer's signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if he or she had remained in office until that time. Any Bond may be executed on behalf of the Issuer by an officer who, on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer.

(c) Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth therein and duly executed by an Authorized Officer of the Issuer shall be entitled to any right or benefit under this Agreement. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by an Authorized Officer; and such executed certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Agreement. An Authorized Officer of the Issuer is authorized, empowered and directed to sell and deliver the Bonds on one or more issuance dates to the Holder.

(d) In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may, at the sole cost and expense of the Borrower, execute, authenticate and deliver a new Bond in lieu of such mutilated, lost, stolen or destroyed Bond, of like date and denomination as that mutilated, lost, stolen or destroyed. Any mutilated Bond shall first be surrendered to the Issuer, and in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Issuer evidence of such loss, theft or destruction satisfactory to it together with indemnity satisfactory to it. Every mutilated Bond furnished to the Issuer shall be destroyed and cease to be an obligation hereunder. Every new Bond issued pursuant to this Section shall, with respect to such Bond, constitute an additional contractual obligation of the Issuer, whether or not the mutilated, lost, stolen or destroyed Bond shall be found at any time, and shall be entitled to all the benefits of this Agreement equally and proportionately with any and all other Bonds duly issued hereunder. Any Bond found as referenced in the preceding sentence shall be destroyed and cease to be an obligation hereunder. All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, wrongfully taken or stolen Bonds and shall preclude any and all rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

(e) The Initial Advance shall be made on the Closing Date by the Holder's deposit of funds in the Construction Fund, upon receipt by the Issuer and/or the Holder, as appropriate, of the following items from or on behalf of the Borrower:

(i) original executed counterparts of this Financing Agreement and the other Borrower Documents;

(ii) subject to variation as approved by Holder in its sole discretion, an opinion of the Borrower's legal counsel that with respect to the Borrower, the General Partner and the Project: (a) the Borrower is a validly organized and existing limited partnership under the laws of the State and qualified to do business in the State, has the legal capacity to own, rehabilitate and operate the Project and to perform its obligations under the Borrower Documents, and that the Loan has been duly authorized by the Borrower, (b) the General Partner is a validly organized and existing corporation under the laws of the State of Ohio and qualified to do business in the State, and that it has the legal capacity to perform its obligations under the Borrower Documents, and that the

Loan has been duly authorized by the General Partner; (c) the Borrower Documents have been duly executed and delivered, constitute legal, valid and binding obligations of the Borrower and the General Partner and are enforceable in accordance with their terms; (d) to the best of its knowledge and the Borrower's knowledge, after due inquiry, there is no threatened or pending litigation that might affect the Loan, the Project, the General Partner or the Borrower; (e) the transactions contemplated by this Agreement do not violate any provision of any law of the State, restriction or document affecting the Borrower, the General Partner or the Project; and (f) such other matters concerning the Loan, the Borrower Documents, the Project, the General Partner and the Borrower as the Holder or its counsel, or the Issuer or its counsel, may reasonably require;

(iii) an Opinion of Bond Counsel, that the Bonds when issued are special, limited obligations of the Issuer enforceable in accordance with their terms and the terms of the Resolution and this Agreement, subject to customary exceptions relating to bankruptcy and insolvency and other matters; and

(iv) delivery by the Holder of an Investor Letter in substantially the form attached hereto as Exhibit F.

(f) Additional Advances shall be made thereafter upon the Borrower's delivery to the Holder of an executed Disbursement Request in substantially the form attached hereto as Exhibit E, and compliance in form and substance with the requirements of Section 4.3 hereof. Each Disbursement Request must be accompanied by a certification, which may be included in such request, of an Authorized Officer of the Borrower, as of the date thereof, that (A) the Borrower has not been advised that the Opinion of Bond Counsel relating to the Bonds issued in connection with a portion of the Initial Advance may no longer be relied upon, (B) to the knowledge of the Borrower, there has been no adverse change in pertinent existing law or regulations or interpretations thereof, including, but not limited to, regulations, rulings and interpretations of the Internal Revenue Service, subsequent to the date of delivery of the Opinion of Bond Counsel relating to the Bonds issued in connection with a portion of the Initial Advance, (C) the representations, covenants, certifications and statements contained in the Borrower Tax Certification are true and accurate and are being complied with by the Borrower, and (D) to the knowledge of the Borrower, no litigation is pending affecting the issuance, legality or validity of the Bonds issued in connection with a portion of the Initial Advance or the exclusion of interest on such Bonds from gross income for Federal income tax purposes. In the event that circumstances render such certifications untrue or inaccurate between the date of the Disbursement Request and the date that the Holder pays the respective purchase price of the Bonds in an amount corresponding to the related Advance for deposit into the Construction Fund for disbursement for Project Costs, the Borrower shall immediately notify, in writing, the Issuer, Bond Counsel and the Holder. The Holder shall pay the purchase price of the Bonds in amounts equal to each Advance requested hereunder on any Business Day proposed by the Borrower therefor by depositing funds in the Construction Fund. Pending disbursement pursuant to Section 4.3 hereof, the proceeds so deposited in the Construction Fund, together with any investment earnings thereon, shall constitute a part of the Pledged Revenues assigned by the Issuer to the Holder for the payment of Bond Service Charges. Notwithstanding anything to the contrary contained in this Agreement or any other Bond Document, no Bond shall be issued after \_\_\_\_\_, 20\_\_\_\_.

(g) The Bonds may be transferred, subject to the terms of Section 2.3 and Section 4.7 hereof, only upon the books kept for the registration and transfer of Bonds by the Bond Registrar, together with an assignment duly executed by the Holder or its duly authorized attorney in such

form as shall be satisfactory to the Bond Registrar. The Holder and subsequent Holder shall give written notice to the Borrower prior to any transfer of the Bonds, but any failure to give such notice shall not affect the validity of such transfer. Upon such request of the transferor, the Issuer, at the sole cost and expense of the Borrower and the Holder, shall execute in the name of the transferee, and shall deliver, a new fully registered Bond in the aggregate principal amount equal to the unamortized and unredeemed principal amount of the Bonds so surrendered and bearing interest at the same rate and maturing on the same date. Absent manifest error, the unamortized and unredeemed principal amount of the Bonds shall be determined from the records of the Holder.

(h) So long as the Bonds remain outstanding, the Bond Registrar shall maintain books for the aforesaid registration and transfer of the Bonds.

(i) The Borrower and Holder acknowledge that:

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OR PLEDGE OF THE GENERAL CREDIT OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. THE BONDS ARE LIMITED AND SPECIAL OBLIGATIONS OF THE ISSUER AND DO NOT CONSTITUTE OR CREATE A DEBT OR OBLIGATION, EITHER GENERAL OR SPECIAL, OR LIABILITY OR MORAL OBLIGATION OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER. NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE ISSUER (WHICH HAS NO TAXING POWER) BUT ARE LIMITED AND SPECIAL REVENUE OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE PLEDGED REVENUES. PAYMENT OF THE PRINCIPAL OR PURCHASE PRICE OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE A VALID CLAIM ONLY AS AGAINST THE PLEDGED REVENUES, IS NOT A GENERAL OBLIGATION OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY MUNICIPAL CORPORATION, SUBDIVISION, OR AGENCY OF THE STATE OR THE ISSUER, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY MUNICIPAL CORPORATION, SUBDIVISION OR AGENCY OF THE STATE OR THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR PURCHASE PRICE OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS.

NEITHER THE BOARD NOR ANY PERSON EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF.

(j) In the event that the Holder, the Issuer or the Borrower determines that legislative, judicial or other developments have occurred or other circumstances have emerged which could result in interest on Bonds not yet issued pending the payment of the purchase price therefor in amount equal to an Advance requested in accordance with this Section 4.2(j) (referred to herein as the "Remaining Available Amount") not being excluded from gross income for federal income tax purposes, or otherwise determines in good faith that it is in its best interest to issue and fully fund all of the Bonds in order to assure that interest on the Bonds will remain excluded from gross income for federal income tax purposes, and, in the case of such determination by the Borrower, such action will resolve the uncertainty with respect to the

exclusion of interest on the Bonds from gross income for federal income tax purposes and will not jeopardize receipt of previously committed unfunded debt or equity funding for the Project, then such party may provide a written letter of direction (a "Draw-Down Notice") to the other two parties to cause the Remaining Available Amount of the Bonds to be issued and fully funded. The Draw-Down Notice, if given, shall take effect on the fifth (5th) Business Day following the date on which written notification from the Holder, the Issuer or the Borrower has been given to the other two parties (or such lesser or greater number of Business Days to which the Holder, the Issuer and the Borrower may agree in writing), referencing the Draw-Down Notice and containing substantially the following words: "The [Borrower/Holder/Issuer] elects to issue by drawing and fully funding the Remaining Available Amount of the Bonds (\$ \_\_\_\_\_) effective \_\_\_\_\_ (the "Draw-Down Date")." Notwithstanding the foregoing, any Draw-Down Notice received after 10:00 a.m. on any Business Day, or on day that is not a Business Day, will be treated as if given on the next succeeding Business Day, unless otherwise agreed to by the Holder, the Issuer and the Borrower. The Draw-Down Notice will be delivered in the manner provided for notices under this Agreement.

### **Section 4.3      Disbursements from the Construction Fund.**

(a)      There is hereby created and established a separate account of the Issuer with the Holder designated as the "Joseph's Crossing Construction Fund" (the "Construction Fund"). Funds in the Construction Fund will not be invested. Subject to the provisions below, and so long as no Event of Default hereunder has occurred and is continuing, disbursements from the Construction Fund shall be made only to reimburse or pay the Borrower, or any person designated by the Borrower, for Project Costs related to the Project. The Issuer hereby authorizes the Holder to disburse amounts deposited to the Construction Fund as provided under this Agreement. Holder, in its sole discretion, may disburse amounts deposited in the Construction Fund directly to the Borrower, the Title Company, or any other party that Holder deems appropriate or necessary to complete the Project as contemplated herein. Any disbursement of funds made to the Title Company shall be deemed to have been made upon deposit with the Title Company regardless of when the Title Company distributes the funds.

(b)      Nothing contained herein permits or shall be construed to permit the expenditure of any moneys in the Construction Fund for, or in reimbursement of payments made for working capital, and no such expenditure shall be made from the Construction Fund.

(c)      Moneys in the Construction Fund (including moneys earned thereon, if any) remaining after the completion of the acquisition, construction, installation, equipment and improvement of the Project and payment, or provision for payment in full of the costs provided for in the preceding subsections of this Section, then due and payable, shall promptly be (i) used to acquire, construct, install, improve and equip such additional real and personal property in connection with the Project as are designated by the Authorized Borrower Representative, the acquisition, construction, rehabilitation, installation, improvement and equipping of which will be such as is permitted under both the Act and the Code, (ii) applied to the prepayment of the Loan pursuant to Section 5.1 hereof or (iii) for a combination of any or all of the foregoing as is provided in such direction.

(d)      Disbursements from the Construction Fund for Project Costs shall be in the amount of such items but, for the purpose of determining the amount of any such item which involves any contract providing for the retention of a portion of the contract price, there shall initially be deducted from such item the amount of any such retention, and, when such retention becomes due and payable, such retention shall be added to the item.

(e) All disbursements from the Construction Fund for Project Costs shall be made only upon the written order of the Authorized Borrower Representative and the following conditions shall have been satisfied with respect to such disbursement:

(i) There shall have been delivered to the Holder an executed Disbursement Request in the form of Exhibit E attached hereto and made a part hereof, and a completed Hard Cost Requisition Form in the form of standard industry AIA documents G702 and G703 and a separate breakdown of soft costs attached to such form, each executed by an Authorized Borrower Representative and approved in writing by the supervising architect for the Project; and

(ii) Subject to any applicable notice and cure periods, there shall be in existence no Event of Default or situation which, upon the giving of notice or the passage of time or both would become an Event of Default.

(f) The Holder shall not be obligated to fund more than one disbursement each calendar month.

(g) The final disbursement from the Construction Fund for Project Costs shall include all amounts theretofore withheld as retainages as set forth in this Section. The Holder shall not have an obligation to cause its approval to be given to the written order of the Authorized Borrower Representative for such final disbursement until the conditions described in this section shall have been satisfied with respect to such final disbursement.

(h) The Holder shall cause to be kept and maintained adequate records pertaining to the Construction Fund and all disbursements therefrom.

(i) Further Conditions to Disbursements. No disbursement shall be made from the Construction Fund unless the Borrower shall have complied with the following:

(1) Title Insurance. The Borrower shall have delivered to the Holder a commitment (the "Title Commitment") for issuance of an ALTA Loan Policy of Title Insurance (Amended 6-17-2006) (the "Title Policy"), in the amount of the Bond proceeds insuring the Mortgage to be a valid first, prior and paramount mortgage and lien upon the fee title to the Project, and a valid first lien upon any easement in favor of the Project or any part thereof which provides access to the Project or any part thereof for ingress and egress and/or for utilities, to the extent of funded disbursements of the Loan, subject only to customary exceptions which, by their nature, cannot be eliminated until construction of the Project has been completed, and with all standard exceptions deleted. The Title Commitment shall (A) contain a comprehensive endorsement; (B) contain an endorsement affirmatively insuring the priority of the Mortgage against any vendor's or mechanic's lien; (C) affirmatively insure the Holder, as Mortgagee that (i) no restrictions of record affecting the Project have been violated, (ii) the survey described below is accurate and accurately depicts the same real estate as is covered by the Title Commitment, and (iii) the Mortgage is the first lien against the Project; (D) insure contiguity of the Project with adjoining public rights of way; (E) contain ALTA Variable Rate Endorsement No. 6; (F) contain an endorsement affirmatively insuring that all future advances of Loan proceeds shall be secured by the Mortgage and have priority as of the date the Mortgage is filed for record with the appropriate county recorder; and (G) contain such other endorsements as the Holder may require. The Borrower agrees to deliver to the title agent, with a copy of each to the Holder, such other papers,



instructions and documents as the title agent may require for the issuance of the Title Commitment and the issuance of date down endorsements and interim certifications relating to construction payouts, and in accordance with all requirements of this Agreement.

(2) Survey. The Borrower shall have delivered a survey, completed not earlier than 90 days prior to the first construction disbursement, certified to the Borrower, the Holder, the Issuer and the Title Company. The survey shall be made in accordance with the most current Minimum Standard Detail Requirements for ALTA/NSPS (2021) Surveys for an “urban” survey, be certified to the Holder, the Issuer and to the Title Company, contain items 1 to 4 (inclusive), 6 to 11 (inclusive), 13, 14, and 16 to 19 (inclusive) of Table A thereof, to the extent that any such items are applicable, and identify the name of the county, township and city, town or village in which the Project is located. Not later than thirty (30) days after completion of the foundation with respect to the Project, Borrower shall furnish to Holder a survey of the location with the foundation of the Project located thereon, and also satisfying the requirements required by the Holder.

(3) Insurance. The Borrower shall have obtained the insurance policies required by Section 6.6(d) hereof, and delivered evidence thereof to the Holder.

(4) Utilities/Permits. The Borrower shall have delivered to the Holder satisfactory evidence that:

(A) all services and utilities such as water, gas, electricity and storm and sanitary sewers required for the construction, rehabilitation, occupancy and operation of the Project are available for use and tap-in at the Project, subject only to payment of fees included in the Project Budget, or will be available after construction or rehabilitation of the Project, subject only to payment of costs and fees included in the Project Budget (as defined below);

(B) all governmental permits and licenses, including building permits for those units for which Borrower is requesting disbursement issued by the appropriate governmental authority authorizing construction or rehabilitation of the Project in accordance with the Plans and Specifications and including tap-in permits required by applicable law to construct, occupy and operate the Project have been issued, are in full force and all fees therefor have been fully paid or, if the stage of construction of the Project does not allow such issuance, then such permits and licenses will be issued if and when the Project is constructed or rehabilitated in accordance with the Plans and Specifications;

(C) the storm and sanitary sewage disposal system, and all mechanical systems serving the Project, do (or when constructed or rehabilitated will) comply with all applicable environmental, pollution control and ecological laws, ordinances, rules and regulations, and the applicable environmental protection agency, pollution control board and/or other governmental agencies having jurisdiction of the Project have issued their permits for the construction and operation thereof, or if the stage of construction of the Project does not allow such issuance, then such permits and/or approvals will be issued when the Project is constructed or rehabilitated in accordance with the Plans and Specifications;

but if no storm sewer is available at the Project, Borrower shall furnish evidence that proper disposal of rain water is assured; and

(D) all utility, access (including curb cuts and highway access), construction, and other easements and permits required or, in the Holder's judgment, necessary for the construction or use of the Project have been granted or issued and are in good standing and unencumbered to the extent necessary for the then-current stage of construction, renovation, operation or use of the Project.

(5) Plans and Specifications. The Borrower shall have delivered the Plans and Specifications as required by Section 3.3 hereof.

(6) Construction Contract. The Borrower shall have delivered to the Holder true, correct and complete copies of the construction contracts for the Project for which a disbursement is being requested and all other contracts for the complete construction of the Project for which a disbursement is being requested, certified as such in writing by the Borrower. The Borrower has entered into a stipulated sum or guaranteed maximum price construction contract in an amount not to exceed \$2,835,000 with Woda Construction, Inc., a general contractor and approved by the Holder, upon terms and conditions acceptable to the Holder.

(7) Environmental Matters. The Borrower shall have delivered to the Holder evidence, including an environmental assessment, indicating that the Project contains no hazardous materials except as previously disclosed in writing (if any) and no other contamination which, even if not so regulated, is known to pose a hazard to the health of any person on or about the Project (ii) is not located in a "Wetlands" or "Flood Plain" area, and (iii) contain no underground storage tanks. The Holder reserves the right, at the Borrower's expense, to retain an independent consultant to review any such evidence submitted by the Borrower or to conduct its own investigation of the Project.

(8) Reserved.

(9) Documents of Record. The Borrower shall have delivered to the Holder copies of all covenants, conditions, restrictions, easements and matters of record that affect the Project for which a disbursement is being requested.

(10) Project Budget. The Borrower shall have delivered to the Holder a cost breakdown by line item listing all anticipated subcontractors and suppliers (the "Project Budget") in connection with the Project. The Project Budget shall itemize in detail the hard costs, the soft costs and the Loan interest. An adequate contingency shall be provided for both hard and soft costs. The Project Budget shall also contain a line item designated for construction interest sufficient to cover the interest payments on the Loan through the Maturity Date. The initial Project Budget is attached hereto as Exhibit G and made a part hereof.

(11) Construction Schedule. The Borrower shall have delivered to the Holder an acceptable construction schedule showing approximate start and finish dates of all major stages of the Project.

(12) Partnership Agreement. The Borrower shall have delivered to the Holder an executed Amended and Restated Limited Partnership Agreement (the "Partnership

Agreement”), pursuant to which the Investor Limited Partner has agreed to make capital contributions in an aggregate amount of not less than \$1,628,741 (the “Limited Partner Equity”), which amount is subject to adjustments, subject to the terms and conditions contained therein. The Partnership Agreement shall contain a schedule of capital contributions as follows: (i) upon execution of the Partnership Agreement and satisfaction of certain other conditions set forth therein, the Investor Limited Partner shall make a capital contribution of approximately \$134,860; (ii) upon completion of construction of the Project and satisfaction of certain other conditions contained therein, the Investor Limited Partner shall make its second capital contribution of approximately \$1,303,901; and (iii) upon the achievement of stabilized operations for the Project and satisfaction of certain other conditions set forth therein, the Investor Limited Partner shall make its third capital contribution of approximately \$80,916. The remaining capital contributions shall be made according to the schedule set forth in the Partnership Agreement as approved by Holder. A portion of the proceeds of the second capital contribution shall be used to repay a portion of the Loan.

(13) LIHTC Approval. The Borrower shall provide satisfactory evidence to the Holder that all necessary approvals and authorizations have been obtained by it in order for the Project to qualify for and be entitled to the benefits of low-income housing tax credits in an amount sufficient to equal an aggregate of not less than \$1,752,450 under Section 42 of the Code on 100% of the dwelling units in the Project. The evidence shall consist of a letter or agreement from the Issuer or such other evidence as may reasonably be requested by the Holder.

(14) Appraisal. The Borrower shall have delivered to the Holder an appraisal for the Project in form and content satisfactory to the Holder that evidences a Loan to value acceptable to the Holder, but in no event greater than eighty percent (80%).

(15) Sources of Funds. The proceeds of all sources of funds for the Project including, but not limited to those sources identified in paragraphs (12), (21) and (22) have been disbursed or are available for disbursement, subject to their respective terms and conditions for disbursement.

(16) Management Agreement. The Borrower shall have delivered to the Holder a fully-executed counterpart copy of the Management Agreement or Agreements for the Project.

(17) Development Agreement. The Borrower shall have delivered to the Holder a fully-executed counterpart copy of the Development Agreement or Agreements for the Project.

(18) Reserved.

(19) Inspections. All inspections shall be completed by an agent for the Holder who may require further information, including, but not limited to, documents such as contracts and invoices, to complete the analysis of the draw request. The Borrower shall pay the cost of these inspections.

(20) Retainage. The Holder shall withhold five percent (5%) (the “Retainage”) from each requested disbursement for that portion of the sum requested for construction hard costs for the Project. The Retainage for each unit in the Project shall be

held by Holder until completion of that unit in the Project, at which time it will be funded to the Construction Fund pursuant to the terms hereof.

(21) Multifamily Loan. Borrower shall provide Holder a binding commitment letter from the Issuer to the Borrower, fully acceptable to Holder and Holder's counsel, evidencing a first-priority loan from the Issuer to the Borrower in the amount of \$850,000 from the Multifamily Loan Program (the "Multifamily Loan"). Borrower shall close the Multifamily Loan after construction of the Project is complete and provide Holder and Holder's counsel with fully executed copies of all loan documents executed in connection with the Multifamily Loan no later than [the date of the closing of the Multifamily Loan]. The Multifamily Loan shall have a fixed interest rate of [4.25%] per annum, shall be amortized over [forty (40)] years, and the entire principal balance, together with all accrued and unpaid interest and any other charges, advances or fees, if any, shall be due and payable in full on the date which is [forty (40)] years from the date on or about the payment in full of the Bonds, at which time the Multifamily Loan will be drawn down, [as described in the Issuer's \_\_\_\_\_ Written Agreement]. The Multifamily Loan will be secured by a first lien position on the Project and the Project Site as described in Exhibit C. A portion of the proceeds from the Multifamily Loan shall be used to repay a portion of the Loan. The affordability period for the Multifamily Loan will have a guarantee under the United States Department of Agriculture's Guaranteed Rural Rental Housing Program and the Project will be subject to USDA's requirements for [forty (40)] years].

(22) CDBG-DR Loan. The Issuer shall make a second-priority loan from Issuer to the Borrower in the amount of \$3,795,000 from the Community Development Block Grant – Disaster Recovery program (the "CDBG-DR Loan") and utilizing Community Development Block Grant – Disaster Recovery funds ("CDBG-DR Funds"). The CDBG-DR Loan documents shall evidence an interest rate of two and one-quarter percent (2.25%) per annum, for which Borrower will make annual payments. Each year following the repayment of the Project's deferred developer's fee, the Borrower shall make a payment to Issuer in an amount equal to 50% Cash Flow (as such term is defined in the Partnership Agreement), and such payments shall continue each year for a term of forty (40) years or the date the CDBG-DR Loan is repaid in full. The affordability period for the CDBG-DR Loan is five (5) years. Following construction and payment in full of the Bonds, the CDBG-DR Loan will be secured by a second lien position on the Project and the Project Site as described in Exhibit C. In no event shall Borrower repay the CDBG-DR Loan prior to the repayment of the Loan except for the annual payments from cash flow after payment of all payments due under the Loan. Borrower shall close the CDBG-DR Loan and provide Holder and Holder's counsel with fully executed copies of all loan documents executed in connection with the CDBG-DR Loan no later than the date of the closing of the CDBG-DR Loan. A portion of the proceeds of the CDBG-DR Loan in the approximate amount of [\$2,144,051] shall be used to pay Project costs during construction and a portion of the proceeds shall be used to repay a portion of the Loan.

(23) Subordination of the CDBG-DR Loan. Borrower covenants and agrees that the CDBG-DR Loan shall be subordinate to the Loan at all times. Upon the request of Holder, Issuer, in its capacity as maker of the CDBG-DR Loan, shall execute a subordination agreement in form and substance acceptable to Holder, evidencing such subordination to the Loan.

(24) Huntington Digital Inclusion Grant. Borrower shall have delivered to Holder a commitment from [The Huntington National Bank] (“Huntington”), to the [Borrower/OOCH] to provide a grant to the Project in the amount of \$30,000 through its Digital Inclusion Grant program (the “Huntington Grant”). Borrower shall provide Holder with fully executed copies of the Huntington Grant award documents executed in connection with the grant. All funds from the Huntington Grant shall be applied to repayment of the Loan on or before the Maturity Date.

(j) Subsequent Disbursements. Prior to the funding of each construction disbursement after the Initial Advance, the Borrower shall furnish the following to the Holder for the Project, all of which must be in form, substance and execution satisfactory to the Holder, in its sole and absolute discretion:

(1) An endorsement to the Title Policy, which endorsement insures that no claim exists which constitutes an encumbrance on the Holder’s secured position established by the insured Mortgage, accelerates the effective date of the Title Policy to the date of the requested disbursement, and covers the amount of the requested disbursement so that the total amount insured by the Title Policy equals the total amount disbursed by the Holder from the Construction Fund.

(2) Lien waivers (or all liens bonded or insured over) from all contractors, material subcontractors and suppliers for the preceding disbursement.

(3) Evidence that the Project is being completed materially in accordance with the construction schedule and the Project Budget or that Borrower has instituted a plan acceptable to Holder in its sole discretion to rectify any discrepancy.

(4) Copies of affidavits signed by the general contractor certifying all outstanding balances due but unpaid for work in place for the Project along with a copy of waiver of liens from the general contractor in the respective sum received for all of the preceding construction advances.

(5) An update to the ALTA Policy, as of the date of the requested disbursement, showing no additional liens or encumbrances upon the Project.

(k) Conditions to All Disbursements. Unless otherwise waived in writing by the Holder, no disbursement from the Construction Fund shall be made at any time unless:

(1) All conditions precedent to that disbursement have been satisfied, including without limitation, performance of all of the Borrower’s obligations under this Agreement.

(2) Loan shall be considered “In Balance” only at such time and from time to time, as the Holder may reasonably determine, that the then undisbursed portion of the Bond proceeds, together with funds from the sources identified in the Project Budget that have not yet been disbursed, equals or exceeds the amount necessary to pay for completion of the construction of the Project in accordance with the Plans and Specifications.

If the Holder determines that the Loan is not “In Balance,” the Borrower shall within ten (10) days after written request by Holder deposit the amount of the deficiency

with Holder. The Holder shall not be obligated to make any disbursements of the Loan at any time that the Loan is not In Balance.

(3) Subject to any applicable notice or cure periods, no Event of Default has occurred and is continuing under this Agreement.

(4) No material litigation or proceedings are pending or threatened (including but not limited to, proceedings under Title 11 of the United States Code) against the Borrower.

(5) No event, circumstance or condition exists or has occurred which could, in the sole judgment of the Holder, delay or prevent the completion of construction of the Project by the Completion Date.

(6) All representations and warranties made by the Borrower continue to be accurate.

Disbursements shall be made approximately ten (10) days after receipt of all information required by Holder to approve the requested disbursements.

(l) Disbursements for Materials Stored On-Site. Any requests for disbursements which in whole or in part relate to materials, equipment or furnishings which Borrower owns and which are not incorporated into the Project as of the date of request for disbursement, but are to be temporarily stored at the Project, shall be made in an aggregate amount not to exceed \$300,000. Any such request must be accompanied by evidence satisfactory to the Holder that (i) such stored materials are included within coverages of insurance policies carried by Borrower, (ii) the ownership of such materials is vested in Borrower free of any liens and claims of third parties, which evidence shall include invoices for such material which invoices must be delivered to the Holder, (iii) such materials are properly insured and protected against theft or damage, (iv) the Holder's construction consultant has viewed and inspected the stored materials, and (v) in the opinion of the Holder's consultant the stored materials are physically secured and can be incorporated into the Project within forty-five (45) days. The Holder may require separate Uniform Commercial Code financing statements to cover any such stored materials.

(m) Disbursements for Offsite Materials. Loan proceeds disbursed for materials stored off-site shall be subject to the Holder's approval in its sole and absolute discretion; provided that Holder will permit disbursements for Engineered Systems in the aggregate amount of \$500,000, subject to Borrower's satisfaction of all requirements of Section 4.3(l) above.

(n) Payment of Developer Fees. Total developer's fees in an amount not to exceed \$540,853 shall be paid from (i) equity contributions from the Investor Limited Partner, or (ii) cash flow from the Project, in accordance with the terms of the Partnership Agreement. No developer's fees other than the initial payment of approximately \$112,588 and payment of \$202,902 at the time of the Investor Limited Partner's payment of its second capital contribution installment shall be paid until completion of construction off the Project.

(o) Documents Required for Final Disbursement. Unless otherwise waived in writing by the Holder, Borrower's request for the final disbursement shall be accompanied by the following, all of which shall be satisfactory to the Holder in its sole and absolute discretion:

(1) A certificate from the inspecting agent that the Project has been substantially completed in accordance with the Plans and Specifications.

(2) A temporary certificate or temporary certificates of occupancy from all applicable governmental authorities for all portions of the Project.

(3) Any other certificates, licenses and permits required by any applicable governmental authority for the use, occupancy, or operation of the Project as rental housing.

(4) All fixtures, furniture, furnishings, equipment and other property contemplated under the Plans and Specifications to be incorporated into or installed in the Project shall have been incorporated or installed free and clear of all liens and security interests other than the Permitted Liens.

(5) The Borrower shall have furnished the Holder with current UCC searches of all UCC financing statements filed with the Secretary of State of West Virginia and/or the Recorder for the county, against the Borrower as debtor, showing that no UCC financing statements are filed or recorded against the Borrower in which the collateral is described as personal property or fixtures located on the Project or used in connection with the Project.

(6) An affidavit of the Borrower stating that each person providing any material or performing any work in connection with the Project has been paid in full and that all withholding taxes have been paid.

(7) Any permits, licenses, certificates of occupancy or other evidence of compliance with the requirements of any governmental authorities necessary for the use of the Project contemplated in the Plans and Specifications.

(8) A satisfactory final inspection report of the inspecting architect indicating that the Project has been fully completed in accordance with the Plans and Specifications, the requirements of this Agreement and the requirements of all approved leases.

(9) Evidence that all insurance required under the terms of this Agreement is in full force and effect.

(10) Such other items as may be reasonably required by the Holder, including, without limitation, evidence that the improvements have been completed to the reasonable satisfaction of the Holder.

#### **Section 4.4      Completion Date.**

The Borrower shall notify the Issuer, the Holder and the Investor Limited Partner of the Completion Date by a certificate signed by the Authorized Borrower Representative stating:

(a) the date on which the Project was substantially completed,

(b) that all other facilities and equipment necessary in connection with the Project have been acquired, constructed, improved installed and equipped,

(c) that the acquisition, construction, renovation, improvement and equipment of the Project and those other facilities have been accomplished in such a manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other similar governmental regulations,

(d) that except as provided in subsection (e) of this Section, all costs of that acquisition, construction, renovation, improvement and equipment then or theretofore due and payable have been paid, and

(e) the amounts, if any, which the Holder shall retain in the Construction Fund for the payment of Project Costs not yet due or for liabilities which the Borrower is contesting or which otherwise should be retained and the reasons such amounts should be retained.

That certificate may state that it is given without prejudice to any rights against third parties which then exist or subsequently may come into being. The Authorized Borrower Representative shall include with that certificate a statement specifically describing all items of personal property and fixtures comprising a part of the Project. The certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in subsections (a) through (d) of this Section.

#### **Section 4.5     Investment of Fund Moneys.**

At the oral or written request (promptly confirmed in writing, if oral) and instruction of the Authorized Borrower Representative, any moneys held as part of the Construction Fund and the Rebate Fund shall be invested or reinvested by the Holder in Eligible Investments. The Borrower hereby covenants that it will restrict that investment and reinvestment and the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for the Bonds or subsequent intentional acts, so that the Bonds will not constitute arbitrage bonds under the Code.

The Borrower shall provide the Issuer with the Borrower Tax Certification, which shall set forth the reasonable expectations of the Borrower on the date of delivery of and payment for the Bonds regarding the amount and use of the proceeds of the Bonds and the facts, estimates and circumstances on which those expectations are based. The Issuer may rely on the Borrower Tax Certification in making any certification with respect to the Bonds and the Project.

#### **Section 4.6     Rebate Fund.**

There is hereby created and established an account of the Issuer with the Holder designated “Joseph’s Crossing Rebate Fund” (the “Rebate Fund”). The Holder shall make deposits and disbursements from the Rebate Fund at the written direction of and in accordance with the written instructions received from the Borrower and pursuant to the terms of the Tax Certificate and Agreement, shall invest the amounts held in the Rebate Fund in Eligible Investments pursuant to written instructions from the Borrower and shall deposit income from such investments immediately upon receipt thereof in the Rebate Fund.

#### **Section 4.7     Restriction on Transfer of Bonds.**

Notwithstanding the Holder’s intent to purchase the Bond without a view to resell such Bond as described in Section 2.3 hereof, the Holder hereby agrees and acknowledges that, in any event, the transfer of such Bond may be made from time to time only to a purchaser of the type described in Section 2.3(b) hereof who has executed and delivered to the Bond Registrar an Investor Letter substantially in the



form attached hereto as Exhibit F. The Holder understands and agrees that this restriction on transfer shall be printed prominently on the form of the Bond or any replacement Bond. The initial Holder and any subsequent Holder desiring to affect a transfer in accordance with the provisions of this Section 4.7 shall, and by acceptance of its Bond does thereby agree to, indemnify the Issuer and the Borrower against any and all liabilities, costs or expenses (including reasonable attorneys' fees) that may result from such transfer, whether or not the transfer actually occurs. The provisions of this Section 4.7 shall apply to all transfers of the Bond subject to the transfer restrictions set forth in this Section 4.7, notwithstanding anything to the contrary contained in this Agreement, the Mortgage or any other document or proceeding, and any transfer in violation of the provisions of this Section 4.7 shall be null and void.

No sale, transfer or other disposition of the Bonds or the Note shall be effective unless and until any subsequent Holder had entered into an agreement, in form and substance satisfactory to the Issuer, containing substantially the same representations made by, and assuming all liabilities and obligations assumed by, the Holder in this Agreement.

#### **Section 4.8     Optional Redemption.**

The Bonds are callable for optional redemption in whole or in part on any date on or after the date on which the Project is placed in service, at the written direction of the Borrower delivered to the Issuer, the Holder and the Investor Limited Partner no fewer than ten (10) days prior to the date set for redemption. The redemption price for the Bonds in any such event shall be 100% of the principal amount redeemed, plus accrued interest to the redemption date.

#### **Section 4.9     Mandatory Redemption; Extraordinary Optional Redemption.**

(a) The Borrower shall have, subject to the conditions hereinafter imposed, the option to direct the redemption of the entire unpaid principal balance of the Bonds in accordance with and subject to the limitations set forth therein upon the occurrence of any of the following events:

(i) The Project shall have been damaged or destroyed to such an extent that (1) it cannot reasonably be expected to be restored, within a period of twenty (20) months from the start of such restoration, to the condition thereof immediately preceding such damage or destruction or (2) its normal use and operation is reasonably expected to be prevented for a period of fifteen (15) consecutive months.

(ii) Title to, or the temporary use of, all or a significant part of the Project shall have been taken under the exercise of the power of eminent domain to such extent that the Project cannot reasonably be expected to be restored within a period of twenty (20) months from the start of such restoration to a condition of usefulness comparable to that existing prior to the taking.

(iii) As a result of any changes in the Constitution of the State, the Constitution of the United States of America, or state or federal laws or as a result of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Issuer or the Borrower in good faith, this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed in this Agreement, or if unreasonable burdens or excessive liabilities shall have been imposed with respect to the Project or the operation thereof, including, without limitation, federal, state or other ad valorem, property, income

or other taxes not being imposed on the date of this Agreement other than ad valorem taxes presently levied upon privately owned property used for the same general purpose as the Project.

(iv) Changes in the economic availability of raw materials, operating supplies, energy sources or supplies, or facilities (including, but not limited to, facilities in connection with the disposal of industrial wastes) necessary for the operation of the Project shall have occurred or technological or other changes shall have occurred which the Borrower cannot reasonably overcome or control and which in the Borrower's reasonable judgment render the Project uneconomical.

(b) The Borrower also shall have the option, in the event that title to or the temporary use of a portion of the Project shall be taken under the exercise of the power of eminent domain, even if the taking is not of such nature as to permit the exercise of the redemption option upon an event specified in (a) above, to direct the redemption, at a redemption price of 100% of the principal amount thereof prepaid, plus accrued interest to the redemption date, of that part of the outstanding principal balance of the Bonds as may be payable from the proceeds received by the Borrower (after the payment of costs and expenses incurred in the collection thereof) in the eminent domain proceeding, provided that the Borrower shall furnish to the Issuer and the Holder an Opinion of Bond Counsel that the proposed redemption in and of itself does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds and a certificate of an engineer stating that (1) the property comprising the part of the Project taken is not essential to continued operations of the Project in the manner existing prior to that taking, (2) the Project has been restored to a condition substantially equivalent to that existing prior to the taking, or (3) other improvements have been acquired or made which are suitable for the continued operation of the Project.

(c) To exercise any option under this Section, the Borrower shall, within ninety (90) days following the event authorizing the exercise of that option, or at any time during the continuation of the condition referred to in clause (iv) of the subsection (a) of this Section 4.9, give notice to the Issuer and to the Holder specifying the date on which the Borrower will deliver the funds required for that redemption, which date shall be not more than ninety (90) days from the date that notice is mailed.

(d) The rights and options granted to the Borrower in this Section may be exercised whether or not the Borrower is in default hereunder; provided, that such default will not relieve the Borrower from performing those actions which are necessary to exercise any such right or option granted hereunder.

#### **Section 4.10 Selection of Bonds for Redemption.**

If less than the entire outstanding principal balance of the Bonds is to be redeemed on the redemption date and moneys for the redemption thereof are held by the Holder, then thereafter the portion of the Bonds to be redeemed shall cease to bear interest, and shall cease to be secured by, and shall not be deemed to be outstanding under this Agreement.

(End of Article IV)

**ARTICLE V**  
**LOAN TO THE BORROWER; SECURITY; TITLE**

**Section 5.1     The Loan; Loan Payments.**

Upon the terms and conditions of this Agreement, the Issuer will make the Loan to the Borrower. The Loan will be funded in installments, with the Holder paying the purchase price of the Bonds in the increments, upon approval of each requested disbursement from the Construction Fund, as and when requested by the Borrower. The Loan from the Issuer to the Borrower shall be deemed to have been made automatically upon the Holder's deposit of funds into the Construction Fund upon approval of each Disbursement Request by the Borrower in accordance with Sections 4.2 and 4.3 hereof.

In consideration of, and in repayment of the Loan, the Borrower shall pay, directly to the Holder, as Loan Payments, payments sufficient to pay when due all Bond Service Charges, all as more particularly provided in, and expressly subject to the terms and conditions of, the Note. The Note shall be executed and delivered by the Borrower concurrently with the execution and delivery of this Agreement. The Borrower may prepay the Loan in whole or in part at any time on or after the date on which the Project is placed in service, and without penalty by delivering funds for such purpose directly to the Holder. Upon receipt of such funds by the Holder, the Bonds shall be deemed to have been redeemed.

To secure Borrower's performance of its obligations under this Agreement and the Note, Borrower shall execute and deliver to the Holder, concurrently with the issuance and delivery of the Bonds, the Mortgage.

Upon payment in full of the Loan, whether at maturity or by redemption or otherwise, the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be surrendered by the Holder to the Borrower, and shall be cancelled by the Borrower.

**Section 5.2     Additional Payments.**

The Borrower also shall pay, or cause to be paid, as and when the same become due: (i) to the Holder and the Issuer, the fees and expenses, including without limitation the reasonable fees of its counsel, all charges for exchange, registration or transfer of Bonds and all other such amounts which the Borrower herein assumes or agrees to pay, including any cost or expense necessary to cancel and discharge this Financing Agreement upon payment in full of the Bonds; (ii) to the Issuer or to any payee designated by the Issuer, the Issuer Fees and Expenses as provided herein, and all expenses of the Issuer, its agents or employees reasonably incurred at any time related to the Bonds or the Project or the financing thereof, including, without limitation, reasonable legal and advisory fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds or in connection with questions or other matters arising under such documents, which amounts described in this clause (iii) shall be paid no later than thirty (30) days after receipt of request for payment thereof (including reasonable documentation of such expenses); (iv) to the Rebate Analyst, the Rebate Analyst Fee; (v) any Rebate Amount; provided, however, that the aggregate of all such amounts paid to the Issuer, or to the Holder on its behalf, shall not equal or exceed an amount which would cause the "yield" on any "nonpurpose investment" to be "materially higher" than the "yield" on the Bonds, as such terms are defined in the Code. All regular fees and expenses set forth in this Section 5.2 shall be limited to the amounts agreed to in writing between the Borrower and the applicable provider.

### **Section 5.3      Obligations Unconditional.**

The obligations of the Borrower to make Loan Payments, and Additional Payments hereof shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Holder or any other Person.

### **Section 5.4      Pledged Revenues.**

To secure the payment of Bond Service Charges, the Issuer hereby assigns to the Holder all its rights under and interest in this Agreement (except for the Unassigned Issuer's Rights and the Rebate Fund and any moneys deposited therein) and the Pledged Revenues. The Borrower hereby agrees and consents to those assignments.

### **Section 5.5      Loan Fees and Penalties.**

(a)      Bond Loan Fee. Borrower shall pay the Holder a loan fee on or prior to the Closing Date in the amount of \$\_\_\_\_\_ [0.50%].

The Borrower acknowledges that the above origination fee shall be for the services rendered by the Holder in connection with the processing and arranging the financing provided to the Borrower in connection with the Bonds, supported by good, valuable and adequate consideration, and is not refundable for any reason.

(b)      Late Fee. For any payment of principal or interest on the Bonds not made within ten (10) days of a Bond Payment Date, the Borrower shall pay a late fee equal to the greater of five percent (5%) of the amount of such payment or fifty Dollars (\$50.00).

### **Section 5.6      Additional Loan Covenants.**

Borrower agrees to the following additional covenants:

(a)      The Plans and Specifications, cost breakdown and itemization and other written materials related to the rehabilitation of the Project shall be subject to Holder's review and approval, including, but not limited to, a soil analysis and evidence of compliance with the Americans with Disabilities Act. Holder shall retain an independent engineer, architect or consultant to conduct such review, and the Borrower agrees to bear the cost and expenses thereof.

(b)      Rehabilitation of the Project shall be completed on or before the Completion Date. Holder acknowledges that work on the Project may begin prior to the Closing Date and the date of the Initial Advance.

(c)      Upon completion of all development and prior to disbursement of the Retainage, the Borrower shall submit evidence of completion of the Project, consisting of (i) a certificate of the supervising architect or general contractor certifying that the Project has been completed in accordance with the final Plans and Specifications as approved by the Holder, (ii) a certificate of use and occupancy and any other certificates required by the local municipality or by any other applicable governmental department, agency or unit, and (iii) if requested, an "As-Built" ALTA/ACSM final survey of the Project certified to the Holder.

(d) The Borrower and the Guarantor shall submit to the Holder and Issuer audited annual financial statements, income and operating statements for the Project and other periodic financial statements as reasonably requested by the Holder or Issuer in writing, including, without limitation, the documents set forth below:

(i) On an annual basis, Borrower shall cause Woda Construction, Inc. to deliver to Holder and Issuer, audited financial statements within two hundred ten (210) days after the end of each calendar year;

(ii) On an annual basis, Borrower shall cause Woda Cooper Development, Inc. to deliver to Holder and Issuer, audited financial statements within two hundred ten (210) days after the end of each calendar year for Woda Cooper Development, Inc.;

(iii) On an annual basis, Borrower shall cause Woda Cooper Companies, Inc. to deliver to Holder and Issuer, compiled financial statements within two hundred ten (210) days after the end of each calendar year for Woda Cooper Companies, Inc.;

(iv) On an annual basis, Borrower shall cause Guarantor to deliver to Holder interim income and balance sheets covering Woda Cooper Companies, Inc., Woda Construction, Inc., Woda Cooper Development, Inc., and Woda Management and Real Estate Inc., within ninety (90) days after the end of each calendar year;

(v) On an annual basis, Borrower shall cause Guarantor to deliver to Holder a schedule of contingent liabilities for Guarantor within ninety (90) days after the end of each calendar year;

(vi) On an annual basis, Borrower shall cause Guarantor to deliver to Holder an annual real estate owned schedule and analysis for Guarantor within two hundred ten (210) days after the end of each calendar year; and

(vii) On a quarterly basis, beginning with completion of construction, Borrower shall deliver to Holder and Issuer a rent roll and operating statement for the Project no later than thirty (30) days following the end of each calendar quarter.

The Borrower and the Guarantor shall provide Holder and Issuer with an annual certification that no adverse condition has occurred that would materially affect the security for, or the payment of, the Loan.

(e) Borrower shall cause Guarantor to comply at all times with the liquidity and net worth requirements set forth in the Payment Guaranty, which require annual testing by the Holder.

(f) Holder shall be entitled to erect a sign on the Project at the Holder's expense or as part of the Borrower's signage indicating that the Holder is the source of financing for the Project and to use the Loan amount, the Borrower's name and Project location in any advertisement.

(g) Provided no material default exists in the covenants, terms and conditions of any Borrower Documents at any time while the Loan remains unpaid, the Holder will permit the Borrower to pay the property insurance premiums and real estate taxes related to the Project outside of escrow formed during the term of the Borrower's Loan. The Borrower shall furnish to

the Holder evidence that the insurance premiums are paid, at least five (5) days prior to the last date for payment of such amounts before termination of the insurance policy.

(h) The origination fees specified herein shall be deemed fully earned by the Holder upon the issuance and acceptance of the Term Letter, and in no event shall said origination fees be refunded to the Borrower. Any unpaid Loan costs and expenses shall be paid by the Borrower immediately upon the expiration or termination of the Term Letter for any reason.

(i) Until the Loan is paid in full, the Borrower shall not, without the prior written consent of the Holder and the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed, create, effect, consent to, attempt, contract for, agree to make, suffer or permit any conveyance (other than leases for portions of the Project in the ordinary course of business), sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation of, the Project, or any interest in or portion of the Project, or any interest in the Borrower, which is effected directly, indirectly, voluntarily, involuntarily, or by operation of law or otherwise. Notwithstanding the foregoing, the following transactions are hereby deemed to be expressly permitted hereunder with prior written notice to Holder:

(i) the transfer by the Investor Limited Partner of its partnership interests in Borrower to an affiliate of the Investor Limited Partner or Ohio Capital Corporation for Housing ("OCCH");

(ii) any change in the beneficial ownership of the Investor Limited Partner of Borrower so long as such entity remains controlled by Ohio Equity Fund, Inc. or OCCH;

(iii) the removal of the General Partner of Borrower pursuant to the Partnership Agreement and the replacement with an affiliate of the Investor Limited Partner or OCCH;

(iv) use of units in the Project as a temporary relocation space for residents of other affordable multifamily properties being renovated by affiliates of the Borrower; and

(v) transfers of direct or indirect interests in the General Partner so long as the General Partner is controlled by Jeffrey J. Woda and/or David Cooper, Jr.

(j) In the event the Borrower or the General Partner receives any funds prior to the Completion Date from any funding sources identified in Sections 4.3(i)(12), (21) or (22) of this Agreement in excess of the amounts needed to complete the Project as shown on the Project Budget delivered at Closing, the Borrower shall immediately deposit such amounts in a separate reserve fund to be held and maintained by the Holder. Any such amounts will be used to pay Bond Service Charges on the Bonds.

(k) Reserved.

(l) Borrower has represented to Holder that the Project will be constructed, operated and maintained as a qualified low-income housing project eligible to receive Low Income Housing Tax Credits ("LIHTCs") under Section 42 of the Code on 100% of the dwelling units in the Project. The Borrower shall be required to reasonably satisfy the Holder as to the Borrower's ability to receive such LIHTCs and the anticipated amount of such credits. The Borrower shall or has submitted an application for LIHTCs ("Application") with the State Agency and shall provide a copy thereof to the Holder. Any and all amendments to the Application, as well as any other

documentation filed with the State Agency by or on behalf of the Borrower with respect to LIHTCs for the project will also be provided to the Holder. The Borrower shall provide to the Holder, within thirty (30) days after its issuance, a copy of the Form 8609 for each building in the Project. The Borrower's failure to deliver the required Form 8609 shall be an Event of Default hereunder. On or around the Closing Date, the Borrower shall furnish the Holder with a copy of the fully executed and properly recorded Extended Use Agreement. Throughout the term of the Loan, the Borrower shall be required to maintain the qualification of the Project as a qualified low-income housing project pursuant to the requirements of the Code, or the successor provisions thereto, and all regulations promulgated thereunder, and to maintain and operate the Project in full compliance with any applicable regulatory requirements of the State Agency or the Internal Revenue Service.

(m) The Borrower hereby pledges to Holder certain of the proceeds of the CDBG-DR Loan, and the Multifamily Loan upon the drawdown of the same, to the extent that such proceeds of the CDBG-DR Loan and the Multifamily Loan are designated for the repayment of the Loan.

(End of Article V)

**ARTICLE VI**  
**ADDITIONAL AGREEMENTS AND COVENANTS**

**Section 6.1     Right of Inspection.**

Subject to reasonable security and safety regulations and upon reasonable notice, the Issuer and the Holder, and their respective agents, shall have the right during normal business hours to inspect the Project.

**Section 6.2     Lease or Grant of Use by Borrower.**

Subject to the provisions of the Mortgage, and any lease or other agreement to which the Borrower is a party or by which it is bound, and except for any lease by the Borrower of units in the Project in the ordinary course of business, the Borrower may lease or grant the right to occupy and use the Project, in whole or in part, to others, provided that:

(a) No such lease or grant shall impair materially the purposes of the Act to be accomplished by operation of the Project as herein provided or adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(b) There shall be delivered to the Issuer and the Holder, at the expense of the Borrower, an Opinion of Bond Counsel addressed to the Issuer and the Holder, in form and substance reasonably acceptable to the Issuer and the Holder, to the effect that such assignment or leasing in and of itself does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds; and

(c) The assignee, lessee or transferee shall assume in writing all obligations of the Borrower under this Agreement.

**Section 6.3     Indemnification.**

The Borrower releases the Issuer from, agrees that the Issuer shall not be liable for, and shall indemnify the Issuer against, all liabilities, claims, investigations, audits, costs and expenses, including attorneys' fees and expenses, imposed upon, incurred or asserted against the Issuer on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project; (b) any breach or default on the part of the Borrower in the performance of any covenant or agreement of the Borrower under this Agreement, the Note or any related document, or arising from any act or failure to act by the Borrower, or any of the Borrower's agents, contractors, servants, employees or licensees; (c) the authorization, issuance, sale, trading, redemption or servicing of the Bonds, or any examination of the Bonds by the Internal Revenue Service to determine compliance with the Code, and the provision of any information or certification furnished in connection therewith concerning the Bonds, the Project or the Borrower, any information furnished by the Borrower for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Issuer, and any other information or certification obtained from the Borrower to assure the exclusion of the interest on the Bonds from gross income for federal income tax purposes; (d) the Borrower's failure to comply with any requirement of this Agreement or the Code pertaining to such exclusion of that interest, including the covenants in Sections 6.4 and 6.6 hereof, and (e) any claim, action, investigation, or proceeding brought with respect to the matters set forth in (a), (b), (c), or (d) above.



The Borrower agrees to indemnify the Holder for, and to hold it harmless against, all liabilities, claims, costs and expenses incurred without negligence or willful misconduct on the part of the Holder on account of any action taken or omitted to be taken by the Holder in accordance with the terms of this Agreement, the Bonds or the Note or any action taken at the request of or with the consent of the Borrower, including the costs and expenses of the Holder in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Agreement, the Bonds or the Note.

The Borrower also agrees to indemnify and to defend and hold the Holder harmless against (i) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the transactions contemplated hereby and (ii) any losses, costs, damages or expenses that the Holder may incur, directly or indirectly, including reasonable attorneys' fees, as a result of or in connection with the assertion against the Holder of any claims relating to the presence or removal of any environmental contamination on the Project or any adjacent property.

In case any action or proceeding is brought against the Issuer or the Holder in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Borrower, and the Borrower upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Borrower from any of the Borrower's obligations under this Section unless that failure materially prejudices the defense of the action or proceeding by the Borrower. At the Borrower's expense, an indemnified party may employ separate counsel and participate in the defense. The Borrower shall not be liable for any settlement made without the Borrower's consent.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, members, agents and employees of the Issuer and the Holder, respectively (each, an "indemnified party"). That indemnification is intended to and shall be enforceable by the Issuer and the Holder, respectively, to the full extent permitted by law and shall survive termination or expiration of this Agreement. Notwithstanding the foregoing, Borrower shall not indemnify Issuer or Holder for the gross negligence or malfeasance of Issuer or Holder, respectively.

**Section 6.4     Borrower Not to Adversely Affect Exclusion from Gross Income of Interest on Bonds.**

Borrower hereby represents that it has taken and caused to be taken, and covenants that it will take and cause to be taken, all actions that may be required of it, alone or in conjunction with the Issuer, for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and represents that it has not taken or permitted to be taken on its behalf, and covenants that it will not take or permit to be taken on its behalf, any actions that would adversely affect such exclusion under the Code.

**Section 6.5     Assignment by Issuer.**

Subject to Section 5.4 hereof, the Issuer shall not attempt to assign, transfer or convey its interest in the Pledged Revenues or this Agreement or create any pledge or lien of any form or nature with respect to the Pledged Revenues or the payments hereunder.

**Section 6.6     Affirmative Covenants of the Borrower.**

Unless the Issuer and the Holder shall otherwise consent in writing:

(a) Maintenance of Project. The Borrower shall maintain and preserve the Project in good working order and condition, ordinary wear and tear excepted, and shall from time to time make all necessary repairs, renewals, replacements, additions and improvements to said properties. All damage to Project units shall be repaired promptly, and all units shall be maintained so as to be available at all times for habitation.

(b) Keeping of Records and Books of Account. The Borrower shall keep adequate records and books of account in which complete entries will be made in accordance with GAAP, reflecting all financial transactions.

(c) Payment of Taxes, Etc. The Borrower shall pay and discharge (or in the case of materialmen's or mechanics liens, adequately bond over): all taxes, assessments, fees, and other Governmental charges or levies imposed upon the Project or income or profits from the Project, before the same shall become delinquent; all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and other similar Persons for labor, materials, supplies and rentals, which if unpaid might by law become a lien upon the Project; any indebtedness heretofore or hereafter incurred by it when due, and discharge, perform and observe all covenants, provisions and conditions to be discharged, performed and observed by it in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any Lien existing at any time upon the Project; provided, however, that the Borrower shall not be required to pay any of the foregoing if (i) the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, (ii) the Borrower shall have set aside on its books, in accordance with GAAP, adequate reserves with respect thereto, and (iii) the title of the Borrower to, and its right to use, the Project is not materially and adversely affected thereby. The Borrower hereby agrees that, in the event they fail to pay or cause to be paid when due taxes, assessments, fees and other governmental charges or levies or the premium on any required insurance, the Issuer may make such payment, but is not obligated to do so, and the Issuer shall be reimbursed by the Borrower therefor with interest on the amount so advanced.

(d) Insurance. The Borrower shall at all times maintain builder's risk, commercial liability, flood, earthquake, property and shall contractually require the general contractor to maintain worker's compensation insurance in the amounts set forth in Exhibit B to the Term Letter. In addition, the Borrower shall obtain promptly such other or additional insurance as the Holder may reasonably request, upon the request of the Holder.

(e) Notice of Certain Events. The Borrower shall promptly notify the Holder in writing of any litigation, arbitration proceeding or administrative investigation, inquiry or other proceeding to which it may hereafter become a party or be subject to which may involve any material risk of any material judgment or liability (unless fully covered by insurance) or which may otherwise result in any material adverse change in the business or assets or in the condition, financial or otherwise, of the Borrower or which may materially impair the ability of the Borrower to perform its obligations under the Bond Documents, or any other agreement or instrument herein or therein contemplated. Subject to any applicable notice or cure periods, in the event that any Event of Default occurs, the Borrower shall give prompt notice in writing of such happening to the Holder and the Issuer. The Borrower shall also promptly notify the Holder and the Issuer in writing of any of the following events:

(i) Any material change with respect to the business, assets, liabilities, financial condition, results of operations or business prospects of the Borrower other than changes in the ordinary course of business the effects of which have not been materially adverse.

(ii) A default by Borrower under any material agreement to which the Borrower is a party or by which the Borrower or its properties or assets may be bound, giving in each case the details thereof and specifying the action proposed to be taken with respect thereto.

(f) Performance of Contracts, Etc. The Borrower shall perform according to and shall comply with all of its contractual obligations in all material respects and all requirements of law if nonperformance thereof would materially and adversely affect the business or credit of the Borrower or would materially impair the ability of the Borrower to perform its obligations under the Borrower Documents or any other agreement or instrument herein or therein contemplated.

(g) Cooperation in Perfecting Security Interests, Etc. The Borrower shall promptly perform, upon request of the Holder, such reasonable acts as may be necessary to perfect and maintain any lien provided for in this Agreement, the Mortgage or in any agreement or document contemplated herein or therein, or otherwise to carry out the intent of this Agreement. The Borrower shall promptly execute, deliver and perform or cause to be done, executed, delivered and performed, on the reasonable request of the Holder, all such documents, instruments, agreements, things and acts, including, without limitation, financing statements, continuation statements, security agreements, assignments of leases and mortgages as may be necessary to perfect or maintain any such lien on any and all assets or rights in the Project, or any interest of the Borrower therein, which are the subject of such lien and the Holder and its officers, employees and authorized agents, or any of them, are hereby irrevocably appointed the attorneys in fact of the Borrower upon the occurrence of an Event of Default to do all acts and things which the Holder may deem reasonable necessary or advisable to preserve, perfect and continue perfected any lien in favor of the Holder.

(h) Change in Organization. The Borrower shall inform the Holder and the Issuer in writing within ten (10) days of any change, amendment, or modification of its place of organization, form of organization, or change in Borrower's name (including, but not by way of limitation, resulting from mergers, acquisitions, tax free exchanges, or other transactions) (all of which are sometimes referred to as "Corporate Changes," regardless of whether the Borrower is organized as a corporation, partnership, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other form of entity recognized under the law of the state in which the Borrower is organized), and Borrower shall cooperate with the Holder by executing as soon as reasonably practicable after receipt thereof any and all amendments to UCC financing statements deemed necessary by the Holder to insure that the security interest of the Holder in any and all collateral of the Borrower remains fully perfected. The Holder may rely on opinions of Bond Counsel as to whether any or all UCC financing statements of the Borrower need to be amended as a result of any Corporate Changes. If the Borrower fails to provide information to the Holder about Corporate Changes on a timely basis, the Holder shall not be liable or responsible to any party for any failure to maintain a perfected security interest in the Borrower's collateral, for which the Holder needed to have information about the Corporate Changes. The Holder shall have no duty to inquire about Corporate Changes if the Borrower does not inform the Holder of such Corporate Changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Holder to search for information on the Corporate Changes if the Borrower does not provide such information.

The Borrower shall not file or record any instrument or document with any entity, officer or office having responsibility for recording of security interests which purports to terminate, vitiate or extinguish a security interest in the collateral in which the Holder holds a security interest (a "Debtor Termination Statement"). The Borrower shall provide the Holder with copies

of any Debtor Termination Statement that the Borrower files in violation of the covenant contained in the previous sentence.

(i) Environmental Matters. The Borrower will take and continue to take prompt action to remedy all environmental pollution and contamination, hazardous waste disposal and other environmental cleanup problems with respect to the Project, if any, whether or not such cleanup problems have resulted from the order or request of a municipal, county, state, federal, administrative or judicial authority, or otherwise.

(j) Non-discrimination. The Borrower will require the manager of the Project to covenant that in the leasing of the Project it will not discriminate by reason of race, creed, color, handicap, national origin, sex, religious belief, marital status, family status or sexual orientation.

(k) Mechanics' Liens. The Borrower will not suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Project or any funds due any contractor, and will promptly bond or discharge the same if any claims for lien or any proceedings for the enforcement thereof are filed or commenced; provided, however, that the Borrower shall have the right to contest in good faith and with due diligence the validity of any such lien or claim upon furnishing to the title agent such security or indemnity as it may require to induce the title agent to issue its title policy or an endorsement thereto insuring against all such claims, liens or proceedings.

(l) Proceedings to Enjoin or Prevent Construction. If any proceedings are filed seeking to enjoin or otherwise prevent or declare unlawful the construction, renovation, occupancy, maintenance or operation of the Project or any portion thereof, the Borrower shall at its sole expense (i) cause such proceedings to be vigorously contested in good faith and (ii) in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom. Without limiting the generality of the foregoing, the Borrower shall resist the entry or seek the stay of any temporary or permanent injunction that may be entered and use its best efforts to bring about a favorable and speedy disposition of all such proceedings.

(m) Signage. Each or both of the Issuer and the Holder may place signs on the Project Site indicating that it is a source of financing for the Project.

(n) Escrow Account. Borrower shall, but only following the written request of Holder, make escrow deposits on each Interest Payment Date in the amount of 1/12th of the annual estimated taxes and insurance premiums due, in an interest-bearing escrow account held by Holder in Holder's name and under its sole dominion and control (the "Escrow Account"). As of the date hereof, no such deposits are required. All payments deposited in the Escrow Account, and all interest accruing thereon, are pledged as additional collateral for the Loan. If Borrower has made deposits into the Escrow Account at Holder's direction, the Holder shall pay all insurance premiums or real property taxes with respect to the Project.

(o) Financial Covenants. Borrower shall cause Guarantor to comply with the financial covenants set forth in Section 6 of the Payment Guaranty.

(p) Radon Mitigation. Borrower shall install a radon mitigation system on the Project as part of the rehabilitation of the Project. No later than 90 days after completion of construction of the Project, Borrower shall undertake sampling of radon levels at the Project in compliance with the State requirements, or if no such requirements exist, at least the greater of (i) in at least one (1) on the lowest habitable floor of each building or (i) once in each Building. In

the event such samples reveal radon levels above EPA requirements, Borrower shall perform a follow-up test. If such follow up test reveals radon levels above EPA requirements, Borrower shall activate radon mitigation systems which result in radon levels within EPA requirements.

(q) Relocation Plan. Borrower shall deliver to Holder a relocation plan for existing tenants which is in form and substance acceptable to Holder and Issuer.

(r) Post-Closing Actions. Borrower has requested that Holder defer certain conditions precedent to the closing of the Loan, and Holder is willing to do so on the terms and subject to the conditions of the Post-Closing Exhibit. In the event of any conflict between the closing conditions or disbursement outlined in this Agreement and the Post-Closing Exhibit, the terms of the Post-Closing Exhibit shall control. Borrower and Holder may modify the Post-Closing Exhibit, from time to time, by executing a supplement using the form included therewith.

Borrower shall comply with all of the Post-Closing Actions set forth on the Post-Closing Exhibit by the deadline for completion stated therein. Failure to do so shall be an Event of Default hereunder.

#### **Section 6.7     Non-Recourse Obligations.**

It is hereby expressly agreed and understood that, unless otherwise expressly set forth in writing, the obligations of Borrower hereunder, under the Note, the Mortgage, the Extended Use Agreement, the Bond Regulatory Agreement, and under every document executed and delivered in connection herewith, are non-recourse to the partners of the Borrower and to any officers, directors, members or stockholders of the Borrower or any of its partners. In furtherance thereof, the Issuer and the Holder shall be entitled to look solely and exclusively to the Borrower for the payment and other obligations of Borrower hereunder, under the Note, the Mortgage, the Extended Use Agreement, the Bond Regulatory Agreement, and all evidences of indebtedness secured hereby, and shall not seek a personal judgment against any of its partners or any officer, director, member or stockholder of the Borrower or any of its partners thereof, provided that nothing herein shall relieve any such Person from liability for any of the following: (a) rent collected for more than one month in advance and received by a partner; (b) misappropriation or misapplication by such Person of insurance or eminent domain proceeds; (c) fraud or material misrepresentation by such Person against the Issuer or the Holder of any Bond; (d) conversion by such Person of all or a material portion of the Project; or (e) gross negligence, willful misconduct or intentional torts relating to the Project or the revenues therefrom.

#### **Section 6.8     Secondary Financing.**

The Borrower shall not permit any secondary financing on the Project, except as set forth herein and in the Borrower Documents, without the prior consent of the Holder, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **Section 6.9     Bank Participation/Syndication.**

The Borrower acknowledges that the Holder reserves the right to syndicate and/or participate its interest in the Loan and Borrower agrees to, at Holder's request, execute such replacement promissory notes and other instruments as may be appropriate to evidence its obligation under the Loan to such syndicate banks as may commit, in the future, to fund a portion of the Loan according to the terms of this Agreement; provided, however, that Holder shall provide prior notice to Investor Limited Partner of any such participation or syndication.

**Section 6.10    No Purchase of Bonds.**

Neither the Borrower nor any “related person” (within the meaning of Section 144(a)(3) of the Code) to the Borrower, pursuant to any arrangement, formal or informal, will purchase any of the Bonds or other obligations of the Issuer in an amount related to the amount of the Loan.

**Section 6.11    Know Your Customer Requirements.**

Borrower, each Guarantor, and each person owning a significant interest in any of them shall not engage in dealings or transactions or otherwise be associated with an OFAC Restricted Person. Borrower shall provide Holder with any additional information that Holder determines necessary from time to time to ensure compliance with Holder’s USA PATRIOT Act Customer Identification Program, due diligence pursuits, and the OFAC Review Process, the Beneficial Ownership Regulation, or any other applicable Laws requiring Holder to collect customer identification materials, including home addresses, telephone numbers, birthdates, social security and other tax identification numbers, and similar information. Borrower shall notify Holder promptly of any change in the information provided in Borrower’s most recent Beneficial Ownership Certification delivered to Holder in connection with the Loan.

(End of Article VI)

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

**Section 7.1      Events of Default.**

Each of the following shall be an Event of Default:

(a) Failure of Borrower (i) (x) to make the Loan Payments within ten (10) days of when due, or (y) to observe or perform any of the other covenants or conditions by the Borrower to be performed under the terms of this Agreement or any other Borrower Document concerning the payment of money, for a period of ten (10) business days after written notice from the Holder that the same is due and payable; or (ii) unless a shorter period is expressly set forth herein for a specific default, for a period of thirty (30) days after written notice from the Holder, to observe or perform any non-monetary covenant or condition contained in this Agreement or any other Borrower Documents; provided that if any such failure concerning a non-monetary covenant or condition is susceptible to cure and cannot reasonably be cured within said thirty (30) day period, then the Borrower shall have an additional thirty (30) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as the Borrower commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting sixty (60) day period from the date of the Holder's notice; and provided further that if a different notice or grace period is specified under any other subsection of this Section with respect to a particular breach, the specific provision shall control.

(b) The disapproval by the Holder at any time of any construction work and failure of the Borrower to cause the same to be corrected to the satisfaction of the Holder within the cure period provided in paragraph (a)(ii) above.

(c) A delay in the construction or a discontinuance for a period of thirty (30) days after written notice from the Holder concerning such delay or discontinuance (subject to Force Majeure), or in any event a delay in construction so that the same is not, in the Holder's judgment likely to be completed on or before the Completion Date.

(d) The bankruptcy or insolvency of the general contractor and failure of the Borrower to procure a contract with a new contractor satisfactory to the Holder within ninety (90) days from the occurrence of such bankruptcy or insolvency.

(e) Any transfer or other disposition in violation of the Collateral Documents.

(f) If any material warranty, representation, statement, report or certificate made now or hereafter by the Borrower or the Guarantor is untrue or incorrect at the time made or delivered, provided that if such breach is reasonably susceptible of cure, then no Event of Default shall exist so long as the Borrower cures said breach (i) within the notice and cure period provided in (a)(i) above for a breach that can be cured by the payment of money or (ii) within the notice and cure period provided in (a)(ii) above for any other breach.

(g) The Borrower, General Partner or Guarantor shall commence a voluntary case concerning the Borrower or such Guarantor under Title 11 of the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto or any other present or future bankruptcy or insolvency statute (the "Bankruptcy Code"); or an involuntary proceeding is commenced against the Borrower, General Partner or Guarantor under the Bankruptcy Code and relief is ordered against the Borrower, General Partner or Guarantor, or the petition is

controverted but not dismissed or stayed within ninety (90) days after the commencement of the case, or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of the Borrower, General Partner or Guarantor; or the Borrower or any Guarantor commence any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction whether now or hereafter in effect relating to the Borrower, General Partner or Guarantor; or there is commenced against the Borrower, General Partner or Guarantor any such proceeding which remains undismissed or unstayed for a period of ninety (90) days; or the Borrower, General Partner or Guarantor fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or the Borrower, General Partner or Guarantor by any act or failure to act indicates its consent to, approval of, or acquiescence in any such case or proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of ninety (90) days.

(h) The Borrower, General Partner or Guarantor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of the Borrower, the General Partner or Guarantor are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

(i) If Borrower is enjoined, restrained or in any way prevented by any court order from constructing or operating the Project.

(j) One or more final, unappealable judgments are entered (i) against the Borrower in amounts aggregating in excess of \$50,000 or (ii) against any Guarantor in amounts aggregating in excess of \$100,000, and said judgments are not satisfied, stayed or bonded over within sixty (60) days after entry.

(k) If Borrower or General Partner shall fail to pay any debt owed by it beyond any applicable grace or cure period or is in default under any agreement with the Holder beyond any applicable notice, grace or cure period, or, with respect to Borrower or General Partner, any other party (other than a failure or default for which the Borrower's and General Partner's maximum liability does not exceed \$50,000) and such failure or default continues after any applicable grace period specified in the instrument or agreement relating thereto.

(l) If a Material Adverse Change occurs with respect to Borrower, the General Partner, the Project or any Guarantor.

(m) The failure of the Investor Limited Partner to make scheduled capital contributions in an amount sufficient to pay the outstanding balance of the Loan on the Maturity Date, after all terms and conditions precedent to such contributions in the Partnership Agreement have been satisfied.

(n) The Borrower's use of Loan proceeds for a purpose that will contribute the excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, provided by Exhibit M of Subpart G of Part 1940 Title 7, Code of Federal Regulations, or for any purpose not provided for herein.



(o) The occurrence of any other event or circumstance denominated as an Event of Default herein or under any of the other Borrower Documents and the expiration of any applicable grace or cure periods, if any, specified for such Event of Default herein or therein, as the case may be.

(p) The failure to close or the occurrence of any default beyond any applicable notice and cure period under the Multifamily Loan, CDBG-DR Loan, and/or Huntington Grant, unless such failure is waived in writing by the applicable lender.

(q) Reserved.

(r) Failure of Borrower to deliver any funds to the Holder pursuant to Section 5.6(i) of this Agreement.

(s) Borrower fails to perform any of the Post-Closing Actions by the applicable deadline specified in the Post-Closing Exhibit.

(t) The occurrence of a Determination of Taxability.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) hereof other than an obligation to pay, the Borrower shall not be deemed in default during the continuance of such inability. However, the Borrower shall promptly give notice to the Holder and the Issuer of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within the Borrower's discretion.

The term Force Majeure shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the Borrower.

The declaration of an Event of Default under subsection (c) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

## **Section 7.2 Remedies on Default.**

Whenever an Event of Default shall have happened and be continuing beyond any applicable grace or cure period, any one or more of the following remedial steps may be taken:

(a) The Holder may declare, by written notice to the Issuer and the Borrower, to be immediately due and payable, the unpaid principal amount of the Bonds, and the payments to be made by the Borrower therefor pursuant to this Agreement and the Note, and accrued interest on the foregoing, whereupon the same shall become immediately due and payable;

(b) The Holder may exercise any or all, or any combination, of the remedies specified in the Mortgage;

(c) The Issuer or the Holder may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower pertaining to the Project;

(d) The Holder may take possession of the Project and complete the construction and do anything which is necessary or appropriate in its sole judgment to fulfill the obligations of the Borrower under this Agreement and the other Borrower Documents, including the right to avail itself of and procure performance of existing contracts or let any contracts with the same contractors or others. Without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes the Holder its lawful attorney in fact with full power of substitution in the Project to complete the construction in the name of the Borrower; to use unadvanced funds remaining under the Note or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Note, to complete the construction; to make changes in the Plans and Specifications which shall be necessary or desirable to complete the construction in substantially the manner contemplated by the Plans and Specifications; to retain or employ new general contractors, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims, which may be liens or security interests, or to avoid such bills and claims becoming liens against the Project; to execute all applications and certificates in the name of the Borrower, prosecute and defend all actions or proceedings in connection with the Project; to take action and require such performance as it deems necessary under any of the bonds to be furnished hereunder and to make settlements and compromises with the surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction; and to do any and every act which the Borrower might do on its own behalf; it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked;

(e) The Holder may withhold further disbursement of the proceeds of the Loan and/or terminate the Holder's obligations to make further disbursements hereunder; and

(f) The Issuer or the Holder may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement and the Note or to enforce the performance and observance of any other obligation or agreement of the Borrower under those instruments.

Notwithstanding the foregoing, the Issuer shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Issuer at no cost or expense to the Issuer.

The provisions of this Section are subject to the further limitation that the rescission by the Holder of its declaration that any of the Bonds are immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which

that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

**Section 7.3      No Remedy Exclusive.**

No failure by the Holder or the Issuer to exercise, and no delay by the Holder or the Issuer in exercising, any right, remedy, power or privilege under this Agreement or any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges under this Agreement and each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law. Borrower, for itself and its Guarantors, hereby waives notice of non-payment, demand, presentment, protest and notice thereof with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Holder to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

**Section 7.4      Agreement to Pay Attorneys' Fees and Expenses.**

If an Event of Default should occur and the Issuer or the Holder should incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement, the Mortgage or the Note or the collection of sums due thereunder, the Borrower shall reimburse the Issuer and the Holder, as applicable, for the reasonable expenses so incurred upon demand.

**Section 7.5      No Waiver.**

No failure by the Issuer or the Holder to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

**Section 7.6      Notice of Default.**

Borrower shall notify the Issuer, the Holder and the Investor Limited Partner immediately if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

**Section 7.7      Cure Right.**

The Issuer, Borrower and the Holder hereby agree to accept performance on the part of the Investor Limited Partner or an affiliate thereof as though the same had been performed by the Borrower under any of the Borrower Documents. The Investor Limited Partner or its affiliate will be allowed (1) ten (10) days after it has been given notice to cure a monetary default under the Borrower Documents other than the payment due at maturity, and (2) up to thirty (30) days after the receipt of notice to cure any non-monetary default under the Borrower Documents. If the Investor Limited Partner or its affiliate makes any such payment or otherwise offers cure of a default, the Issuer and the Holder will accept or

reject such action as curing such default on the same basis as if payment or cure were made directly by Borrower.

(End of Article VII)

**ARTICLE VIII**  
**[RESERVED]**

**ARTICLE IX**  
**MISCELLANEOUS**

**Section 9.1     Term of Agreement.**

This Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the Holder until such time as all of the Bonds shall have been fully paid (or provision made for such payment) and all other sums payable by the Borrower under this Agreement and the Note shall have been paid, except for obligations of the Borrower under Sections 3.4, 4.3 and 6.3 hereof, which shall survive any termination of this Agreement.

**Section 9.2     Notices.**

All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by first class mail, postage prepaid, or forwarded by overnight courier service, delivery charges prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Borrower, the Investor Limited Partner or the Holder shall also be given to the others. The Borrower, the Investor Limited Partner, the Issuer and the Holder, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

**Section 9.3     Extent of Covenants of the Issuer; No Personal Liability.**

All covenants, obligations and agreements of the Issuer contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, official, director, agent or employee of the Issuer or the Board in other than his or her official capacity, and neither the members of the Board nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Agreement.

**Section 9.4     [Reserved].**

**Section 9.5     Binding Effect.**

This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Borrower and its permitted successors and assigns; provided that this Agreement may not be assigned by the Borrower (except in connection with a sale, lease or grant of use pursuant to Section 6.2 hereof) and may not be assigned by the Issuer or as otherwise may be necessary to enforce or secure payment of Bond Service Charges. This Agreement may be enforced only by the parties, their assignees and others who may, by law, stand in their respective places.

**Section 9.6     Amendments and Supplements.**

This Agreement may be amended with the prior written consent of the Issuer, the Borrower and the Holder.

**Section 9.7     Execution Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**Section 9.8     Severability.**

If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 9.9     Governing Law.**

This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

**Section 9.10    Waiver of Jury Trial.**

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

(End of Article IX)

IN WITNESS WHEREOF, the Issuer, the Holder and the Borrower have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

**ISSUER:**

**WEST VIRGINIA HOUSING DEVELOPMENT  
FUND**

By: \_\_\_\_\_  
Erica L. Boggess, Executive Director

**BORROWER:**

**WC JOSEPH'S CROSSING LIMITED  
PARTNERSHIP**, a West Virginia limited partnership

By: WC Joseph's Crossing GP, LLC, an Ohio limited  
liability company, its General Partner

By: Woda Cooper Communities II, LLC, an Ohio  
limited liability company, its Sole Member

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

Name: \_\_\_\_\_

Title: Managing Member



**HOLDER:**

**KEYBANK NATIONAL ASSOCIATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A-1

FORM OF BOND

***THIS BOND IS SUBJECT TO TRANSFER RESTRICTIONS, MORE FULLY DESCRIBED IN THE FINANCING AGREEMENT REFERRED TO HEREIN, AND MAY NOT BE TRANSFERRED EXCEPT TO A “QUALIFIED INSTITUTIONAL BUYER” WITHIN THE MEANING OF RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN ACCREDITED INVESTOR WITHIN THE MEANING OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933.***

No. 1

West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds  
(Joseph’s Crossing Apartments Project) Series 2022

INTEREST RATE: MATURITY DATE: DATED AS OF:  
Variable Rate, as provided in the Financing Agreement \_\_\_\_\_, 20\_\_\_\_\_, 2022

REGISTERED OWNER: KEYBANK NATIONAL ASSOCIATION

PRINCIPAL AMOUNT: NOT TO EXCEED \$3,500,000 AGGREGATE PRINCIPAL AMOUNT OF  
MULTIFAMILY HOUSING REVENUE BONDS (JOSEPH’S CROSSING  
APARTMENTS PROJECT) SERIES 2022

The West Virginia Housing Development Fund (the “Issuer”), a public body corporate and governmental instrumentality of the State of West Virginia (the “State”), for value received, promises to pay to the Registered Owner specified above or registered assigns, but solely from the sources and in the manner referred to herein, on the Maturity Date specified above, such portion of the Principal Amount specified above as shall have been advanced as reflected in the Schedule of Drawings noted on Schedule A hereto, and to pay from those sources interest thereon at the aforesaid Interest Rate (as more fully described in the Financing Agreement) on the first day of each month, commencing \_\_\_\_\_ 1, 2022 (the “Interest Payment Dates”) until such Principal Amount is paid or duly provided for. This Bond will bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date.

The principal of this Bond is payable on the Maturity Date upon presentation and surrender hereof at the designated office of the Issuer or elsewhere as provided by the Issuer. Interest is payable on each Interest Payment Date by check or draft mailed, or by wire transfer, to the person in whose name this Bond is registered (the “Holder”) at the close of business on the Business Day (as defined in the Financing Agreement) immediately preceding that Interest Payment Date on the registration books for this issue maintained by the Bond Registrar (as defined in the Financing Agreement), at the address or account, as applicable, appearing therein. The principal of and interest on this Bond are payable in lawful money of the United States of America, without deduction for the services of the paying agent.

THE BONDS ARE NOT A GENERAL OBLIGATION, DEBT OR BONDED  
INDEBTEDNESS OF THE ISSUER OR A PLEDGE OF THE MONEYS OR FAITH AND

EX-A-1-1

CREDIT OF THE ISSUER, AND THE HOLDER OF THE BONDS HAS NOT BEEN GIVEN AND DOES NOT HAVE ANY RIGHT TO HAVE EXCISES OR TAXES LEVIED FOR THE PAYMENT OF DEBT SERVICE THEREON. THE ISSUER HAS NO TAXING POWER.

The State is not liable on the Bonds, neither the faith and credit nor the taxing power of the State or of any political subdivision of the State is pledged to the payment of the principal of or the interest on the Bonds, and the Bonds do not constitute a debt, liability or other obligation of the State.

This Bond is one of a duly authorized issue of Multifamily Housing Revenue Bonds (Joseph's Crossing Apartments Project) Series 2022 (the "Bonds"), issuable under the Financing Agreement dated as of \_\_\_\_\_, 2022 (the "Financing Agreement"), among the Issuer, WC Joseph's Crossing Limited Partnership (the "Borrower") and KeyBank National Association, which Bonds are authorized to be issued in an aggregate principal amount not to exceed \$3,500,000 for the purpose of making a loan (the "Loan") to assist the Borrower to pay a portion of the costs of the acquisition, rehabilitation, furnishing and equipping of the Project (as defined in the Financing Agreement). The Bonds are special limited obligations of the Issuer, issued or to be issued under and are to be secured and entitled equally and ratably to the protection given by the Financing Agreement. The Bonds are payable solely out of the Pledged Revenues (as defined in the Financing Agreement). The Bonds are issued pursuant to provisions of the West Virginia Housing Development Fund Act, constituting Article 18, Chapter 31 of the Code of West Virginia, 1931, as amended (the "Act"), and a resolution duly enacted by the Issuer.

Reference is made to the Financing Agreement for a more complete description of the Project and the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Borrower and the Holder of the Bonds, the terms and conditions upon which the Bonds are issued and secured, and the restrictions on transferability of the Bonds. The Holder of the Bonds has only those remedies provided in the Financing Agreement. The Holder assents, by its acceptance hereof, to all of the provisions of the Financing Agreement. A copy of the Financing Agreement is on file with the Issuer.

This Bond shall not be entitled to any security or benefit under the Financing Agreement or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

This Bond shall not be transferred except in accordance with the Financing Agreement.

It is certified and recited that there have been performed and have happened in regular and due form, as required by law, all acts and conditions necessary to be done or performed by the Issuer or to have happened (i) precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special limited obligations of the Issuer, and (ii) precedent to and in the execution and delivery of the Financing Agreement; that payment in full for the Bonds issued on the date hereof has been received; and that the Bonds do not exceed or violate any constitutional or statutory limitation.

The Act provides that neither the directors or officers of the Issuer nor any person executing this bond shall be liable personally hereon or shall be subject to any personal liability or accountability by reason of its execution.

IN WITNESS WHEREOF, the West Virginia Housing Development Fund has caused this bond to be executed in its name by the manual signature of its duly Authorized Officer and its corporate seal (or a facsimile thereof) to be affixed, imprinted, engraved or otherwise reproduced hereon and attested by the manual signature of its Assistant Treasurer, Secretary or other Authorized Officer, all as of the dated date shown above.

WEST VIRGINIA HOUSING DEVELOPMENT  
FUND

By \_\_\_\_\_  
Authorized Officer

[SEAL]

Attest

\_\_\_\_\_  
Assistant Secretary

## CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Financing Agreement.

Date of Registration and Authentication: \_\_\_\_\_, 2022

WEST VIRGINIA HOUSING DEVELOPMENT  
FUND

By \_\_\_\_\_  
Authorized Officer

## ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer that Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature Guaranteed:

\_\_\_\_\_  
Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agent Medallion Program or in such other guarantee program acceptable to the Bond Registrar.

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

Please insert social security number or other tax identification number of transferee

\_\_\_\_\_  
\_\_\_\_\_

SCHEDULE A  
SCHEDULE OF DRAWINGS

<u>DRAW DATE</u>	<u>DRAW AMOUNT</u>	<u>PRINCIPAL REMAINING</u>



## EXHIBIT A-2

### FORM OF NOTE

This Promissory Note has not been registered under the Securities Act of 1933. Its transferability is restricted by the Financing Agreement referred to herein.

\$3,500,000.00 \_\_\_\_\_, 2022

WC JOSEPH'S CROSSING LIMITED PARTNERSHIP, a West Virginia limited partnership (the "Borrower"), for value received, promises to pay to KEYBANK NATIONAL ASSOCIATION, as the Holder of the Bonds identified below (the "Holder"), the principal sum of

Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00)

or any portion of such principal amount as shall be advanced under and pursuant to the Agreement (as defined below) which is reflected in the amount appearing in the Amount of Advance column of the Grid attached hereto and made a part hereof, together with interest thereon, on the date or dates and in the manner specified below, from the respective dates of the advances under the Agreement until the earlier of \_\_\_\_\_, 2024 [24 months], or the date such principal amount is paid in full. The Borrower agrees to pay (i) interest on the unpaid balance of such principal sum from and after the date of this Note at the interest rate borne by the Bonds from time to time and (ii) interest on overdue principal, and to the extent permitted by law, on overdue interest, at the Default Rate.

This Note has been executed and delivered by the Borrower pursuant to a certain Financing Agreement (the "Agreement") dated as of \_\_\_\_\_, 2022, between the West Virginia Housing Development Fund (the "Issuer"), the Holder and the Borrower. Terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

Under the Agreement, the Issuer has agreed to loan the Borrower the proceeds received from the sale of the Issuer's not to exceed \$3,500,000 aggregate principal amount of Multifamily Housing Revenue Bonds (Joseph's Crossing Apartments Project) Series 2022 dated as of \_\_\_\_\_, 2022 (the "Bonds") to assist in the financing of the Project, and the Borrower has agreed to repay such loan by making Loan Payments at the times and in the amounts set forth in this Note for application to the payment of the principal of and interest on the Bonds as and when due.

To provide funds to pay the Bond Service Charges on the Bonds as and when due, the Borrower hereby agrees to and shall make Loan Payments as follows: on each Bond Payment Date, interest and principal due on the Bonds or upon maturity, redemption or acceleration of Bonds. In addition, to provide funds to pay the Bond Service Charges on the Bonds as and when due at any other time, the Borrower hereby agrees to and shall make Loan Payments on any other date on which any Bond Service Charges on the Bonds shall be due and payable, whether at maturity, upon acceleration, call for redemption or otherwise.

If payment or provision for payment in accordance with the Agreement is made in respect of the Bond Service Charges on the Bonds from moneys other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of Bond Service Charges has been made. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be payable in lawful money of the United States of America and shall be made to the Holder at its designated office.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Holder, or any other person. The obligations of the Borrower hereunder shall be non-recourse in accordance with and to the extent of Section 6.7 of the Agreement. It is hereby expressly agreed and understood that, unless otherwise expressly set forth in writing, the obligations of Borrower hereunder, under the Note, the Mortgage, the Bond Regulatory Agreement and under every document executed and delivered in connection herewith, are non-recourse to the partners of the Borrower and to any officers, directors, members or stockholders of the Borrower or any of its partners. In furtherance thereof, the Issuer and the Holder shall be entitled to look solely and exclusively to the Borrower for the payment and other obligations of Borrower hereunder, under the Note, the Mortgage, the Bond Regulatory Agreement and all evidences of indebtedness secured hereby, and shall not seek a personal judgment against any of its partners or any officer, director, member or stockholder of the Borrower or any of its partners thereof, provided that nothing herein shall relieve any such Person from liability for any of the following: (a) rent collected for more than one month in advance and received by a partner; (b) misappropriation or misapplication by such Person of insurance or eminent domain proceeds; (c) fraud or material misrepresentation by such Person against the Issuer or the Holder of any Bond; (d) conversion by such Person of all or a material portion of the Project; or (e) gross negligence, willful misconduct or intentional torts relating to the Project or the revenues therefrom.

This Note is subject to optional and extraordinary optional prepayment, in whole or in part, upon the terms and conditions set forth in Article IV of the Agreement and to the extent the Bonds are subject to redemption. Any optional or extraordinary optional prepayment is subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Agreement. This Note is subject to tender at the option of the Holder upon the terms and conditions set forth in Article IV of the Agreement.

Whenever an Event of Default under Section 7.1 of the Agreement shall have occurred and be continuing beyond any applicable notice and cure periods, and, as a result thereof, the principal of Bonds then outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant thereto, the unpaid principal amount of and accrued interest on this Note shall also be due and payable on the date on which the principal of and premium and interest on the Bonds shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Bonds shall also constitute an annulment of any corresponding declaration with respect to this Note.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name as of the date first above written.

**WC JOSEPH'S CROSSING LIMITED  
PARTNERSHIP**, a West Virginia limited partnership

By: WC Joseph's Crossing GP, LLC, an Ohio limited liability company, its General Partner

By: Woda Cooper Communities II, LLC, an Ohio limited liability company, its Sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Member

[illegible]

Amount of Advance	Amount of Interest Payment	Amount of Principal Payment	Unpaid Principal Balance	Date of Advance/Date Paid	Holder Endorsement (Payment)	Borrower Endorsement (Advance)
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

## **EXHIBIT B**

### **PROJECT FACILITIES**

Seven (7) residential buildings containing forty-two (42) apartment units and the ancillary and appurtenant facilities located upon the land described in Exhibit C.

**EXHIBIT C**  
**PROJECT SITE**  
**LEGAL DESCRIPTION**

## EXHIBIT D

### COMPLETION CERTIFICATE

To: KeyBank National Association, Holder

Ohio Equity Fund for Housing Limited Partnership XXXI, as Investor Limited Partner

and

West Virginia Housing Development Fund, Issuer

From: Authorized Borrower Representative

Subject: Not to Exceed \$3,500,000 West Virginia Housing Development Fund Multifamily Housing Revenue Bonds (Joseph's Crossing Apartments Project) Series 2022

The undersigned hereby certifies in connection with the Project, financed with the proceeds of the above described Bonds issued by the West Virginia Housing Development Fund (the "Issuer") pursuant to a resolution duly adopted by the Board of the Issuer on \_\_\_\_\_, 2022, the proceeds of which have been loaned to (the "Borrower") pursuant to the Financing Agreement between the Borrower, the Holder and the Issuer dated as of \_\_\_\_\_, 2022 (the "Financing Agreement") (words capitalized herein have the meaning ascribed to them in the Financing Agreement):

1. The acquisition, improvement, construction, installation and equipping of the Project was substantially completed as of December 31, 2022 (the "Completion Date").

2. All other facilities necessary in connection with the Project have been acquired, constructed, improved, installed and equipped.

3. The Project has been completed in such manner as to conform to all applicable zoning, planning, building, environmental, food handling and other similar governmental regulations.

4. All Project Costs have been paid in full except for those not yet due and payable or being contested, which are described below and for which money for payment thereof is being held and should be retained in the Construction Fund:

(a) Project Costs not yet due and payable:

Description	Amount
-------------	--------

(b) Payments being contested:

Description	Amount
-------------	--------

5. The money in the Construction Fund in excess of the total set forth in 4(a) and (b) above represents the surplus proceeds of the Bonds and the Holder under the Agreement is hereby authorized and directed to use such money to redeem the principal amount of outstanding Bonds at the earliest possible time.

6. Attached hereto is a statement of the Authorized Borrower Representative listing and specifically describing all items of personal property and fixtures acquired and installed as part of the Project.

EX-D-1



This certificate is given without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being.

Authorized Borrower Representative

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

## EXHIBIT E

### FORM OF DISBURSEMENT REQUEST

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS  
FROM THE JOSEPH'S CROSSING CONSTRUCTION FUND PURSUANT TO  
SECTION 4.3 OF THE FINANCING AGREEMENT BETWEEN THE  
WEST VIRGINIA HOUSING DEVELOPMENT FUND, HOLDER AND BORROWER

Pursuant to Section 4.3 of the Financing Agreement (the "Agreement") between the West Virginia Housing Development Fund (the "Issuer"), KeyBank National Association (the "Holder") and WC Joseph's Crossing Limited Partnership (the "Borrower") dated as of \_\_\_\_\_, 2022, the undersigned Authorized Borrower Representative hereby requests and authorizes KeyBank National Association to pay to the Borrower or to the person(s) listed on the Disbursement Schedule attached hereto as Schedule 1 out of the moneys deposited in the Construction Fund the aggregate sum of \$ \_\_\_\_\_ to pay such person(s) or to reimburse the Borrower in full, as indicated on Schedule 1, for advances, payments and expenditures made by it in connection with the items listed on Schedule 1.

Amount Requested:

Total Disbursements to Date:

1. Each obligation for which a disbursement is hereby requested is described in reasonable detail in Schedule 1.

2. Detailed bills, invoices or statements of account for each line item expenditure referenced in Schedule 1 are attached hereto.

3. The Borrower hereby certifies that:

(a) Each obligation referenced in Schedule 1 has been properly incurred, is a proper charge against the Construction Fund and has not been the basis of any previous disbursement.

(b) The expenditure of the amount requested under this Requisition, when added to all disbursements under previous Requisitions, will result in at least ninety five percent (95%) of the total of such disbursements, having been used (i) for the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation under the Code, or (ii) for payment of amounts which are, for federal income tax purposes, chargeable to the Project's 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 amounts and are to be used for qualified purposes. (For purposes of this paragraph, expenses incurred in connection with the issuance of the Bonds shall not be included as a Project expense which would count toward the representation of having used 95% of the total of such disbursement for the stated purposes).

(c) No Defaults exist under the Agreement.

(d) This Borrower's Certificate is to be utilized only in satisfaction of costs and charges with respect to the Project as shown on the Soft and Hard Cost Requisition Form as attached in Schedule I, dated \_\_\_\_\_, attached hereto.

(e) It agrees to provide, if requested by the Holder, a Vendor Payee Listing showing the name and the amount currently due each party to whom the Borrower is obligated for labor, materials

and/or services and supplies. This information would be provided in support of the disbursements set forth herein.

(f) It has complied with all duties and obligations required to date to be carried out and performed by it pursuant to the terms of the Agreement.

(g) All change orders or changes to the Schedule of Values in excess of \$50,000 on any one occasion or \$150,000 in the aggregate have been submitted to and approved by the Holder.

(h) All funds previously disbursed have been used for the purposes set forth in the Borrower Documents.

(i) All outstanding claims for labor, materials and/or services furnished prior to this draw period have been paid or will be paid from the proceeds of this disbursement.

(j) All construction prior to the date of this Borrower's Certificate has been accomplished in accordance with the Plans and Specifications.

(k) All sums advanced by the Holder on account of this Application will be used solely for the purpose of paying obligations owing as shown on the attached documentation and no item(s) for which payment is requested and/or equity is contributed has (have) been the basis for any prior disbursement and/or equity contribution.

(l) There are no liens outstanding against the subject project or its equipment except for Holder's liens and security interests as agreed upon in the Agreement.

(m) All representations and warranties contained in the Agreement are true and correct as of the date hereof.

(n) The Borrower has not been advised that the Opinion of Bond Counsel relating to the Bonds issued in connection with a portion of the Initial Advance may no longer be relied upon.

(o) To the knowledge of the Borrower, there has been no adverse change in pertinent existing law or regulations or interpretations thereof, including, but not limited to, regulations, rulings and interpretations of the Internal Revenue Service, subsequent to the date of delivery of the Opinion of Bond Counsel relating to the Bonds issued in connection with a portion of the Initial Advance.

(p) The representations, covenants, certifications and statements contained in the Borrower Tax Certification are true and accurate and are being complied with by the Borrower.

(q) To the knowledge of the Borrower, no litigation is pending affecting the issuance, legality or validity of the Bonds issued in connection with a portion of the Initial Advance or the exclusion of interest on such Bonds from gross income for Federal income tax purposes.

(r) The undersigned understands that this certification is made for the purpose of inducing the Holder to make an advance to the Borrower and that, in making such advance, Holder will rely upon the accuracy of the matters stated in this certificate. In the event that circumstances render the certifications in (n) through (q) above untrue or inaccurate between the date of this certification and the date that the Holder pays the respective purchase price of the Bonds in an amount corresponding to such advance, the Borrower understands that it is under an obligation under the Agreement to immediately notify the Issuer, Bond Counsel and the Holder.

4. All capitalized terms herein shall have the meanings assigned to them in the Agreement.

EX-E-2

**WC JOSEPH'S CROSSING LIMITED  
PARTNERSHIP**, a West Virginia limited partnership

By: WC Joseph's Crossing GP, LLC, an Ohio limited  
liability company, its General Partner

By: Woda Cooper Communities II, LLC, an Ohio  
limited liability company, its Sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Member

**SCHEDULE 1**

**DISBURSEMENT SCHEDULE NO. \_\_\_\_**

	Payee	TIN	Address	Purpose for Disbursement	Amount
1.					
2.					
3.					
4.					
5.					
6.					
	TOTAL				\$ _____

**EXHIBIT F**  
**FORM OF INVESTOR LETTER**

**[Letterhead of Bond Purchaser]**

\_\_\_\_\_, 2022

West Virginia Housing Development Fund  
5710 MacCorkle Avenue SE  
Charleston, West Virginia 25304

Re: Not to Exceed \$3,500,000 West Virginia Housing Development Fund Multifamily  
Housing Revenue Bonds (Joseph's Crossing Apartments Project) Series 2022 (the  
"Bonds")

Ladies and Gentlemen:

The undersigned understands and acknowledges that the Bonds are being sold with certain restrictions imposed by the West Virginia Housing Development Fund (the "Issuer") and the Bonds are being sold to the undersigned in reliance on the undersigned representing that it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment and is able to bear the economic risks of the investment.

In connection with the purchase of not to exceed \$3,500,000 in principal amount of the Bonds by the undersigned, the undersigned hereby represents and warrants as follows:

1. The undersigned is "Qualified Investor" who is either (a) a financial institution constituting an "accredited investor" as defined in Rule 501 of Regulation D of the Securities and Exchange Commission or a financial institution serving as a trustee or custodian signing in such capacity for the benefit of a financial institution constituting an "accredited investor", but excluding therefrom any individuals permitted as purchasers thereunder as described in subsection (4), (5) and (6) of such definition or (b) a "qualified institutional buyer" within the meaning of Rule 144A promulgated pursuant to the Securities Act of 1933, as amended.
2. The undersigned has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Bonds.
3. The undersigned has made its own inquiry and analysis with respect to the Bonds and the security therefor, the project to be financed with proceeds of the Bonds, and other material factors affecting the security and payment of the Bonds, and it has not relied upon any statement by you, your officers, directors, partners, agents or employees, or your legal advisors or financial consultants in connection with such inquiry or analysis or in connection with the offer and sale of the Bonds.
4. The undersigned recognizes that it may bear the economic risk of its investment in the Bonds for an indefinite period of time, since the Bonds may only be sold to another qualified institutional buyer or accredited investor.

5. The undersigned acknowledges that the Bonds are not and never will become general obligations of West Virginia Housing Development Fund (the “Issuer”), the State of West Virginia (the “State”), or any other political subdivision of the State, but are special limited obligations of the Issuer payable solely from and secured by a pledge of the revenues described in the Financing Agreement dated as of \_\_\_\_\_, 2022 relating to the Bonds (the “Financing Agreement”).

6. The undersigned has either been furnished with or has had access to all necessary information that it desires in order to enable it to make an informed investment decision concerning investment in the Bonds, and it has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Bonds and the security for the Bonds, so that it has been able to make an informed decision to purchase the Bonds.

7. The undersigned is purchasing the Bonds for its own account for investment and not with a view to, or for sale in connection with, any distribution of the Bonds or with any present intention of distributing or selling the Bonds, or any part thereof, provided that we reserve the right to transfer the Bonds or any part thereof to a purchaser or transferee who agrees to comply with the provisions of Section 4.7 of the Financing Agreement, and, unless the Bonds are held in a book entry system which restricts transfers to qualified institutional buyers, to deliver an investor letter in substantially the same form as this letter.

Very truly yours,

KeyBank National Association

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

**EXHIBIT G**  
**BUDGET**

[See Attached]



**EXHIBIT H**  
**POST-CLOSING EXHIBIT**

Borrower: WC Joseph's Crossing Limited Partnership  
Project: Joseph's Crossing Apartments  
Loan Amount: \$3,500,000.00

Borrower has requested that Holder defer certain conditions precedent to the closing of the Loan, and Holder is willing to do so on the terms and subject to the conditions of this Post-Closing Exhibit. This Post-Closing Exhibit shall be sufficient to modify and supplement the Loan Agreement. Except as modified or supplemented herein, the Loan Agreement and the other Loan Documents shall remain in full force and effect in accordance with their terms.

Borrower and Holder may modify the conditions above by executing a supplement to this Post-Closing Exhibit, in the form attached hereto.

The parties agree as follows:

<b>Description of Action:</b>	<b>To be Completed on or Before:</b>	<b>Deliver to:</b>
		Holder